

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: **A37-00353G**
Date Received: 7/28/1988
Receipt No: X777777
Received By: _____

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: DOUGLAS DRIEVER 208-788-2991
Address: PO BOX 2072
HAILEY ID 83333
2. Date of Priority: JUN 12, 1886
3. Source: BIG WOOD RIVER Trib. to: MALAD RIVER
4. Point of Diversion:
- | Township | Range | Section | 1/4 of | 1/4 of | 1/4 | Lot | County |
|----------|-------|---------|--------|--------|-----|-----|--------|
| 02N | 18E | 36 | SW | NW | | | BLAINE |
5. Description of diverting works:
EXISTING CANAL & DITCH TO P/U, ADD. DITCH & PUMP TO BE INSTALLED
6. Water is used for the following purposes:
- | Purpose | From | To | C.F.S | (or) | A.F.A. |
|------------|-------|-------|-------|------|--------|
| IRRIGATION | 04/01 | 11/01 | 0.200 | | 18.00 |
7. Total Quantity Appropriated is:
0.200 C.F.S. (and/or) 18.00 A.F.A.
8. Total consumptive use is 15.0 Acre Feet Per Annum.
9. Non-irrigation uses:
10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
01N	18E	13	SE	SE		IRR	6.0

Section Acres 6.0

Total Acres

MICROFILMED
6.0
OCT 24 1994

11. Place of use in counties: BLAINE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
A37-00363D

14. Remarks:

CLAIM BASED ON 37-0353 DECREE, SPLIT OFF FROM PART A.

THIS CLAIM RESULT OF APPROVED TRANSFER NO. 3678:

1. THE CHANGE AUTHORIZED BY THIS TRANSFER SHALL BE ACCOMPLISHED WITHIN ONE (1) YEAR OF THE DATE OF THIS APPROVAL.
2. FAILURE TO COMPLY WITH THE CONDITIONS OF THIS TRANSFER IS CAUSE FOR THE DIRECTOR TO ISSUE AN ORDER TO SHOW CAUSE WHY THE APPROVAL OF THE TRANSFER SHOULD NOT BE RESCINDED.
3. APPROVAL OF THIS TRANSFER DOES NOT PRECLUDE THE OPPORTUNITY FOR REVIEW OF THE VALIDITY OF THE WATER RIGHT(S) IN THE ONGOING SRBA.
4. USE OF WATER UNDER THIS WATER RIGHT IS SUBJECT TO CONTROL BY THE WATERMASTER OF STATE WATER DISTRICT NO. 37, BIG WOOD RIVER.
5. THIS RIGHT WHEN COMBINED WITH ALL OTHER RIGHTS SHALL PROVIDE NO MORE THAN 3.0 AFA PER ACRE FOR THE LANDS ABOVE.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: / /

Decree Plaintiff

vs Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A37-00353C
Date Received: 7/28/1988
Receipt No: S001142
Received By: AD

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: GUS A. CHEK
Address: P.O. BOX 1984
HAILEY, ID

208-788-3779

83333

RECEIVED

2. Date of Priority: JUN 12, 1886

3. Source: BIG WOOD RIVER

Trib. to: MALAD RIVER - 1990

4. Point of Diversion:

Department of Water Resources
Southern Region Office
County
BLAINE

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot
02N	18E	36	SW	NW		

5. Description of diverting works:
DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	10/15	0.400		

7. Total Quantity Appropriated is:
0.400 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is 45.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
01N	18E	13	SE	SE		IRR	15.0

Section Acres 15.0

Total Acres 15.0

A37-00353C

Page 1

Date: 01/23/90

MICROFILMED
FEB 22 1993

11. Place of use in counties: BLAINE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
A37-00363D

14. Remarks:
CLAIM BASED ON 37-0353 DECREE, SPLIT OFF FROM PART A.

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date:

Decree Plaintiff

vs

Decree Defendant

MICROFILMED
FEB 22 1993

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): Cms A Chok Date: 2-5-90

Date: _____

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 5th day
of Feb. 19 90
[Signature]
Notary Public

Seal

Residing at Kinberly, ID.
My Commission Expires 6/30/94

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A37-00353C
Date Received: 7/28/1988
Receipt No: S001142
Received By: TL

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: GUS A. CHEK 208-788-3779
Address: P.O. BOX 1984
HAILEY, ID 83333

2. Date of Priority: JUN 12, 1886

3. Source: BIG WOOD RIVER Trib. to: MALAD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
02N	18E	36	SW	NW			BLAINE

5. Description of diverting works:
DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	10/15	1.000		

7. Total Quantity Appropriated is:
1.000 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 45.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
01N	18E	13	SE	SE		IRR	15.0

Section Acres 15.0

Total Acres 15.0

A37-00353C

Page 1

Date: 07/28/88

MICROFILMED
FEB 22 1993

11. Place of use in counties: BLAINE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
A37-00363D

14. Remarks:
CLAIM BASED ON 37-0353 DECREE, SPLIT OFF FORM PART A.

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date:

Decree Plaintiff

vs

Decree Defendant

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do do not / wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Individuals:

Signature of Claimant(s):

Date: 7-28-88

Date:

County of

Quin Falls

SS.

Subscribed and sworn (or affirmed) before me this 28th day

2812

of July 19 88

Tom White
Notary Public

Residing at Turn Falls, Ed.

My Commission Expires 5/95

MICROFILMED
FEB 22 1993



T66

2
38.5

12

13/18

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T68

2
143.4

3
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4 130.3

12

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19

T 70

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3
12.2

4
132.1

98

MICROFILMED
FEB 22 1983

AC 10

11/28/2006

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-353G

NAME AND ADDRESS: BARBARA A BARRY
1800 ALAMEDA DRIVE
NAPLES FL 34102

DOUGLAS DRIEVER
PO BOX 2072
HAILEY ID 83333

DISALLOWED

SOURCE: BIG WOOD RIVER

TRIBUTARY: MALAD RIVER

QUANTITY: 0.200 CFS
18.000 AFY

PRIORITY DATE: 06/12/1886

POINT OF DIVERSION:

T02N R18E S36 SWNW Within BLAINE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	4/01 11/01	0.200 CFS 18.00 AFY

PLACE OF USE: IRRIGATION in BLAINE County

T01N R18E S13 SESE 6.00

6 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

No lawful appropriation shown: There are a number of circumstances in which a claim is proposed to be disallowed on this basis. This is most commonly included for a claim based on beneficial use or posted notice that is proposed to be disallowed because the right claimed is not within an exception to the mandatory permit statute, and beneficial use of water prior to the mandatory permit statute was not confirmed. This is also included where a claim is proposed to be disallowed because the claim is to water that is not public water subject to appropriation. This is also included where a right was determined not to exist in a prior adjudication.

EXPLANATORY MATERIAL: BASIS OF CLAIM -

The claimed place of use is also known as Lot 9 of the Dean Ranch Subdivision.

11/18/2006

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-353G

NAME AND ADDRESS: DOUGLAS DRIEVER
PO BOX 2072
HAILEY ID 83333

SOURCE: BIG WOOD RIVER

TRIBUTARY: MALAD RIVER

QUANTITY: 0.200 CFS
18.000 AFY

PRIORITY DATE: 06/12/1886

POINT OF DIVERSION:

T02N R18E S36 SWNW Within BLAINE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	4/01 11/01	0.200 CFS 18.00 AFY

PLACE OF USE: IRRIGATION in BLAINE County

T01N R18E S13 SESE 6.00

6 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

EXPLANATORY MATERIAL: BASIS OF CLAIM -

This right is a split from former right 37-353.

No lawful appropriation shown: There are a number of circumstances in which a claim is proposed to be disallowed on this basis. This is most commonly included for a claim based on beneficial use or posted notice that is proposed to be disallowed because the right claimed is not within an exception to the mandatory permit statute, and beneficial use of water prior to the mandatory permit statute was not confirmed. This is also included where a claim is proposed to be disallowed because the claim is to water that is not public water subject to appropriation. This is also included where a right was determined not to exist in a prior adjudication.

DISALLOWED



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

December 20, 1999

Lee Peterson, Watermaster
Water District 37
P.O. Box P
Shoshone, Idaho 83352

RECEIVED
DEC 28 1999
Department of Water Resources
Southern Region

Re: Assessment of Claims to Right No. ~~37-00353~~ (Frost Decree – James Johnson)

Dear Lee:

You have requested guidance from the Department of Water Resources on which claimants to parts of Right No. 37-00353 should be included in the Water District 37 "Decree Book." Claims to various parts of the right have been filed in the Snake River Basin Adjudication. The claims, in total, exceed the decreed amount of the right. Some of the new claimants were not previously identified in the Water District records as having an ownership interest in the water right and have not been previously assessed by the Water District. Some of the claimants not previously identified in the Water District's records have called for water delivery based upon their claims. It is my understanding that the right is delivered by the Water District to the head of the District 45 canal along which most of the claimants are located. Because the Water District does not control delivery from the canal, your records do not verify use of water under the rights by the claimants.

Based upon this understanding Water District 37 should include in its Decree Book each of the water users claiming a part of Right No. 37-00353 that have demonstrated a probable ownership. Those having a probable ownership in the right include:

a. Water users listed in the Water District Records as having an ownership interest. These include:

- | | |
|----------------------------|------------|
| 1. Gardner | 180 inches |
| 2. Fosnot | 20 inches |
| 3. Grigsby (formerly Bick) | 20 inches |
| 4. Kantenwein | 10 inches |
| 5. Oppenheimer | 20 inches |
| 6. Stricker | 20 inches |
| 7. Driever | 10 inches |

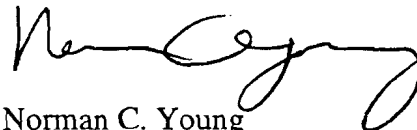
It is my understanding that the Water District Records also at one time listed Robert Keirstad as the owner of 40 miners inches. Because Mr. Keirstad has not filed a claim in the SRBA, the county records cast doubt on his continued ownership of any of the right, and he has not called for water for many years, I suggest that Mr. Keirstad not be listed in the Decree Book until these issues are resolved.

- b. Claimants not previously listed in the Water District records which have now filed a claim in the SRBA and for which IDWR has entered a preliminary order in response to a petition for distribution by the watermaster. Olsen Livestock Consulting falls into this category.

Other claimants who have not demonstrated a probable ownership to a part of the right, even though they have claims pending in the SRBA, should not be include in the Decree Book until such time as the court confirms their right or IDWR has entered a preliminary order recognizing, at least for the interim period prior to action by the court, that a probable ownership exists by the claimant. The claims filed by Ziker, Price, and Goicoechea are in this category. Ziker has a pending petition calling for distribution of water and has supplied some ownership information. If an order to deliver results from the petition, Ziker should then be included in the Decree Book.

At this time the claimants calling for water that have demonstrated a probable ownership in the right do not exceed the amount of the right. It is easy to see that this will not be the case if all existing claimants call for delivery of water. The preliminary order entered in response to the Olsen Livestock Consulting petition indicates that the amount of water would be prorated among all the claimants if others demonstrate probable ownership to the amounts they are claiming. It is important that all claimants be advised of petitions calling for water under the new claims to allow them to participate in administrative actions. IDWR will provide copies of all preliminary orders to all claimants. Action to resolve the matter in the SRBA is still off in the future because the preliminary Director's Report for Basin 37 is scheduled to be available in December 2002.

Sincerely,



Norman C. Young
Administrator
Water Management Division

A37-00353	BICK, J KARL	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
	BICK, JUDITH G	C				4 STOCK
A37-00353A	SPLIT RIGHT,	C	06/12/1886	/Z	BIG WOOD RIVER	1 IRR
					SPL IT RI GHT	
A37-00353B	STRICKER, EDWARD W	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
	STRICKER, JEANNINE	C				4 STOCK
A37-00353C	SPLIT RIGHT,	C	06/12/1886	/Z	BIG WOOD RIVER	1 IRR
					SPL IT RI GHT	
A37-00353D	GARDNER, ROBERT	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
	GARDNER, KATHRYN	C				
A37-00353E	OPPENHEIMER JR, HARRY	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
A37-00353F	ZIKER TRUSTEE, RICHARD	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
	ZIKER TRUSTEE, PAULA	C				
~~A37-00353G~~	DRIEVER, DOUGLAS	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
A37-00353H	KANTENWEIN, REID	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
A37-00353J	OLSEN LIVESTOCK CONSUL	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
A37-00353K	PRICE, SHERRY	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
	PRICE, BRUCE	C				
A37-00353L	GOICOECHEA, TOM	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
	GOICOECHEA, ANNETTE	C				

A37-00353G

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

FILED
JUL 24 1997
DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF A CALL FOR)
DELIVERY OF WATER RIGHT NO.)
37-0353 TO OLSEN LIVESTOCK)
CONSULTANTS, INC.)
_____)

PRELIMINARY ORDER

Scott Campbell, an attorney representing Olsen Livestock Consultants, Inc., requested delivery of 0.40 cfs (20 miners inches) of water from the Big Wood River under water right No. 37-0353. After reviewing the files and records of the Department, Water District 37, and Blaine County, the Department of Water Resources enters the following Findings of Fact, Conclusions of Law, and Preliminary Order.

FINDINGS OF FACT

1. Water Right No. 37-0353 was decreed to James Johnson in the case of S. C. Frost, et al vs. Alturas Water Co., et al. The right is for 6.4 cfs to be diverted from the Big Wood River for irrigation of the E1/2SE1/4 of Section 13 and the E1/2NE1/4, Section 24, T1N R18E, B.M., Blaine County (approximately 160 acres). The water right has been diverted into the Wood River Valley Irrigation District No. 45 canal located within the SW1/4NW1/4, Section 36, T2N, R18E, for delivery to users of the water. The priority of right No. 37-0353 is June 12, 1886.

2. The decreed place of use for right No. 37-0353 was divided in the early 1970's into an 18 lot subdivision known as the Dean Ranch Subdivision. The records of the Department and Water District 37 indicate that right No. 37-0353 was appurtenant to and used upon the decreed place of use up to the time the land was subdivided and on some of the subdivision lots and other land each year thereafter. Lot 2, Block 1 of the subdivision has not been irrigated for more than 10 years as evidenced by a review of aerial photographs and other information available to the department.

3. Olsen Livestock Consultants, Inc. claims ownership of Lot 2, Block 1, Dean Ranch Subdivision. The deeds in the chain of title filed with Blaine County for this lot from the creation of the subdivision to the present are summarized as follows:

a. M.D. and Katherine Dean deeded Lot 1 (approximately 8 acres) and Lot 2 (approximately 10 acres) with appurtenances to Charles A. and Debra Anne Curtis on November 1, 1974. Appurtenant water rights were not specifically described.

- b. Charles A. and D. Anne Curtis deeded Lot 1 with appurtenances to Robert E. Fosnot on October 19, 1978. Appurtenant water rights were not specifically described.
 - c. Charles A. and Debra Anne Curtis deeded Lot 2 with appurtenances to Dean R. and Judene Call on December 5, 1978. A water right with an 1887 priority date for 20 inches was specifically included.
 - d. Dean R. and Judene Call deeded Lot 2 with appurtenances to Robert D. and Sharyl M. Head on August 5, 1991. A water right with an 1887 priority date for 20 inches was specifically included.
 - e. Robert D. and Sharyl M. Head deeded Lot 2 with appurtenances to Olsen Livestock Consultants, Inc. on September 25, 1996. Appurtenant water rights were not specifically described.
4. Blaine County does not have any record of deeds transferring title of any part of Water Right No. 37-0353 separately from the appurtenant land during the time period of December 15, 1969 (date land was deeded to M. D. Dean) to November 1, 1974 (the date of the initial sale of Lot 1 and 2).
5. Water District 37 records list the following as the current owners of water right No. 37-0353:
- a. Harry L. Oppenheimer (20 miners inches) based upon a letter dated October 27, 1977 from M. D. Dean confirming the sale of the water to Jerry Lee Johnson, a February 16, 1978 warranty deed from Jerry Lee Johnson to Marvin Lotspeich, and a 1980 warranty deed from Marvin Lotspeich to Harry L. Oppenheimer.
 - b. Robert Kierstad (40 miners inches) based upon an October 28, 1977 letter from M. D. Dean confirming sale of water to Mr. Kierstad.
 - c. Ed Stricker (20 miners inches) based upon an October 29, 1977, letter from M. D. Dean confirming sale of the water to Mr. Stricker.
 - d. Gus Chek (10 miners inches) based upon a November 1, 1977, letter confirming sale of 20 inches of water to Mr. Chek. Mr. Chek subsequently sold 10 inches to Douglas Driever.
 - e. Douglas Driever (10 miners inches) based upon an October 4, 1991 letter from Gus Chek confirming sale of the water and Transfer No. 3679 approved by the department.

f. Robert Gardner (180 miners inches) based upon a June 25, 1982 letter from M. D. Dean confirming sale of the water to Mr. Gardner.

g. J Karl Bick (20 miners inches) based upon a June 25, 1982 letter from M. D. Dean to John Peterson and a quit claim deed dated November 3, 1993 from John Peterson to J Karl Bick.

h. Robert Fosnot (20 miners inches) based upon Transfer No. 2948 approved by the department.

6. The records of Water District 37 list a current owner for all 6.4 cfs (320 miners inches) of right No. 37-0353. Olsen Livestock Consultants, Inc. is not listed as a current owner by the water district. The watermaster records indicate that an assessment has not been paid for delivery of water for use on Lot 2, Block 1, Dean Ranch Subdivision since 1982 or earlier.

7. The following have claimed portions of right 37-0353 in the Snake River Basin Adjudication (SRBA):

- | | | |
|----|---|--------------------|
| a. | A37-0353 J. Karl & Judith G. Bick
(This claim was originally filed by John Peterson.) | 20 miners inches |
| b. | A37-0353B Edward & Jeannine Stricker | 20 miners inches |
| c. | A37-0353D Robert & Kathryn Gardner | 180 miners inches |
| d. | A37-0353E Harry L. Oppenheimer, Jr. | 20 miners inches |
| e. | A37-0353F William R. Long | 10 miners inches |
| f. | A37-0353G Douglas Driever
(This is one half of claim A37-0353C filed by Gus Chek.) | 10 miners inches |
| g. | A37-0353H Reid Kantenwein
(This is one half of claim A37-0353C filed by Gus Chek.) | 10 miners inches |
| h. | A37-0353J Tom Olsen | 13.5 miners inches |
| i. | A37-11688 Paul R. & Robert E. Fosnot
(This claim is based upon water right No. 37-0353.) | 20 miners inches |

8. The SRBA claims on file total 303.5 miners inches.

9. The Water District 37 records show that Wood River Valley Irrigation District No. 45 has paid the Water District 37 assessments for 1997 for Gus Chek and for 1996 and 1997 for Robert Kierstad.

10. The Department, Water District 37, and Blaine County records do not show the transfer of an 1887 water right to Lot 2, Block 1, Dean Ranch Subdivision.

11. Water District 37 has been active each year since 1974 and earlier.

12. Rule 104 of the "Rules of Procedure of the Idaho Department of Water Resources", IDAPA 37.01.01, authorize the department to initiate a formal proceeding by issuing an informal determination that will become final in the absence of further action by the person(s) to whom the document is addressed.

CONCLUSIONS OF LAW

1. Water right No. 37-0353 has not been forfeited as evidenced by the Water District 37 records of delivery and use, although use has not occurred on Lot 2, Block 1 Dean Ranch Subdivision for many years.

2. Lot 2, Block 1 Dean Ranch Subdivision was included in the decreed place of use of water right No. 37-0353. Unless a change in place of use was made in accordance with a valid transfer procedure, water right No. 37-0353 is prorated uniformly to the place of use; i.e., 2 miners inches to each acre of the place of use, *Crow v. Carlson*, 107 Idaho 461 (1984).

3. A water right is an appurtenance to the land and passes by conveyance of the land unless it was specifically reserved in the deed or it can be clearly shown that it was known to both parties that the water right was not intended to be conveyed. *Russell v. Irish*, 20 Idaho 194, 118 P. 501 (1911). Because the 1974 deed from M. D. and Katherine Dean to Charles A. and Debra Anne Curtis did not specifically reserve water rights from the sale, a proportionate share of water right 37-0353 remained appurtenant to the parcel. Deeds and letters confirming the sale of portions of the decreed water right issued by M. D. Dean subsequent to the 1974 deed to Curtis purporting to convey water rights could not have moved the water right from Lot 2.

4. The reference to an "1887" water right in the chain of title to Lot 2, Block 1, Dean Ranch Subdivision, appears to be a typographical error in describing the appurtenant May 12, 1886 priority water right because documentation has not been found to associate an 1887 priority water right with Lot 2, Block 1, Dean Ranch Subdivision. The inclusion of this reference to a water right in the deed to Mr. Call indicates that Mr. Curtis understood that a water right was appurtenant to Lot 2, Block 1, Dean Ranch Subdivision.

5. Section 42-607, Idaho Code, provides that a water user can not adversely possess the water rights of another user in an active water district.

6. The information available to the department indicates that a proportionate share of water right No. 37-0353 is appurtenant to Lot 2, Block 1, Dean Ranch Subdivision owned by Olsen Livestock Consultants, Inc. The watermaster of Water District 37 should be instructed to deliver the water to the authorized point of diversion for delivery and irrigation use.

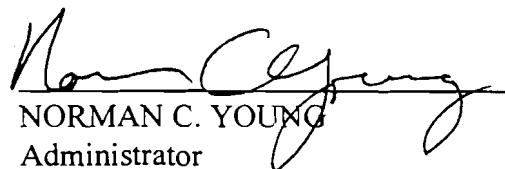
7. The department is not able with the information presently available to determine which of the persons presently listed in the Water District 37 records as owning a portion of water right No. 37-0353 are not entitled to the full amount attributed to them. This matter is left for further determination by the department or the district court. Because some of the persons listed as owning part of the right are not calling for delivery under the right and have not done so for several years, the watermaster can satisfy the Olsen Livestock Consultant, Inc. call without otherwise changing the delivery to those entitled to use the water. If calls for water by those entitled to receive the water exceed the total amount of the right, delivery to each user will be proportionately reduced until the ownership issue is resolved.

ORDER

IT IS, THEREFORE, HEREBY ORDERED:

1. The watermaster of Water District 37 is instructed to deliver 0.20 cfs of water right 37-0353 with a June 12, 1886 priority date to the Wood River Valley Irrigation District No. 45 headgate in the SW1/4NW1/4, Section 36, T2N, R18E for use by Olsen Livestock Consultants, Inc. Prior to delivery of the water under this order, Olsen Livestock Consultants, Inc. shall have paid any applicable Water District 37 assessments.
2. This Order does not constitute a determination that Olsen Livestock Consultants, Inc. has a right-of-way, easement, or other necessary authorities and approvals needed to convey water through the Wood River Valley Irrigation District headgate and canal system.
3. This Order is a preliminary determination subject to revision if additional information is submitted indicating that water right No. 37-0353 is no longer appurtenant to Lot 2, Block 1, Dean Ranch Subdivision. All persons receiving this order and others using or claiming the use of water under right No. 37-0353 have the opportunity to seek reconsideration or file exceptions in accordance with Rule 730 of the "Rules of Procedure of the Department of Water Resources," IDAPA 37.01.01.

Signed at Boise, Idaho, this 22ND day of July, 1997.


NORMAN C. YOUNG
Administrator

Water Management Division

CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of July, 1997, I served a true and correct copy of the foregoing document on the following person(s) by mailing in the U.S. mail, first class, with the correct postage affixed thereto:

Scott Campbell
Elam & Burke
PO Box 1539
Boise, Idaho 83701

J Karl and Judith G. Bick
PO Box 2014
Sun Valley, Idaho 83353

Gus Chek
PO Box 1984
Hailey, Idaho 83333

Robert and Kathryn Gardner
PO Box 470
Bellevue, Idaho 83313

William R. Long
11710 Mayfield Avenue
Los Angeles, California 90049

Robert Earl Fosnot
PO Box 290
Bellevue, Idaho 83313

E. Lee Schlender
PO Box 296
Hailey, Idaho 83333

Edward and Jeannine Sticker
10767 State Highway 75
Bellevue, Idaho 83313

Douglas Driever
PO Box 2072
Hailey, Idaho 83333

Harry L. Oppenheimer, Jr.
246 Summit Drive
Corde Madera, California 93925

Reid Kantenwein
PO Box 1525
Hailey, Idaho 83333

Paul R. Fosnot
837 Laurel Avenue
Pomona, California 91767


DEBORAH DREW-ELLIS
Legal Secretary

MICROFILMED
OCT 24 1994

Water right number - A37-00353C

Prefix Translation: ADJUDICATION CLAIM

```
+ - - - - - Remarks - - - - - +
      PART G - DOUGLAS DRIEVER (TRANSFER NO. 3678) .2 CFS 6 ACRES
      PART H - REID KANTENWEIN (TRANSFER NO. 3679) .2 CFS 7.5 ACRES
+ - - - - - Old Water Right Numbers - - - - - +
      No Old Water Right Numbers Found
+ - - - - - Conditions of Approval - - - - - +
      No Conditions of Approval found.
+ - - - Decree Plaintiff - - - +      + - - - Decree Defendant - - - +      + - Decree Date - +
                                         00/00/0000
+ - - - - - Comments - - - - - +
      No Comments Found
+ - - Audit Fields - - +
      11/16/93 ROBERTSO
+ - - - - - Adjudication Rights Dates and Flags Area - - - - - +

      Court Report Filing - 00/00/0000   Field Inspection Made - 00/00/0000   Civil Case Number - 39576
      Objection Filed Date - 00/00/0000   Field Inspection Flag -
      Response Filed Date - 00/00/0000   Verified Date - 00/00/0000   Old Case Number -
      Claim Received Date - 07/28/1988   Last Amended Date - 01/23/1990   Old Judicial District -
                                          Receipt Number - S001142   Temporary Right - P
                                          POU Ownership Flag - Y   Water District -
                                          Name Connector -       Federal/State Indicator - S
                                          Presumption Flag -
                                          Notice of Error Flag -
```

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OCT 24 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

16-Nov-1993

DOUGLAS DRIEVER
PO BOX 2072
HAILEY ID 83333

RE: Amendment of SRBA Claim ~~A37-00353C - GUS CHEK~~

Dear Claimant:

Pursuant to the approval of Transfers No. 3678 & 3679, the above referenced Notice of Claim in the Snake River Basin Adjudication has been amended to conform with the transfers and resulted in a split of that right into parts A37-00353G (Driever) and A37-00353H (Kantenwein). Please find enclosed a printout of the way your claim record has been modified. Please look the modified record over carefully to be sure it correctly reflects your intended change. If you have questions please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Jeanie'.

Jeanie Robertson
Records Clerk

Encl:

cc: GUS A. CHEK
PO BOX 1984
HAILEY ID 83333

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OCT 24 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

16-Nov-1993

DOUGLAS DRIEVER
PO BOX 2072
HAILEY ID 83333

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Sincerely,

A handwritten signature in cursive script, appearing to read 'Jeanie'.

Jeanie Robertson
Records Clerk

Encl:

cc: GUS A. CHEK
PO BOX 1984
HAILEY ID 83333

MICROFILMED
OCT 24 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

23-Jan-1990 09:25

Gus A. Chek
P.O. Box 1984
Hailey, Idaho 83333

RE: SRBA Claim A37-00353C

RECEIVED

FEB 5 - 1990

Department of Water Resources
Southern Region Office

Dear Mr. Chek:

James Stanton of our office has asked me to draft an amendment of your Notice of Claim A37-00353C correcting the amount of water which is being claimed. Apparently James and you discovered that you only have a right to 20 miner's inches or 0.40 cubic feet per second of the June 12, 1886 water when you were filing for some transfer applications.

Please find enclosed the draft amendment which you should review and sign before a notary and return to our office.

If you have any questions please feel free to contact our office.

Sincerely

A handwritten signature in cursive script, appearing to read 'Allen Merritt', is written over a horizontal line.

Allen Merritt, P.E.
Water Rights Supervisor

Encl:

cc: James Stanton IDWR

MICROFILMED
FEB 22 1993