

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 24-10753

NAME AND ADDRESS:

KEVIN TONER
136 MADISON AVE 3RD FLOOR
NEW YORK NY 10016

YODON THONDEN
136 MADISON AVE 3RD FLOOR
NEW YORK NY 10016

SOURCE: Source:
SAGE CREEK

Tributary:
CROW CREEK

QUANTITY: 0.130 CFS ~~0.280 CFS~~
0.000 AFY

PRIORITY DATE: 05/01/1932
~~05/01/1968~~

POINT OF DIVERSION:

T09S R46E S20 NESESW
Within CARIBOU County

**PURPOSE AND
PERIOD OF USE:**

Purpose of use
IRRIGATION

Period of use:
04/15 10/31

Quantity:
0.130 CFS
~~0.280 CFS~~

PLACE OF USE:

IRRIGATION within CARIBOU County
T09S R46E S20 SESE 3.7
T09S R46E S29 NENE 2.6

~~T09S R46E S20 SESE 9.4~~

6.3 ACRES TOTAL

~~9.4 ACRES TOTAL~~

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

This right is a split from former right 24-4020.

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 24-10753
Date Received: 1/30/1990
Receipt No:
Received By:

**AMENDED NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

YODON THONDEN Phone: (212) 842-8903

136 MADISON AVE 3RD FLOOR
NEW YORK NY USA 10016

KEVIN TONER Phone: (212) 842-8903

136 MADISON AVE 3RD FLOOR
NEW YORK NY USA 10016

2. Date of Priority: 05/01/1932

3. Source: SAGE CREEK Trib. to: CROW CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
09S	46E	20	NE SE SW	CARIBOU	

5. Description of diverting works:

HEADGATE & DITCHES TO FLOOD IRRIGATE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/01	10/31	0.13	

7. Total Quantity Appropriated is:
0.13 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
09S	46E	20	SE	SE	IRRIGATION	3.7
					Section Acres	3.7
09S	46E	29	NE	NE	IRRIGATION	2.6
					Section Acres	2.6
					Total Acres	6.3

11. Place of use in counties: CARIBOU

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

13. Other Water Rights Used:

14. Remarks:

CHANGED OWNERSHIP PER REQUEST/JH/5-20-99

This right is a split from former right 24-4020.

15. Basis of Claim: Statutory Claim

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): _____ Date: _____

_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this

of _____ 20__ _____

Notary Public

Residing at _____

My commission Expires _____

COPY

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

In Re SRBA

Case No. 39576

A. Subcase 24-10753
(Insert water right number
From the Objection Form)

STANDARD FORM 4

MOTION TO FILE:

☐ LATE NOTICE OF CLAIM

☒ AMENDED NOTICE OF CLAIM

INSTRUCTIONS

This form is used to file a late Notice of Claim or an amendment to a Notice of Claim in a reporting are where the Director's Report has been filed. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even number pages upside down.

The water right number for your late or amended claim must be indicated above in the blank space following "Subcase." You must use a **separate form for each** late or amended Notice of Claim.

This form has been adopted by the court in *SRBA Administrative Order 1, Rules of Procedure* (amended Sept. 30, 1996), Section 4, which may be consulted for further information.

By file a *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim*, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

- ☐ I have read *SRBA Administrative Order 1, Rules of Procedure* (amended Sept. 30, 1996).

My name is _____

My address is _____

My phone number is: Work _____ Home _____

I am an attorney representing Kevin Toner, Yodon Thonden

My name is Kent W. Foster; Holden, Kidwell, Hahn & Crapo, PLLC

My address is PO Box 50130, Idaho Falls, ID 83405-0130

My phone number is 208-523-0620

MOTION TO FILE A LATE NOTICE OF CLAIM

A Motion to File a Late Notice of Claim will require a hearing before the Presiding Judge.

- ☐ I did not file a Notice of Claim to the use of water in the SRBA because:

- ☐ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of Claim for domestic or stock watering use.

- ☐ I am providing a legal and factual documentation for my claimed use of water. You must describe these documents and attach a readable copy. (You do not need to fill this out if you are reinstating a Notice of Claim for domestic or stock watering use, but you **must** attach a copy of you Notice of Claim.)

I have attached:

- ☐ A fully completed Notice of Claim (available from IDWR).
- ☐ A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I.C. § 42-1414. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ _____.
- ☐ A claim filing fee and a late claim fee for those claims other than a domestic or stock watering use for which a notice of claim was not filed. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ _____.

Follow these instructions regarding the hearing on this motion.

1. Contact the Clerk of the SRBA Court (208-736-3011) to request a hearing date and time.
2. Fill in the following information:

This motion will be heard on _____
(Insert Date and Time)
at the SRBA Court courthouse, 253 Third Avenue North, Twin Falls, Idaho.

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A Motion to File an Amended Notice of Claim may require a hearing before the presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires.

√ I must amend my Notice of Claim to the use of water in the SRBA because:

Detailed field examinations by IDWR have disclosed that information contained in former claims is inaccurate and needs to be corrected.

- ☐ I am providing legal and factual documentation to support my amended Notice of Claim. You must describe these documents and attach a readable copy.

I have attached:

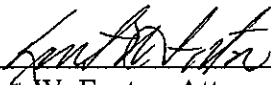
- ☒ An amended Notice of Claim (available from IDWR).
- ☐ Payment of the following additional fees required by IDWR:

VERIFICATION

State of Idaho)
)ss:
County of Bonneville)

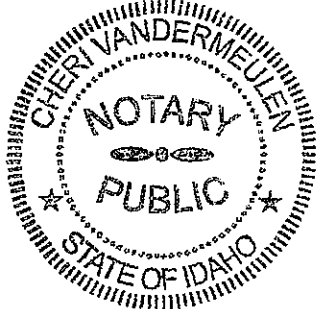
Kent W. Foster, being first duly sworn, upon oath, deposes and says:

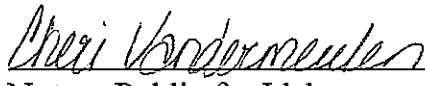
That I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.



Kent W. Foster, Attorney

Subscribed and sworn to before me this 12th day of August, 2007.





Notary Public for Idaho
Residing at: Idaho Falls, Idaho
My Commission expires: July 7, 2009

CERTIFICATE OF MAILING

I certify that on this 10th day of August, 2007, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

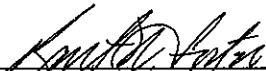
2. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

3. If you are filing an amend Notice of Claim in a subcase being heard before the Presiding Judge or a Special Master, you must serve a copy on all parties to that subcase.



Kent W. Foster, Attorney

G:\WPDATA\KWF\10652 MARTIN, STEPHEN E\07 Toner, Kevin\Motion to Amend Claim, 24-10753.wpd

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 24-10753
Date Received _____
Receipt Number _____

**AMENDED NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s) Kevin Toner & Yodon Thonden Phone (212) 842-8903

Mailing Address 136 Madison Ave., 3rd Floor, New York, NY Zip 10016

2. Date of Priority (Only (1) per claim) May 1, 1932

3. Source of water supply (a) Sage Creek

which is tributary to (b) Crow Creek

4.a. Location of existing point of diversion is:
Township 9S Range 46E Section 20, NE 1/4 of SE 1/4 of SW 1/4, Govt. Lot _____,
County of Caribou

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4, Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4 Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged
and the depth of each well. Headgate and Ditch

6. Water is claimed for the following purposes: _____ (Both dates are inclusive) (cfs) (acre feet)

For Irrigation purposes from 04/01 to 10/31 amount 0.13 cfs or _____

7. Total quantity claimed (a) 0.13 cfs (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses; describe full (eg. Domestic: Give number of household served; Stockwater: Type and number of livestock Etc.) _____

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instruction for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TLS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
9S	46E	20																3.7	3.7
		29	2.6																2.6

Total number of acres irrigated 6.3

11. In which county(ies) are lands listed above as place of use located? Caribou

12. Do you own the property listed above as place of use? Yes ☒ No ☐

If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.

_____ or None (☒)

14. Remarks:

15. Basis of Claim (Check one) Beneficial Use ☒ Posted Notice ☐ Permit ☐ Decree ☐ License ☐

If applicable provide IDWR Water Right Number 24-10753

Court _____ Case Number _____ Decree Date _____

Plaintiff vs Defendant _____

16. Signature(s)

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s) [Signature] Date 7/30/07

[Signature] Date 7/30/07

For Organizations: I do solemnly swear or affirm that I am _____ of _____ (Title)

_____, that I have signed the foregoing document in the space below as (Organization)

_____, of _____ and that the statements contained in the (Title) (Organization)

foregoing document are true and correct.

Last Name Toner/Thonden Ident. Number 24-10753

Signature of Authorized Agent _____

Title and Organization _____ Date _____

State of Idaho)
County of New York) SS.

Subscribed and sworn (or affirmed) before me this 30 day of JULY, 2007.

Notary Public [Signature]
Residing at _____
My Commission Expires _____
JESSICA FLORES (CALDERON)
Notary Public, State Of New York
N5.01FL6149342
Qualified in Queens County
Commision Expires July 10, 2010

17. Notice of Appearance:

Notice is hereby given that I, Kent W. Foster, will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____

Address: 1000 Riverwalk Dr., Ste. 200, PO Box 50130, Idaho Falls, ID 83405-0130

Date _____

DEPT. OF LAND & WATER
TWIN FALLS, IDAHO 83405
FILED _____

2007 JAN 23 PM 10 42

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

In Re SRBA

A. Subcase 24-10753

Case No. 35976

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Kevin Toner & Yodon Thonden

Address: 136 Madison Ave., 3rd Floor

New York, NY 10016

Daytime Phone: 212-842-8903

Name & Address of Attorney, if any:

Kent W. Foster

Holden, Kidwell, Hahn & Crapo, PLLC

PO Box 50130, Idaho Falls, ID 83405

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Kevin Toner & Yodon Thonden

Address: 136 Madison Ave., 3rd Floor

New York, NY 10016



D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: 1.6 cfs
4. ☒ **Priority Date**
Should be: May 1, 1902
5. ☒ **Points of Diversion**
Should be: SESW, Sec. 20, T9S., R46E.
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: Irrigation
8. ☒ **Period of Year**
Should be: 04/01 to 10/31
9. ☒ **Place of Use**
Should be: T9S., R46E., Sec. 20, SESE (6), Sec. 29, NENE (8)
10. **I object because:**
☐ This water right should not exist.
☒ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION(S):** Claimants recently acquired this land and hired a ranch manager who has now been able to obtain information from the former owners and irrigators of the property.

SCANNED
MAR 26 2007

VERIFICATION (Must be Completed)

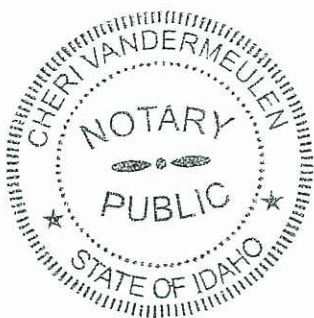
State of Idaho)
)ss.
County of Bonneville)

Kent W. Foster, duly sworn, upon oath, deposes and says that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Kent W. Foster

Subscribed and sworn to before me this 2nd day of January, 2007.





Notary Public for Idaho
Residing at: Idaho Falls, ID
My Commission Expires: July 7, 2009

SCANNED
MAR 26 2007

INSTRUCTIONS FOR MAILING

You must mail the objection, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of January, 2007, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environmental and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Kent W. Foster

G:\WPDATA\KWF\10652 MARTIN, STEPHEN E\07 Toner, Kevin\Objection.10753.wpd

09/08/2006

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

RIGHT NUMBER: 24-10753

NAME AND ADDRESS: YODON THONDEN
136 MADISON AVE 3RD FLOOR
NEW YORK NY 10016

KEVIN TONER
136 MADISON AVE 3RD FLOOR
NEW YORK NY 10016

SOURCE: SAGE CREEK

TRIBUTARY: CROW CREEK

QUANTITY: 0.280 CFS

PRIORITY DATE: 05/01/1968

POINT OF DIVERSION: T09S R46E S20 NESESW Within CARIBOU County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/15 10/31	0.280 CFS

PLACE OF USE: IRRIGATION Within CARIBOU County
T09S R46E S20 SESE 9.40

9.4 ACRES TOTAL

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

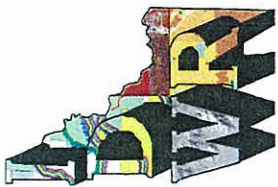
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - , Beneficial Use

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

This right is a split from former right 24-4020.

SCANNED
MAR 26 2007



Idaho Department of Water Resources

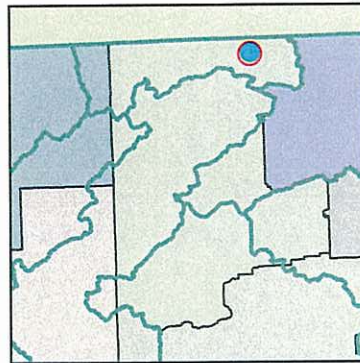
SRBA Recommendation:

24-10753

(Irrigation)

Legend

- Point of Diversion
- Place of Use
- Townships
- PLS Sections
- Quarter Quarters

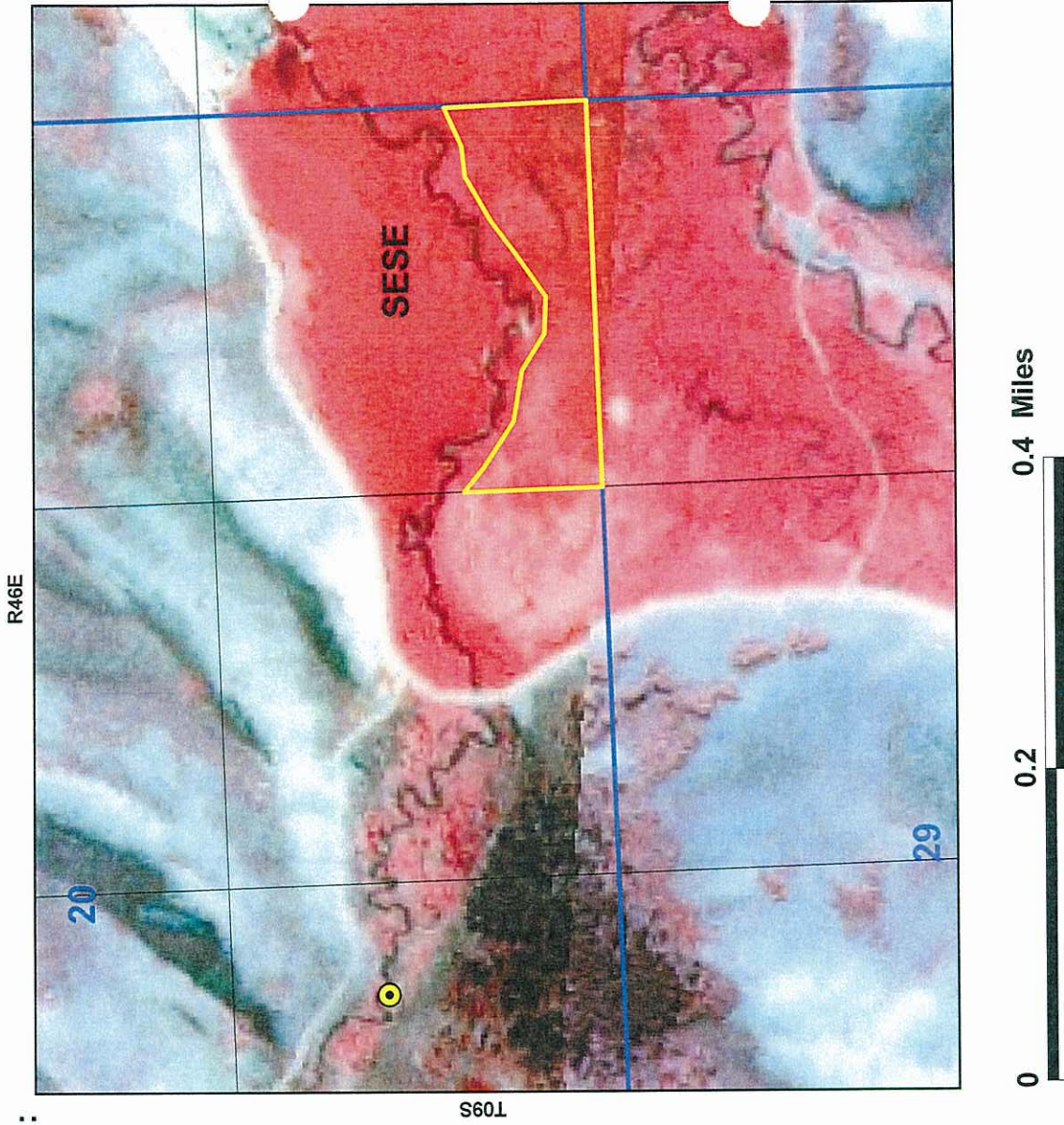


Caribou County
IDWR Basin 24



SCANNED
MAR 26 2007

Prepared by C. BIRD
On Friday, September 1, 2006
1987/88 Aerial Photography



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 24-10753
Date Received: 1/30/1990
Receipt No:
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NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

YODON THONDEN Phone: (212) 842-8903
136 MADISON AVE 3RD FLOOR
NEW YORK NY USA 10016

KEVIN TONER Phone: (212) 842-8903
136 MADISON AVE 3RD FLOOR
NEW YORK NY USA 10016

2. Date of Priority: 05/01/1902

3. Source: SAGE CREEK Trib. to: CROW CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
09S	46E	20	NE SW	CARIBOU	

5. Description of diverting works:

HEADGATE & DITCHES TO FLOOD IRRIGATE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/01	11/01	0.64	

7. Total Quantity Appropriated is:
0.64 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
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SCANNED
MAR 26 2007

09S	46E	20	SE	SE	IRRIGATION	24
					Section Acres	24
					Total Acres	24

11. Place of use in counties: CARIBOU

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

13. Other Water Rights Used:

14. Remarks:

This right is a split from former right 24-4020 .

15. Basis of Claim: Statutory Claim

SCANNED

SCANNED

MAR 26 2007