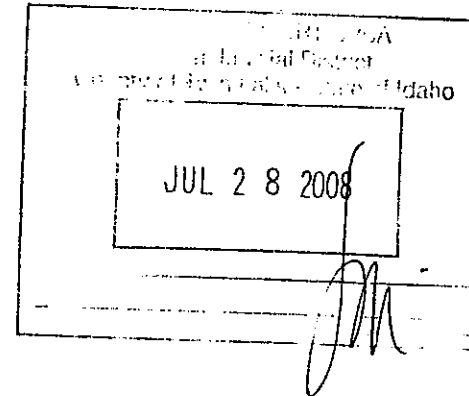


Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 West Main, Suite 303
P.O. Box 485
Twin Falls, ID 83301-0485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Attorneys for Lynn A. & Robin R. Herbst



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

)
)
)
)
)
)
)

Subcase No. 74-00741

Case No. 39576

OBJECTOR'S EXHIBIT LIST

Exhibit No.	Description
101	Claim for Water Right 74-741, filed by John F. and Emma Herbst, on April 20, 1990.
102	Warranty Deed, December 3, 1969, from Doyle W. & Loa B. Dance to John Ferrell & Emma Herbst
103	Notice of Change of Ownership for water right 74-741, changing ownership to Lynn A. and Robin R. Herbst
104	Amended Director's Report for Water Right 74-741, dated October 11, 2007.
105	Notice of Claim to a Water Right, for water right 74-741, in the Lemhi Adjudication, dated October 6, 1971
106	Lemhi Decree for water right 74-741
107	Homestead Certificate No. 46
108	Application for Permit, filed by Joseph L. Pattee, on January 8, 1908
109	License No. 3350, dated September 10, 1912
110	January 2, 1996, Memorandum from Bob Foster to Ernie Carlsen RE: A74-00741

DATED this 28th day of July 2008.

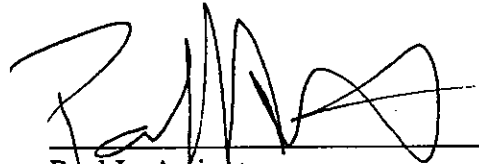
BARKER ROSHOLT & SIMPSON, LLP

A handwritten signature in ink, appearing to be "Paul L. Arrington", written over a horizontal line.
Paul L. Arrington

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of August, 2007, I served the foregoing **OBJECTOR'S EXHIBIT LIST** upon the following by facsimile and by U.S. Mail, postage prepaid:

Chris Bromley
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098



Paul L. Arrington

Exhibit 101

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: 74-00741
DATE RECEIVED: 4-30-90
RECEIPT NO: X999999
RECEIVED BY: *Red*

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. NAME: JOHN F. HERBST
ADDRESS: P.O. BOX 21
TENDDY, ID

82468

NAME: EMMA HERBST
ADDRESS: P.O. BOX 21
TENDDY, ID

83468

2. DATE OF PRIORITY: JAN 08, 1908

3. SOURCE: LEMHI RIVER

TRIB. TO: SALMON RIVER

4. POINT OF DIVERSION:

TOWNSHIP	RANGE	SECTION	1/4 OF	1/4 OF	1/4	LOT	COUNTY
19N	24E	29	SE	NW			LEMHI

5. DESCRIPTION OF DIVERTING WORKS:

6. WATER IS USED FOR THE FOLLOWING PURPOSES:

PURPOSE	FROM	TO	C.F.S.	(OR)	A.F.A.
IRRIGATION	03/15	11/15	4.300		
STOCKWATER	01/01	12/31	0.060		

7. TOTAL QUANTITY APPROPRIATED IS:
4.300 C.F.S. (AND/OR)

A.F.A.

8. TOTAL CONSUMPTIVE USE IS

ACRE FEET PER ANNUM.

9. NON-IRRIGATION USES:

MICROFILMED

10. PLACE OF USE:

TOWNSHIP	RANGE	SECTION	1/4	OF	1/4	LOT	USE	ACRES
19N	24E	17	NE		SW		IRR	22.0
			SE		SW		IRR	32.0
			NW		SE		IRR	5.0
			SW		SE		IRR	3.0
			SECTION ACRES 62.0					
		20	NE		NW		IRR	34.0
			NW		NW		IRR	11.0
			SW		NW		IRR	4.0
			SE		NW		IRR	26.0
			NE		SW		IRR	6.0
			SECTION ACRES 81.0					
			TOTAL ACRES 143.0					

11. PLACE OF USE IN COUNTIES: LEMHI, LEMHI

12. DO YOU OWN THE PROPERTY LISTED ABOVE AS PLACE OF USE? YES

13. OTHER WATER RIGHTS USED:

14. REMARKS:

DIV. L-31.

AC. IRR. = 143.1.

WATER HAS BEEN USED ON AN EXCHANGE BASIS FROM AN UNNAMED SOURCE
LOCATED WITHIN NENW, S29, T19N, R24E.

15. BASIS OF CLAIM: DECREE

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: _____

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): John F. Herast DATE: 4-30-90

DATE: _____

FOR ORGANIZATIONS:

I DO SOLEMNLY SWEAR OR AFFIRM THAT I AM _____ OF

TITLE
_____, THAT I HAVE SIGNED THE FOREGOING
ORGANIZATION
DOCUMENT IN THE SPACE BELOW AS _____ OF

TITLE
_____, AND THAT THE STATEMENTS CONTAINED IN THE
ORGANIZATION
FOREGOING DOCUMENT ARE TRUE AND CORRECT.

SIGNATURE OF AUTHORIZED AGENT

TITLE AND ORGANIZATION

DATE

STATE OF IDAHO)
COUNTY OF Yamhi) SS.

SUBSCRIBED AND SWORN (OR AFFIRMED) BEFORE ME THIS 30 DAY
OF April 19 90

Sheila Stargis
NOTARY PUBLIC

SEAL

RESIDING AT Helen Harrington, Notary Public
Residing at Boise, Idaho
MY COMMISSION My Commission Expires December 1, 1994
DATE: 02/08/95

74-00741

PAGE

3

DEC 14 1992

MICROFILMED 2061

Exhibit 102

WARRANTY DEED

1 For value received, DOYLE W. DANCE and LOA B. DANCE, husband
2 and wife, the grantors, do hereby grant, bargain, sell and convey
3 unto JOHN FARRELL HERBST and EMMA HERBST, husband and wife, the
4 grantees, the following described premises in Lemhi County, Idaho,
5 to wit:
6

7 A tract of land embracing a fraction of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, fraction
8 of the SW $\frac{1}{4}$ NE $\frac{1}{4}$, fraction of the E $\frac{1}{4}$ SW $\frac{1}{4}$, fraction of the W $\frac{1}{4}$ SE $\frac{1}{4}$ of
9 Section 17; the W $\frac{1}{4}$ NW $\frac{1}{4}$, fraction of the E $\frac{1}{4}$ NW $\frac{1}{4}$, the NW $\frac{1}{4}$ SW $\frac{1}{4}$, fraction
10 of the E $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20; fraction of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29;
11 all in T. 19 N., R. 24, E.B.M., and more particularly described as
12 follows, to wit:

13 Beginning at a point 41 feet west of the northeast corner of
14 the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of S. 17, run thence S. 6°42' E. 800.0 feet; thence S.
15 5°01' E. 1410.5 feet; thence S. 0°53' W. 450.2 feet; thence S.
16 8°23' W. 827.5 feet; thence S. 9°15' W. 507.0 feet, from which
17 point the South one-quarter corner of Section 17 bears N. 59°41' E.
18 37.2 feet; thence continuing S. 9°15' W. 1225.0 feet; thence S.
19 8°42' W. 1472.4 feet; thence S. 1°07' E. 856.0 feet; thence S.
20 7°52' E. 970.5 feet; thence S. 17°11' E. 489.1 feet; thence S.
21 7°18' E. 584.4 feet; thence S. 6°59' E. 650 feet, more or less to
22 the east line of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29; thence south to the
23 southeast corner of said NE $\frac{1}{4}$ NW $\frac{1}{4}$ of S. 29; thence west to the south-
24 west corner of said NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29; thence north to the south-
25 east corner of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of S. 20; thence west to the southwest
26 corner of said NW $\frac{1}{4}$ SW $\frac{1}{4}$ of S. 20; thence north to the northwest corner
27 of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of S. 20; thence east to the northeast corner of said
28 NW $\frac{1}{4}$ NW $\frac{1}{4}$ of S. 20; thence north to the northwest corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$
of S. 17; thence east to a point 41 feet west of the northeast
corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of S. 17, the place of beginning, containing
410.30 acres, more or less.

EXCEPTING from the described premises a tract of land con-
sisting of 30.68 acres, more or less, formerly occupied by the
Gilmore and Pillsburgh Railroad Company, limited (now abandoned)
for right-of-way purposes.

ALSO EXCEPTING therefrom a tract of land consisting of .30
acres, more or less, conveyed by Fred Pattee and Phoebe Pattee to
School District No. 8, and recorded in Book W of Deeds, at page
180, records of Lemhi County, Idaho.

ALSO EXCEPTING therefrom a tract of land consisting of 1.00
acres, more or less, conveyed by Fred Pattee and Phoebe Pattee to
School District No. 8, and recorded in Book X of Deeds, page 107,
records of Lemhi County, Idaho.

ALSO EXCEPTING therefrom a tract of land consisting of .23

acres, more or less, conveyed by Fred Pattee and Phoebe Pattee to

1 Together with all water, water rights, ditch and ditch rights
2 range and range rights, used in connection therewith.

3 TO HAVE AND TO HOLD the said Premises, with their appurtenance
4 unto the said Grantees, their heirs and assigns forever. And the
5 said Grantors do hereby covenant to and with the said Grantees
6 that they are the owners in fee simple of said premises; that said
7 premises are free from all incumbrances and that they will warrant
8 and defend the same from all lawful claims whatsoever.
9

10 Dated: December 3, 1969.

11 Doyle W. Dance
12
13 Loa B. Dance
14

15 STATE OF IDAHO
16

17 County of Lemhi--SS

18 On this 4th day of December, 1969, before me, a Notary Public
19 in and for said state, personally appeared Doyle W. Dance and Loa
20 B. Dance, husband and wife, known to me to be the persons whose
21 names are subscribed to the within instrument, and acknowledged to
22 me that they executed the same.
23

24 Blaine Cook
25

26 Notary Public for Idaho., Residing at Salmon, Idaho.
27
28

Exhibit 103

Form 42-1409(7)



NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Please print or type
(see instructions on back of page)

POOR ORIGINAL

RECEIVED

DATE OF CLOSING: July 16, 1993

AUG 13 1993

LEGAL DESCRIPTION OF PROPERTY: Township _____ Range _____ Department of Water Resources
Section _____ 1/4 of _____ 1/4 of _____ 1/4 Govt. Lot _____, BM. Eastern District Office
Lot _____, Block _____, Subdivision/Townsite _____

If you have additional legal descriptions, please attach separate sheet.

SEE EXHIBIT "A" ANNEXED HERETO.

- [] Served Only by a Public Service Water Supply (all water is received from a city or company who maintains water supply system, owns the water right, and bills the customer on a regular basis)

- [] Water Right Number(s)
Assigned by IDWR:

add note
AT.
check w/ 10-2-93
A74-00250, A74-00735, ~~00739, 00740~~, 00739, 00740, 00741, 00742, 07147

- [] Name and Address of Former
Owner/Claimant(s)(Seller):

John F. Herbst and Emma H. Herbst

Route 1, Box 259

Salmon, Idaho 83467

- [] New Owner/Claimant
(Purchaser):

Lynn A. Herbst and Robin R. Herbst

- [] New Mailing Address:

P. O. Box 21

Tendoy, Idaho 83468

- [] New Telephone Number:

(208) 756-2584

- [] Does the change in ownership result in a splitting of the water right owned/claimed? yes x no
If yes, then describe the portion of the water right that is now owned/claimed by the new owner:

- [] Attach proof of
ownership, describe
proof attached:

See Warranty Deed annexed hereto

(proof of ownership must describe either the property conveyed or include the claim number. Proof of ownership is not required if this form is signed by the former owner/claimant.)

- [] Signature of New
Owner/Claimant(s)

Lynn A. Herbst
Robin R. Herbst

Date

7/16/93

Date

7/16/93

- [] Signature of Former
Owner/Claimant(s):

John F. Herbst
Emma H. Herbst

Date

7/16/93

Date

7/16/93

(Signature of former claimant(s) is not required if proof of ownership is attached.)

FOR IDWR USE ONLY:

Initial Review and Data-Entry

Date:

By:

Further Action Needed:

Further Action Taken

Date:

By:

Final Review and Data-Entry

Date:

By:

Claim Numbers of Split, if any:

MICROFILMED

Original to be mailed to Idaho Department of Water Resources 19 1994
Copies to Former Owner and New Owner

CONTRACT

THIS CONTRACT, Made as of this 16th day of July, 1993,
between JOHN F. HERBST and EMMA H. HERBST, husband and wife,
(hereinafter "Sellers") and LYNN A. HERBST and ROBIN R.
HERBST, husband and wife (hereinafter "Buyers"),

WITNESSETH:

In consideration of the covenants herein, Sellers agree
to sell and convey to Buyers and Buyers agree to purchase and
pay for the following described real property (hereinafter
"premises") situate in Lemhi County, Idaho, to-wit:

See Exhibit "A" annexed hereto

Together with all appurtenances thereon or appertaining
thereto of every kind; subject, however, to all easements and
rights-of-way appearing on such premises or of record and
reservations in favor of the United States or the State of
Idaho.

A tract of land embracing a fraction of the SE1/4NW1/4, fraction of the SW1/4NE1/4, fraction of the E1/2SW1/4, fraction of the W1/2SE1/4 of Section 17; the W1/2NW1/4, fraction of the E1/2NW1/4, the NW1/4SW1/4, fraction of the E1/2SW1/4 of Section 20; fraction of the NE1/4NW1/4 of Section 29; all in Township 19 North, Range 24 East, Boise Meridian, and more particularly described as follows, to-wit:

Beginning at a point 41 feet west of the northeast corner of the SE1/4NW1/4 of Section 17, run thence South 6 degrees 42' East 800.0 feet; thence South 5 degrees 01' East, 1,410.5 feet; thence South 0 degrees 53' West, 450.2 feet; thence South 8 degrees 23' West, 827.5 feet; thence South 9 degrees 15' West, 507.0 feet, from which point the South one-quarter corner of Section 17 bears North 59 degrees 41' East 37.2 feet; thence continuing South 9 degrees 15' West, 1,225.0 feet; thence South 8 degrees 42' West, 1,472.4 feet; thence South 1 degree 07' East, 856.0 feet; thence South 7 degrees 52' East, 970.5 feet; thence South 17 degrees 11' East, 489.1 feet; thence South 7 degrees 18' East, 584.4 feet; thence South 6 degrees 59' East, 650 feet, more or less to the east line of the NE1/4NW1/4 of Section 29; thence south to the southeast corner of said NE1/4NW1/4 of Section 29; thence west to the southwest corner of said NE1/4NW1/4 of Section 29; thence north to the southeast corner of the NW1/4SW1/4 of Section 20; thence west to the southwest corner of said NW1/4SW1/4 of Section 20; thence north to the northwest corner of the NW1/4NW1/4 of Section 20; thence east to the northeast corner of said NW1/4NW1/4 of Section 20; thence north to the northwest corner of the SE1/4NW1/4 of Section 17; thence east to a point 41 feet west of the northeast corner of the SE1/4NW1/4 of Section 17, the place of beginning, containing 410.30 acres, more or less.

EXCEPTING FROM THE DESCRIBED PREMISES, A tract of land consisting of 30.68 acres, more or less, formerly occupied by the Gilmore and Pittsburg Railroad Company, limited (now abandoned) for right-of-way purposes.

ALSO EXCEPTING THEREFROM, A tract of land consisting of .30 acres, more or less, conveyed by Fred Pattee and Phoebe Pattee to School District No. 8, and recorded in Book W of Deeds, at page 180, records of Lemhi County, Idaho.

ALSO EXCEPTING THEREFROM, A tract of land consisting of 1.00 acres, more or less, conveyed by Fred Pattee and Phoebe Pattee to School District No. 8, and recorded in Book X of Deeds, page 107, records of Lemhi County, Idaho.

ALSO EXCEPTING THEREFROM, A tract of land consisting of .23 acres, more or less, conveyed by Fred Pattes and Phoebe Pattes to Alice R. Reese, and recorded in Book W of Deeds, page 309, records of Lemhi County, Idaho.

ALSO EXCEPTING, That tract of land heretofore sold to Kenneth Anderson and consisting of about 10 acres and recorded in Book 47 of Deeds, page 13, records of Lemhi County, Idaho.

Meaning and intending to except any tract of land heretofore sold which said sales are of record in the office of the County Recorder of Lemhi County, Idaho.

Together with all water, water rights, ditch and ditch rights, range and range rights, used in connection therewith.

IN WITNESS WHEREOF, The parties have signed this Sales Contract as of the day and year first above written.

John F. Herbst
John F. Herbst

Emma H. Herbst
Emma H. Herbst

Sellers

Lynn A. Herbst
Lynn A. Herbst

Robin R. Herbst
Robin R. Herbst

Buyers

STATE OF IDAHO)
):ss.
County of Lemhi)

On this day of July, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared JOHN F. HERBST and EMMA H. HERBST, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

For All
Notary Public for Idaho
Residing at Salmon, Idaho
Commission Expires: 2-9-97

STATE OF IDAHO)
) ss.
County of Lemhi)

On this 16th day of July, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared LYNN A. HERBST and ROBIN R. HERBST, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



Notary Public for Idaho
Residing at Salmon, Idaho
Commission Expires: 2/17/97

Exhibit 104

AMENDED DIRECTOR'S REPORT

Subcase No. 74-741

In Re SRBA

Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
David R. Tuthill, Director
Donald V. Shaff, Adjudication Bureau Chief

October 11, 2007

DESCRIPTIVE SUMMARY

This is an Amended Director's Report submitted by the Director of the Idaho Department of Water Resources.

DISCUSSION

Pursuant to the Special Master's *Order Granting Motion, Vacating Trial and Setting Dates* dated August 22, 2007, the Director submits for filing with the Court an Amended Director's Report for the aforementioned subcase. The Director notes this titled "amended" recommendation of right number 74-741 remains unchanged from the original recommendation of the right in the Director's Report for Irrigation and Other Uses, IDWR Basin 74, filed on January 23, 2006.

Respectfully submitted this 11th day of October, 2007.


DONALD V. SHAFF
Adjudication Bureau Chief

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

RIGHT NUMBER: 74-741

NAME AND ADDRESS: LYNN A HERBST
PO BOX 21
TENDON ID 83468

ROBIN R HERBST
PO BOX 21
TENDON ID 83467

SOURCE: LEMHI RIVER

TRIBUTARY: SALMON RIVER

QUANTITY: 4.300 CFS

PRIORITY DATE: 01/08/1908

POINT OF

DIVERSION: T19N R24E S29 SENW Within LEMHI County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/15 11/15	4.300 CFS
STOCKWATER	01/01 12/31	0.060 CFS

PLACE OF USE: IRRIGATION in LEMHI County

T19N R24E S17	NESW	22.00	T19N R24E S17	SESW	32.00
T19N R24E S17	NWSE	5.00	T19N R24E S17	SWSE	3.00
T19N R24E S20	NENW	34.00	T19N R24E S20	NWNW	11.00
T19N R24E S20	SWNW	4.00	T19N R24E S20	SESW	26.00
T19N R24E S20	NESW	6.00			

STOCKWATER same as IRRIGATION

143 ACRES TOTAL

This right authorizes the irrigation of 143.1 total acres.

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 - Decreed

CERTIFICATE OF SERVICE

I certify that on 10/12, 2007, I caused to be served a true and correct copy of this Amended Director's Report, to the following persons, in the manner indicated 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

☐ Overnight Mail
☐ Regular Mail
☐ Hand-Delivered
☒ Facsimile

2. Copies to:

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

☐ Overnight Mail
☐ Regular Mail
☒ Hand-Delivered
☐ Facsimile

United States Department of Justice
Environment & Natural Resources Div.
550 W. Fort Street MSC 033
Boise, ID 83724

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Lemhi County Courthouse
206 Courthouse Dr.
Salmon, ID 83467

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Paul L. Arrington
113 Main Ave. W., Ste 303
P.O. Box 485
Twin Falls, ID 83303-0485

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile



Signature of person delivering form

Exhibit 105

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI

IN THE MATTER OF THE GENERAL DETER-
MINATION OF THE RIGHT TO THE USE OF
SURFACE WATER AND UNDERLIES FROM
WHATEVER SOURCE OF THE LEMHI RIVER
DRAINAGE BASIN

NOTICE OF CLAIM

IDENT. NO.

MAP NO.

TO A

WATER RIGHT

74-0741

19-24-C

RECEIVED
OCT 6 1971

Notice is hereby given that

John F. and/or Emma Herbst

(Name of Claimant)

P.O. Box 21

Tendoy, Idaho 83468

(Mailing Address)

, claims a right to the diversion

and beneficial use of the surface or groundwater, of or tributary to the LEMHI River;

The extent and nature of said claim is as follows:

- (1) Date of priority: When was the water first applied to a beneficial use, or date that permit was issued) January 8, 1908

- (2) Describe source of water: (Name of stream, lake, spring, etc., or groundwater) Lemhi River from diversion L-31.
Also drainage is used from the NENW, Sec. 29, T19N, R24E.

- (3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Quantity 5.72 Use Irrigation Period of Use From April 1 To November
(CFS. ~~XXXXXX~~) (Domestic, irrigation, stock, etc.) (Mo., Day) (Mo., Day)

Quantity 0.28 Use Stockwater Period of Use From January 1 To December
(CFS. ~~XXXXXX~~) (Domestic, irrigation, stock, etc.) (Mo., Day) (Mo., Day) (Both Dates Inclusive)

Quantity _____ Use _____ Period of Use From _____ To _____
(CFS. GPD. AF.) (Domestic, irrigation, stock, etc.) (Mo., Day) (Mo., Day) (Both Dates Inclusive)

- (4) 6.00 TOTAL QUANTITY CLAIMED.
(CFS. ~~XXXXXX~~)

- (5) A) Point of Diversion: Give location of point where water is diverted from its source SE $\frac{1}{4}$ NW $\frac{1}{4}$,
Sec. 29, Twp. 19N, Rge. 24E, B.M.; additional points:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.)
Give sizes and capacities; be as specific as possible. Ditch out of Lemhi River

- (6) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTAL
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
19N	24E	20					34.3	10.7	73.9	26.4	5.0								81.1
19N	24E	17								22.0			32.2	5.1	2.7				62.0
Quantity of stockwater claimed is necessary to prevent the ditch from freezing in the 2.5 mile ditch to the place of use.																			

Total No. of acres 143.1

- B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

- (7) Effluent, sewage waste, or return water from this use is discharged into Lemhi River

- (8) If you are claiming water as a member of an organization, list name of organization:

- (9) Remarks Priority claimed is based on evidence as indicated valid license #74-2023.
Source is now the Lemhi River rather than Agency Creek

- (10) Basis of claim (Check one) ☒ A) Right based on diversion and beneficial use.

☐ B) Right decreed by court, cite title of case.

☐ B) Right decreed by court, cite title of case

Exhibit 106

THE

PROPOSED FINDING OF VIOLATION

IN THE

STATE OF NEW YORK

PROPOSED FINDING OF WATER RIGHTS - LEAMI RIVER DRAINAGE

Source: Lemhi River, Div. L-31

Pt. of Div.: SEANW4, Sec. 29, T19N, R24E

DRESS	PRIORITY	PURPOSE	PERIOD OF USE	MAXIMUM RATE OF DIVERSION (cfs)	PLACE OF USE and LANDS IRRIGATED	BASIS OF RIGHT and REMARKS
hm F. and/or 21 aho	6 -1 -1871	Irrigation	4/1 11/1	0.38	Sec. 17 SE $\frac{1}{4}$ NW $\frac{1}{4}$, T19N, R24E	Beneficial Use 12.5 <u>12.5</u>
been used on an exchange basis from an unnamed source located within NE $\frac{1}{4}$ NW $\frac{1}{4}$, 19N, R24E.						
hm F. and/or 21 aho	1 -8 -1908	Irrigation	4/1 11/1	4.30	Sec. 17 NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$,	Beneficial Use 22.0 32.2 5.1 2.7
been used on an exchange basis from an unnamed source located within NE $\frac{1}{4}$ NW $\frac{1}{4}$, 19N, R24E.						
21 aho	1 -8 -1908	Stockwater	1/1 12/31	0.06 <u>4.30</u>	Sec. 20 NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, T19N, R24E	Beneficial Use 34.3 10.7 3.9 26.4 5.8 <u>143.1</u>
VESTOCK, INC. Mahaffey	9 -1 -1945	Irrigation	4/1 11/1	1.70	Sec. 8 NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$,	Beneficial Use 0.3 2.2 12.0 3.4 23.1
aho					Sec. 17 NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, T19N, R24E	Beneficial Use 2.0 12.4 1.3 <u>56.7</u>
been used on an exchange basis from an unnamed source located within NE $\frac{1}{4}$ NW $\frac{1}{4}$, 19N, R24E.						

Exhibit 107

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The United States of America,
 To all to whom these presents shall come, Greeting:
 Homestead Certificate No. 46 }
 Application 476

Whereas, there has been deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Hailey, Idaho, whereby it appears that, pursuant to the Act of Congress approved 20th May, 1862, "To secure Homesteads to Actual Settlers on the Public Domain", and the acts supplemental thereto, the claim of Joseph B. Patton has been established and duly consummated, in conformity to law, for the South East quarter of the North West quarter and the East half of the South West quarter of Section seventeen, in Township one north, of Range twenty four East of Boise Meridian in Idaho, containing one hundred and twenty acres according to the Official Map of the Survey of the said land, returned to the General Land Office by the Surveyor General: Now know ye, that there is, therefore, granted by the United States unto the said Joseph B. Patton a tract of land above described: To have and to hold the said tract of land with the appurtenances thereof, unto the said Joseph B. Patton and to his heirs and assigns forever, subject to any vested and reserved water rights for mining, agricultural, manufacturing, or other purposes, and rights of ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a mine or lode to enter the tract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law.

In testimony whereof, I, Grover Cleveland, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the twenty fifth day of September, in the year of our Lord one thousand eight hundred and one, and of the Independence of the United States the one hundred and nineteenth.

Grover Cleveland

Exhibit 108

NOV 24 1904

APPLICATION FOR PERMIT To appropriate the Public Waters of the State of Idaho

1. Name of applicant: George W. Smith

Postoffice address: Sunnyside, Idaho

County: Lemhi State: Idaho

2. The quantity of water desired: 100,000 gal. per day

3. Name of water source: Snake River

County of Lemhi

4. Location of point of diversion: 1/2 mile S. of the mouth of the Snake River

5. To be used for:

(a) Irrigation and domestic use

(b) In the event of a shortage of water for irrigation

(c) In the event of a shortage of water for domestic use

6. Estimated cost of work: \$10,000

7. Description of work to be done:

(a) Kind of work: Ditching

(b) Dimensions of work:

(c) Height of dam: 10 feet

(d) Length of dam: 100 feet

(e) Width of dam: 10 feet

(f) Area of land to be irrigated: 100 acres

(g) Condition of land: Poor

8. Time required for the completion of the work: 1 year

9. Time required for the complete application of the work: 2 additional years.

10. It is hereby certified that the undersigned hereby certifies that the above information is true and correct.

11. It is hereby certified that the undersigned hereby certifies that the above information is true and correct.

12. It is hereby certified that the undersigned hereby certifies that the above information is true and correct.

13. It is hereby certified that the undersigned hereby certifies that the above information is true and correct.

14. It is hereby certified that the undersigned hereby certifies that the above information is true and correct.

15. It is hereby certified that the undersigned hereby certifies that the above information is true and correct.

16. It is hereby certified that the undersigned hereby certifies that the above information is true and correct.

17. It is hereby certified that the undersigned hereby certifies that the above information is true and correct.

18. It is hereby certified that the undersigned hereby certifies that the above information is true and correct.

19. It is hereby certified that the undersigned hereby certifies that the above information is true and correct.

APPROVAL OF PERMIT

The number of this permit is 3350.

Date of first receipt of application 9:00 a.m. January 8, 1908.

Recorded in Book 10 Page 3350 Approved January 11, 1908.

This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho and hereby grant the same, subject to the following limitations and conditions:

Work to begin on or before March 11, 1908, and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.

One-fifth of the work above specified to be completed on or before January 11, 1909.

The whole of said work to be completed on or before January 11, 1910.

The time for proof of beneficial use of water appropriated in accordance herewith, to extend to January 11, 1912.

Witness my hand this eleventh day of January 1908.

J. M. H. H. H. H. H.

Idaho Engineer

Blank notice of proof of completion mailed applicant October 1, 1909.
Notice received fixing December 27, 1909 as time and Salmon Idaho as place of proof.
Notice for publication Mailed Idaho Recorder at Salmon City, November 2, 1909.
Deposition blanks mailed F. J. Cowen November 2, 1909.
H. J. Bagley authorized November 15, 1909, to make examination of the works.
Deposition blanks, affidavit of publication and fees received January 3, 1910.
Engineer's report received January 14, 1910.
Certificate of completion issued January 21, 1910.

PERMIT No. 3350.

CERTIFICATE OF COMPLETION OF WORKS.

To All Whom it May Concern:

This is to certify that JOSEPH L. PATTEE, of Sunfield, County of Lemhi, and State of Idaho, the holder of Permit No. 3350, issued upon Application No. 4728, having date of priority of January 8th, 1908, authorizing the diversion of 3.2 second feet of the waters of Old Agency Creek, County, Lemhi, State of Idaho, for irrigation and domestic purposes, has fully complied with the provision of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use three and two-tenths (3.2) second feet of the waters of said creek; that the point of Diversion of said waters is at a point in the Southernly quarter of the Northeast quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 20, Township 19 North of Range 24 East of the Boise Meridian, and that the land proposed to be irrigated by the use of said water are described as follows, to-wit: the Northwest quarter (NW $\frac{1}{4}$) of Section 20, Township 19 North of Range 24 East of the Boise Meridian.

Witness my hand this twenty-first day of January, A. D. 1910.

WILLIAM H. BROWN, JR.

State Engineer of the State of Idaho.

License issued for 2.5 second feet

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STATE OF IDAHO, }
County of Lemhi. } ss.

Joseph L. Patee, being first duly sworn, upon his oath deposes and says:

That he is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho No. 3350.

That he intends to change the point of diversion, as described in said permit, to the following described point:

To the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 20, T. 19 N. R. 24 E.B.M.

That such change will be made for the following reasons, to-wit: A mistake was made in locating the Point of Diversion when Application was made, the wrong legal subdivision or 40 was designated. The Point of Diversion is now where it has always been and was intended to be when Permit was applied for.

That no one will be injured by such change and that deponent will make such change at his own risk.

And further deponent saith not.

Joseph L. Patee.

Subscribed and sworn to before me this 28th day of August, 1912.

John E. Rees.

Notary Public.

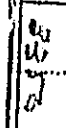
My Commission expires Aug. 9, 1913.

Received and filed for record in the office of the County Clerk of Lemhi County, Idaho, this 28th day of August, 1912.

ARC.

P3350 Township 110.19 North, of Range No. 24 East.									
Map and Plan of Marks in duplicate to accompany application of Joseph L. Pattee for permit to appropriate public water.									
Application No. 4725. Permit 3860. Joseph L. Pattee 3.2 sec. 11, 12 Agency Creek. Toshi County Approved January 1, 1908. <i>Joseph L. Pattee</i> State Engineer. 3350									

120664 L. Fuller No 3350



SCALE: 2 INCHES = 1 MILE DRAW PLAN IN INK.

Exhibit 109

 Lemhi County *
 Old Agency Creek *
 2.6 second-foot *
 Irrigation *
 Priority 1/8/08. *

STATE OF IDAHO.
Water License No. 2350.

WHEREAS, On the 8th day of January, A. D. 1908, JOSEPH L. PATTEE, of Tendency, County of Lemhi, State of Idaho, duly made application (No. 4725) to me for a permit to use three and two-tenths (3.2) cubic feet per second of the waters of OLD AGENCY CREEK, County of Lemhi, State of Idaho for irrigation and domestic purposes, and,

WHEREAS, On the 11th day of January, A. D. 1908, Permit No. 2350 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 11th day of January, A. D. 1910, and for the application to beneficial use of said water on or before the 11th day of January, A. D. 1912, and,

WHEREAS, On the 27th day of December, A. D. 1909, JOSEPH L. PATTEE, the holder of said permit, duly made proof of the completion of adequate works for the diversion of 3.2 cubic feet per second of said waters, as evidenced by my Certificate No. 3250 dated January 21, 1910, confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use three and two-tenths (3.2) cubic feet per second of water, with date of priority of January 8, 1908, and,

WHEREAS, On the 11th day of January, A. D. 1912, JOSEPH L. PATTEE, the holder of said permit, duly made proof of the application to beneficial use of 2.6 cubic feet per second of said water;

NOW, THEREFORE, By virtue of authority vested in me by the laws of the State of Idaho, I hereby grant and confirm to JOSEPH L. PATTEE, of Tendency, County of Lemhi, State of Idaho, the holder and owner of said Permit No. 2350, a perpetual right, dating from January 8, 1908, to the use of two and six-tenths (2.6) cubic feet per second of the waters of OLD AGENCY CREEK, in the County of Lemhi and State of Idaho, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at a point in the Southeast quarter of Southwest quarter (SE4 SW4) Section 20, Township 19 North, Range 24 East of Boise Meridian, and conducted to and upon 120 acres divided as follows: (38 acres in the NE4 of NW4; 37 acres in the SE4 of NW4; 25 acres in the NW4 of NW4 and 20 acres in the SW4 of NW4, Section 20, Township 19 North, Range 24 East of Boise Meridian, for the purpose of irrigation and domestic use, subject, however, to the laws of the State of Idaho applicable to a license for the use of the waters of the State, and subject, also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and the seal of my office at Boise, Idaho, this 10th day of September, A. D. Nineteen hundred and twelve.

A. E. Robinson,
 State Engineer.

(SEAL)

Exhibit 110

MEMORANDUM

DATE: January 02, 1996

TO: Ernie Carlsen, Eastern Region

FROM: Bob Foster^{ef}, Salmon

RE: A74-00741

The enclosed documents and information were received in my office on the above date. These items are in regards to the possible change of priority date for A74-00741. There appears to be substantial documentation of the development of the water right and the priority date issue should be considered when the claim is verified in the SRBA.

Department of
Eastern District Office

PROCESSED
NOV 15 1996