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DEPARTMENT OF
WATER RESOURCES

DANIEL V. STEENSON (ISB #4332)
RINGERT LAW CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Claimants Eddie E. Baker and Eddie Baker, Jr.

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 72-16778
	)	
	)	
Case 38576	)	AFFIDAVIT OF EDWIN E. BAKER, JR. IN SUPPORT
	)	OF MOTION TO FILE LATE NOTICE OF CLAIM
_____	)	

STATE OF IDAHO	)
	) ss
COUNTY OF CUSTER	)

EDWIN E. BAKER, JR., being first duly sworn upon his oath, deposes and says that:

1. My name is Edwin ("Eddie") E. Baker, Jr. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.
2. I was born in 1961. I have lived on ranch property owned by my family along the East Fork of the Salmon River ("East Fork") since 1961. This property was first settled by my great-great grandfather in the mid 1800s. Today, I own this property with my father, Edwin ("Eddie") Baker Sr., through a partnership called Baker Ranch Partnership.
3. My recollection of our diversion, conveyance and use of water on these fields dates from the early to mid 1960s. All of our diversions, ditches, and irrigated fields were in

existence at the time of my earliest recollections, and have been continuously used to irrigate our fields. From that time to the present, we have irrigated the same fields with water diverted from the East Fork and the tributaries to the East Fork. The quantities of water we divert and the sizes of the ditches have not changed. The only significant change has been the installation of fish screens in many of our diversions in recent years. The screens were sized so that we could continue to divert the quantities of water that we had historically diverted.

4. In addition to fields on land we own, we also irrigate a field on federal land shown in the aerial photograph attached hereto as **Exhibit A**. As shown in the photograph, the field is bounded by the East Fork Road to the east, and the ditch that from which this field is irrigated to the north and west. Today, as in the past, water is diverted from the ditch shown in Exhibit A through cutouts and canvass dams at various locations to flood irrigated the field.

5. From my earliest recollection in the early to mid 1960s to the present, we have irrigated this field with water diverted from Big Boulder Creek, a tributary to the East Fork, at a diversion denominated as BBC-1. Big Boulder Creek is one of the East Fork tributaries from which we divert water to irrigate our fields pursuant to water rights that have been decreed in the Snake River Basin Adjudication (SRBA). The aerial photograph attached hereto as **Exhibit B** is marked to show the locations of our diversions, including BBC-1.

6. The field shown in Exhibit A is administered by the Bureau of Land Management ("BLM"). For purposes of this affidavit, I call the field the "BLM field." From the time 1948 (per the Affidavit of my uncle, Richard L. Baker) until 1988, we used and irrigated the BLM field with BLM's permission, but without a permit. Since January, 1988 BLM has issued permits for our use of this field. Attached hereto as **Exhibit C** is our most current Land Use Permit,

issued this year. Conditions 2 and 3 of the Permit (in Permit Exhibit B) requires us to file either a late claim in the Snake River Basin Adjudication (SRBA), or a water right permit application or a water right transfer, in order to obtain a water right to irrigate the BLM field.

7. The BBC-1 designation corresponds to the designation used in our "Flow Agreement" with the Idaho Department of Fish and Game which define the maximum flow for the fish screen Fish and Game installed in this diversion, based upon measurements taken by Fish and Game shortly before the screen was constructed. This Flow Agreement is attached hereto in **Exhibit D**.

8. Attached hereto as **Exhibit E** are photographs of the BBC-1 diversion (Ex. E, p. 1), fish screen and ditch (Ex. E, p. 2). The BBC-1 ditch, from the diversion to the place of use, is approximately 1.2 miles long. The bed and banks of the ditch are gravel, so there is a very large amount of seepage loss in conveying water from the point of diversion to the place of use. Our BBC-1 diversion is included in two (2) of our water rights: BBC-1 is one of four (4) points of diversion in water right no. 72-10302A, which authorizes diversion of 0.3 cfs at BBC-1 and a total combined diversion of 1.5 cfs, and is one of six (6) points of diversion in water right no. 72-10304, which authorizes diversion of 0.6 cfs at BBC-1 and a total combined diversion of 2.2 cfs. The places of use for these water rights do not include the BLM field.

9. Since 1948, we have continuously used water diverted from Big Boulder Creek at BBC-1 to irrigate the BLM field.

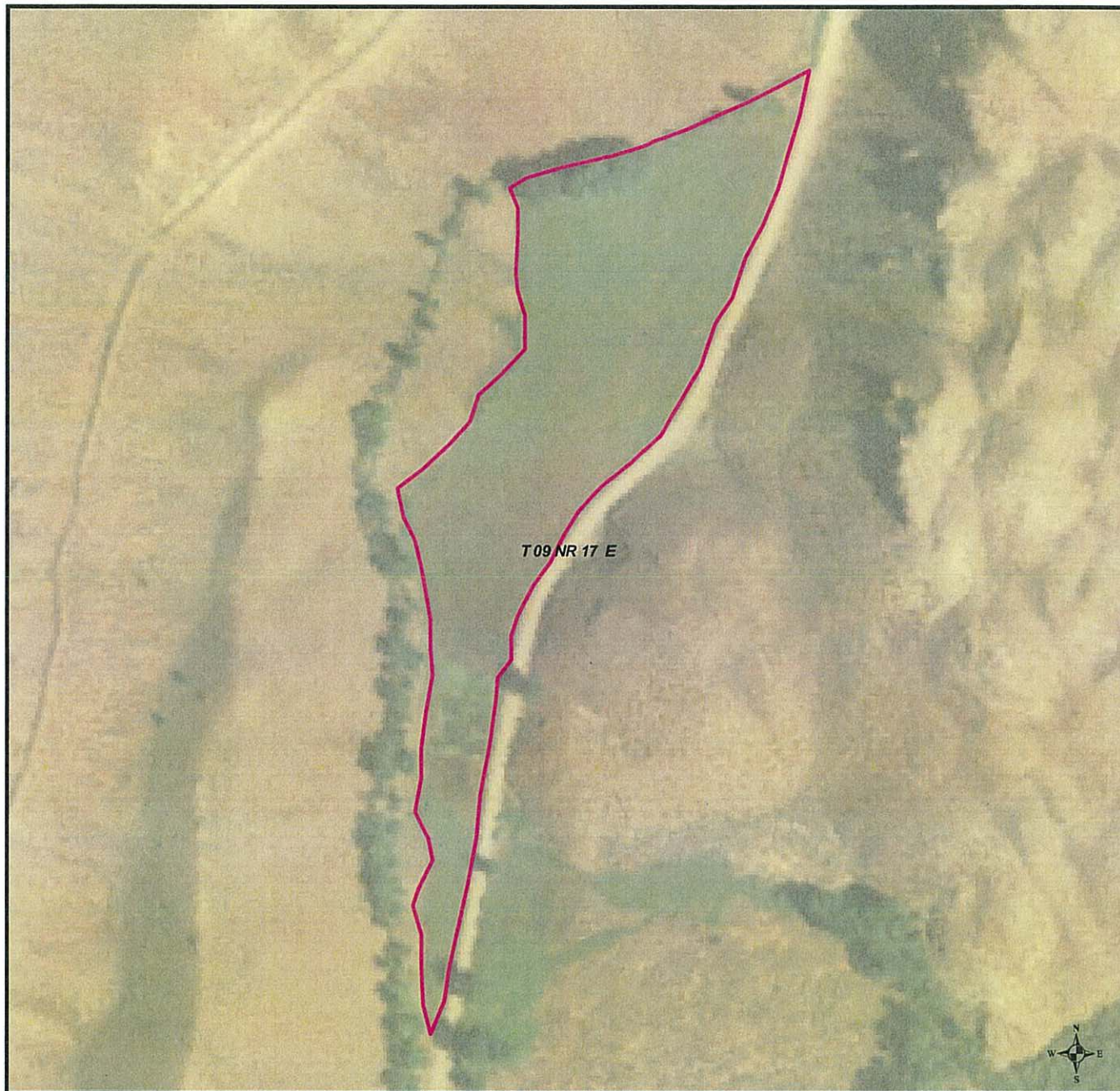
Further your affiant sayeth naught.

Dated this 25th day of August, 2008.

STATE OF IDAHO)
County of Custer)ss.

Notary Public for Idaho
Residing at Payton, Idaho
My Commission Expires: 12-12-09

Exhibit A
Eddie Baker Jr., Land Use Permit
IDI-25476
B.M., T, 9 N., R. 17 E., sec. 10, lot 6



Legend

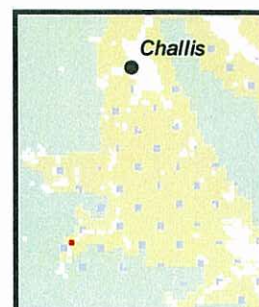
- PRIVATE
- BLM
- USFS
- STATE

Exhibit A

This map represents.... agricultural harvest, vicinity
 Boulder Creek within the Challis Field Office,
 Idaho BLM.

The sources of the data are from Idaho-
 BLM Corporate Data, and the USGS.

No warranty is made by the Bureau of Land
 Management (BLM). The accuracy, reliability,
 or completeness of these data for individual
 use or aggregate use with other data is
 not guaranteed.



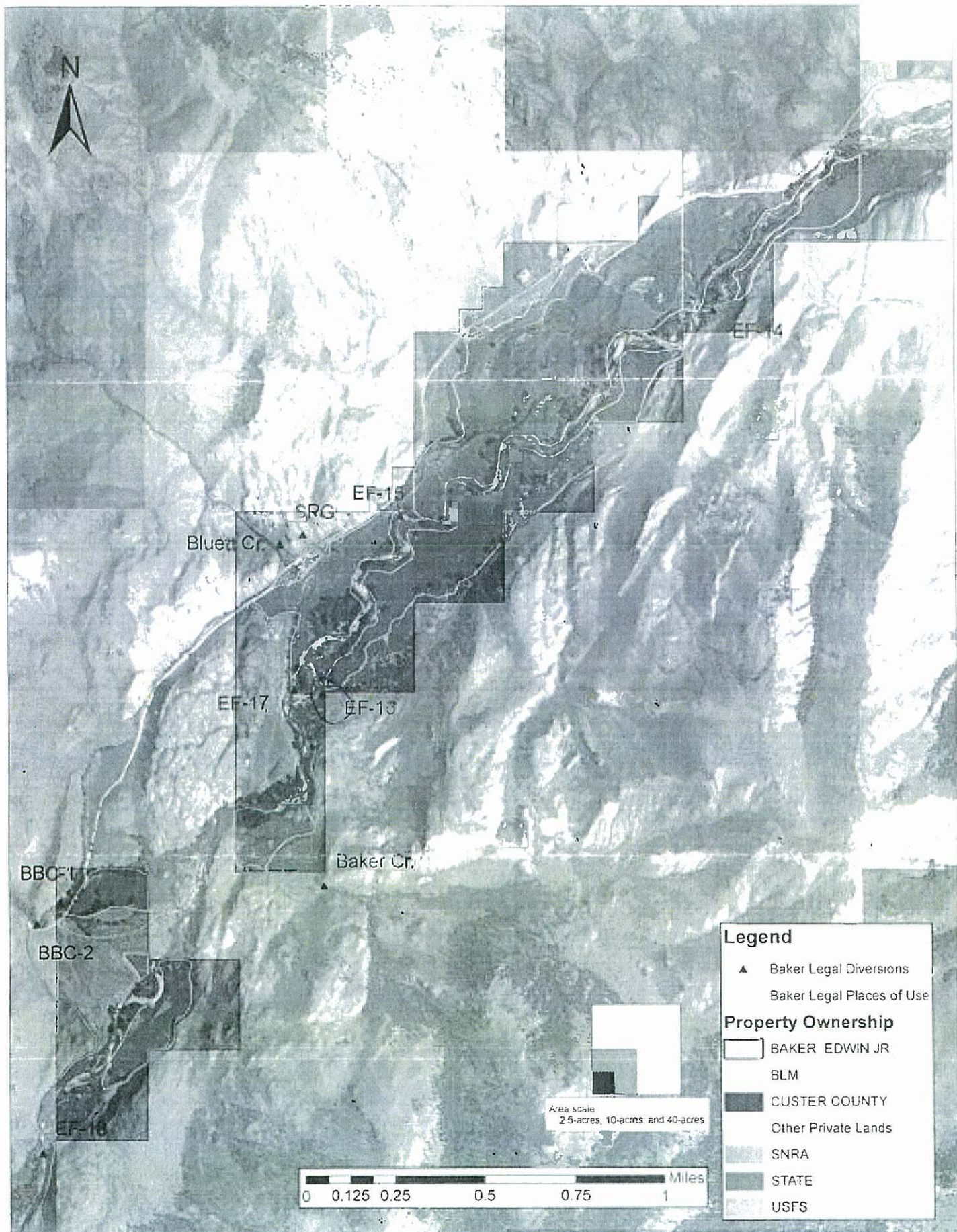


Exhibit B

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

LAND USE APPLICATION AND PERMIT
Sec. 302(b) of P.L. 94-579, October 21, 1976, 43 U.S.C. 1732

FORM APPROVED
OMB NO. 1004-0009
Expires: August 31, 1995

FOR BLM USE ONLY

Application Number

DI-25476

APPLICATION

1. Name (first, middle initial, and last)	Address (include zip code)	Phone (include area code)
Eddie (Jr.) Baker	HC 68, Box ~~879~~ 379 Clayton, ID 83227	208 838-2318

2. Attach map or sketch showing public lands for which you are applying See Exhibit A

3. Proposed date(s) of use: from June 1, 2008 to June 1, 2011

4. Give legal basis for holding interest in lands in the state of Idaho
(Check appropriate box and explain.)

☒ Resident	☐ Partnership
☐ Corporation	☐ County
☐ Local Government	☐ State Government
☐ Other	

5. Are the lands now improved, occupied, or used? ☐ Yes ☒ No (If "yes," describe improvements and purposes, identify users and occupants.)

6. Do you need access to the land? ☐ Yes ☒ No (Describe needed or existing access)

7a. What do you propose to use the lands for?

Renewal of my previous authorization to grow and harvest grass hay on 13.86 acres of public land at B.M., T. 9 N., R. 17 E., sec. 10, lot 6. There will be no change from the last period of authorized use.

b. What improvements and/or land development do you propose? (To complete application processing, engineering and construction drawings may be required.)

No new improvements

c. What is the estimated capital cost? \$	d. What is the source of water for the proposed use? <u>Big Boulder Creek by Diversion</u>
--	---

I CERTIFY That the information given by me in this application is true, complete, and correct to the best of my knowledge and belief and is given in good faith.

Eddie Baker Jr.
(Signature of Applicant)

7-9-08
(Date)

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

Exhibit C

PERMIT

Permission is hereby granted to **Eddie (Jr.) Baker**
of **Clayton, Idaho**
to use the following-described lands:

Permit Number
IDI-25476

TOWNSHIP	RANGE	SECTION	SUBDIVISION
9 North	17 East	10	lot 6

Meridian	State	County	Acres (more or less)
Boise	Idaho	Custer	13.86

for the purpose of

Grass hay cultivation/harvest

and subject to the following conditions:

1. This permit is issued for the period specified below. It is revocable at the discretion of the authorized officer of the Bureau of Land Management, at any time upon notice. This permit is subject to valid adverse claims heretofore or hereafter acquired.
2. This permit is subject to all applicable provisions of the regulations (43 CFR 2920) which are made a part hereof.
3. This permit may not be assigned without prior approval of the authorized officer of the Bureau of Land Management.
4. Permittee shall not enclose roads or trails commonly in public use.
5. Authorized representatives of the Department of the Interior, other Federal agencies, and State and local law officials shall at all times have the right to enter the premises on official business.
6. Permittee shall pay the United States for any damage to its property resulting from the use.
7. Permittee shall notify the authorized officer of address change immediately.
8. Permittee shall observe all Federal, State, and local laws and regulations applicable to the premises and to erection or maintenance of signs or advertising displays including the regulations for the protection of game birds and game animals, and shall keep the premises in a neat, orderly, and sanitary condition.
9. Permittee shall pay the authorized officer, in advance, the lump sum of \$ **750.00** for the period of use authorized

by this permit or ~~\$250.00~~ **To be determined** dollars, annually, as rental or such other sum as may be required if a rental adjustment is made.

10. Use or occupancy of land under this permit shall commence within **months** from date hereof and shall be exercised at least **days** each year.

11. Permittee shall take all reasonable precautions to prevent and suppress forest, brush, and grass fires and prevent pollution of waters on or in the vicinity of the lands.

12. Permittee shall not cut any timber on the lands or remove other resources from the land without prior written permission from the authorized officer. Such permission may be conditioned by a requirement to pay fair market value for the timber or other resources.

13. Permittee agrees to have the serial number of this permit marked or painted on each advertising display or other facility erected or maintained under the authority of such permit.

14. This permit is subject to the provisions of Executive Order No. 11246 of September 24, 1955, as amended, which sets forth the Equal Opportunity clauses. A copy of this order may be obtained from the signing officer.

15. Permittee acknowledges, by signing below, that he/she knows, understands and accepts the terms and conditions under which this permit is issued.

16. Special conditions (attach additional sheets, if necessary)

No new development or disturbance and conditions in attached sheet labeled "Exhibit B" must be met by Permittee as per the language contained therein.

Permit issued for period
July 31

June 1, 2008

From:

July 31

June 1, 2011

Eddie Baker Jr.
(Permittee)

David J. [Signature]
(Authorized Officer)

Field Manager

(Title)

(Date)

INSTRUCTIONS

1. Submit, in duplicate, to any local office of the Bureau of Land Management having jurisdiction of the lands.
2. Applications for Land Use Permits will not be accepted unless a notification of the availability of the land for non-BLM use (Notice of Realty Action) has been published in the Federal Register and for 3 weeks thereafter in a newspaper of general circulation. This provision does not apply in those situations where the publication of a (Notice of Realty Action) has been

waived by the authorized officer.

3. If the annual rental exceeds \$250 dollars per year; costs of processing the application must be paid by the applicant in advance.

4. The authorized officer may require additional information to process an application. Processing will be deferred until the required information is furnished by the applicant.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.) requires us to inform you that: Information is needed to process application for land use authorizations, pursuant to 43 CFR Section 2920. Information shows if the applicant and proposed use meet the requirements of 43 CFR Section 2920.1. Applicant must respond before he/she can be granted an authorization to use public lands.

PERMIT

Permission is hereby granted to **Eddie (Jr.) Baker**
of **Clayton, Idaho**
to use the following-described lands:

Permit Number
IDI-25476

TOWNSHIP	RANGE	SECTION	SUBDIVISION
9 North	17 East	10	lot 6

Location Boise	State Idaho	County Custer	Acres (approx) 13.86
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for the purpose of

Grass hay cultivation/harvest

and subject to the following conditions:

1. This permit is issued for the period specified below. It is revocable at the discretion of the authorized officer of the Bureau of Land Management, at any time upon notice. This permit is subject to valid adverse claims heretofore or hereafter acquired.
2. This permit is subject to all applicable provisions of the regulations (43 CFR 2920) which are made a part hereof.
3. This permit may not be assigned without prior approval of the authorized officer of the Bureau of Land Management.
4. Permittee shall not enclose roads or trails commonly in public use.
5. Authorized representatives of the Department of the Interior, other Federal agencies, and State and local law officials shall at all times have the right to enter the premises an official business.
6. Permittee shall pay the United States for any damage to its property resulting from the use.
7. Permittee shall notify the authorized officer of address change immediately.
8. Permittee shall observe all Federal, State, and local laws and regulations applicable to the premises and to erection or maintenance of signs or advertising displays including the regulations for the protection of game birds and game animals, and shall keep the premises in a neat, orderly, and sanitary condition.
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- by this permit or ~~\$-To be determined~~ **\$250.00** dollars, annually, as rental or such other sum as may be required if a rental adjustment is made.
10. Use or occupancy of land under this permit shall commence within _____ months from date hereof and shall be exercised at least _____ days each year.
11. Permittee shall take all reasonable precautions to prevent and suppress forest, brush, and grass fires and prevent pollution of waters on or in the vicinity of the lands.
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Permit issued for period
July 31
June 4, 2008

From
July 31
To
June 4, 2011

Eddie Baker Jr.
(Permittee)

David J. Thompson
(Authorized Officer)
Field Manager

(Title)

7/31/2008
(Date)

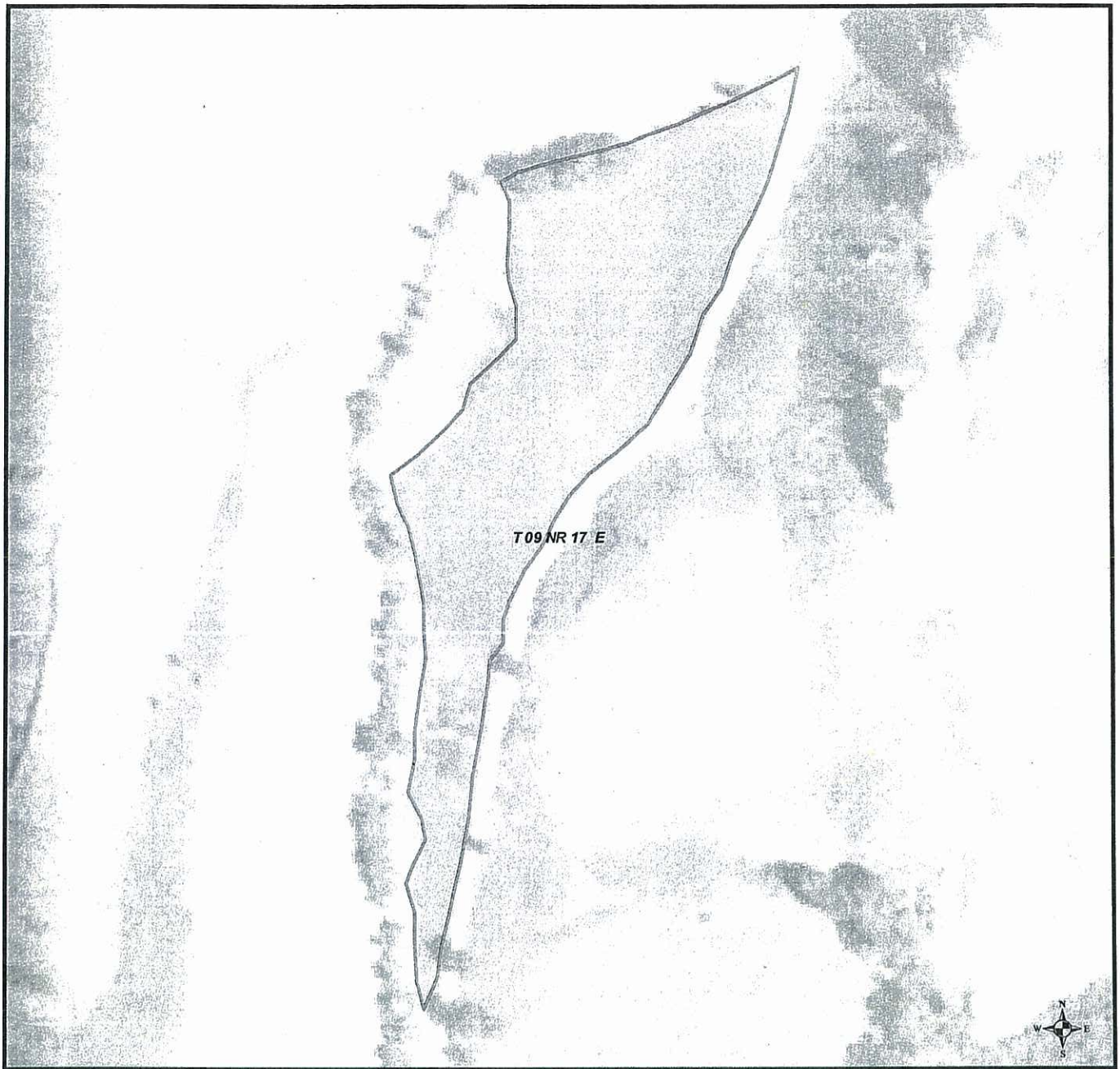
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Exhibit A
Eddie Baker Jr., Land Use Permit
IDI-25476
B.M., T, 9 N., R. 17 E., sec. 10, lot 6



Legend

- ☐ PRIVATE
- ☐ BLM
- ☐ USFS
- ☐ STATE

This map represents.... agricultural harvest, vicinity
Boulder Creek within the Challis Field Office,
Idaho BLM.

The sources of the data are from Idaho-
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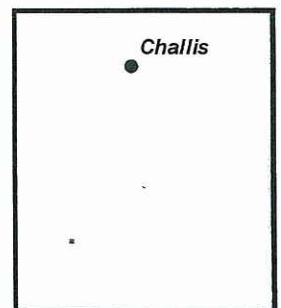


EXHIBIT B
Land Use Permit Water Right Terms and Conditions

1. All farming costs, including but not limited to, labor, seed, cultivation, watering, vehicle usage, machinery, harvesting, and storage, shall be the sole expense of the permittee as his/her expense in doing business under this permit.
2. Within thirty (30) days after the issuance of this permit, permittee shall file a late claim in the Snake River Basin Adjudication (SRBA), and/or a permit or transfer application with the Idaho Department of Water Resources (IDWR), to confirm or establish a water right for irrigation use upon B.M., T. 9 N., R. 17 E., sec. 10, lot 6. Within thirty (30) days after the SRBA district court issues a partial decree or IDWR issues an approved permit or transfer, permittee shall assign ownership of the water right to the United States. Permittee assumes all liability for compliance with applicable state and federal rules governing irrigated agriculture and for damages caused by the permittee in the pursuit of the same. This permit is subject to termination in accordance with 43 CFR § 2920.9-3 for failure of the permittee to establish and maintain the water right. No rights to public land accrue due to their description as the place of use of place of crossing in conjunction with a water right, beyond those described specifically by this permit.
3. The water right shall be and remain appurtenant to the land described in this paragraph for as long as the permittee uses the water right on public land. Title to any portion of the water right that permittee thereafter transfers from public land to private land shall, upon IDWR issuance of an approved transfer application, immediately and completely revert back to the sole ownership of the permittee. The water right assignment and reversion shall be at the permittee's initiative and expense. The United States agrees to cooperate with said water right transfer.
4. The subject parcel shall not, nor this permit, be used as collateral in securing any loans. This permit shall not be used as a means of obtaining financial underwriting for operation of the farm or any other endeavor.
5. The subject land shall not be included in any Conservation Reserve Program of the USDA, Consolidated Farm Service Agency (CFSA) nor shall it be included in formulas or participation acreage in calculation of deficiency payments or other purposes as a result of crops grown on the subject parcel. Also, they shall not be included in any CFSA program that causes Federal money to be used in making payments to the permittee.

OPTIMUM MAXIMUM DIVERSION FLOW AGREEMENT

Between: Idaho Department of Fish and Game and Eddie Baker and Eddie Baker Jr., owner(s)\user(s) of Salmon East Fork Big Boulder Creek diversion 01, SEFBBC - 01.

Purpose: This agreement is to quantify the optimum maximum flow to be screened for fish protection by the Idaho Department of Fish and Game, and

Whereas: Irrigators have the right to divert flows above their decreed right during maximum flows from the Big Boulder Creek, and

Whereas: Maximum flows vary in time of year and in length of time from year to year, and

Whereas: Maximum flows vary in level from year to year, and

Whereas: Measured flows by the Idaho Department of Water Resources (IDWR) and Idaho Department of Fish and Game are only one point in time measurements, and

Whereas: These measurements give only an approximation and not a definitive value for maximum flows, and

Whereas: In the past, the Idaho Department of Fish and Game has designed screening facilities for approximated maximum flows based on their or IDWR flow measurements, and

Whereas: In some cases, measured maximum flows following construction of new fish screens have exceeded design flows, and

Whereas: Idaho Department of Fish and Game is required to meet current design criteria established by National Marine Fisheries Service of 0.4 of a foot per second maximum approach velocity of water through the screen, and

Whereas: Idaho Department of Fish and Game is trying to bring all screening structures into NMFS criteria, and

Flow Agreement SEFBBC - 01

Whereas: Costs of the fish screen structure rise in proportion to the water diverted, especially on small diversions, and

Whereas: Cost of building a screen to meet only a short period of maximum flow is a waste of tax payer dollars, and

Whereas: Screens which are built to meet maximum flows that are available only during a short period of time or only during occasional years, do not operate efficiently at or near decreed flow levels, and

Whereas: This agreement is not for the purpose of limiting or infringing on irrigator's water rights or the right to divert flows above decreed rights, and

Whereas: This agreement is in the best interest for both Idaho Department of Fish and Game and the irrigators to agree on a maximum flow for the above diversion, and

Whereas: If there is no such agreement, Idaho Department of Fish and Game will design and build the fish screen to meet the approximated maximum measured flow, which may or may not be the correct optimum flow. It is

Therefore: Agreed that the maximum diverted flow for the above diversion will not exceed 4.2 CFS (210 Idaho's Miners Inches)

James R. Fubers
Idaho Department of Fish and Game

9-13-02
Date

Eddie Baker Jr
Water User

9-11-02
Date

Water User

Date



