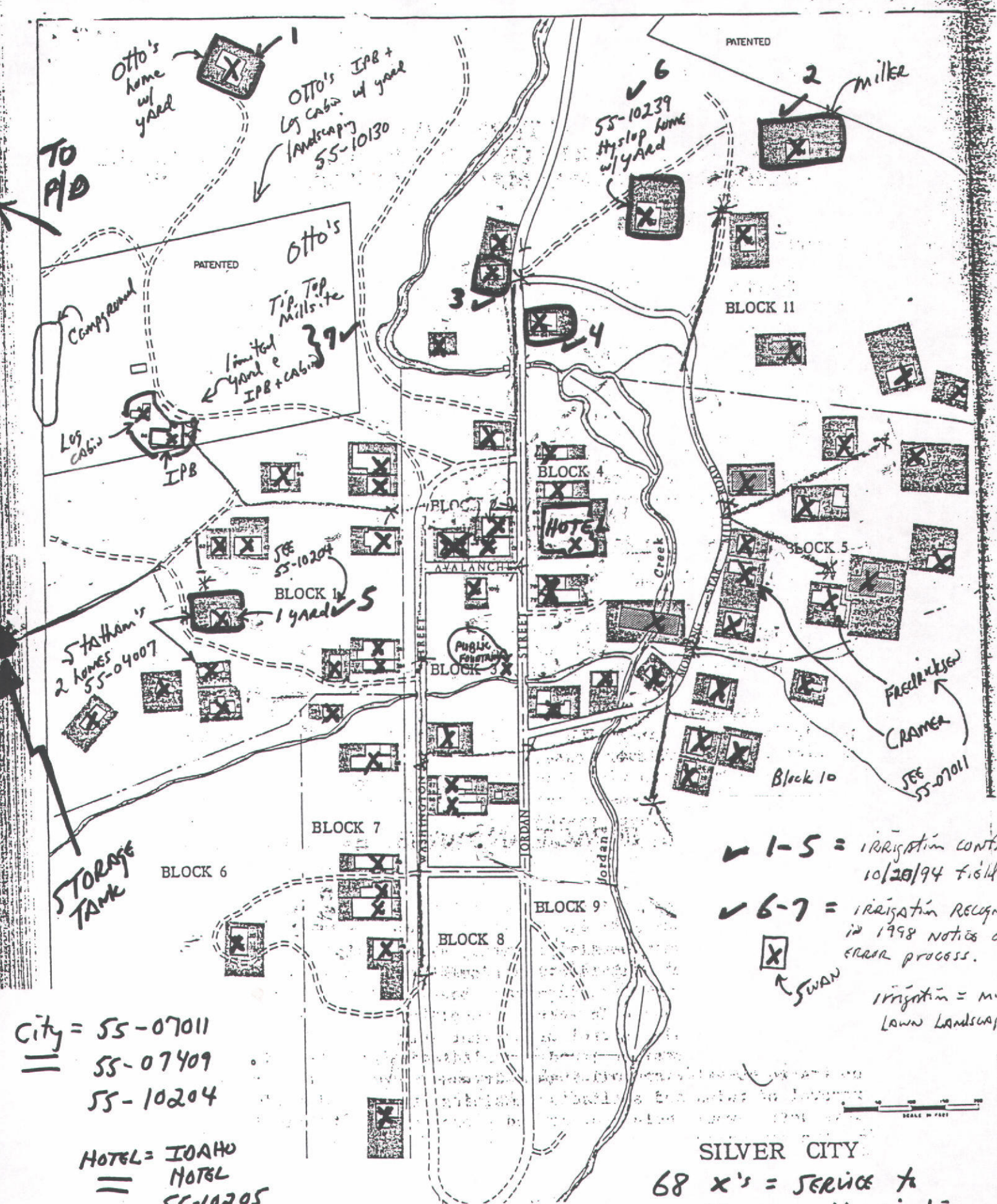




CITY = 55-07011
 = 55-07409
 = 55-10204

HOTEL = IOAHU
 = HOTEL
 = 55-10205

UNITS SERVED BY
 "City Spring" via
 city distribution system
 - 52 5/11/98

✓ 1-5 = irrigation confirmed
 10/20/94 field trip

✓ 6-7 = irrigation recognized
 in 1998 notice of
 error process.

irrigation = minor
 lawn landscaping

SILVER CITY

68 X's = service to
 units via city pipeline
 system. 67 units plus
 1 public fountain.

MASTER map for 55-07011

55-10130 55-04151
and new filing of
claim to a water right.



Campground. White spray
in background is
irrigation using water
under right 55-10130.



Green lawn and rock walls at IPB.

29. Trees
Below
Tank



Campground



~~DI~~. Flume & Hose
 1988 University
 of Idaho "dig"
 Original in filing
 of 55-04151

Evidence of
 diversion and
 development
 for filing
 Notice of Claim
 to a Water
 Right on the
 new spring
 of Geania St.,
 Otto, Sec 6,
 T05S R03W,
 tip top Millsite,
 Flume built
 in 1937,
 which replaced
 a 1922 flume,

RECEIVED

APR 14 1998

WATER RESOURCES
 WESTERN REGION

QUITCLAIM DEED

THIS INDENTURE, Made this ninth day of July

In the year of our Lord one thousand nine hundred and Fifty six
M. W. Williams and Floribel Williams

between

of Boise, Idaho

County of Ada

State of Idaho

the parties

of the first part, and

Gloria Otto

of Palo Alto

County of

State of California

the party

of the second part.

WITNESSETH That the said parties of the first part, for and in consideration of the sum of DOLLARS.

One lawful money of the United States of America, to Them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever QUITCLAIM unto the said party of the second part, and to their heirs and assigns, all certain lot, piece or parcel of land, situate, lying and being in

Silver City, County of Owyhee, State of Idaho, bounded and particularly described as follows, to-wit:

Beginning at the Quarter section corner common to sections 5 and 6, T 5S, R 3 W, S 4 N; thence North 76° 35' West 1412.8 feet; thence South 41° 35' West 476.2 feet to corner No 1, which is the real point of beginning, and from which point said Quarter corner common to said Section 5 and 6 bears North 84° 25' East 1831.6 feet; thence continuing North 24° 35' West 219.0 feet to corner No 2; thence South 65° 29' West 226.6 feet to corner No 3; thence South 24° 35' East 300 feet to corner No 4; thence North 65° 29' East 371.3 feet to corner No 5; thence North 24° 35' West 81.0 feet to corner No 6; thence South 65° 29' West 72.7 feet to corner No 1, enclosing a tract with a total area of 2.182 acres;

Book 48, page 289

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, All and singular the said premises, together with the appurtenances, unto the part of the second part, and to her heirs and assigns forever.

IN WITNESS WHEREOF, The said part 1 of the first part have hereunto set their hand and seal the day and year first above written.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF

M. Ned Williams [Seal]
Floribel Williams [Seal]
[Seal]
[Seal]

STATE OF IDAHO

County of Ada

ss.

On this 10th day of July, 1956, before me

in and for said State, personally appeared M. Ned Williams and Floribel Williams, a Notary Public

known to me to be the persons whose names are acknowledged to me that they executed the same.

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

Marie Markowski
Notary Public for the State of Idaho.
Residing at _____, Idaho.

No.

QUITCLAIM DEED

M. Ned Williams, et ux

-TO-

Gloria Otto

Dated July 2, 1956

STATE OF IDAHO

Recorded July 2, 1956

in my office, and duly recorded in Book

Deeds at page 289

NICK IHLE

By [Signature] Ex-Officio Recorder

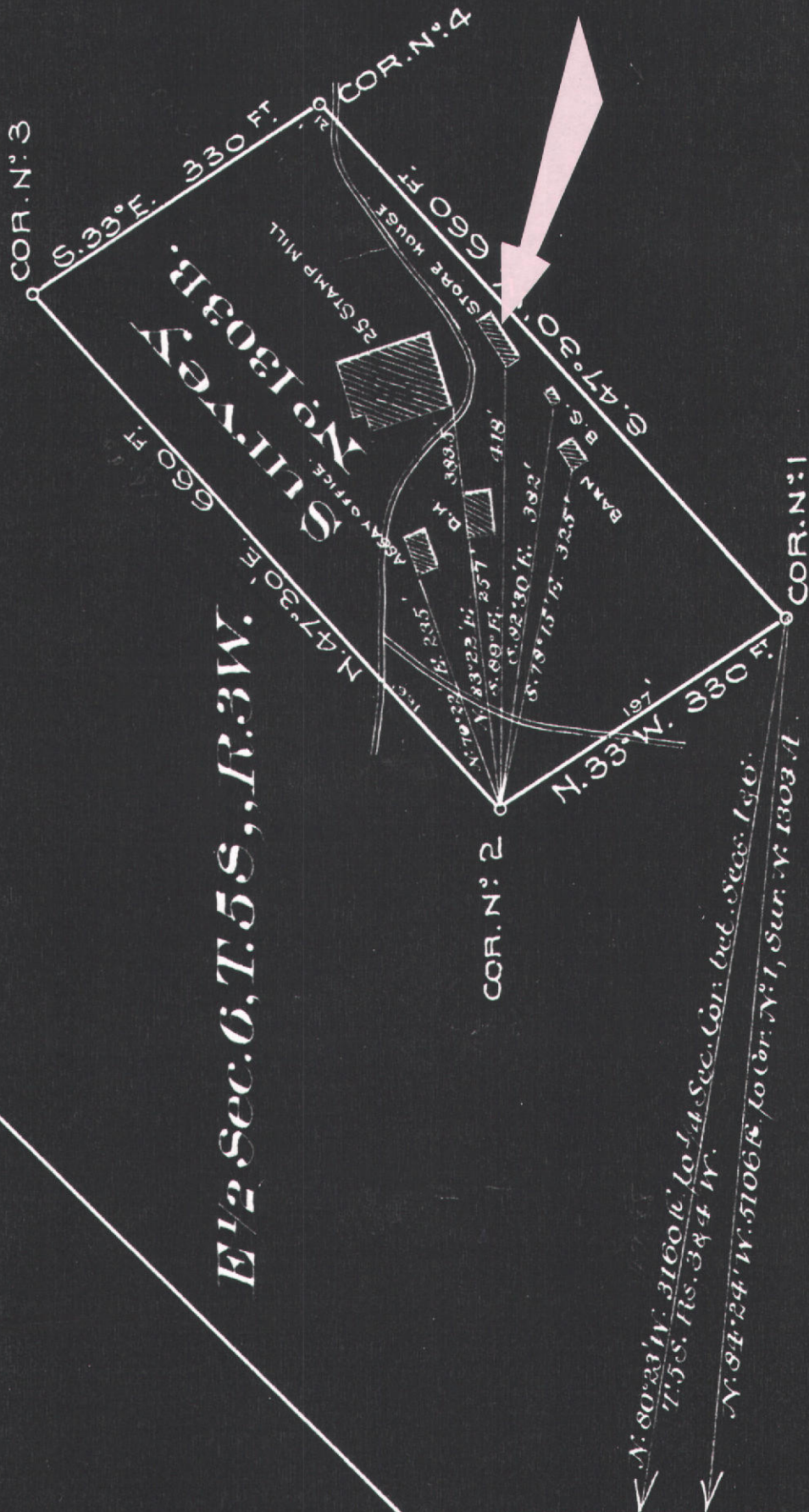
Deputy

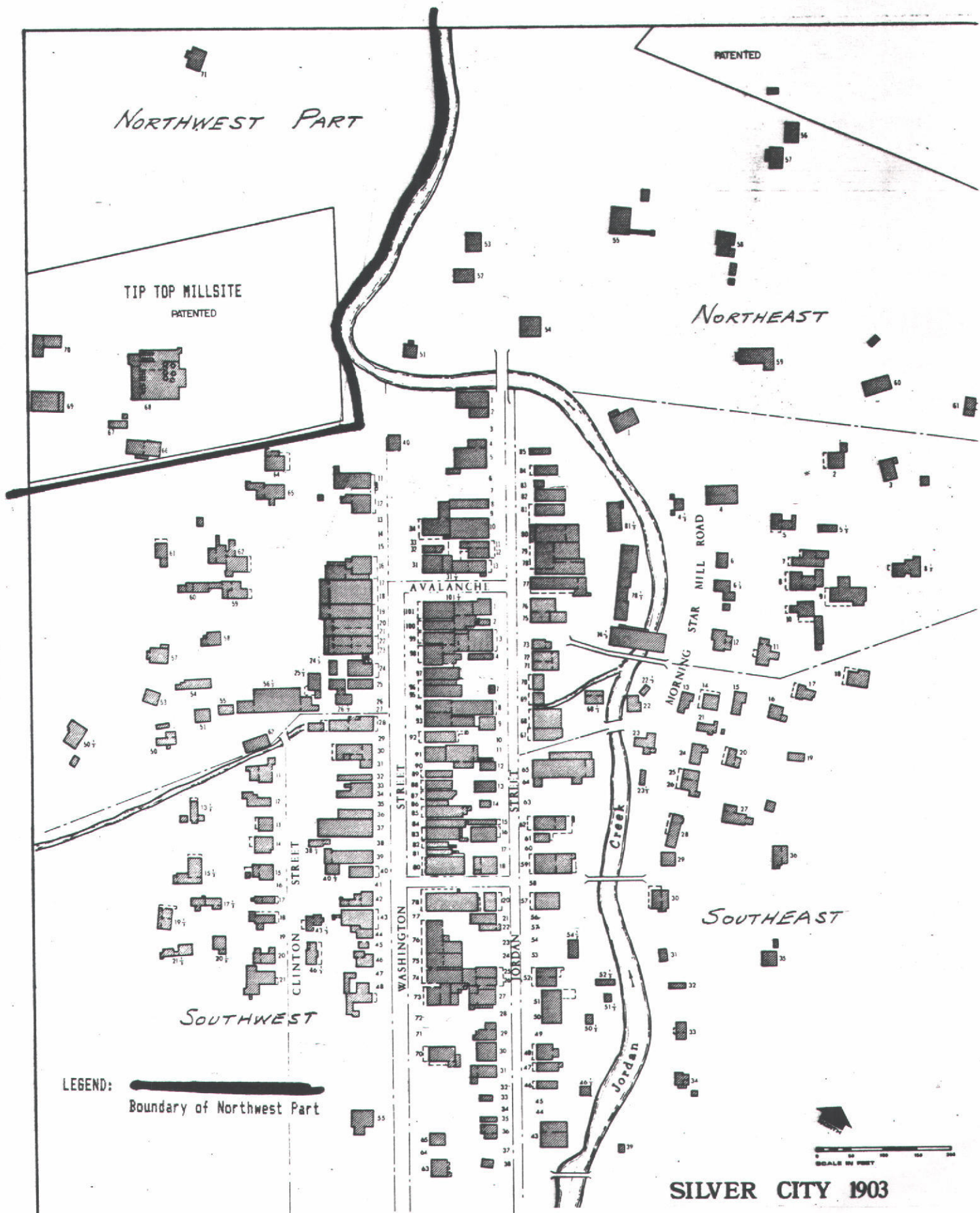
Mail to

NEW YORK COMPANY BOISE

Survey N° 1303 A & B. 15.834

E 1/2 Sec. 6, T. 5 S., R. 3 W.

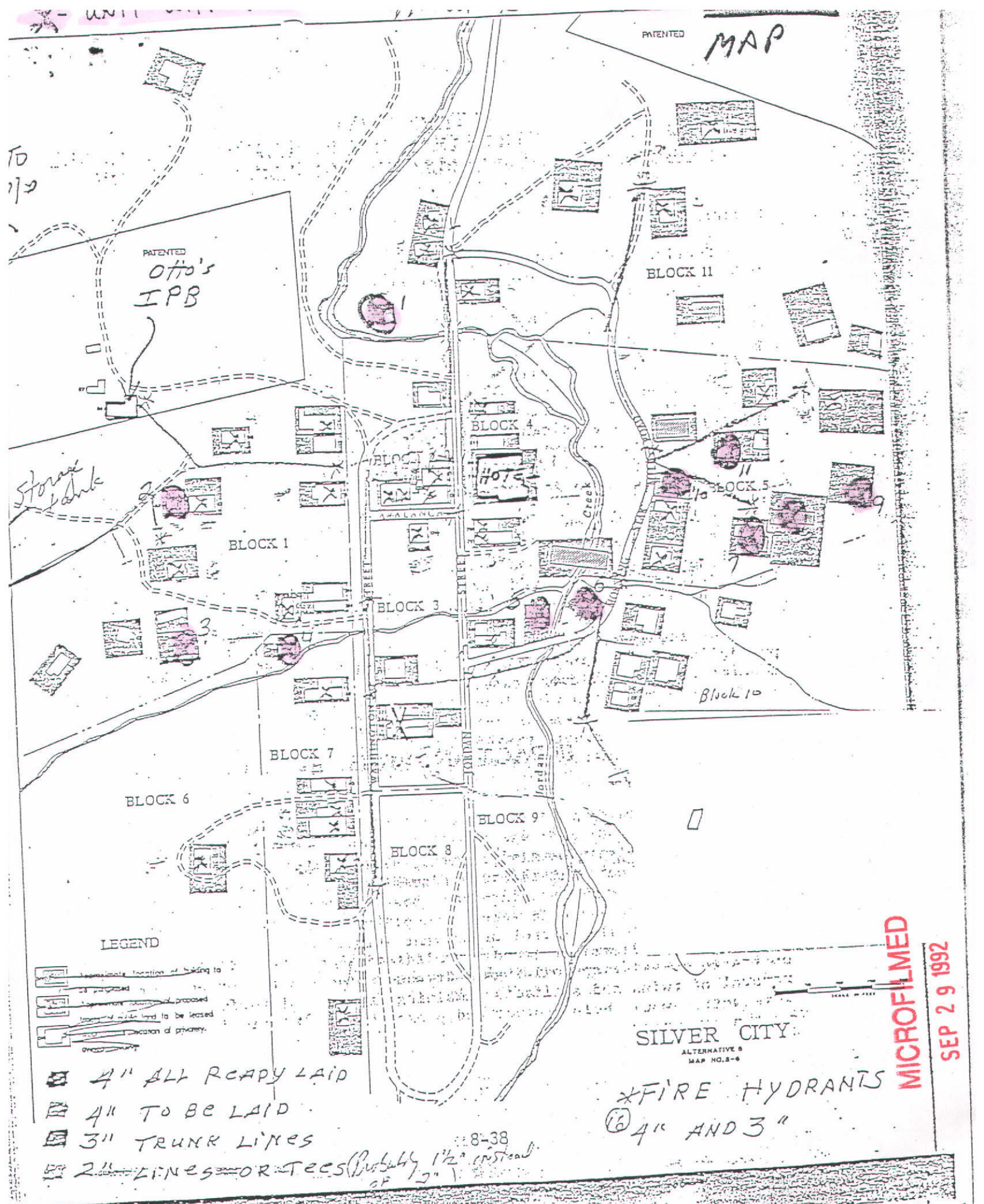






DENSE DEVELOPMENT SOUTH and EAST OF TIP TOP MILLSITE
[Arrow points to Lincoln Mill]

(1896 Photo courtesy of Idaho State Historical Society)



THIS SHOWS UPGRADING IN PROCESS TO IMPROVE WATER DELIVERY TO HOME

ROSHOLT, ROBERTSON, TOLMAN & TUCKER

Chartered

ATTORNEYS AT LAW

1020 MAIN STREET

SUITE 400

P.O. BOX 2139

BOISE, IDAHO 83701-2139

TELEPHONE (208) 336-0700

FAX (208) 344-6034

JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER
TERRY R. McDANIEL
GARY D. SLETTE
JERRY JENSEN
F. BRUCE COVINGTON
CAROLYN M. MINDER
BRUCE M. SMITH
G. RICHARD BEVAN
GARY L. QUIGLEY
TIM J. WILLIAMS
JUSTIN R. SEAMONS
JOHN O. FITZGERALD

Twin Falls Office
142 3rd AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

November 20, 1990

Steve Lester
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: Carl and Gloria Otto Water Rights/Claim Nos:
A55-10204, A55-10130, Permit No. 55-7011

Dear Steve:

Thanks for meeting with me to discuss the Silver City water rights situation. Mr. and Mrs. Otto are very interested in the situation and simply want to make sure their water rights are protected.

As part of this process, would you please send me a copy of the field exam and recommendation for licensing of permit No. 55-7011. Also, please accept this letter as notice that the Otto's would like to participate when you get ready to do the field exam on their adjudication claim in the summer of 1991. Thanks again for your help in addressing this matter.

Sincerely,



Bruce M. Smith

BMS/dj
54831

cc: State Office - adjudication section
Dave Tuthill

Response attached

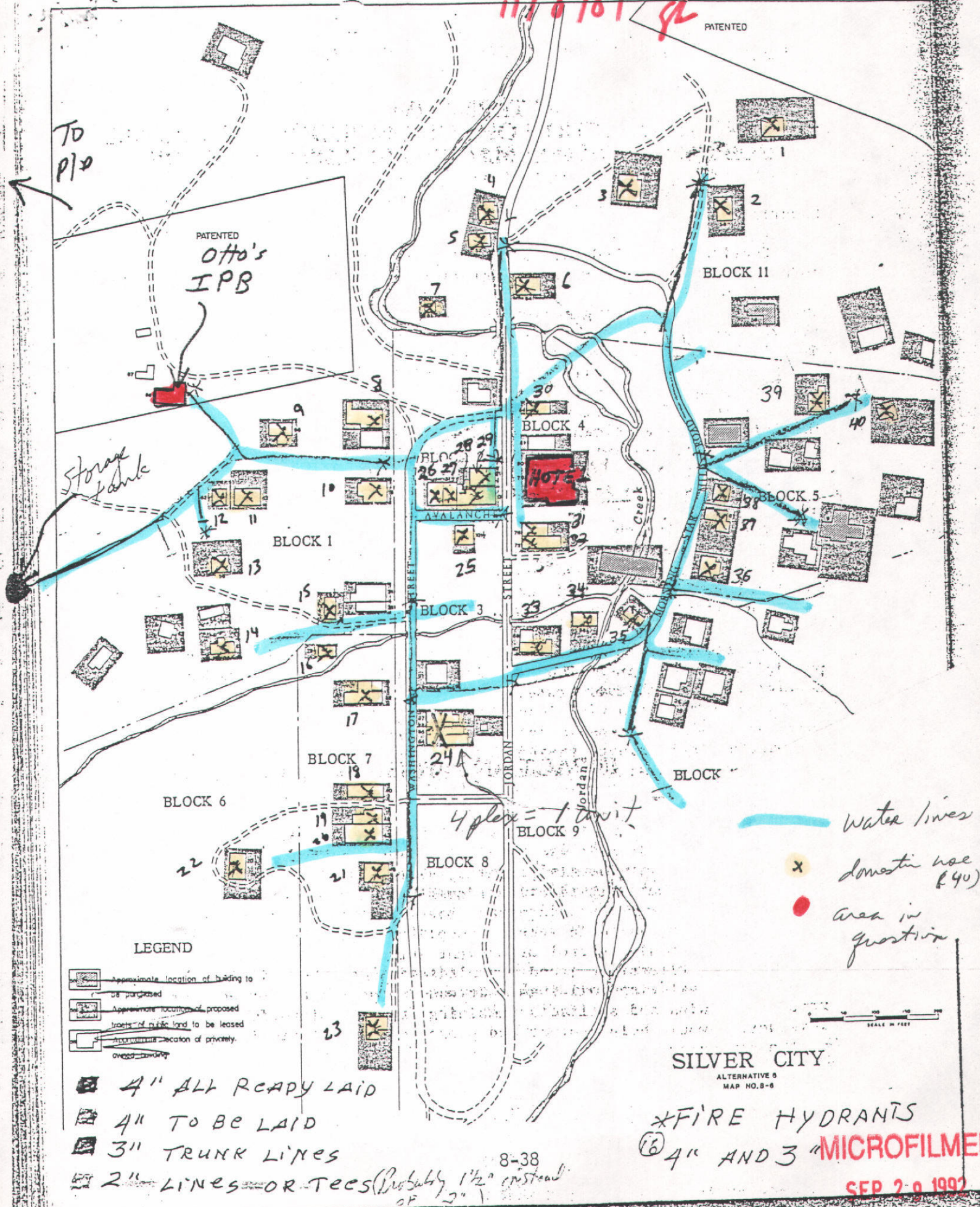
MICROFILMED

SEP 29 1992

X = UNIT WITH WATER

Revised map
11/8/89
JL

55-7011



LEGEND

- Approximate location of building to be purchased
- Approximate location of proposed tracts of public land to be leased
- Approximate location of private property

- 4" ALL READY LAID
- 4" TO BE LAID
- 3" TRUNK LINES
- 2" LINES OR TEES (Probably 1 1/2" instead of 2")

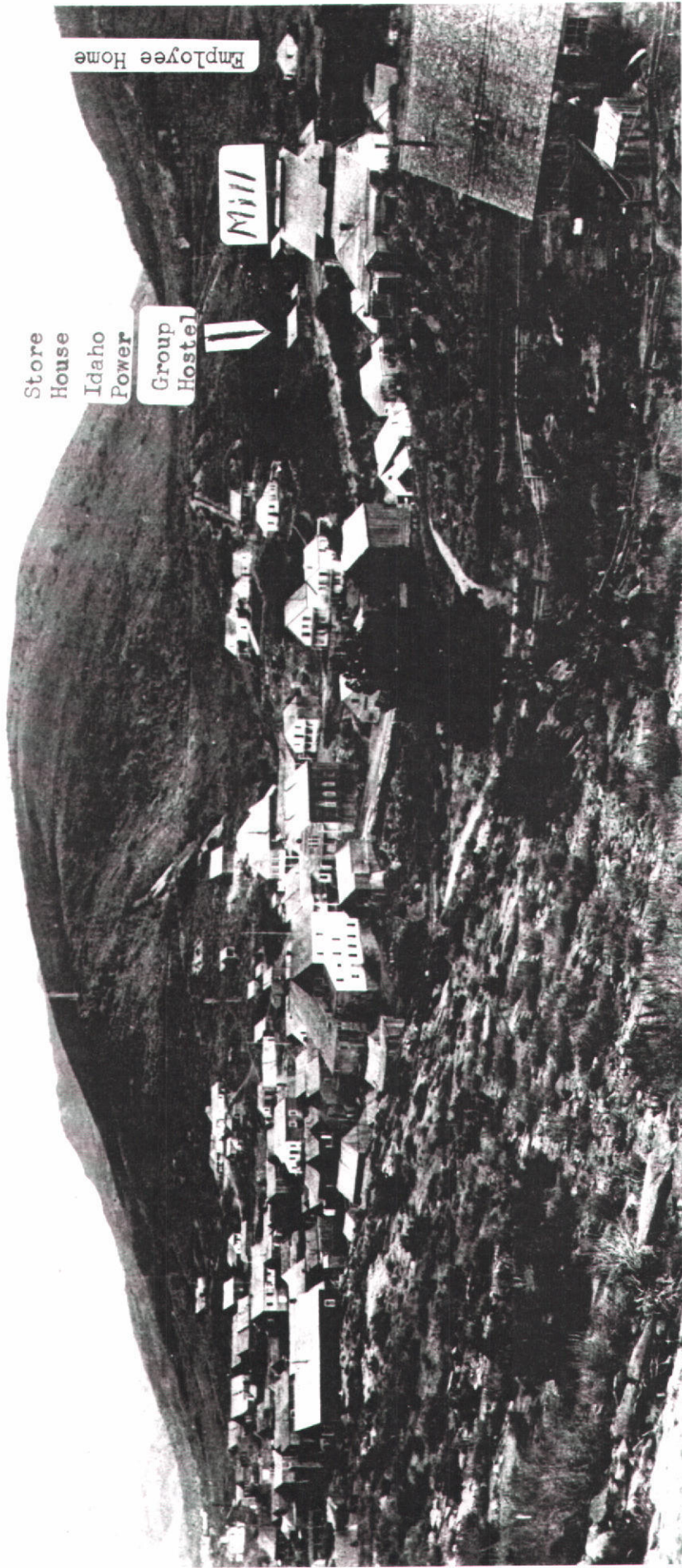
SILVER CITY

ALTERNATIVE 6
MAP NO. 8-6

*FIRE HYDRANTS
① 4" AND 3"

SEP 20 1992

THIS SHOWS UPGRADING IN PROCESS TO IMPROVE WATER DELIVERY TO HOME





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: A55-10130
Date Received: 1/19/1989
Receipt No: W002198
Received By: DE ZA

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: GLORIA OTTO 208-495-2868
Address: P.O. BOX 56
MURPHY, ID 83650

2. Date of Priority: JAN 01, 1866

3. Source: SPRINGS Trib. to: JORDAN CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
05S	03W	6	NE	SE	NW		OWYHEE

5. Description of diverting works:
SEE REMARKS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.020		
COMMERCIAL	01/01	12/31	0.040		

7. Total Quantity Appropriated is:
0.060 C.F.S. (and/or) 45.00 A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
D/1 HOUSEHOLD, C/HOTEL

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
05S	03W	6	NW	SE		DOMEST	
			NW	SE		COMMER	

A55-10130

Page 1

Date: 03/09/89

MICROFILMED
SEP 29 1992

11. Place of use in counties: OWYHEE

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

13. Other Water Rights Used:
57-7011, 55-4006, 55-4151.

14. Remarks:

DESCRIP. OF DIVERTING WORKS: SPRING BOX AND SERVICE PIPING FROM SPRINGS TO BUILDINGS WAS CONSTRUCTED IN THE PAST. WITH RENOVATION OF THE SYSTEM, THIS WATER IS NOW CARRIED THROUGH THE CITY WATER SYSTEM TO THE OWNER'S PROPERTY VIA THE CITY WATER TANK ~~NAD, THENCE~~ ^{AND} IN PIPING TO OWNERS BUILDINGS AS WELL AS BEING PICKED UP AS OVER FLOW FROM THE CITY WATER TANK AND IS DELIVERED BY A FLUME AND WATER LINES TO VARIOUS POINTS OF USE ON OWNERS PROPERTY. IF THE CITY SYSTEM FAILS TO CONTINUE TO CONVEY THIS WATER THE SPRING BOX AND PIPING SYSTEM MAY BE RECONSTRUCTED AND UTILIZED TO IMPROVE WATER SUPPLY.

DUE TO THE TENUOUS WATER SUPPLY IN THIS AREA, IT IS IMPORTANT THAT ALTERNATIVE WATER SUPPLIES BE DEVELOPED TO ASSURE A CONSTANT SUPPLY.

15. Basis of Claim: BENEFICIAL USE

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 _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____
My Commission Expires _____

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 A55-10130
Date Received 1-19-89
Receipt Number W002198

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Gloria Otto Phone (208) 415 368-5004
495-2868
Mailing Address P. O. Box 56, Murphy, Idaho Zip 83650
2. Date of Priority (Only one (1) per claim) January 1, 1866
3. Source of water supply (a) Springs
which is tributary to (b) Jordan Creek
4. a. Location of existing point of diversion is: Township 5S Range 3W Section 6,
NE 1/4 of SE 1/4 of NW 1/4, Govt. Lot, B.M., County of Owyhee
Additional points of diversion if any: None
- b. If instream flow, beginning point of claimed instream flow is: N/A
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. Spring box and service piping from springs to
buildings was constructed in the past. With renovation of the system, this water is now
carried through the city water system to the owner's property via the city water tank and
thence in piping to owners buildings as well as being picked up as overflow from the city
water tank and is delivered by a flume and water lines to various points of use on
owners property. If the city system fails to continue to convey this water the spring box
and piping system may be reconstructed and utilized to improve water supply.

MICROFILMED

SEP 29 1992

HOW YOU WILL RECEIVE NOTICES IN THE SNAKE RIVER BASIN ADJUDICATION

All documents filed in the Snake River Basin Adjudication other than notices of claims are filed with the court. Notices of claims to water rights filed in the Snake River Basin Adjudication are filed with the Idaho Department of Water Resources. Copies of all documents filed in the Snake River Basin Adjudication will not be mailed to all parties (claimants) in the adjudication.

By order of the court, any document filed with the court will be mailed only to those parties who may be directly affected by it. A monthly docket sheet will be prepared by the department which contains a summary of all documents filed with the court in the previous month and the dates and locations of hearings scheduled for the following three months. The docket sheet will be filed with the district court clerk in each county within the Snake River Basin in Idaho. Copies of the docket sheet may be obtained from any of the offices of the department either in person or by mail; a small fee will be charged to cover the cost of mailing and/or copying. If you wish to receive a copy of the docket sheet each month, you should mark the appropriate place on your notice of claim form. You will be charged a small annual subscription fee to cover the cost of copying and mailing. Copies of any document listed on the docket sheet may be obtained from any of the offices of the department either in person or by mail; a small fee will be charged to cover the cost of mailing and/or copying.

Copies of all notices of claims filed with the department will be available for inspection from all offices of the department. Copies of the notices of claims may be obtained in person or by mail, but you will be charged for the cost of copying and mailing. (A claimant will not be charged for a copy of his or her own notice of claim, and a person who acquires property with water rights for which a notice of claim was filed will not be charged for a copy of the notice of claim filed by the previous owner.)

After the notices of claims have been reviewed, the director will prepare and file a report with the court. Part 1 of the report will contain the director's recommendations as to each water right claimed under state law. Part 2 of the report will list each federal reserved water right claimed. A number of reports will be prepared, one or more for each sub-basin in the Snake River Basin. When the report for your sub-basin is filed with the court, you will be mailed a notice informing you that the report for your sub-basin has been filed. The notice will be sent to the most recent address shown by the department's files. Attached to the notice will be a copy of those portions of the report describing the water rights you have claimed. If you do not agree with the way your water right is described, you may file an objection to the report with the court. You can also file an objection if you disagree with the way other claimant's water rights are described, and the notice will tell you where a copy of the full report is available for inspection. The notice will tell you when and where to file your objection. The notice of filing for each sub-basin report will also be published state-wide in local newspapers.

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Domestic purposes from 1/1 to 12/31 amount .02 or 15

For Commercial purposes from 1/1 to 12/31 amount .04 or 30

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) .06 (cfs) and/or (b) 45 (acre feet)

8. Total consumptive use claimed is de minimus acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Single family residence, hostel for up to 14 individuals

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 instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
5S	3W	6														D			
5S	3W	6														C			

Total number of acres irrigated -0-

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

12. Do you own the property listed above as place of use? Yes X 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.
57-7011; 55-4006; 55-4151 or None ()

14. Remarks:
Due to the tenuous water supply in this area, it is important that alternative
water supplies be developed to assure a constant supply.

Last Name Otto Ident No. _____

MICROFILMED
Copies: White -State, Yellow-Claimant
SEP 29 1992

It is very important that you inform the department in writing of any change in your address. This is to make sure that you receive the notices affecting your water rights that are to be mailed by the department.

If you are acquiring property with water rights in the Snake River Basin water system in Idaho (either by purchase, gift, inheritance, or other means), it is very important that you inquire of the department whether a notice of claim has been filed. If not, you must file a notice of claim or the water right may be declared by the court to no longer exist. If a notice of claim has been filed, it is very important that you file a written notice of change in ownership with the department. The notice of change in ownership must be accompanied by some evidence of the change in ownership, such as a copy of the deed or a property tax statement showing the name of the new owner. Again, this is to make sure that you receive the notices affecting your water rights that are to be mailed by the department.

The cost of the subscription to the docket sheet is \$7.50 for calendar year 1988. The cost of the subscription may increase a small amount for calendar year 1989 if the cost of copying and/or mailing should increase.

If you are planning to file a motion or other pleading (not a notice of claim) with the court (not IDWR), the court has issued an order setting a special procedure that is different from the usual civil rules. A copy of the order may be obtained from any office of IDWR; you may be charged for the cost of mailing and/or copying.

Scale: 2 inches equals 1 mile

[illegible]

MICROFILMED
Copies: White-State, Yellow-Claimant

SEP 29 1992

15. Basis of Claim (check one) Beneficial Use X Posted Notice _____ License _____ Permit _____
Decree _____
If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs 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 X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments 10

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

Signature of Claimant (s) x Gloria H. Otto Date Jan. 10, 1989

Date _____

For Organizations: I do solemnly swear or affirm that I am _____

of _____, that I have signed the foregoing
Organization
document in the space below as _____ of _____
Title Organization
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____
Title and Organization _____ Date _____

State of ~~Idaho~~ or CALIFORNIA SS.
County of SANTA CLARA

Subscribed and sworn (or affirmed) before me this 10th day of JANUARY 19 89

SEAL



Notary Public Donna Dae Nicholas

Residing at 250 Lytton Ave. Palo Alto, Ca.

My Commission Expires 4/19/91

Please Print Name DONNA DAE NICHOLUS

17. Notice of Appearance:

Notice is hereby given that I, _____ 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 _____

Date _____

Last Name Otto Ident. Number _____

MICROFILMED
Copies White-State, Yellow-Claimant
SEP 29 1992

AFFIDAVIT

I, Gloria W. Otto, of P.O. Box 56, Murphy, ID, 83650
Post Office Address

do hereby affirm that I have personal knowledge of the spring located in
the 1/4, 1/4, Section 6, Township 5S, Range 3W.

Information I can formally attest to is as follows:

1. Source of water Spring (55-07011) on East Flank of Florida Mountain.
2. Date of first use of water 1866
3. Nature of use Domestic - Commercial
4. Quantity of water diverted .02 Domestic - .04 Commercial
5. Use of water by this owner We have used city water every year since 1940. In 1940, my father, Ned Williams, began to remove all the transmission lines and substations in the Owyhee Mountains for the Idaho Power Company, continuing the salvage until 1953. City water was used for the crews, pack trains, salvage preparation). From 1953, the millsite was his base for mining operations (metal concentrators and separators).
6. Other information Since 1953, my family has lived in the Idaho Power House as an auxillary home when my husband was out of the United States, and for a vacation home. The old bathroom (bathtub, flush toilet and lavatory) was removed in 1984 when the building was renovated. Two new bathrooms have been added with showers, flush toilets and lavatories. Since 1980, city water has been used on the millsite and in the Idaho Power House by mining, lessees, renters, construction workers (see affidavits) and by members of the Williams-Otto families and friends.

Gloria W. Otto
Signature

STATE OF California
County of San Mateo

Subscribed and sworn to before me this 11th day of November, 1988.

(NOTARY SEAL)

Helen E. Alburger
Notary Public



MICROFILMED

SEP 29 1992

AFFIDAVIT

I, Eudora Terry, of Route 8, Box 609, Caldwell, Id. 83605,
Post Office Address

do hereby affirm that I have personal knowledge of the spring located in
the NW 1/4, SE 1/4, Section 6, Township 5S, Range 3W.

Information I can formally attest to is as follows:

1. Source of water Silver City water system
2. Date of first use of water 1922
3. Nature of use domestic
4. Quantity of water diverted one inch line from city water tank
5. Use of water by this owner domestic, kitchen, watering lawn
and bathroom of a tub, lavatory, and toilet, laundry, small
plaster operations, horse
6. Other information My husband, Ben Kidder, was substation operator
for the Idaho Power Company from 1922 until 1939, at Silver
City Idaho

Eudora Terry
Signature

STATE OF IDAHO

County of CANYON

Subscribed and sworn to before me this 5th day of JANUARY, 19 88.

(NOTARY SEAL)

Chas. Shufes
Notary Public

12543

MICROFILMED

SEP 29 1992

AFFIDAVIT

I, PATRICK L. KIDDER, of 3373 Winthrop St.
Concord, CA, 94520
Post Office Address

do hereby affirm that I have personal knowledge of the spring located in
the N/W 1/4, S/E 1/4, Section 6, Township 5S, Range 3W.

Information I can formally attest to is as follows:

1. Source of water CITY WATER SYSTEM
2. Date of first use of water 1922
3. Nature of use DOMESTIC + IRRIGATION + STOCK
4. Quantity of water diverted 6 PEOPLE, LAWN 60' x 60'
5. Use of water by this owner BATHROOM (TUB, TOILET + WASH BASIN), KITCHEN, LAUNDRY, WATER COOLED REFRIG-
ERATOR, FIRE PROTECTION, OUTSIDE FAUCETS,
6. Other information MY FATHER WAS ELECTRIC POWER
MANAGER FOR THE CITY + SURROUNDING GOLD MINES.
FOR THE IDAHO POWER COMPANY FROM 1922 TO 1939

11/28/87

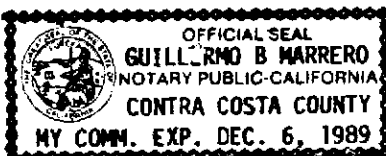
Patrick L Kidder
Signature

STATE OF CALIFORNIA

County of CONTRA-COSTA

Subscribed and sworn to before me this 23 day of November, 1987.

(NOTARY SEAL)



[Signature]
Notary Public

MICROFILMED

SEP 29 1992

HISTORY OF WATER USE AT TIPTOP MILLSITE

The use of water by people and companies associated with the TipTop millsite before 1901 has a complicated history for several reasons.

of water
First, the need for both domestic and commercial purposes has existed since 1864 when Silver City was founded. One of the largest mills (twenty stamps) was built on the property in 1866. Auxiliary buildings included residences for employees as well as an office, barn, blacksmith shop, assay office, retort building and tool shop. Although all of the buildings except one, known as the Idaho Power House, have disappeared, the use has continued to this day to be both domestic and commercial. *water*

Second, the sources of water have been varied. In 1864 a ditch was established to bring water from Long Gulch creek to the millsite to run the mill which at that time was powered by steam. Springs on Florida Mountain were developed to furnish water for the residences and the retort operations. Two small springs rise within the boundaries of the millsite. It is believed that water from the large metal pipe that brought water to the property from the spring on Florida Mountain (about 2500 feet northwest of the millsite) was developed by the Lincoln mill company in 1865. Newspaper articles in the Owyhee Avalanche of that period refer to the residents of Silver City gaining a right to use water from the Florida spring. The water right of the mill complex may have been compromised when the Lincoln Milling Company became bankrupt in 1868, but the water continued to be used by its successors in title, the Ida Elmore Mining and Milling Company, *Ida Elmore Mining and Milling Company*.

Third, the amount of water needed was enormous. It is believed that one of the reasons that the area between Telegraph Hill and the Chinese placers has not been developed is ~~because~~ *that* the water sources had been pre-empted by the mill complex.

Fourth, the water delivery systems have been changed frequently. When ownership of different parts of the property changed, the commercial use also was changed. Because the property was subject to bankruptcies, sheriff's sales, lawsuits and divisions, the chain of title (although unbroken) is difficult to understand in terms of how the changes effected water use. In the summers of 1987 and 1988, archaeologists found extensive water lines which had been installed at various periods of time. The hill between the Idaho Power House and the present city water tank bears evidence of the existence of many different water systems.

Fifth, the records in the Owyhee County courthouse regarding Water Rights, Millsites and Tunnels are incomplete. Books I and II are missing. Records are not available until 1875 with Book III. However, old deeds document extensive water rights which existed prior to 1875. (Deeds, Book I page 401, 1865).

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Study of the chain of title will show that the property has always been occupied since 1864 by owners who needed and used water for domestic and commercial purposes. (Deed record appended).

One question arises regarding domestic use. In 1903 Silver City was surveyed and mapped by the Sanborn Map Company to determine its fire rating. On that map, an inset of properties peripheral to the town showed that the TipTop mill complex was served water only for milling purposes. The map specifies that no provision had been made to control fire. The map does not show whether water was available for domestic use at millsite residences because the map did not indicate domestic hook-ups anywhere in the city. Only water for fire control was mentioned, other than the milling uses. However, the map does show that the building which is now known as the Idaho Power House had already become property of an electrical public utilities company (Owyhee Electric Company) and that the building served as a residence as well as an electric substation. Members of families of early substation operators believe that the building was equipped with a modern bathroom (tub, toilet and lavatory) at least by 1900 when the electric utility acquired the building.

The fact that the mill and its auxiliary buildings have disappeared does not invalidate the claim to a water right by the present owners of the Idaho Power house which is the only surviving building. The ownership of the Idaho Power property had been separated from the ownership of the rest of the property of the millsite in 1901. Whereas the mill complex may have lost its right to city water because it ceased to use city water, the Idaho Power House can show continuous use of city water because it has been in active use and occupancy ever since its ownership was separated from the main body of the millsite. The Idaho Power house may have acquired its water right through its association with the original mill complex but it has maintained its water right through its own use. The continuous use of city water after 1900 is supported by the enclosed affidavits of Otto, Terry, Kidder, Hampton, and the archaeology students from the University of Idaho at Moscow.

The use of city water by present owners of the Idaho Power House has been impacted by the transitional status of the building which is being renovated for use as a group hostel. In 1985 heavy earth-moving equipment destroyed the former water delivery systems. Since then, although the city water has been used, its use has been sporadic and the delivery systems have been make-shift or temporary. The present system was installed in 1987 and will be expanded as it is tailored to specific purposes of the property's new role, an inn or hostel. Sources of water other than the city system which are available to the hostel owners did not prove to be adequate during 1987 and 1988 when drought conditions prevailed. Over \$100,000 has been expended on the improvements to the property in anticipation of

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the new business. The agreement worked out by the Ottos with the Water committee of the Silver City Taxpayers' Association to include both domestic and commercial water use by the Idaho Power House occupants affirms a traditional, historic and necessary water right.

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AFFIDAVIT

X

I, Leo Hampton, of P.O. Box 1603, Edmond, Ok. 73083
Post Office Address

do hereby affirm that I have personal knowledge of the spring located in
the NW 1/4, SE 1/4, Section 6, Township 5S, Range 3W.

Information I can formally attest to is as follows:

1. Source of water tunnel and flume diverting water from spring and overflow from city water tank.
2. Date of first use of water summers from 1980 to 1987
3. Nature of use commercial and domestic
4. Quantity of water diverted varies from one quart per minute to four gallons per minute
5. Use of water by this owner _____

6. Other information Our use consists of operating a separator of gold and silver concentrates, and a mining camp of two to eight persons.

Leo Hampton
Signature

STATE OF _____

County of Oklahoma

Subscribed and sworn to before me this 1st day of December 1987.

(NOTARY SEAL)

Glenda King
Notary Public

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The area around the city spring is located on the northwest corner of the Carson Ranch (Lands Claims, Book I, 1864) which was deeded to Lincoln Silver Company on Sept. 10, 1865 (Deeds, Book I, page 401). That company built a mill complex including a 20-stamp mill, residences and auxiliary buildings and developed several sources of water including springs on Florida Mountain and built a large capacity delivery system. Records of water rights before 1875 are not available (Water Rights Books I and II are missing from Owyhee County Records), however, water rights are mentioned in deeds to the land and buildings. The chain of title from Lincoln mill complex to the present is unbroken and the use of water from the city spring on Florida has been continuous. The present owners of the millsite base their claim to a water right on the above-mentioned historical use and upon the affidavits (appended) which deal with water use since 1900.

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layed described on p 27869
same as before

water

J. V. Bryan, John Bryan,
George W. Venable, and Alfred Hicks
to
Charles Bunting

Book 11, Page 1985
Quitclaim Deed

This Indenture made this 10th day
of September, 1895, between J. V. Bryan,
John Bryan and George W. Venable of
Blaine County, in the State of Idaho, and
Alfred Hicks of the County of Owyhee
in the State of Idaho, parties of the
first part, and Charles Bunting of
Blaine County, in the County of Bingham in
the State of Idaho, party of the second part;

Witnesseth: That the said parties of
the first part, for and in consideration
of the sum of Ten thousand dollars,
lawful money of the United States of America,
to them in hand paid by the said party of
the second part, receipt whereof is hereby
acknowledged, have bargained, sold, remised,
released and forever quitclaimed, and by
these presents do bargain, sell, remise, re-
lease and forever quitclaim unto the said
party of the second part, his heirs and
assigns, the following property situated,
lying and being in the County of Owyhee
in the State of Idaho and particularly de-
scribed as follows, to-wit:

All that certain property, situated, lying
and being in the town of Silver City in
said county, known as the Ora Fina
Twenty Stamp Steam Brushing Quartz
Mill, together with the Boiler, Engine,
Battery, Pans and all machinery therein
contained of whatever kind or nature;
together with all water rights and ditches
connected therewith. Also those certain
buildings near said mill, known as the
Ora Fina Warehouse, Blacksmith shop, Stables
dwelling house and Office and all the right,
title, interest, estate, possessions and property

Angels Upjohn Carter }
Ida Elmore Mining Co. }

Water -
55-7011
Millsite

P 191
Sept 10, 1869

This Indenture, made and entered into this tenth day of September in the year of our Lord one thousand eight hundred and sixty nine by and between D. H. Fogus, John M. Wilson, and H. B. Carter, all of Silver City in the Territory of Idaho parties of the first and the Ida Elmore Mining Company a corporation party of the second part, Witnesseth, that the said parties of the first part for and in consideration of the sum of one dollar and of certain shares of stock in the Capital Stock of said Corporation the receipt whereof is hereby acknowledged have this day granted, bargained, sold, remised, and conveyed and by these presents do grant bargain remise and quit claim unto the said party of the second part, all that certain lot or parcel of land lying and being in the Town of Silver City, Owyhee County, Idaho Territory bounded as follows: Commencing at the South west corner at a Fir tree about eighteen inches in diameter and running thence North twenty seven degrees West three hundred and sixty five feet; thence North sixty three degrees East five hundred and seventy five feet to the West line of Washington Street in said Silver City, thence South twenty eight degrees East along the west line of said Washington Street two hundred and sixty five feet, thence South sixty three degrees West seventy eight feet, thence South twenty eight degrees East one hundred feet, thence South sixty three degrees West five hundred and five feet to the Place of beginning.

Together with the Steam Quartz Crushing Mill generally known as the "Lincoln Quartz Mill", and the Office, boarding house, dwelling house, Stable and Smith Shop, and all the building outhouses, improvements and appurtenances unto said lot of land belonging or in any wise appertaining. To have and to hold the said described premises to the said second party and to its assigns forever.

In witness whereof the said parties of the first part have herunto set their hands and seals the day and year first before written.

In presence of
H. P. Porter Smith
L. W. Greenwell.

D. H. Fogus
John M. Wilson
H. B. Carter
By his Attorney in fact
John M. Wilson

New Stamp 57 cc. canceled.

description of land not changed until 1901

12/22/1988

SRBA CLAIMS RECEIVING CHECKLIST

CLAIMANT'S NAME OttoCLAIM IDENT. NO. A55-10130DATE RECEIVED 1-19-89CK # 259AMOUNT \$ 56-

YES

NO

Required
Info?

1. Is the name and address complete with zip code? ☒ YES ☐ NO *
2. Is a priority date entered? ☒ YES ☐ NO *
- Is the priority date acceptable in view of mandatory filing dates? ☒ YES ☐ NO *
3. (a) Is a source entered? ☒ YES ☐ NO *
- (b) Is a tributary to entered? (if required) ☒ YES ☐ NO N/A
4. Is the legal description of the p.d. sufficient? ☒ YES ☐ NO *
5. Is there a description of the diverting works? ☒ YES ☐ NO
6. Are the water uses appropriate for the form? The short form is limited to domestic and stockwater uses with direct diversion. All claims that include storage or instream stockwater must use long form. ☒ YES ☐ NO
- Is the period of use included? ☒ YES ☐ NO
- Is a quantity claimed for each use? ☒ YES ☐ NO *
7. Is a total quantity claimed entered? ☒ YES ☐ NO
8. If required is a consumptive use entered? ☒ YES ☐ NO N/A
- Is the consumptive use correct? ☒ YES ☐ NO N/A
9. Are the non-irrigation uses listed properly? If this claim is on the short form, and more than one domestic use is listed, single ownership must be stated. If not under single ownership, see Adjudication Memo # 4. ☒ YES ☐ NO N/A *
10. Is (are) the place(s) of use and purpose(s) indicated? ☒ YES ☐ NO *
11. Is (are) the county(ies) entered? ☒ YES ☐ NO
12. Is the ownership of p.u. checked? ☒ YES ☐ NO
13. Are other water rights listed or "none" indicated? ☒ YES ☐ NO
14. If required, are remarks correct? (If the claimant does not own the place of use, authority for filing the claim must be explained in the remarks.) ☒ YES ☐ NO N/A
15. Is the basis of the claim indicated? ☒ YES ☐ NO
16. Has the claimant requested a monthly docket sheet? (If yes, describe payment status in "Comments" below.) ☒ YES ☐ NO
17. Is the claim signed by the claimant, and is the signature appropriate? ☒ YES ☐ NO *
18. Has the claim been signed, sealed, and dated by a notary? ☒ YES ☐ NO *
19. Was this claim filed on time, or was an extension granted? ☒ YES ☐ NO *
20. Is the fee enclosed correct? ☒ YES ☐ NO Exempt *
21. If this claim is based on an existing water right, has the identification number been entered? ☒ YES ☐ NO N/A
22. Should this claim be receipted and data entered? ☒ YES ☐ NO

Claim checked by: [Signature]Date: 2/13/89Claim must be returned to claimant: (Yes) (No)Claimant must be sent a copy of amended claim for approval: (Yes) (No)Receipt Prepared by: [Signature]Date: 2/13/89Claim data entered by: [Signature]Date: 2/13/89Checked by: [Signature] Date: 2/13/89Sent to claimant by: [Signature]Date: 2/13/89Comments:

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SEP 29 1992

AJ0749NP
No. R55-10130

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 05/01/98
PAGE: 2

=====

Dates:	Exam Made Date: 07/16/1991	Verified Date:	Objection Filed Date:
--------	----------------------------	----------------	-----------------------

=====

Misc:	Water District Number:	Field Inspection Flag:
		Presumption Flag:

=====

Comments: Date: 03/02/1998 User-ID: LHARRIS Subject: COPIED FROM REMARKS
THIS RIGHT IS DIVERTED THROUGH THE CITY DISTRIBUTION SYSTEM.
DUAL USES AT THE IPB AND LOG CABIN UNITS DEPEND ON ARRANGEMENTS
WITH GUESTS, (DOMESTIC USE IS FOR NON-PAYING GUESTS, COMMERCIAL
USE IS FOR PAYING GUESTS).

Date: 05/01/1998 User-ID: SLESTER Subject: ADDITIONAL INFORMATION PER NOTICE OF ERROR
EXTERNAL USE INCLUDES MINOR LANDSCAPING OF NON-NATIVE AND NATIVE
VEGETATION.
CLAIMANT AND ATTORNEY ADDRESSES UPDATED PER CLAIMANT'S 4/22/98
LETTER FILED IN A55-04006.

Audit: 05/01/98 SLESTER

ADDITIONAL INFO / PHOTOS

IN FRONT OF DRAWER 3 - GRAY CABINET

NEXT TO SUPPLY CABINET

WESTERN REGION OFFICE



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

August 19, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

GLORIA OTTO
PO BOX 56
MURPHY ID 83650

RE: SRBA ADJUDICATION CLAIMS

Dear Gloria:

Today you called and requested copies of department letters sent after you filed your notices of error for Basin 55 adjudication claims in the Silver City area. You also requested that your attorney be provided with such copies. Your concern was that perhaps some information had not been mailed to you and/or your attorney.

You and your attorney filed the notices of error on April 3, 1998 at this office. I checked all of your SRBA claim files plus Mrs. Hyslop's claim file no. A55-10239, for which you filed a notice of error on that same date.

Enclosed please find copies of all Western Region letters or faxes sent after April 3, 1998 regarding your and Mrs. Hyslop's claims. Copies of fax notes are normally not provided to other parties, although fax information is included in today's mailing for your and your attorney's convenience.

The records indicate that only two letters are involved. The May 5 letter sent to your California address was copied to your attorney's office at that time. The May 6 letter to Mrs. Hyslop regarding the notice of error you filed against that claim apparently was not copied to you or your attorney. I regret that oversight.

The enclosed information is being sent to your attorney as you requested. A copy is also provided to Mrs. Hyslop since her claim is included in this discussion. As you know, all matters related to the adjudication claims are now before the Court but not the department.

Sincerely,

A handwritten signature in cursive script that reads "Steve Lester".

Steve Lester
Water Rights Supervisor

Enclosure

c (w/ enclosure): Scott Campbell, Attorney
Julie Hyslop, claimant

A55-10130

CONVERSATION MEMORANDUM

DATE 8/19/98

FILE See below

NAME OF PARTY Gloria Otto

EMPLOYEE 82

RE: REQUEST for copies

Gloria called & asked for CE's to be sent to her (c Murphy's address) + attorney of all docs mailed by IOWA (Western office only) since rec'd her 4/13/98 notice of error w/ her attorney.

I checked all her ERBA files + Hysh's ASS-10239 (Gloria's notice of error re Hysh claim) & rec'd Gloria's attorney w/ letter & faxed from me dated 4/7 - 5/6 1998.

Info was from files:

ASS-04151

ASS-10239

10130

13689

↑

Otto

↑

Hysh

* PO Box 56
Murphy 83650

SUPPLEMENT TO RECOMMENDED RIGHTS FROM CITY SPRING AT SILVER CITY

PREPARED BY STEVE LESTER *SL*
IDWR WESTERN REGION
~~MARCH 4~~ MAY 8, 1998

NOTE - THIS REPLACES THE 3/4/98 MEMO FOR RIGHTS FROM CITY SPRING & A FEW MISC. RELATED FILINGS. UPDATE BASED ON FINAL CONCLUSIONS FROM NOTICE OF ERROR PROCEDURE. OUT OF DATE INFO IS SHOWN IN ~~STRIKEOUT~~ FORMAT WHILE NEW INFO IS SHOWN IN UNDERLINE FORMAT.

~~This explanation is provided to all claimants whose Snake River Basin Adjudication Claims identify the "city spring" in Silver City as a source. The explanation is provided for the claimants because it may be confusing to receive a recommended right without a complete explanation of all uses from the city spring.~~

The following terms are used:

CAMPGROUND = Ottos' private campground uphill from IPB site

CITY = Silver City Property Owners Association

CITY SYSTEM = City's diversion works and delivery pipelines

IDWR = Idaho Department of Water Resources

IPB = Ottos' hostel at Idaho Power building

LOG CABIN = Ottos' secondary structure near the IPB site

SRBA = Snake River Basin Adjudication.

STORAGE TANK = the new City tank that replaced the old wooden tank.

~~The claims have been recommended by IDWR as shown in this mailing. The recommended rights are subject to corrections per the claimant response period provided under Idaho law.~~ IDWR recommendations are based on a review by IDWR legal and other staff. The recommendations result from a thorough review of all the evidence provided by the claimants plus IDWR field exams conducted from 1987 through 1994.

If a use for an individual owner is recommended under that owner's older claim, that use has been deleted from the City's younger claims to avoid duplication. Supplemental information shown below is arranged alphabetically by ownership.

CITY RIGHT NOS. 55-10204, 55-07011 AND 55-07409

55-10204 - recommended with 1968 priority date for domestic use for 16 homes where 2 of the homes include lawn irrigation. This right results from

*from file 55-07011 → Attachment 2
(6 pgs)*

combining a number of single family domestic uses, previously unrecorded until the SRBA, under a single priority date. The latest priority date for the combined uses must be used in such situations. The right lists the lot numbers served by this right.

55-07011 - recommended with 1971 priority date for 22 homes where 2 of the homes include lawn irrigation. ~~Also covers commercial use at the Idaho Hotel.~~ The lot numbers are not completely known for this right so have been omitted. The recommendation is based on a pending license. The right now exists as a permit which was field examined in 1987 before SRBA claims were filed. Licensing has been complicated by competing SRBA claims. It is assumed that the license can be issued before the IDWR Director's Report is submitted to the SRBA Court (later this year after the claimant response period is completed), in a timely manner while the SRBA Director's Report is being considered by the court.

55-07409 - this permit includes a 1990 priority date to cover those uses initiated after the November 1987 field exam of 55-07011. This right is outside of the SRBA scope and therefore will not be included in the Director's Report nor will it be decreed by the SRBA Court. The permit can be licensed for domestic use for 23 homes (includes 1 home with lawn irrigation) and a public drinking fountain assuming that the other two City rights are decreed as above.

City Summary - the 3 City rights will cover domestic use for 61 homes including lawn irrigation at 5 of those homes ~~(that is all of the irrigation found by 1994 field verification)~~ plus drinking water at the public fountain. ~~and commercial water for the Idaho Hotel.~~ All other uses via the City System are covered under individuals' rights.

FREDRICKSON RIGHT NO. 55-13655

Recommended to be disallowed based on insufficient evidence of priority date. IDWR legal staff determined that a contentious situation such as the City Spring requires better documentation to support SRBA claims. This use is recommended for 1 home (in-house use only) in City right 55-07011.

HYSLOP RIGHT NO. 55-10239

This right is recommended with a 1874 priority date for 1 home ~~(in-house use only)~~ for Lot 50. Use includes in-house and limited yard landscaping.

IDAHO HOTEL RIGHT NO. 55-10205

This right is recommended ~~for disallowal based on evidence of forfeiture from 1942-1968. This commercial use is recommended in City right 55-07011.~~ with a 1868 priority for inside commercial use at the Idaho Hotel.

OTTO RIGHT NOS. 55-04151 and, 55-10130 & 55-13689

55-04151 - recommended with a ~~1937~~ 1922 priority date for 2 sources: overflow from the storage tank plus any additional water provided from the old shaft/tunnel located below the tank and the road (shaft/tunnel is near the flume by the Campground). The points of diversion include the overflow collection at

the storage tank plus the shaft/tunnel. This is not water from the City Spring except insofar as captured overflow from the Storage Tank is involved. Uses include commercial use at the campground and the IPB site plus and domestic use at the private Campground, Log Cabin and IPB sites (note dual uses depend on arrangement with guests at the site: domestic for non-paying but commercial for paying guests). This is not water piped into the IPB, rather it is water delivered via a ditch to the IPB site. Uses do not include any lawn etc. irrigation. Internal and limited yard landscaping uses are included. Landscaping of up to 1/2 acre includes non-native plants plus native plants, the latter case in which water is applied to refresh plants after campers depart so a beneficial use is derived from this practice.

55-10130 - recommended with a 1922 priority date for domestic and commercial water for the IPB and Log Cabin delivered by the City system. This is water piped into the two units and does not include lawn etc. irrigation. This right includes the dual use arrangement noted in 55-04151. The same internal and external uses occur (except not at the Campground) in this right as in 55-04151.

Additional right? - another filing is needed to cover a spring that contributes water to the delivery system in 55-04151. An old mining shaft is located above the road not far from the storage tank overflow diversion. This additional source cannot be included in any of the current Otto rights. If the use started before 5-20-1971, a late SRBA claim can be filed along with evidence to support the beneficial use claim. If the use started on or after 5-20-1971, an application for permit should be filed to establish a 1998 priority date. The appropriate filing should be made without delay. Result shown in next paragraph.

55-13689 - A 1937 beneficial use right has been recommended as claimed as a result of the claimant's notice of error action. This right is recommended for the same uses as in 55-04151. This is not water from the City Spring but is commingled with water from 55-04151.

STATHAMS' RIGHT NOS. 55-04007 AND 55-04110

55-04007 - recommended with a 1909 priority for in-house domestic use at 2 homes, Lots 91 and 92. Does not include lawn irrigation (see next right).

55-04110 - recommended to be disallowed per 1994 withdrawal of claim. This claim was for lawn irrigation at 1 of the Statham homes but has been recommended in City right 55-10204.

All of the uses regarding the City Spring are covered by the above recommendations to the extent that the uses have been verified by claimants' evidence and/or IDWR field examinations.

ADDITIONAL RIGHT NOT FROM CITY SPRING

Included in this explanation is another right not from the City Spring but serving homes also served under the City rights.

55-04000 - recommended with a 1948 priority for an unnamed stream (flow from old mining tunnel) located uphill from the homes. IDWR has been informed that this right serves Lots 36 and 44 for Cramer and Fredrickson homes. The claim lists Cramer and Statham, but IDWR has learned that Statham property is not

involved. The home owners served by this right ~~should file a change in ownership with IDWR to replace Statham with Fredriksen assuming that IDWR has the correct information for this situation.~~ filed the proper change in ownership to record the right in the names of Cramer and Fredricksen.

Original filed in permit 55-07011 with copies in all other water right and adjudication files at region and state office.

Silver City Master Plot Map

5/11/98

Attached plot replaces 1990 version. The 1990 map was best estimate then. Now, following SABA Director's Report recommendations, this new map is the final one.

Not possible to indicate which units are covered by which city ¹

Right - no master list has been found to correlate to this map.

Key point is that who are covered by city right, or by separate rights under separate ownership.

No duplication occurs in coverage.

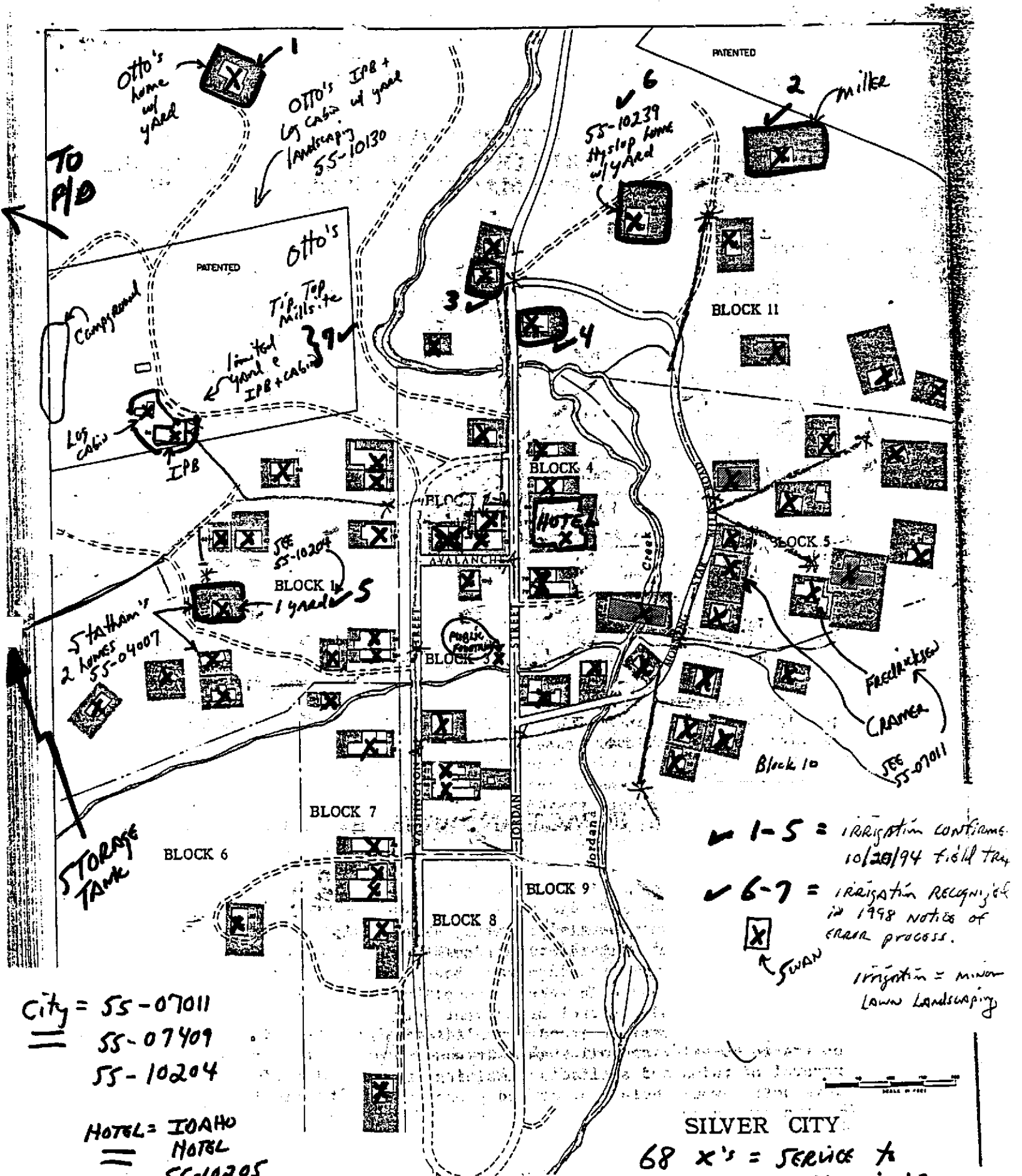
<u>OWNER & Right</u>	<u>Priority</u>	<u>USES</u>	<u>X's on map</u>
City SS-10204	1968	0/16 w/ 2 laws ²	16
SS-07011	1971	0/22 " 2 "	22
SS-07409	1990	0/23 " 1 "	} 24
		1 public fountain	
Hyslop SS-10239	1874	0/1 w/ 1 lawn	1
IO HOTEL SS-10205	1868	comm/1 -	1
OTTO SS-10130	1922	0/2 ³ w/ 1 lawn	2
Statham SS-04007	1909	0/2 -	2

all X's accounted for $\rightarrow$ 68

¹ city = the association.

² 1 lawn = Statham's main home w/ internal use re SS-04007.

³ also includes commercial use & same 2 units (IPB & lg Cabins). Combined yard use for 2 units (plus compound which is served by other rights not from city spring) is $\leq \frac{1}{2}$ acre.



UNITS SERVED BY
 "city spring" via
 city distribution system
 -82 5/11/98

MARKER map for 55-07011



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

May 5, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

GLORIA AND CARL OTTO
250 AUSTIN AVE
ATHERTON CA 94027-4006

RE: SRBA CLAIMS IN SILVER CITY

Dear Gloria and Carl:

This letter summarizes the results of the notice of error process for your claims in the Silver City area. First, please note that the California address has been added to each claim. Also, the correct address for your attorney has been added to the claims.

Recommendations for claim nos. A55-04151 and A55-10130 have been revised. The 1922 priority date for A55-04151 has been recognized as you requested. Also, landscaping irrigation at the IPB, log cabin and campground has been included in both rights as you requested. The beneficial use term "irrigation" has not been used to recognize the yard use, but the limiter of "inside (in-house) use only" has been deleted. The clarifying term "internal and external uses" has been added, which is a standard Idaho Department of Water Resources (IDWR) technique. The revised recommendations result from the information submitted in your notices of error. This includes the notices filed at this office on April 3, 1998 in the presence of your attorney plus the "amended notice" for A55-10130 that you faxed to me on April 14, 1998.

Claim no. A55-13689 has been recommended as claimed based on the evidence that you provided. A copy of the data entered version of the claim is enclosed for your records. Final IDWR recommendations for all of your claims will be mailed to your California address under separate mailing from IDWR State Office ("Orchard Street") in the next week or two, according to the latest schedule.

The rest of your claims, in which you accepted the recommendations identified in the notice of error procedure, will remain unchanged except for the address updates already mentioned.

Additionally, IDWR received your April 14, 1998 facsimile notice of error regarding claim no. A55-10239 (Hyslop). The information in your notice of error is not sufficient to alter recommendations for the Hyslop claim. This office will notify that claimant by separate

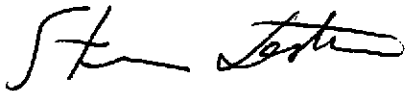
Otto SRBA Claims
April 5, 1998
Page 2

letter regarding your notice of error against that claim but cannot take further action at this time.

Soon after you receive the recommendations discussed in this letter, IDWR will deliver its director's report to the court. At that time, claimants must address their concerns to the court rather than to IDWR.

A copy of this letter is being sent to Scott Campbell as we discussed in your April 3 visit to this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Lester", written over a horizontal line.

Steve Lester
Water Rights Supervisor

Enclosure - Claim no. A55-13689

c: Scott Campbell, Attorney of Record for Claimant

OTTO -

ASS-04151

ASS-10130

- 82
5/1/98

REVIEWING NOTICES OF ERROR -

- 1) Claimant & Attorney visited zone 4/3/98, met w/ me & John Marshall.
- 2) Submitted notices of error w/ add'l info.
- 3) Subsequent to that, claimant mailed add'l info dated 4/10/98 & faxed amended notice of error dated 4/14/98 c ASS-10130.
- 4) Claimant mailed change of address letter dated 4/22/98.

Based on review of claimant's add'l info described above:

- 1) Losses from ASS-04151 system can attach to valves to deliver water into IPB so can = internal use also.
- 2) Minor landscaping does occur c IPB/Ly Cabin area although very marginal from my field observations - vague, doubtful landscaping but give benefit of doubt to claimant.
- 3) Reviewed my field exam info of 7/16/91 & 10/20/94, including photos.
- 4) Can recognize landscaping b/c c campground - recognizes the vegetation when campers leave.
- 5) per claimant's reference to Exh 6C (Kiddan), Exh 3A (Terry), Exh 3B (Kiddan) & Exh 8b (Moore) - these dates found: 1922 ("travel"), 1937 (overflow c tank, ditch c long gulch), and post-1972 (Moore).

- continued -

- Pg 2 -

- 6) Although int is weak, can recognize 1922 d.o.p.
for ASS. 04151.
- 7) can recognize ext. landscaping & ZPB, by Cab. &
compared for both rights. Total is $\leq \frac{1}{2}$ rev.
To "migration" use stay but contained ~~in~~
within dom. & comm. terms.

REVISE R FILES BASED ON THIS REVIEW.

AMENDED NOTICE OF OWN DOES NOT LEAD TO DIFFERENT
CONCLUSIONS THAN SHOWN HERE

CONVERSATION MEMORANDUM

DATE 4/30/98FILE See BelowNAME OF PARTY EMPLOYEE Steve LasterRE: REVISED RECOMMENDATIONS for Rights
From "City Spring" AT SILVER CITYBASED ON VARIOUS NOTICES OF CORRE, THE MARCH 1998R files ARE revised for Rights from this spring.SOME REVISIONS ARE BASED ON ADD'L INFO SUPPLIED BYCLAIMANT, AND SOME ARE REVISED BECAUSE PREVIOUSLYDISALLOWED 55-10205 (IN HOTEL) IS NOW RECOMMENDED AS OK.REVISED Rights include:55-04007Station55-07011City55-10130Off55-10204City55-10205IN HOTEL (Jagals)55-10239Hyslop

For example - 55-04007 is revised just to add 55-10205
to list of Rights from same source (QNT & EXP
Remarks).

55-07011 is revised as in 04007 plus Commercial
is deleted from 07011 since now covered by 10205.

kinko's
the copy center1194 El Camino Real
Menlo Park, CA 94025
Phone: 650-321-4202
Fax: 650-321-1387**FAX COVER SHEET****TO** Name Steve Lester
Company IDWR
Phone # _____ Fax # 208-334-2348
(for international fax) City _____ Country _____**FROM** Name GLORIA OTTO
Company _____
Phone # 650-368-5004 Fax # _____Date 14 April Number of pages including cover sheet 9**NOTE** _____

Kinko's provides public fax service. We are not responsible for the contents of any transmissions or receptions or for any fees associated with them.

✓ Files 55-10130
55-10239

April 14, 1998

Steve Lester
Western Region
Idaho Department of Water Resources
2375 Airport Way
Boise, Idaho 83703

Dear Steve,

We have been reviewing the Recommendations for the Water Filings in Basin 55 and have come to the conclusion that the Priority Date of 1922 for our filing 55-10130 needs to be challenged on many grounds, one of which is that the process used by IDWR does not seem to be consistent with their other determinations. Scott Campbell and I would like to meet with you and John Marshall as soon as possible to find out if the need to resort to the legal proceedings in front of the adjudication court cannot be averted by using the opportunity offered by IDWR to discuss the problems now. Please let me know when the meeting date can be set so that I can contact Mr. Campbell and adjust my schedule.

When you and John and Scott and I met on April 3 in your office, you and John advised us to take the opportunity to address any issues with which we did not agree and that filing a Notice of Error to another claimant's IDWR recommendation was a direct way of formalizing our questions, especially when the other claimant's water rights impact ours adversely. Enclosed is a Notice of Error Reply pertaining to the Hyslop water filing 55-10239. I am always reluctant to intrude into other people's business but I know that the Stathams and Hyslops have filed protests (diplomatically labeled "Exceptions" by IDWR) against my filings and that they have discussed them with IDWR staff without my participation: therefore I am taking the IDWR up on its offer to settle as many differences as possible at this time.

I have included some supplementary material with the Notices of Error which might be helpful to John Marshall to clarify the issue that we are bringing up. Hopefully it will save him the trouble of trying to digest those volumes of paper while under time pressure.

Let me hear from you soon.

Sincerely,



Gloria W. Otto

Telephone 650-368-5004

March 6, 1998

**NOTICE OF ERROR
REPLY**

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation. **YOUR DEADLINE FOR RETURNING A**

NOTICE OF ERROR REPLY IS: March 30, 1998

Water right number: 55-10130

GLORIA W OTTO
PO BOX 56
MURPHY ID 83650

Daytime Telephone Number: 650 - 368 - 5004
Evening Telephone Number: same

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

Priority date: 01/01/1922

2. Describe the changes you wish to make in the proposed recommendation:

See attachment 1.

3. Give a brief explanation as to why you disagree with these portions:

See attachment 2.

 I AGREE with this proposed recommendation; no changes need to be made.

DATE: 04-10-1998SIGNATURE: Gloria W. OttoPlease print your name: Gloria W. Otto

Attachment One to supplement Notice of Error Reply regarding 55-10130

The priority date of 1865 is true and correct. It is based on a tenet of Idaho law which holds that a spring that rises within the boundaries of the real property owned and occupied by the documented party can claim that spring as an asset of his property so long as that spring has not been claimed, or the waters thereof diverted and used by an adverse claimant, and as a condition the property owner must use all of the waters of said spring for his beneficial use and must dominate the possession and use of that spring.

Attachment Two to supplement Notice of Error Reply regarding 55-10130

Gloria Otto's Affidavit states that "During the 19th century this property received water through a system of wooden conduits, iron pipe and open ditch. Beginning in 1902, this property also received and used water from a wooden tank newly installed at that time.... The place of origin of the water for all these systems is the spring (said spring) designated in Notice of Claim to Water Right No. A55-10130."

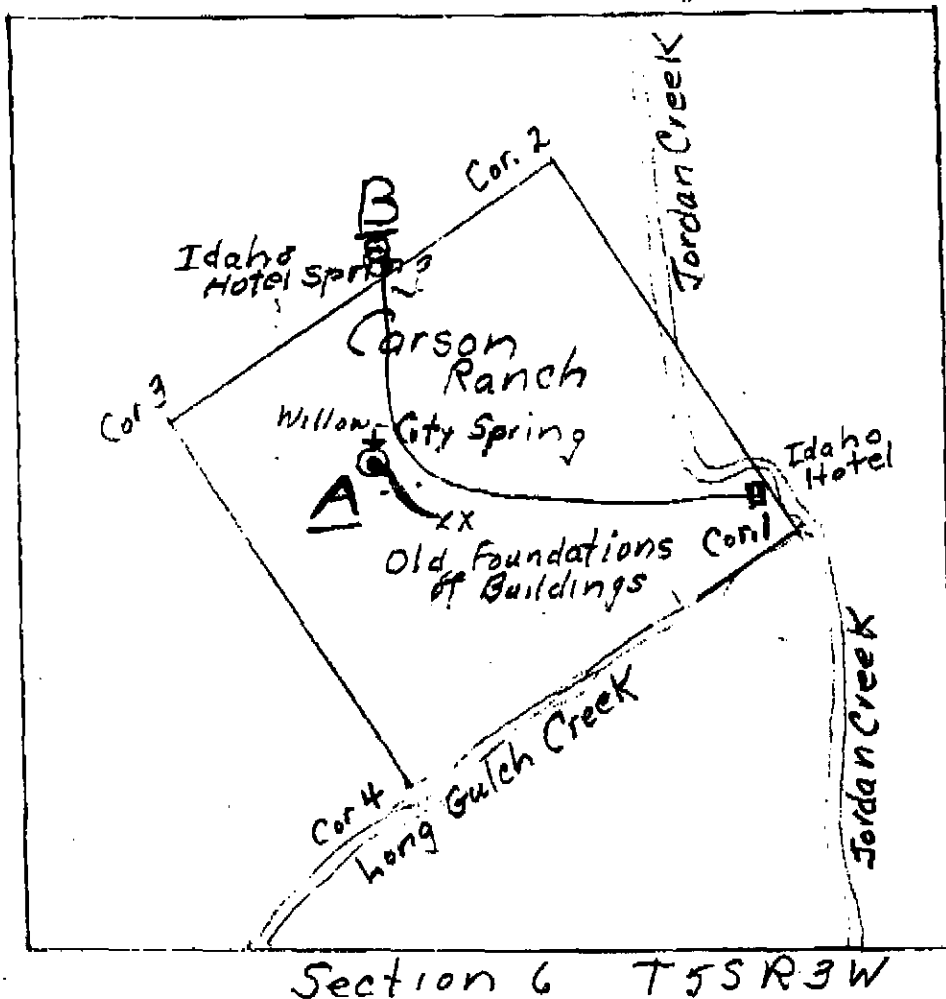
She further states that "This dual use has existed since the property was developed as a millsite in 1865; then water was used domestically in the homes of employees of the milling company and commercially in the auxiliary buildings of the milling company..."

It is further stated that "Part of my claim to water from said spring is the continuous use of the water by occupants of the land from 1865, when the Lincoln Silver Company built the mill complex, until the present. These owners of the land can be traced in documents recorded in the Owyhee County courthouse (Exhibits 3a and b) and in newspaper article."

It is further stated that "Prior to 1902, and for a number of years thereafter, the building was connected with said spring through a system of iron pipes, wire-wrapped, wooden conduits and ditches."

She also states that "I have conducted several searches of the historical records pertinent to this property from its beginnings as the Carson ranch in 1863 and as a millsite in 1865.....My claim to water from the spring noted in Notice of Claim to Water Right No. A55-10130 is based in part on the re-recorded records and references to the destroyed records [due to fire in Courthouse in Silver City in 1884] which are on file now in the Owyhee County Courthouse in Murphy, Idaho (Exhibit 9b), and, in part, on articles from newspapers published in Ruby City and Silver City between the years 1865 and 1870."

WILLOW/CITY SPRING - FIRST PERIOD OF TIME 1863 to 1866

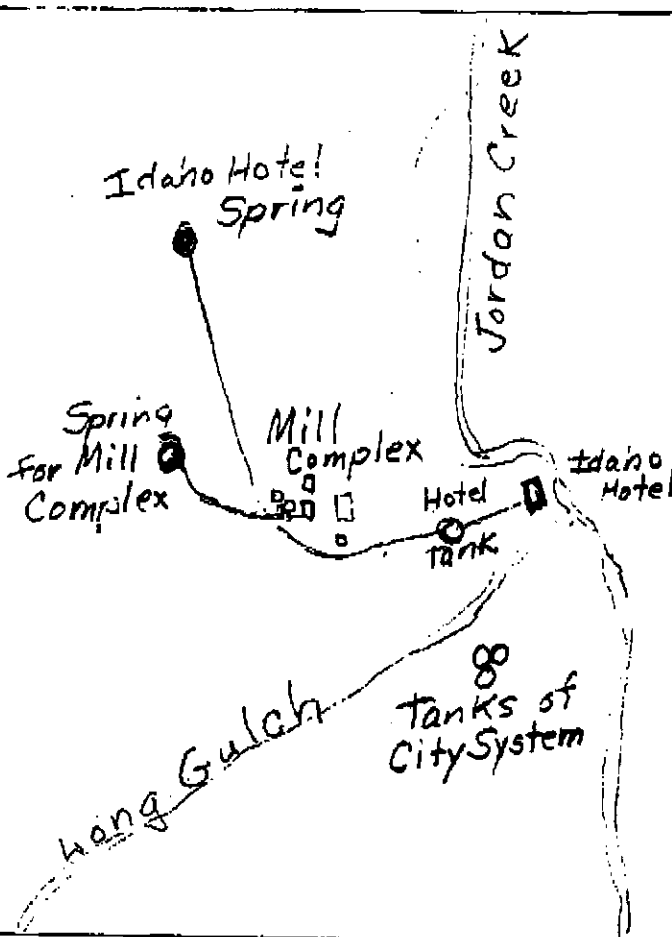


A. The spring now referred to as Willow-City spring was located on the Thomas Carson Ranch and the waters thereof used by him for beneficial purposes appropriate to a ranch, including domestic purposes in the living quarters. Water was delivered by wooden conduits and ditching to points of use. Conduits were in place on the site as late as 1940.

The ranch was sold through a middleman named Clinton to the Lincoln Mining Company, in 1864. The Lincoln Mining Company built one of the biggest mills in Owyhee County and a large house for the manager and smaller ones for at least two employees. Water was piped into the residential units from the Willow/City spring.

B. The Idaho Hotel developed a spring about 1400 feet north of the Willow/City spring and piped the water first to a reservoir in the hotel and later to a tank located downhill and northeast of the wooden tank that the hotel built in 1903. The Idaho Hotel developed Spring B in 1868.

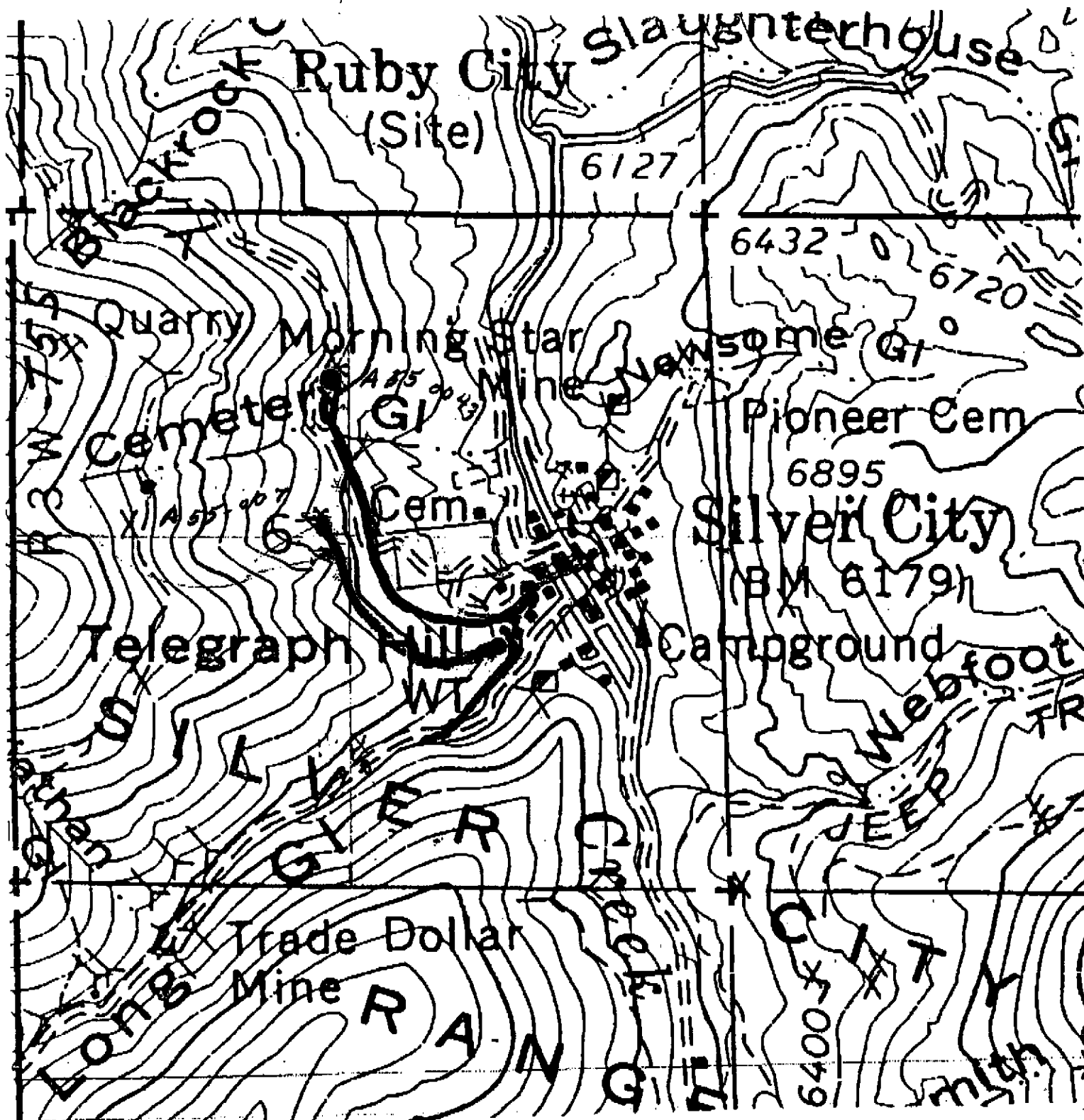
WILLOW/CITY SPRING * SECOND PERIOD OF TIME 1866 to 1898



The land on the northwest corner of Silver City was dominated by owners of the mill complex. Proof is the lack of building ^{that} went on in the rest of the town. When electricity was chosen to replace the power provided by wood, Col. Dewey, miner, and the Regan's who ran the mill complex and the Idaho Hotel, combined forces to spark a new mining boom. Providing a new water system and a new electric power substation and retrofitting the Lincoln-Idaho mill was part of the plan. By 1903 the plan was completed and it was successful for almost 20 years.

Springs on Florida Mt.

Dark lines indicate springs and lines
 Northern line = Idaho Hotel Spring & line
 Southern line = Willow / City Spring and line
 to the mill complex



March 6, 1998

**NOTICE OF ERROR
REPLY**

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

**YOUR DEADLINE FOR RETURNING A
NOTICE OF ERROR REPLY IS:**

March 30, 1998

Water right number: 55 - 10239

GLORIA W OTTO
PO BOX 56
MURPHY ID 83650

Daytime Telephone Number: 650 - 368 - 5004
Evening Telephone Number: same

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

Priority date: 1874

2. Describe the changes you wish to make in the proposed recommendation:

Change the priority date to 1903. (See attachment One).

3. Give a brief explanation as to why you disagree with these portions:

See attachment Two.

____ I AGREE with this proposed recommendation; no changes need to be made.

DATE: April 10,
1998SIGNATURE: Gloria W. Otto
Please print your name: Gloria W. Otto

Attachment One to supplement the notice of Error Reply regarding 55-10239

The claimant owns property that could not have used water from Willow/City Spring because that spring was owned and the waters used by the Lincoln-Ida Elmore-TipTop mill complex that owned the land upon which the Willow/City spring rose. Proof of adverse use of the waters from Willow/City spring by the mill complex was shown by the Idaho Hotel when in 1868 it went out of its way 1400 feet north of Willow/City spring to develop a different spring. Also as proof, the residents of Silver City developed and used water from several springs and other sources in Long Gulch rather than appropriating Willow/City spring which was a much better spring and which was located more conveniently to the town. The Long Gulch system was known officially as the City Springs until that system became useless.

Attachment Two to supplement the notice of Error Reply regarding 55-10239

I want the Department of Water Resources to recognize the date 1903 as the earliest date that anyone with property in Silver City can claim for receiving water from Willow City spring because that is the first date with specific documentation pertaining to Willow/city spring. At the turn of the century the Idaho Hotel put in a new water delivery system and added Willow/City spring to its properties with the consent and cooperation of the owners of the mill complex (Lincoln-Idaho Elmore) and Col. Dewey of the Trade Dollar Mining and Milling Company which renovated David Adams realty office into a modern home for the substation operator who would soon be occupying it as an employee of the electrical power company that won the agreement (contract) to operate the Silver City area power grid. Before that date, all of the citizens of Silver City were either receiving water from the official City Springs whose tanks were located in Long Gulch or from the Idaho Hotel system which received water from a spring about 1400 feet north of the spring now referred to as City Spring. The term City Spring was not used to refer to Willow/City spring until recently as the townspeople began to take over the maintenance and repair of the old Idaho Hotel system as the hotel owners withdrew from active management of their water system.

Any claimant to Willow/City spring who uses a date of priority before 1903 has flaws in his case which make it open to objection and a test before the adjudication court. I believe that 1903 is a date that everyone could agree can be supported by factual documentation and acceptance by residents of Silver City, and would serve as a rallying point for those who have personal acknowledge and experience to challenge other claimants claims. Since 1933 when the courthouse was removed from Silver City, the town has undergone the wrenching experience of bitter depression in which feuding has dominated the social scene. Much of the fighting could be stopped if the involved parties were prevented from delving into the past hundred years by a decision of IDWR to set 1903 as the date supported by documentation and various affidavits of involved claimants.

RECEIVED

APR 14 1998

WATER RESOURCES
WESTERN REGION

April 10, 1998

Dear Steve,

The enclosed photographs show the existence of the sod that is so essential to the ambiance of the TipTop millsite, especially the areas of the campground and around the Log Cabin and the Group Hostel (IPB). My water rights under 55-10130 and 55-04151 must continue to legalize the use of water for irrigation purposes not just inhouse use only.

These photographs have been taken since 1984 but similar ones are included in the exhibits filed under the above mentioned Notices of Claim to Water Rights which show historical use (see the Kidder and Otto affidavits).

I can't understand how you could have missed the existence of this turf on your various visits to Silver City when the camera shows them so clearly. The photo of the lawn east of the Group Hostel illustrates the maximum green of the grass there.

Because Silver City's water supply and mine too have been suffering from the recent sevenyear draught, I have been using water very conservatively. Nevertheless irrigation is essential if the landscaping is to survive.

Please use these photographs in conjunction with my recently filed Notices of Error for 55-04151 and 55-10130 and with the new filing on the spring next to the pump house on Lot 105.

Sincerely,



Gloria W. Otto

55-10130 55-04151
and new filing of
claim to a water right.



Campground. White spray
in background is
irrigation using water
under right 55-10130.



Green lawn and rock walls at IPB.

29. Trees
Below
Tank



Campground



Flume & Hose
1988 University
of Idaho "dig"
Original in filing
of 55-04151

Evidence of
diversion and
development
for filing
Notice of Claim
to a Water
Right on the
new spring
of Georgia St.,
Otto, Sec 6,
T05S R03W,
tip top Millsite.
Flume built
in 1937,
which replaced
a 1922 flume.

RECEIVED
APR 14 1998
WATER RESOURCES
WESTERN REGION



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

Sent ✓

FAX TRANSMITTAL COVER SHEET

FAX # (208) 334-2348

DATE: 4/7/98

TO: Gloria Otto
c/o Kinko's
fax: 650-321-1387

FROM: Steve Lester

DOCUMENT DESCRIPTION: DEAR Kinko's -
Please call Gloria Otto @ 650-368-5004 to let
her know this fax arrived.
Thanks, JL

TOTAL PAGES SENT: 6 + COVER SHEET

CONTACT: _____

Documents = copies of Notice of Error 55-04151
55-10130

CONVERSATION MEMORANDUM

DATE 4/3/98

FILE A55-04151

NAME OF PARTY Gloria Otto / Scott Campbell

A55-10130

EMPLOYEE SL

RE: Meeting to Discuss Recommendations

Gloria & her attorney, Scott Campbell, met with John Marshall & me today to discuss the "notice of error" responses to these claims.

Claimant submitted additional information. Claimant stated that:

- 1) -4151 includes irrigation of compound to reestablish the plant life after campers depart.
- 2) -4151 includes hose routed to external valves/pipes. This connection can provide water into IPB for plumbing (bathroom etc).
- 3) -4151 includes (via same hose) watering of planted flowers @ IPB site.
- 4) -10130 includes watering of same flowers etc. @ IPB through plumbing arrangement @ IPB site.
- 5) intends to file claim for some not included in -4151 per my 3/4/98 supplemental explanation for all claims related to "City Spring".

Additionally, Scott C. requested that:

- 1) to ensure database has his correct claim name/address.
- 2) " " Gloria & Scott are notified if anyone files objection into Otto claims.

SEE card on back of this memo

continued →

Scott had several questions regarding the basic for
dept.'s policy to not recognize watering of natural
species of plants as irrigation beneficial use.

ELAM & BURKE

ATTORNEYS AND COUNSELORS AT LAW

SCOTT L. CAMPBELL

TELEPHONE
208-343-6454
FACSIMILE
208-384-5844

KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1639
BOISE, IDAHO 83701

March 6, 1998

**NOTICE OF ERROR
REPLY**

RECEIVED

APR 03 1998

WATER RESOURCES
WESTERN REGION

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

**YOUR DEADLINE FOR RETURNING A
NOTICE OF ERROR REPLY IS:**

March 30, 1998

Water right number: 55-10130

GLORIA OTTO
PO BOX 56
MURPHY ID 83650

Daytime Telephone Number: (650) 368-5004
Evening Telephone Number: same

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

Purpose of use; domestic, inside use only.

2. Describe the changes you wish to make in the proposed recommendation:

Please see Attachment 2, appended hereto.

3. Give a brief explanation as to why you disagree with these portions:

Please see Attachment 3, appended hereto.

 I AGREE with this proposed recommendation; no changes need to be made.

DATE: 3-26-98

SIGNATURE: Gloria W. Otto

Please print your name: Gloria W. Otto

ATTACHMENT -2-

Attachment 2

The use of water should not be restricted or limited because it has been used inside and outside since the building was converted to an electrical substation with living quarters for the manager and his family.

ATTACHMENT -3-

Attachment 3

Flowers and ferns have been (and still are) growing in the rock wall on the east side of Group Hostel (IPB). The lawns which have existed since the building became a home-substation were mentioned in photographs and filings with the SRBA process (Exhibits 6a, 6c, 7c, and 8c). Most of the lawn area was disturbed during a recent reconstruction of the building and installation of a septic tank but have since been reseeded. Domestically, our family uses the outside area for family reunions. The campground on the flat was and is being used in conjunction with the rental of the IPB, and irrigation water has been in the past and is used now to recondition and revive the turf which becomes damaged by tents and foot traffic. The turf there is a low growing type, very sturdy and drought resistant with a thick sod of roots and short blades, but it will turn into a dust wallow if it is not irrigated after heavy use.

CONVERSATION MEMORANDUM

DATE 3/25/98FILE ASS-04151NAME OF PARTY Gloria OttoASS-10130EMPLOYEE 82RE: Summary & Tour Recommendations

Gloria called from her CALIF #
(650-368-5004) to discuss R. Files.
Not sure if she attend 3/30 public mtg.
in Marana.

I told her that everything does not have
to be done by 3/30 but soon
thereafter ("sooner is better").

She asked me to fax the 3/4/98 Summary
& Silver City Spring files that was included
as supplement to recent mailing. She did
not receive that - Region mailed her a
cc the other day per her call.

completed
today { Fax to Kinko's 650-321-1387 - add
note for K to call Gloria.

{ Fax to her Atty Scott C. 384-5844 per
her request



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

✓
FAX TRANSMITTAL COVER SHEET

FAX # (208) 334-2348

DATE: 3/25/98

TO: Scott Campbell

FROM: Steve Laska

for 384-5844

DOCUMENT DESCRIPTION:

Summary^{*} of claims from Silver City
"city spring" re Ottos' ASS-04151 & ASS-10130. Gloria
asked me to fax to you today. She said she did not get
this supplement with her recent mailing of recommended rights.
This office mailed her a copy of supplement yesterday & faxed it to
her today per her request.

TOTAL PAGES SENT: 3 + COVER SHEET

CONTACT: _____

* 3 ps. Summary of 3/4/98

ASS-04151

ASS-10130



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

✓
FAX TRANSMITTAL COVER SHEET

FAX # (208) 334-2348

DATE: 3/25/98

TO: Kinkos

FROM: Steve Lester

fax 650-321-1387

DOCUMENT DESCRIPTION: PLEASE call Gloria Otto 650-368-5004.
This fax is for her. She's expecting your call.

Thanks,
SL

TOTAL PAGES SENT: 3 + COVER SHEET

CONTACT: _____

3 pgs summary of 3/4/98

ASS-04151

ASS-10130

SUPPLEMENT TO RECOMMENDED RIGHTS FROM CITY SPRING AT SILVER CITY

**PREPARED BY STEVE LESTER *SL*
IDWR WESTERN REGION
MARCH 4, 1998**

This explanation is provided to all claimants whose Snake River Basin Adjudication Claims identify the "city spring" in Silver City as a source. The explanation is provided for the claimants because it may be confusing to receive a recommended right without a complete explanation of all uses from the city spring.

The following terms are used:

CAMPGROUND = Ottos' private campground uphill from IPB site

CITY = Silver City Property Owners Association

CITY SYSTEM = City's diversion works and delivery pipelines

IDWR = Idaho Department of Water Resources

IPB = Ottos' hostel at Idaho Power building

LOG CABIN = Ottos' secondary structure near the IPB site

SRBA = Snake River Basin Adjudication.

STORAGE TANK = the new City tank that replaced the old wooden tank.

The claims have been recommended by IDWR as shown in this mailing. The recommended rights are subject to corrections per the claimant response period provided under Idaho law. IDWR recommendations are based on a review by IDWR legal and other staff. The recommendations result from a thorough review of all the evidence provided by the claimants plus IDWR field exams conducted from 1987 through 1994.

If a use for an individual owner is recommended under that owner's older claim, that use has been deleted from the City's younger claims to avoid duplication. Supplemental information shown below is arranged alphabetically by ownership.

CITY RIGHT NOS. 55-10204, 55-07011 AND 55-07409

55-10204 - recommended with 1968 priority date for domestic use for 16 homes where 2 of the homes include lawn irrigation. This right results from combining a number of single family domestic uses, previously unrecorded until the SRBA, under a single priority date. The latest priority date for the combined uses must be used in such situations. The right lists the lot numbers served by this right.

55-07011 - recommended with 1971 priority date for 22 homes where 2 of the homes include lawn irrigation. Also covers commercial use at the Idaho Hotel. The lot numbers are not completely known for this right so have been omitted. The recommendation is based on a pending license. The right now exists as a permit which was field examined in 1987 before SRBA claims were filed. Licensing has been complicated by competing SRBA claims. It is assumed that the license can be issued before the IDWR Director's Report is submitted to the SRBA Court (later this year after the claimant response period is completed).

55-07409 - this permit includes a 1990 priority date to cover those uses initiated after the November 1987 field exam of 55-07011. This right is outside of the SRBA scope and therefore will not be included in the Director's Report nor will it be decreed by the SRBA Court. The permit can be licensed for domestic use for 23 homes (includes 1 home with lawn irrigation) and a public drinking fountain assuming that the other two City rights are decreed as above.

City Summary - the 3 City rights will cover domestic use for 61 homes including lawn irrigation at 5 of those homes (that is all of the irrigation found by 1994 field verification) plus drinking water at the public fountain and commercial water for the Idaho Hotel. All other uses via the City System are covered under individuals' rights.

FREDRICKSON RIGHT NO. 55-13655

Recommended to be disallowed based on insufficient evidence of priority date. IDWR legal staff determined that a contentious situation such as the City Spring requires better documentation to support SRBA claims. This use is recommended for 1 home (in-house use only) in City right 55-07011.

HYSLOP RIGHT NO. 55-10239

This right is recommended with a 1874 priority date for 1 home (in-house use only) for Lot 50.

IDAHO HOTEL RIGHT NO. 55-10205

This right is recommended for disallowal based on evidence of forfeiture from 1942-1968. This commercial use is recommended in City right 55-07011.

OTTO RIGHT NOS. 55-04151 and 55-10130

55-04151 - recommended with a 1937 priority date for 2 sources: overflow from the storage tank plus any additional water provided from the old shaft/tunnel located below the tank and the road (shaft/tunnel is near the flume by the campground). The points of diversion include the overflow collection at the storage tank plus the shaft/tunnel. Uses include commercial use at the campground and the IPB site plus domestic use at the IPB site (note dual uses depend on arrangement with guests at the site). This is not water piped into the IPB, rather it is water delivered via a ditch to the IPB site. Uses do not include any lawn etc. irrigation.

55-10130 - recommended with a 1922 priority date for domestic and commercial water for the IPB and Log Cabin delivered by the City system. This is water piped into the two units and does not include lawn etc. irrigation. This right includes the dual use arrangement noted in 55-04151.

Additional right? - another filing is needed to cover a spring that contributes water to the delivery system in 55-04151. An old mining shaft is located above the road not far from the storage tank overflow diversion. This additional source cannot be included in any of the current Otto rights. If the use started before 5-20-1971, a late SRBA claim can be filed along with evidence to support the beneficial use claim. If the use started on or after 5-20-1971, an application for permit should be filed to establish a 1998 priority date. The appropriate filing should be made without delay.

STATHAMS' RIGHT NOS. 55-04007 AND 55-04110

55-04007 - recommended with a 1909 priority for in-house domestic use at 2 homes, Lots 91 and 92. Does not include lawn irrigation (see next right).

55-04110 - recommended to be disallowed per 1994 withdrawal of claim. This claim was for lawn irrigation at 1 of the Statham homes but has been recommended in City right 55-10204.

All of the uses regarding the City Spring are covered by the above recommendations to the extent that the uses have been verified by claimants' evidence and/or IDWR field examinations.

ADDITIONAL RIGHT NOT FROM CITY SPRING

Included in this explanation is another right not from the City Spring but serving homes also served under the City rights.

55-04000 - recommended with a 1948 priority for an unnamed stream (flow from old mining tunnel) located uphill from the homes. IDWR has been informed that this right serves Lots 36 and 44 for Cramer and Fredrickson homes. The claim lists Cramer and Statham, but IDWR has learned that Statham property is not involved. The home owners served by this right should file a change in ownership with IDWR to replace Statham with Fredrickson assuming that IDWR has the correct information for this situation.

AJ0749NP
No. R55-10130

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 03/03/98
PAGE: 2

Objection Filed Date:

Verified Date:

Exam Made Date: 07/16/1991

Dates:

Field Inspection Flag:
Presumption Flag:

Water District Number:

Misc:

Comments: Date: 03/02/1998 User-ID: LHARRIS Subject: COPIED FROM REMARKS
THIS RIGHT IS DIVERTED THROUGH THE CITY DISTRIBUTION SYSTEM.
DUAL USES AT THE IPB AND LOG CABIN UNITS DEPEND ON ARRANGEMENTS
WITH GUESTS, (DOMESTIC USE IS FOR NON-PAYING GUESTS, COMMERCIAL
USE IS FOR PAYING GUESTS).

Audit: 03/03/98 LHARRIS

AJ0749NP
No. R55-10130

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 03/02/98
PAGE: 2

Objection Filed Date:

Dates: Exam Made Date: 07/16/1991 Verified Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

Comments: Date: 03/02/1998 User-ID: LHARRIS Subject: COPIED FROM REMARKS
DESCRIP. OF DIVERTING WORKS: SPRING BOX AND SERVICE PIPING FROM
SPRINGS TO BUILDINGS WAS CONSTRUCTED IN THE PAST. WITH RENOVATION
OF THE SYSTEM, THIS WATER IS NOW CARRIED THROUGH THE CITY WATER
SYSTEM TO THE OWNER'S PROPERTY VIA THE CITY WATER TANK NAD THENCE
IN PIPING TO OWNERS BUILDINGS AS WELL AS BEING PICKED UP AS OVER
FLOW FROM THE CITY WATER TANK AND IS DELIVERED BY A FLUME AND
WATER LINES TO VARIOUS POINTS OF USE ON OWNERS PROPERTY. IF THE
CITY SYSTEM FAILS TO CONTINUE TO CONVEY THIS WATER THE SPRING BOX
AND PIPING SYSTEM MAY BE RECONSTRUCTED AND UTILIZED TO IMPROVE
WATER SUPPLY.
DUE TO THE TENUOUS WATER SUPPLY IN THIS AREA, IT IS IMPORTANT
THAT ALTERNATIVE WATER SUPPLIES BE DEVELOPED TO ASSURE A CONSTANT
SUPPLY.
THIS RIGHT IS DIVERTED THROUGH THE CITY DISTRIBUTION SYSTEM.
DUAL USES AT THE IPB AND LOG CABIN UNITS DEPEND ON ARRANGEMENTS
WITH GUESTS, (DOMESTIC USE IS FOR NON-PAYING GUESTS, COMMERCIAL
USE IS FOR PAYING GUESTS).

Audit: 03/02/98 LHARRIS

SUPPLEMENT TO RECOMMENDED RIGHTS FROM CITY SPRING AT SILVER CITY

**PREPARED BY STEVE LESTER *SL*
IDWR WESTERN REGION
MARCH 4, 1998**

This explanation is provided to all claimants whose Snake River Basin Adjudication Claims identify the "city spring" in Silver City as a source. The explanation is provided for the claimants because it may be confusing to receive a recommended right without a complete explanation of all uses from the city spring.

The following terms are used:

CAMPGROUND = Ottos' private campground uphill from IPB site
CITY = Silver City Property Owners Association
CITY SYSTEM = City's diversion works and delivery pipelines
IDWR = Idaho Department of Water Resources
IPB = Ottos' hostel at Idaho Power building
LOG CABIN = Ottos' secondary structure near the IPB site
SRBA = Snake River Basin Adjudication.
STORAGE TANK = the new City tank that replaced the old wooden tank.

The claims have been recommended by IDWR as shown in this mailing. The recommended rights are subject to corrections per the claimant response period provided under Idaho law. IDWR recommendations are based on a review by IDWR legal and other staff. The recommendations result from a thorough review of all the evidence provided by the claimants plus IDWR field exams conducted from 1987 through 1994.

If a use for an individual owner is recommended under that owner's older claim, that use has been deleted from the City's younger claims to avoid duplication. Supplemental information shown below is arranged alphabetically by ownership.

CITY RIGHT NOS. 55-10204, 55-07011 AND 55-07409

55-10204 - recommended with 1968 priority date for domestic use for 16 homes where 2 of the homes include lawn irrigation. This right results from combining a number of single family domestic uses, previously unrecorded until the SRBA, under a single priority date. The latest priority date for the combined uses must be used in such situations. The right lists the lot numbers served by this right.

55-07011 - recommended with 1971 priority date for 22 homes where 2 of the homes include lawn irrigation. Also covers commercial use at the Idaho Hotel. The lot numbers are not completely known for this right so have been omitted. The recommendation is based on a pending license. The right now exists as a permit which was field examined in 1987 before SRBA claims were filed. Licensing has been complicated by competing SRBA claims. It is assumed that the license can be issued before the IDWR Director's Report is submitted to the SRBA Court (later this year after the claimant response period is completed).

55-07409 - this permit includes a 1990 priority date to cover those uses initiated after the November 1987 field exam of 55-07011. This right is outside of the SRBA scope and therefore will not be included in the Director's Report nor will it be decreed by the SRBA Court. The permit can be licensed for domestic use for 23 homes (includes 1 home with lawn irrigation) and a public drinking fountain assuming that the other two City rights are decreed as above.

City Summary - the 3 City rights will cover domestic use for 61 homes including lawn irrigation at 5 of those homes (that is all of the irrigation found by 1994 field verification) plus drinking water at the public fountain and commercial water for the Idaho Hotel. All other uses via the City System are covered under individuals' rights.

FREDRICKSON RIGHT NO. 55-13655

Recommended to be disallowed based on insufficient evidence of priority date. IDWR legal staff determined that a contentious situation such as the City Spring requires better documentation to support SRBA claims. This use is recommended for 1 home (in-house use only) in City right 55-07011.

HYSLOP RIGHT NO. 55-10239

This right is recommended with a 1874 priority date for 1 home (in-house use only) for Lot 50.

IDAHO HOTEL RIGHT NO. 55-10205

This right is recommended for disallowal based on evidence of forfeiture from 1942-1968. This commercial use is recommended in City right 55-07011.

OTTO RIGHT NOS. 55-04151 and 55-10130

55-04151 - recommended with a 1937 priority date for 2 sources: overflow from the storage tank plus any additional water provided from the old shaft/tunnel located below the tank and the road (shaft/tunnel is near the flume by the campground). The points of diversion include the overflow collection at the storage tank plus the shaft/tunnel. Uses include commercial use at the campground and the IPB site plus domestic use at the IPB site (note dual uses depend on arrangement with guests at the site). This is not water piped into the IPB, rather it is water delivered via a ditch to the IPB site. Uses do not include any lawn etc. irrigation.

55-10130 - recommended with a 1922 priority date for domestic and commercial water for the IPB and Log Cabin delivered by the City system. This is water piped into the two units and does not include lawn etc. irrigation. This right includes the dual use arrangement noted in 55-04151.

Additional right? - another filing is needed to cover a spring that contributes water to the delivery system in 55-04151. An old mining shaft is located above the road not far from the storage tank overflow diversion. This additional source cannot be included in any of the current Otto rights. If the use started before 5-20-1971, a late SRBA claim can be filed along with evidence to support the beneficial use claim. If the use started on or after 5-20-1971, an application for permit should be filed to establish a 1998 priority date. The appropriate filing should be made without delay.

STATHAMS' RIGHT NOS. 55-04007 AND 55-04110

55-04007 - recommended with a 1909 priority for in-house domestic use at 2 homes, Lots 91 and 92. Does not include lawn irrigation (see next right).

55-04110 - recommended to be disallowed per 1994 withdrawal of claim. This claim was for lawn irrigation at 1 of the Statham homes but has been recommended in City right 55-10204.

All of the uses regarding the City Spring are covered by the above recommendations to the extent that the uses have been verified by claimants' evidence and/or IDWR field examinations.

ADDITIONAL RIGHT NOT FROM CITY SPRING

Included in this explanation is another right not from the City Spring but serving homes also served under the City rights.

55-04000 - recommended with a 1948 priority for an unnamed stream (flow from old mining tunnel) located uphill from the homes. IDWR has been informed that this right serves Lots 36 and 44 for Cramer and Fredrickson homes. The claim lists Cramer and Statham, but IDWR has learned that Statham property is not involved. The home owners served by this right should file a change in ownership with IDWR to replace Statham with Fredrickson assuming that IDWR has the correct information for this situation.

Recommendations for
R File

SEE ATTACHED profile
Report

-JR
3/1/98

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	GLORIA OTTO PO BOX 56 MURPHY ID 83650 (208) 495-2868	01/01/1986 <i>1922</i>	COMMERCIAL DOMESTIC	01-01 12-31 01-01 12-31	0.04 CFS 0.02 CFS	<i>delete</i> 45.00 AFA
TOTAL DIVERSION:					0.06 CFS	

Water Source: *just 1- Springs* *SE* *NESENW* Tributary to: JORDAN CREEK Stage: BENEFICIAL USE
Point(s) of Diversion: T05S R03W S06 OWYHEE County

Place of use Legal Description for: COMMERCIAL

NE				NW				SW				SE			
T	R	S	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac
05S	03W	6	:												

Place of use Legal Description for: DOMESTIC

NE				NW				SW				SE			
T	R	S	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac
05S	03W	6	:												

POU County: OWYHEE

Non-Irrigation Uses: *2 homes* *all internal use only* ~~D/H HOUSEHOLD~~, C/HOTEL

Other Rights: ~~55-4006~~, 55-4006, 55-4151.

Remarks: GEN DESCRIP OF DIVERTING WORKS: SPRING BOX AND SERVICE PIPE SPRINGS TO BUILDINGS WAS CONSTRUCTED IN THE PAST. WITH RE OF THE SYSTEM, THIS WATER IS NOW CARRIED THROUGH THE CITY SYSTEM TO THE OWNER'S PROPERTY VIA THE CITY WATER TANK NAI IN PIPING TO OWNERS BUILDINGS AS WELL AS BEING PICKED UP FLOW FROM THE CITY WATER TANK AND IS DELIVERED BY A FLUME WATER LINES TO VARIOUS POINTS OF USE ON OWNERS PROPERTY. CITY SYSTEM FAILS TO CONTINUE TO CONVEY THIS WATER THE SPR AND PIPING SYSTEM MAY BE RECONSTRUCTED AND UTILIZED TO IMP WATER SUPPLY. DUE TO THE TENUOUS WATER SUPPLY IN THIS AREA, IT IS IMPOR THAT ALTERNATIVE WATER SUPPLIES BE DEVELOPED TO ASSURE A CI SUPPLY.

use remarks:
① Domestic use is for 2 homes, inside use only.
② Commercial use is for hotel.
(see next page too)

Dates: Exam Made Date: Verified Date: Objection Filed Date:
Misc: Water District Number: Field Inspection Flag: Presumption Flag:

-K

AJ5809NP
No. A55-10130

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 03/01/98
PAGE: 4

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	GLORIA OTTO PO BOX 56 MURPHY ID 83650 (208) 495-2868	01/01/1986 <i>1922</i>	COMMERCIAL DOMESTIC	01-01 12-31 01-01 12-31	0.04 CFS 0.02 CFS	<i>delete</i> 45.00 AFA
TOTAL DIVERSION:					0.06 CFS	

Water Source: SPRING

SE Tributary to: JORDAN CREEK

Stage: BENEFICIAL USE

Point(s) of Diversion:

T05S R03W S06 *NESENW*

OWYHEE County

Place of use Legal Description for: COMMERCIAL

NE				NW				SW				SE			
T	R	S	Ac	T	R	S	Ac	T	R	S	Ac	T	R	S	Ac
05S	03W	6													

Place of use Legal Description for: DOMESTIC

NE				NW				SW				SE			
T	R	S	Ac	T	R	S	Ac	T	R	S	Ac	T	R	S	Ac
05S	03W	6													

POU County: OWYHEE

Non-Irrigation Uses: *2 homes* *all internal use only*
~~HOUSEHOLD~~, C/HOTEL

Other Rights: ~~55-4004~~, 55-4006, 55-4151.

Remarks: GEN DESCR OF DIVERTING WORKS: SPRING BOX AND SERVICE PIPING FROM SPRINGS TO BUILDINGS WAS CONSTRUCTED IN THE PAST. WITH RENOVATION OF THE SYSTEM, THIS WATER IS NOW CARRIED THROUGH THE CITY WATER SYSTEM TO THE OWNER'S PROPERTY VIA THE CITY WATER TANK NAD THENCE IN PIPING TO OWNERS BUILDINGS AS WELL AS BEING PICKED UP AS OVER FLOW FROM THE CITY WATER TANK AND IS DELIVERED BY A FLUME AND WATER LINES TO VARIOUS POINTS OF USE ON OWNERS PROPERTY. IF THE CITY SYSTEM FAILS TO CONTINUE TO CONVEY THIS WATER THE SPRING BOX AND PIPING SYSTEM MAY BE RECONSTRUCTED AND UTILIZED TO IMPROVE WATER SUPPLY. DUE TO THE TENUOUS WATER SUPPLY IN THIS AREA, IT IS IMPORTANT THAT ALTERNATIVE WATER SUPPLIES BE DEVELOPED TO ASSURE A CONSTANT SUPPLY.

See attached page e remarks etc.

Dates: Exam Made Date: Verified Date: Objection Filed Date:
Misc: Water District Number: Field Inspection Flag: Presumption Flag:

JK

ASS- 10/30

Continued

3/1/98
JL

Remarks

EXP

→ Source known locally as City Spring. (comment)
diverted through the city distribution system. (This right is)

EXP
FOLD

{ Right nos. 55-04007, 55-07011, 55-10204 and 55-10239
are also diverted through the same pld.

QNT
E04

{ This right, when combined with right nos. same list of #'s
cannot exceed .20 cfs.

Comments

{ Dual uses at the IPB and by Cabin units depend on
arrangements with guests (domestic use is for nonpaying
guests, commercial use is for paying guests).

EXP

→ Property also known as Tip Top Mill Site.

***** Attorney-Client Privileged Information*****

TO: Steve Lester 
FROM: John Marshall
DATE: February 26, 1998

RE: Silver City Recommendations

Steve:

Following are the suggestions I have for the recommendations of the domestic and commercial claims in Silver City based on my review of the files you provided. I did not have a chance to research outside of the information contained in the files. However, I believe that the information contained in the files provides a sufficient factual background on which to make the recommendations.

A55-10205 Idaho Hotel (Lot 34)

This right should be disallowed for forfeiture for non-use. There is solid evidence that this right was not used from 1942-1968. This use should fall under the permit right A55-07011.

A55-10239 Hyslop (Lot 50)

Priority of 1874. They have submitted convincing evidence from the *Owhyee Avalanche* that this right was developed and we do not have any evidence that it was forfeited for non-use.

A55-13655 Fredrickson (Lot 35)

This right should be disallowed. Given the contentiousness of the area, I felt that a self-signed affidavit was not good enough evidence to support an early priority date. This right should be included in the permit right 07011.

A55-04007 Statham

This is the Statham's right to the city spring water through the city system. She provided convincing evidence from her mother that they were hooked in by 1909. This is the priority I would suggest for this right.

A55-04110 Statham

Disallow based on their withdrawal.

A55-04151 Otto IPB Overflow right in combination with unnamed spring

Gloria claims a priority for this right of Jan 1, 1903. I could not find any documentation from her that supports this priority. She has affidavits from several folks supporting a priority of 1922 and 1937, but nothing that I can find that supports 1903 (which does not

mean that its tucked away in her filings somewhere). This right is problematic since it claims as its source three different (as far as I can tell) sources--1) the overflow from the city system, 2) water that comes out of the tunnel even when there is no overflow, and 3) spring water coming out of an old mine shaft (good for drinking I'm sure). I parsing through the affidavits, I noticed several that gave 1922 the date of first use, but only for sources that did not include the city spring overflow. The only affidavit I could find on overflow supported a date of 1937. The reason this matters is because I'm not sure that this overflow right is a waste water right. It may be an independent right to the use of spring water. I have not looked carefully into the law of waste, but my recollection is that waste water is water that is captured after it has been put to a beneficial use. In this case the overflow water has not yet been put to a beneficial use and the argument can be made that this is an independent right on the spring regardless of the fact that her diversion system depends on the city system. If this is the case, then she can make a call on the city spring water. In thinking through this as I write, the difference between 1922 and 1937 does not make too much difference since there are no intervening appropriators in that gap. Anyway, it seems to me like she has two different water rights--one for the spring and one for the overflow. It is my understanding that the Department can and has "spun off" new rights to correct filing errors of this sort. That may be the best bet here--a 1937 right to the overflow and a 1922 right to the unnamed spring.

I question whether or not this water is being put to beneficial use. This is your call. I have not been out there, but the documentary evidence is pretty thin. I imagine that I my suspicions are raised given her might efforts (likely at the prodding of counsel) to show that there are beneficial uses occurring. Trying so hard to prove use makes me think that a legitimate use does not exist. At the very least, as you and I discussed before, there is not an irrigation use associated with this water.

A55-10130 Otto

I do not believe that Gloria provided sufficient evidence to support her contention that predecessors in interest to her property used the city spring prior to the installation of the hotel system in 1902. She has not provided any reliable evidence connecting "willow spring" to the city spring. I do believe, however, that she has provided good enough evidence to prove her property was tapped into the city system by 1922 through the affidavit of Patrick Kidder.

A55-10204 Tax Payers

The association did not provide sufficient information to support all of the claimed uses in 1968. Roxane Brown identified the following lots as having been identified with a priority of 1968: Lot 44, 49, 54, 55, 65, 66, 67, 71, 72, 74, 75, 76, 79, 88, 91, 94, 96.

Roxane identified through looking at the license file another 21 homes that can be included in the 07011 filing.

I hope that this helps. Please feel free to give me a call this weekend. I will be in the office most of the day on Sunday (327-5404) or you can catch me at home on Sat (395-1745).

*50 covers
uses plumbed
into JPR+Log
cabin via
city system*

[Signature]

J R B A FIELD EXAM NOTES

CLAIM # See below

EXAM DATE 7-16-1991

EXAMINER JA Lata

ASS-02212

04006 ← original with exams filed in

04151

10000

10130

10237

A55-04151 AMENDED

A55-10130

These claims have received an
EXCEPTION* from Silver City
Property Owners, received 1-9-92.

EXCEPTION AVAILABLE IN OFFICE
OF Steve Luster & Region.

(info is too bulky to currently
keep in claim files).

*see original memo #28

RECEIVED

JAN 05 1998

WATER RESOURCES
WESTERN REGION

SCOTT L. CAMPBELL
ELAM & BURKE
702 W. Idaho St., Suite 1000
Boise, Idaho 83702

Attorneys for Claimant
Carl and Gloria Otto

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

In Re THE GENERAL ADJUDICATION OF)	Case No. 39576
RIGHTS TO THE USE OF WATER FROM)	
THE SNAKE RIVER BASIN WATER)	IDENTIFICATION NO. A55-10130
SYSTEM)	
_____)	AFFIDAVIT OF GLORIA W. OTTO

Gloria W. Otto, first being duly sworn, hereby deposes
and says as follows:

1. The following statements are based upon my personal
knowledge and belief.

2. This Affidavit is submitted in support of Notice of
Claim to a Water Right No. 55-10130 filed under the name of Carl
W. Otto and Gloria W. Otto, in Civil Case No. 39576, in Re The
General Adjudication of Rights to the Use of Water from the Snake
River Basin Water System, presently pending in the District Court
of the Fifth Judicial District of the State of Idaho, In and For
the County of Twin Falls.

3. The statements contained herein are intended to clarify
statements made in an "AFFIDAVIT" signed by Julia J. Hyslop. Her
paper is not notarized and not dated except for the stamped
notice of FEB 06 1996, which probably indicates the date when it

was received by the Office of the Western Region of the Idaho Department of Water Resources.

4. Mrs. Hyslop committed two kinds of serious errors in her 'Affidavit' purporting to discredit the Otto filing (A55-10130) on Willow/City Spring. She committed errors of omission when she presented a story that appears to be reasonable and authentic but which, in fact, leaves the reader with an incomplete picture that results in a wrong impression. That kind of error is one in which only part of the truth is presented. She committed errors of commission when she made statements as facts, which, in reality, are contestable.

5. ERRORS OF OMISSION

This part of This Affidavit will deal with the Errors of Omission, which pertain primarily to the Conclusion of Hyslop's paper. Her conclusion is a chronological account of the "source of the water now being used in the building known as the Idaho Power Building." The story, as she wrote it, will be presented here exactly as it appears in her "Affidavit." The pertinent information which she omitted will be underlined.

Beginning with "Conclusion:" on the second page of Julia Hyslop's 'Affidavit' bearing the date Feb. 6, 1996:

1866 - The Lincoln mill was built and used water from Long Gulch transferred by a ditch to process the ore. Potable water which was required in the mill manager's home, and in the living quarters of the crew when they were building the mill in 1865 came from Willow/City Spring.

1868 - The Idaho Hotel established a water system to the hotel from water on Florida Mountain. The spring claimed and developed by the Idaho Hotel is located approximately 600 feet in a northerly direction from the Willow/City Spring. The reason why the Idaho Hotel went 600 feet out of its way to develop a different spring is that Willow/City Spring was claimed, and being used by the Lincoln mill complex. That the two springs are different is described by Wilma Statham in her Affidavit dated 6 January 1992 and filed as part of an "Exception" with the Department of Water Resources.

1868-1896 - During this period of time the mines in the Owyhee Mountains experienced volatile success and failure. As the scarcity of wood to fuel the boilers in the mills worsened, it became apparent that the power would have to come from electricity. The Trade Dollar Company that built Swan Falls Dam and Power Plant bought the building now known as the Idaho Power Building. The TipTop Mining and Milling Company bought the mill complex. Potable water from Willow/City Spring was being used in the mill manager's house and other supportive structures, including the building which was being converted to accommodate a sub-station with transformers. Reports of a new mining boom in the Owyhee Mountains brought William Williams back to Silver City. He bought a house adjacent to the TipTop mill complex.

1898 - William Williams files for a water right, he showed no connection with the Lincoln mill or with the Idaho Hotel for the use of this water. Mr. Williams was employed at various times by the parties involved in the conversion of the mill from wood to electric power. During a time when the negotiations were stalled, Mr. Williams used the water from Willow/City Spring for working a small placer operation. His filing provided a holding action while the principals negotiated and the placer work supplemented his income.

1902 - The Idaho Hotel upgraded their (sic) water works, installing a new tanks (sic) and pipes which were attached to the present City Spring.

1902 -- The Owyhee Electric Light Company used the Idaho Power Building as a transformer house. After several transfers of ownership, the Idaho Power Company acquired title to the transformer building and surrounding land.

1902 - Hurd began to construct a residence in the transformer house turning the east half of the building into a modern family home complete with hot and cold water, a bathtub and flush toilet, powered entirely by electricity for heating, cooking, laundry and all domestic uses.

1903 - January the Hurd family moved into the residence. Water from Willow/City Spring was used in the Idaho Power

Building for two kinds of beneficial purposes, domestic for the family and commercial for the electric utility business. Water from Willow/City Spring was used in the auxiliary buildings of the TipTop mill complex for potable, domestic purposes as it had been since 1865.

1903 - The mill had been shut down during the period of conversion and opened soon thereafter as a custom mill that operated until 1914, terminating its operation in Silver City with the sale and removal of the mill building after World War I. The Idaho Power Company continued to operate its electrical business from the Silver City transformer building (the Idaho Power Building) until World War II. The operators for Idaho Power Company (families named Kidder and Meek) lived in the residential part of the transformer building and used water from Willow/City Spring until they left in 1943. Ned Williams used the building while he was employed by the Idaho Power Company to remove all its electrical equipment and service from parts of Owyhee County. In 1946 he acquired the property and his family and his daughter, Gloria Otto, and her family continued to use the same water system from the same Willow/City Spring in the same transformer house and continue to do so today.

1942 - The hotel closed. The townspeople took on the task of keeping the water lines repaired and usable. This continued until the Silver City Taxpayers was organized and took on the responsibility for the system which is continued to the present day. The Silver City Taxpayers name was changed to the Silver City Property Owners, Inc. The water is administered by the Water Board, elected from and by the water users of Silver City. From 1942 until 1972 the hotel was closed and did not use water from Willow/City Spring during those 30 years. Mr. & Mrs. Tom Rock, who owned the hotel, did not live in the hotel; they lived and operated a beer parlor in a building across the street.

6. ERRORS OF COMMISSION, FACTUAL MISTAKES

Underlining will not be used in the remaining portion of This Affidavit. The statements quoted from the Hyslop 'Affidavit' will be enclosed in quotation marks.

A. Hyslop states that "Williams had no connection to the Lincoln mill at this time." That statement is not true. When the mill property was in negotiation for the retrofit from steam to electrical power and the TipTop Mining and Milling Company was making the conversion, William Williams worked for and with the various parties involved in the change. My affidavits supporting filings A55-02212, A55-10130, A55-4006 and A55-10000 name people who were active in

the 1894 to 1903 transition period of the Lincoln mill complex. Those names are Regan, Dewey, Elmer, Knapp and Adams. I maintain contact with those families even today. William Williams was my grandfather and he frequently told me what he did in behalf of the mill complex from the time when he was a teen-ager and cut stump wood for the Ida Elmore (Lincoln) mill until his death in 1938.

B. Hyslop states "Carl and Gloria Otto claim first rights to the spring on Florida now known as City Spring.... Their claim concerns the building known as the Idaho Power Building which is presently on the town system."

My claim is based not only on the Idaho Power building but on the 3+ acres surrounding that building, and other buildings, all of which are part of the original tract of Lincoln, Ida Elmore, TipTop mill complex. The land and buildings have an unbroken chain of title dating back to 1865. The area of land where the Idaho Power Building sits has sometimes been included in the holdings of the mill complex, sometimes as part of the Trade Dollar holdings, and sometimes as the Williams-Otto holdings. The prime consideration is not limited to the rights of the individual building, but to the entity that held title to the land surrounding the buildings.

C. Hyslop says "The newspaper states that the Lincoln mill was furnished water from a ditch they (sic) purchased." That is true, but the implication that the rest

of the mill complex used ditch water for all purposes is wrong. The uses that required potable water (such as the manager's house (domestic use), the assay office, and the mercury reclamation building, received water from the Willow/City Spring.

D. Hyslop contended that the Ottos made a point of saying "...that the water for running the Lincoln Mill came from this (the City Spring) in 1866." That is wrong. As a matter of fact, the following statement is included in my documentation: "This Notice of Claim to Water Right No. A55-10130 is separate from and has no relation to water used to provide steam for the engines which powered the equipment in the Lincoln Mill."

E. Another statement by Hyslop: "During the summer months of 1902 the Idaho Hotel had commenced work on what is now called the City Spring when they upgraded the town water system." At that point in time the Idaho Hotel had no relationship whatsoever with the town water system. Most of the people in Silver City got their water from Long Gulch, from storage tanks situated in the southwest part of town. The system owned and operated by the Idaho Hotel was separate and distinct from the 'town system'. In fact, the article in the Idaho Avalanche describing this event is written as follows: "Messrs. Connors and Evans of the Idaho Hotel are remodeling and enlarging their system independently of the town line, and when completed will

prove a very valuable addition in case of fire." The connection of the Idaho Hotel water system to the system that served the rest of Silver City was made in the 1940's by Delbert Eytchison and his grandfather, Leish Lewis. The two systems were connected near the intersection of Washington Street and Avalanche Street.

F. Hyslop stated: "...half the town was using water from the system" [owned and supplied by the Idaho Hotel in 1902]. The truth of the matter is that only a few of the buildings that are close to the Idaho Hotel main line used water from the Willow/City Spring before 1940. I watched my father and Grover Tipton (who worked for Babe Hicks, owner of the Idaho Hotel) map the line and disconnect those lines that were leaking.

G. Hyslop states: "In my opinion the important point in the Otto filing on the water rights to City Spring hangs only [underlining added] on when the building referred to now as the Idaho Power building began using water." I believe that 'point' is specious. A water right is determined by beneficial use; I have documented beneficial use of water from Willow/City Spring which precedes the date of connection of the city system to that spring. That connection was made, I believe, as a result of an agreement between the owners of the Idaho Hotel and the Tip Top Mining Company, in recognition of the fact that the spring yields

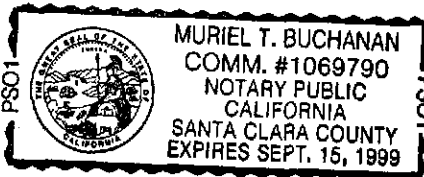
more water than could be used alone by the Tip Top Mining Company, and possibly for other unknown [to me] benefits. It is hard to imagine that the owners of the Tip Top Mining Company would have given up its established rights to its water at that time.

DATED this 29th day of December, 1997.

Gloria W. Otto
Gloria W. Otto

SUBSCRIBED AND SWORN to before me this 29 day
of December, 1997.

NOTARY PUBLIC in and for the State of California,



Muriel T. Buchanan
residing at 10619 Nathanson AVE. Cupertino, CA

My commission expires 9/15/99

EXHIBITS
accompanying
GLORIA OTTO's AFFIDAVIT
for
Claim No. A55-10130

<u>Exhibit No.</u>	<u>Description</u>
1.	Copy of Deed transferring western portion of Tip Top Millsite from M. Ned Williams to Gloria Williams Otto.
2a.	Map of the Town of Silver City in Section 6;
b.	Copy of Map of Tip Top Millsite (Survey 1303B), showing the storehouse which became a domicile/substation, and is now a hostel;
2c.	1977 map of the town of Silver City, showing Tip Top Millsite as patented ground.
3a.	A 'Chain of Title' for "this property," from the construction of the Lincoln Mill to the present;
b.	Copy of Court Decree which quiets title to "this property" in the name of Gloria W. Otto.
4a.	Introduction to the Storehouse/Warehouse-Domicile/Substation-Idaho Power Building-Hostel
b.	1887 Photo of Lincoln Mill and Storehouse;
c.	Copy of a portion of the 1903 Sanborn fire map, identifying the domicile/substation;
d.	1985 Photo of Idaho Power Building (Hostel).
5a.	Affidavit of Gloria W. Otto pertaining to the experiences in Silver City of her forefathers beginning in 1882;
b.	Affidavit of Marvin Dudley Williams.
6a.	Affidavit of Gloria Otto about use of water during the period when the domicile/substation was owned by electric utility companies (1901 - 1946);
b.	Affidavit of Eudora Terry;
c.	Affidavit of Patrick Kidder.

EXHIBITS (continued)
 accompanying
GLORIA OTTO's AFFIDAVIT
 for
Claim No. A55-10130

- 7a. Affidavit of Gloria W. Otto pertaining to her association with persons who have personal knowledge of, and experience with, the spring, delivery system, and use of the water since the 1940s;
- b. Affidavit of Eugene Perkins;
- c. Affidavit of Jean O'Neill;
- d. Affidavit of Ralph Moore;
- e. Affidavit of James Spencer;
- f. Affidavit of David Cooper;
- g. Affidavit of Leo Hampton;
- 8a. Affidavit of Gloria W. Otto pertaining to her personal knowledge of, and experience with, the spring, delivery system, and use of the water during her lifetime;
- b. Map of Northwest Part of Silver City;
- c. Excerpt from Deeds Records, Book P, Page 525;
- d. Excerpt from Deeds Records, Book P, Page 154;
- e. Affidavit of Carlin Otto;
- f. Map of Silver City in 1977;
- g. Map of Silver City in 1903;
- h. Photo showing proximity/congestion of buildings in the south and eastern parts of Silver City.
- 9a. Copy of article in 18 April 1884 issue of The Owyhee Avalanche regarding the burning of the Courthouse in Silver City, and of a Notice to the Public by the Recorder describing the records that were saved from the fire;
- b. Affidavit of Gloria W. Otto pertaining to the records available at the present time in the Owyhee County Courthouse in Murphy, Idaho.

C-O-P-Y

QUITCLAIM DEED

THIS INDENTURE, Made this ninth day of July
in the year of our Lord one thousand nine hundred and Fifty six
between M. Ned Williams and Floribel Williams
of Boise, Idaho County of Ada
State of Idaho, the parties of the first part, and Gloria Otto
of Palo Alto County of
State of California, the party of the second part.

WITNESSETH That the said parties of the first part, for and
in consideration of the sume of One DOLLARS, lawful money of
the United States of America, to Them in hand paid bay the
said party of the second part, the receipt whereof is hereby
acknowledged, does by these presents reminise, release and
forever QUITCLAIM, unto the said party of the second part, and
to her heir and assigns, all certain lot, piece or parcel
of lan, situate, lying and being in Silver City, County of
Owyhee, State of Idaho, bounded and particularly described as
follows, to wit::

Beginning at the Quarter section corner common to
sections 5 and 6, T 5 S, R 3 W, B.M.; thence North 76' 35'
West 1412.8 feet; thence South 41' 35' West 676.2 feet to
corner No 1, which is the real point of beginning, and from
which point said Quarter corner common to said Section 5 and
6 bears North 84' 25' East 1831.6 feet; thence continuing
North 24' 35' West 219.0 feet to corner No 2; thence South
65' 29' West 296.6 feet to corner No 3; thence South 24' 35'
East 300 feet to corner No 4; thence North 65' 29' East
371.1 feet to corner No 5; thence North 24' 35' West 81.0
feet to corner No 6; thence South 65' 29' West 74.7 feet to
corner No 1, enclosing a tract with a total area of 2.182
acres;

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, All and singular the said premises, together with the appurtenances, unto the party of the second part, and to her heirs and assigns forever.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hand and seal the dday and year first above written.

SIGNED, SEALED AND DELIVERED IN
PRESENCE OF

(signature) [Seal]
M. Ned Williams

(signature) [Seal]
Floribel Williams

[Seal]

[Seal]

STATE OF IDAHO }
County of Ada } ss.

On this 12th day of July in the year 1956, before me, a Notary Public, in and for said State, personally appeared M. Ned Williams and Floribel Williams known to me to be the persons whose names subscribed to the within instrument, and acknowledged to me that they executed the same.

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

(signature)
Marie Markouski
Notary Public for the State of Idaho.
Residing at _____, Idaho.

QUITCLAIM DEED

THIS INDENTURE, Made this ninth day of July

in the year of our Lord one thousand nine hundred and Fifty six
M. Ed Williams and Floribel Williams

between

of Boise, Idaho

County of Ada

State of Idaho

the parties

of the first part, and

Gloria Coto

of Palo Alto

County of

State of California

the party

of the second part.

WITNESSETH That the said parties of the first part, for and in consideration of the sum of
One DOLLARSlawful money of the United States of America, to Them in hand paid by the said
the second part, the receipt whereof is hereby acknowledged, does by these presents re
and forever QUITCLAIM unto the said party of the second part, and to
assigns, all certain lot, piece or parcel of land, situate, lyingSilver City, County of Owyhee, State of Idaho, bounded and
described as follows, to-wit:

Beginning at the Quarter section corner common to said
 Sand 6, T 58, R 3 W, B 4; thence North 76° 35' West 1412.8 feet; thence
 South 41° 35' West 476.2 feet to corner No 1, which is the real point of
 beginning, and from which point said Quarter corner common to said Sect
 5 and 6 bears North 84° 30' East 1831.6 feet; thence continuing North
 24° 35' West 212.0 feet to corner No 2; thence South 65° 23' West 222.1
 feet to corner No 3; thence South 24° 35' East 300 feet to corner No 4;
 thence North 65° 23' East 371.3 feet to corner No 5; thence North 24° 35'
 West 212.0 feet to corner No 6; thence South 65° 23' West 222.1 feet to
 No 1, enclosing a tract with a total area of 2.182 acres;

Book 418, page 289

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, All and singular the said premises, together with the appurtenances, unto the part of the second part, and to her heirs and assigns forever.

IN WITNESS WHEREOF, The said part 1.05 of the first part have hereunto set their hand and seal the day and year first above written.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF

M. Ned Williams [Seal]
Floribel Williams [Seal]
[Seal]
[Seal]

STATE OF IDAHO

County of Ada

ss.

On this 10th day of July, 1956, before me

in and for said State, personally appeared M. Ned Williams and Floribel Williams, Notary Public

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 affixed my official seal, the day and year in this certificate first above written.

Nick Markowski
Notary Public for the State of Idaho.
Residing at _____, Idaho.

No.

QUITCLAIM DEED

M. Ned Williams, et al.

—TO—

Gloria Otto

Dated July 9, 1956

STATE OF IDAHO

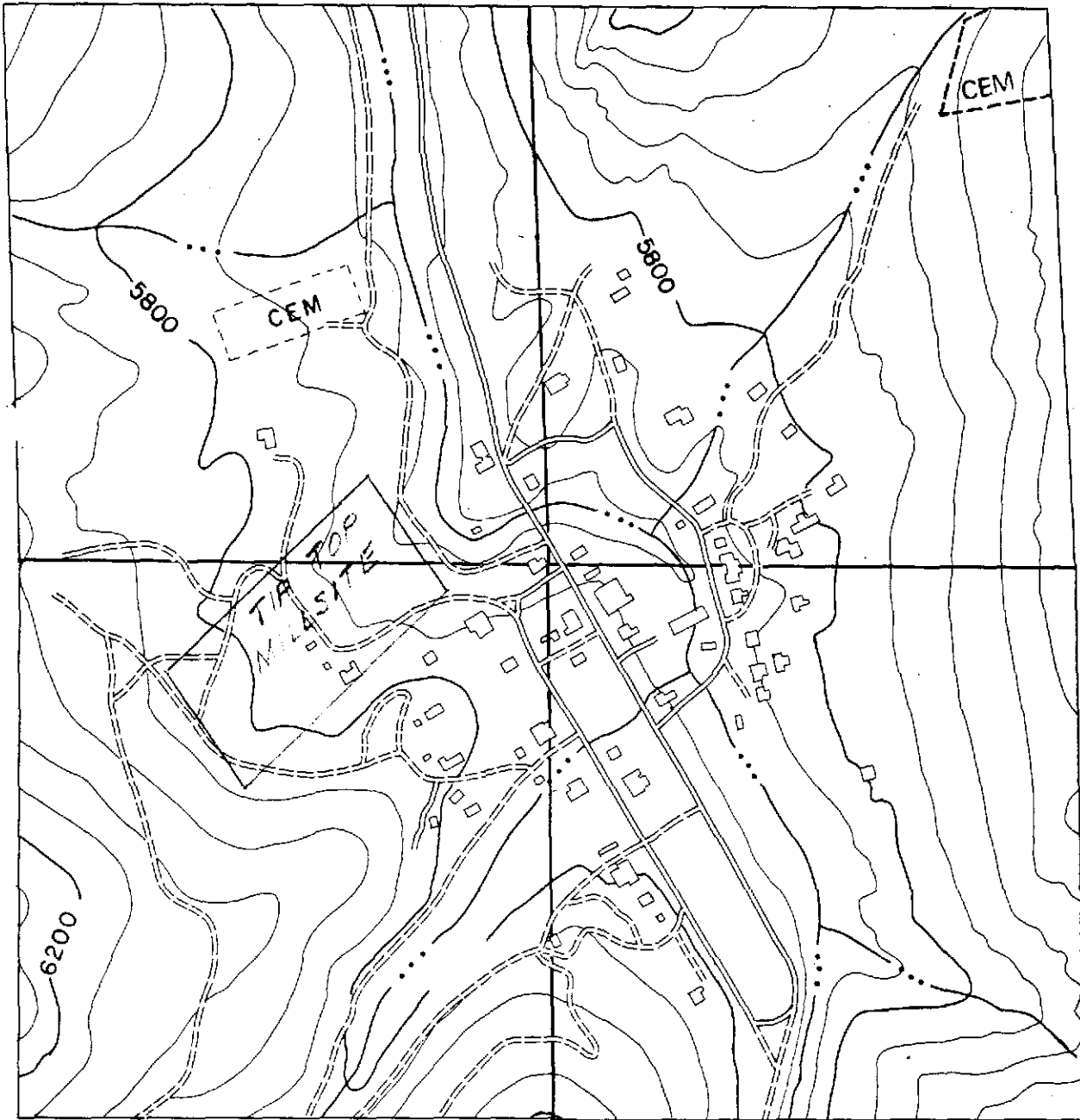
Deeds at page 289
in my office, and duly recorded in Book 117

NICK IHLL
Deputy

Mail to

NEW YORK COMPANY, 201

T5S R3W
S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 6



0 330 660 990 1320
SCALE IN FEET

SILVER CITY AREA

EXHIBIT 2 a

1864.

<u>Date</u>	<u>Instrument</u>	<u>From</u>	<u>To</u>
30 Jan '78	Deeds, Book S, Page 279	Sheriff Charles M. Hays, to satis- fy a tax assessment against the Ida Ellmore Mining Co., sold for \$1,997	C. W. Moore
31 Jul '79	Deeds, Book S, Page 571	Sheriff Charles M. Hays, to satis- fy a Writ of the Court against the Ida Ellmore Mining Co., sold for \$30,000	C. W. Moore
1 Dec '81	Deeds, Book T, Page 283	Christopher W. Moore sold for \$15,000	War Eagle Mining Co.
22 Dec '82	Deeds, Book T, Page 450	Sheriff John D. Springer, to satis- fy a Writ of the Court against the War Eagle Mining Co., sold for \$4115	A. L. Simondi
12 Jul '83	Deeds, Book T, Page 482	A. L. Simondi sold 1/2 interest for \$2,100	A. J. Sands & Moritz Oberdorfer
2 Mar '85	Deeds, Book T, Page 676	Late Sheriff Mark Leonard issues a title, resulting from a sale, with other properties, held 12 Jul '84 to satisfy a Writ of the Court against Sands & Oberdorfer in favor of Melville Hermann for \$835	Paulina Sands
29 Sep '85	Deeds, Book U, Page 3	A. J. & Paulina Sands sold 1/2 interest for \$2,500	William H. B. Stout & E. E. Cunningham
13 Sep '85	Deeds, Book U, Page 5	A. L. Simondi & wife Olga sold 1/2 interest for \$2,500	William H. B. Stout & E. E. Cunningham

<u>Date</u>	<u>Instrument</u>	<u>From</u>	<u>To</u>
11 Oct '86	Deeds, Book U, Page 12	Wm. H. B. Stout sold 1/2 interest for \$1	Isadora Cunningham
21 Oct '86	Deeds, Book U, Page 13	E. E. Cunningham & wife Isadora sold 1/2 interest for \$8,000	David Adams
6 Jul '88	Deeds, Book U, Page 289	W. H. B. Stout sold 1/2 interest for \$2,000 (states that purpose is to convey all the 1/2 interest of Inden- ture in Deeds Book T, Page 450)	David Adams
16 Jul '88	Deeds, Book U, Page 291	David Adams sold for \$25,000	Joseph Hamilton Brotherton
15 Feb '94	Deeds, Book W, Page 280	Sheriff E. L. Ballard, to sat- isfy a Writ of the Court against Oro Fino Mines, Ltd. and Timothy Regan, sold for \$2,670	S. T. N. Smith
10 Aug '94	Deeds, Book X, Page 158	S. T. N. Smith sold for \$6,000	G. V. Bryan, John Bryan & Alfred Hicks
1 Apr '95	Deeds, Book W, Page 615	Sheriff E. L. Ballard, to sat- isfy a Writ of the Court against Hilands-Brotherton, sold, among other items, for \$159,363	Timothy Regan
10 Sep '95	Deeds, Book X, Page 167	Bryan, Bryan, George W. Venable & Hicks sold for \$10,000	Charles Bunting
12 Aug '96	Deeds, Book X, Page 503	Bunting sold for \$5,000	W. S. McCornick

<u>Date</u>	<u>Instrument</u>	<u>From</u>	<u>To</u>
17 Jun '98	Land Claims & Millsites, Book 3, Page 650	Amended Location made by W. S. McCornick	
13-15 July 1898	Surveys of Mining Claims, Idaho, Vol. 45, #1303B, Page 405	Survey conducted	
31 Dec '98	Deeds, Book Y, Page 577	W. S. McCornick sold, among other items, for \$1	Tip Top Mining Company
1 May '99	General Land Office, Vol. 314, Page 345	U. S. Government issues patent No. 30991	W. S. McCornick
4 Nov '01	Deeds, Book 1, Page 560	Tip Top Mining Company sold a lot of 0.032 acres on which warehouse is situated	Trade Dollar Consolidated Mining Company
21 Apr '06	Deeds, Book 3, Page 411	Tip Top Mining Co. sold a 100' x 50' lot for \$100	Lydia Woolard
22 May '08	Deeds, Book 7, Page 548	Tip Top Mining Company sold, among other items, for \$1	W. S. McCornick
19 Jul '12	Deeds, Book 7, Page 116	W. S. McCornick sold, among other items, for \$15,500 (excepts two lots)	Tip Top Gold Mining & Milling Company
9 Jan '41	Deeds, Book 31, Page 346	Banner Mining & Milling Company sold for \$25 (western portion of millsite, ex- cepts lot of 0.032 acres al- ready owned by IPC)	Idaho Power Company

<u>Date</u>	<u>Instrument</u>	<u>From</u>	<u>To</u>
8 Aug '46	Deeds, Book 38, Page 377	Idaho Power Company made a Conditional Sale (to be final in 10 years) for \$ \$100 (no exceptions)	Ned M. Williams
9 Jul '56	Deeds, Book 48, Page 289	M. Ned Williams & Floribel Williams trans- ferred for \$1	Gloria W. Otto
20 Oct '78	Reception No. 156762 (microfilm)	Cleo R. Swayne sold 100' x 50' lot for ??? (per Court Judg- ment, Swayne had a title from Woolard through Farquahr, Tax No. 145, Miller House, Assay House, Brum- baugh and Lewis)	Carl W. Otto & Gloria Otto
9-11 Feb. 1981	Third Judicial District Court, Case # 4231	Quieted title	in name of Gloria Otto

* Indicates that this transaction may not be critical for a continuous chain of title, but may contain pertinent data.

** Indicates that the Ottos do not have a copy of the document.

August 20, 1997

Dear Steve,

Will you please file the
enclosed affidavits in the
respective files.

Sincerely,

Garcia M. Otto

Please note that this usage
pertains to time periods
that have not been affirmed
before. Oversight!

RECEIVED

AUG 25 1997

WATER RESOURCES
WESTERN REGION

RECEIVED

AUG 25 1997

WATER RESOURCES
WESTERN REGION

SCOTT L. CAMPBELL
ELAM & BURKE
702 W. Idaho St., Suite 1000
Boise, Idaho 83702

Attorneys for Claimant
Carl and Gloria Otto

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

In Re THE GENERAL ADJUDICATION OF)	Case No. 39576
RIGHTS TO THE USE OF WATER FROM)	
THE SNAKE RIVER BASIN WATER)	IDENTIFICATION NO. A55-10130
SYSTEM)	
_____)	AFFIDAVIT OF CARLIN D. OTTO

Carlin D. Otto, first being duly sworn, hereby deposes
and says as follows:

1. The following statements are based upon my personal
knowledge and belief.

2. This Affidavit is submitted in support of Notice of
Claim to a Water Right No. A55-10130, filed under the name of
Carl W. Otto and Gloria W. Otto, in Civil Case No. 39576, In Re
The General Adjudication of Rights to the Use of Water from the
Snake River Basin Water System, presently pending in the District
Court of the Fifth Judicial District of the State of Idaho, In
and For the County of Twin Falls.

3. I am the daughter of Mr. and Mrs. Carl W. Otto, owners
of the Idaho Power Building and the surrounding real estate

AFFIDAVIT OF CARLIN D. OTTO - 1

designated as TipTop Millsite, in Silver City, Idaho, and the granddaughter of M. Ned Williams, who formerly owned the property, having acquired it from the Idaho Power Company.

4. I have been actively involved in the use of water at that property since 1953 until the present.

5. From 1953 until September of 1959 I lived in the Idaho Power House with my mother and my siblings for several months each summer and fall. Running water was available in the kitchen and the bathroom and in the east and west yards. The bathroom had a bathtub, a hand sink and a flush toilet.

6. In 1962 the Idaho Power House was our family's principal place of residence from early June until November. The above-described water system was functioning as described above and we used it while we were there.

7. In 1967 the Idaho Power House was again our principal place of residence while our father was awaiting re-assignment. The water system described above was functioning and we used it for domestic purposes. Our grandfather used it occasionally in his mining business.

8. From 1968 until 1978 the Idaho Power House was used as a dormitory for us six Otto young people and our friends as my mother had acquired her mother's house in Silver City. Water was available in the kitchen (which we used for potable purposes and for light cooking), and in the bathroom as described above, and in the yard for irrigation.

9. I lived in Caldwell from 1973 until 1977, teaching at Boise State University and Nampa Nazarene College. My husband and I used the buildings owned by my family as a week-end retreat (that is, second home). Water as described above was available in the kitchen and bathroom as described above. I believe that the water could be turned into the Idaho Power House from the constantly flowing system all year around even though the city system was closed for the winter.

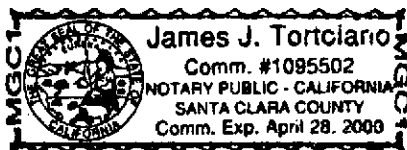
10. In 1978, 1979, 1982 and 1991, I stayed at the Idaho Power Building for several days. Twice I attended family gatherings there. The size of the groups varied from 16 to 22 people. I stayed from two to four days camping on the flat west of the Idaho Power Building. Everyone, including myself, used the water in the kitchen and in the two new bathrooms.

11. Regarding the watering of the landscaped areas on the east side of the Idaho Power Building, I remember moving the hose connected to the faucet on the east side of the house around frequently to keep the grass and flowers green. The areas I remember watering are the grass on the bank southeast of the house, and the lawn between the big fir tree and the house, the fir tree itself (when first planted), and the ferns and columbines on the rock walls by the road and south of the east lawn. I witnessed or performed this intensive irrigation all of the years that I stayed in Silver City, as explained above.

DATED this 5 day of August, 1997.

Carlin Dee Otto
CARLIN DEE OTTO

SUBSCRIBED AND SWORN to before me this 5th day of
August 1997.



James J. Tortolano
NOTARY PUBLIC in and for the State
of California, residing at
Los Altos

My commission expires 4-28-2000.

RECEIVED

MAY 05 1997

WATER RESOURCES
WESTERN REGION

SCOTT L. CAMPBELL
ELAM & BURKE
702 W. Idaho St., Suite 1000
Boise, Idaho 83702

Attorneys for Claimant
Carl and Gloria Otto

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

In Re THE GENERAL ADJUDICATION OF) Case No. 39576
RIGHTS TO THE USE OF WATER FROM)
THE SNAKE RIVER BASIN WATER) IDENTIFICATION NO. A55-10130
SYSTEM)
_____) AFFIDAVIT OF RUBY V. FISHER

I, Ruby V. Fisher, first being duly sworn, hereby deposes
and says as follows:

1. The following statements are based upon my personal
knowledge and belief.

2. This Affidavit is submitted in support of Notice of
Claim to a Water Right No. A55-10130, filed under the name of
Carl and Gloria Otto, in Civil Case No. 39576, In Re The General
Adjudication of Rights to the Use of Water from the Snake River
Basin Water System, presently pending in the District Court of
the Fifth Judicial District of the State of Idaho, In and For the
County of Twin Falls.

3. I am familiar with the Idaho Power Building located on
the TipTop Millsite in Silver City in Section Six, Township Five
South, Range Three West, because I was friends with Mr. and Mrs.

Harry Meek and their daughter Allene from 1937 until 1943. Mr. Meek was substation operator for the Idaho Power Company.

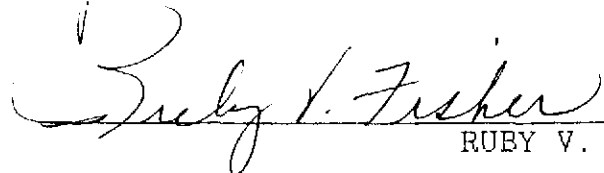
4. I lived in the Idaho Power Building from September 1938 until May 1939 with Mr. And Mrs. Meek so that I could attend school in Silver City.

5. I used water in the kitchen to do the dishes. Mrs. Meek used the water to wash clothes, cook and clean. I used water in the bathroom and I remember it well. There was a bathtub, a hand basin and a flush toilet. Water was available all of the time that I lived there and it was heated by electricity. It came from the wooden tank on the hill south of the building.

6. When I visited the Meeks in 1943 water was available year around and was still used in the kitchen and bathroom as it was when I lived there.

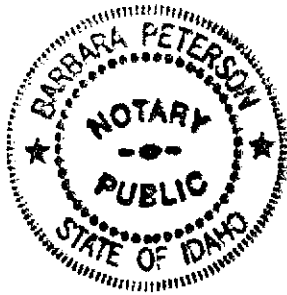
7. Mr. Meek had a horse that was used to patrol the power lines. It lived in a log cabin barn near the Idaho Power Building. The horse drank water that ran in a ditch through its fenced-in area.

DATED this 14th day of April, 1997.



RUBY V. FISHER

SUBSCRIBED AND SWORN to before me this 14th day of
April 1997.



Barbara Peterson

NOTARY PUBLIC in and for the State
of Idaho, residing at

Frutland ID

My commission expires 12/98

Dear Steve,

RECEIVED

MAY 05 1997

WATER RESOURCES
WESTERN REGION

Will you please
file this affidavit in
the A55-10302 (please check #)
for the Idaho Power Building
proof of use of water from
city / Thellow spring.
This completes the chain of
use from 1903 to the present
for year around water
delivery through the city
water system.

Thank you.

Gloria



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

November 8, 1996

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

GLORIA OTTO
250 AUSTIN AVE
ATHERTON CA 94027

**RE: RECORDED RIGHTS FOR "CITY SPRING" WATER USE AT YOUR "IDAHO
POWER BUILDING" SITE**

Dear Gloria:

Enclosed are computer reports detailing the recorded water rights that include use of water via the "city spring" for use at your hostel, also known as the Idaho Power building (IPB), in Silver City. You requested copies today in our telephone conversation to assist you in working with the BLM to obtain approval for pipeline work involving public property.

Four recorded rights include in some fashion or another the use of city spring water for the property in question. Two of the rights have been recorded by you, and the other two have been recorded by the city.

Your Snake River Basin Adjudication (SRBA) claims, nos. A55-04151 and A55-10130, include use of the overflow water associated with the city storage tank. These are beneficial use claims to be addressed in the SRBA proceedings.

The city rights include SRBA claim no. A55-10204, the city's claim to record all "grandfather" uses developed prior to May, 1971. The claim addresses water delivered via the city distribution network. The other city right is permit no. 55-07409 issued for uses developed after November, 1987. This permit is beyond the SRBA scope and therefore does not have a SRBA claim associated with it.

It appears that ample water right recordings have been made to show that the IPB site enjoys use of water from the city distribution network as well as from the city tank overflow.

If you or BLM staff have any questions about this matter, please contact me at your convenience.

Sincerely,

Steve Lester
Deputy Regional Manager

Enclosure

RECEIVED

FEB 11 1994

WATER RESOURCES
WESTERN REGION

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
Established in 1928

KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454

FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

February 11, 1994

*Response to 2/1 request
for add'l info
e 2 claims*

VIA HAND DELIVERY

Mr. Steve Lester
Water Rights Supervisor
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706-5082

*- 82
2/11/94*

Re: Your Correspondence of February 1, 1994 Regarding Additional Information to
Support SRBA Claim No. A55-10130 and A55-10237

Dear Steve:

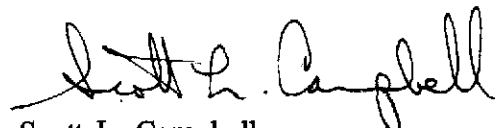
I have enclosed a copy of a three page document entitled "Additional Information Requested by Steve Lester" dated February 1, 1994. I believe the information contained in these three pages answers the questions you set forth in your correspondence.

Additionally, I have enclosed a document entitled "Important Points to Consider Regarding the Ottos in Silver City." I believe this document provides additional clarification in support of the various SRBA water right claims filed by the Ottos.

If you require additional information with respect to the evaluation of the Otto's SRBA water right claims, please contact me at your convenience.

Very truly yours,

ELAM & BURKE
A Professional Association


Scott L. Campbell

SLC:ma

cc: Carl and Gloria Otto

ADDITIONAL INFORMATION

requested by
Steve Lester
in letter dated 1 February 1994

**CLAIM NO. A55-10130 - MAXIMUM NUMBER OF PEOPLE WHO HAVE USED
WATER FOR COMMERCIAL PURPOSES PRIOR TO NOVEMBER 19, 1987:**

Answer: 111 people used water for commercial purposes in the
hostel at the IPB site in mid-September 1987;

An estimated 115 people used water for commercial
purposes in the hostel at the IPB in July and
August 1987.

Details and explanations:

In September 1987, Three classes in the fourth grade of a
Boise school rented the Group Hostel and campgrounds for a two-
day social studies field trip to Silver City. There were 36
adults and 75 children. Some stayed in the building and some
camped.

Darby Stapp, archaeologist from University of Idaho,
sponsored an archaeological 'dig' in Silver City in July-August
1987; the staff comprised 5 personnel. There were about 20
students in his class. They and their families (an additional 20
people) were camped in the campgrounds for three weeks officially
and two weeks 'before and after'. The University of Idaho class
used the Idaho Power building as a support base for their movies,
slide shows, bathrooms, sorting artifacts, etc. See the affidavit
of Darby Stapp which was included in the report by Gloria dated
31 October 1991. Darby Stapp invited the public through Idaho
newspapers to observe and assist in the 'dig'. I estimate that
about 60 public participants showed up for two days of digging
and lectures. I estimate that some 115 people were present at one
time or another during the 'dig.'

**MAXIMUM NUMBER OF DAYS PER YEAR OF USAGE PRIOR TO NOVEMBER 19,
1987:**

Answer: 365 days in the 1950s when the IPB was leased on a
year-round basis;

125 days in 1987.

Details and explanation:

Before 1987, there were many years in which water was used
for commercial purposes in the Idaho Power Building 365 days a
year. At that time the delivery system (still visible) had its
own private year-around hook up. For instance, the substation was
a commercial-domestic activity which began in 1901 and terminated

in 1943. My father and I rented the building to people (Dalys, etc.) year around for several years in the Fifties. Since the new tank was installed, the use of the water has been disadvantaged by the city practice of shutting the system down to prevent pipes being broken due to freezing. Nevertheless, consultants and lessees have made use of the water in the winter season by obtaining water from the overflow.

The Group Hostel was leased in June 1987 to a builder and his crew. Between June 26 and July 10 the Hamilradjo Mining Company rented the Group Hostel and the Log Cabin and the campgrounds. From July 10 until August 16, Darby Stapp and the University of Idaho archaeologists used the hostel and the campgrounds. In September three classes of fourth grade students spent two days at the hostel and campgrounds. In October some drillers stayed at the hostel. These stays total 105 days between June 1 and October 30. There were also some individuals who engaged the compound for a day or two in 1987. I estimate that usage by individuals was low because the building was not completely finished inside; allow 20 days. The above days of use total 125 for the summer period.

My rationale for maximum days usage would be 365 for that period of time in the 1950s when the Idaho Power building (Group Hostel) was occupied under a lease basis year-round as headquarters and base camp for a mining operation, and as a base camp for employees of a salvage operation.

CLAIM NO. A55-10237 - PRIORITY DATE

Answer: 1866

The round, brick-lined retention basin for this spring and delivery line was developed to reclaim mercury in the retort process, a commercial endeavor used by the Lincoln mill. In the Thirties, Ned Williams used the water as part of his agreement with Mrs. Steele. In that instance, Mrs. Steele, owner of the Tip Top property, would have been profiting commercially on the water and Ned Williams would have been using it for commercial purposes as a base camp for his mining crews. The water was used for a wide variety of commercial and domestic purposes until sometime between 1962 and 1965, when Ned Williams added a 4x4x16 feet collection-storage box and ran a line to service the Idaho Power Building, the Log Cabin and the campgrounds. This water was used by me commercially in 1972-3 when the Albertine's lived in the Log Cabin and camped on the campgrounds and had a garden (see Jean Albertine's affidavit in "the 1991 Submittal").

MAXIMUM NUMBER OF DAYS PER YEAR FOR CAMPGROUND USE:

Answer: 125 days

Details and explanation:

1866 and subsequent years - Year-round as mercury reclamation at retort.

Late 1930s - Approximately 180 days a year during season of warm weather when Mrs. Peter Steele leased to Ned Williams the use of the campground as base camp for mining crews. In the 1950s Ned Williams housed power line salvage crews on the campground and used Water from Notices of Claim to Water Right Nos. A55-04008 and A55-10237.

Before 1987, the maximum number of days that the water from A55-04151 was used would be about 210 days occurring in 1972-3 when the Albertines had a garden on the campground and camped there while using the Log Cabin as extra living space.

In 1987, the maximum number of days that the water was used is the same as for the A55-10130 filing because the campground was used as auxiliary space for the Group Hostel. Darby Stapp, archaeologist with the University of Idaho, invited to public to observe and assist in a 'dig' on the Tip Top millsite. His students (about 20) and their families were camped there. I estimate that about 60 additional participants pitched tents or slept under the stars at the campground.

IMPORTANT POINTS

to consider, regarding
the OTTOs in Silver City

1. The Ottos' situation in Silver City is unique as compared with nearly every other property owner. The Ottos are full time residents from late spring until fall, do not have a "base" in Treasure Valley, and must be completely dependent on the resources available in Silver City. Others usually reside at their "base" in Treasure Valley for most of the summer and come to Silver City for short periods of time; even if they stay for an extended period, they are able to go to their "base" for needed support.
2. The Ottos and their forefathers have had a continuous presence in Silver City for more than a century; only a couple other families can claim such a relationship and they now reside in Silver City only for sporadic periods. The Ottos and their forefathers have seen many changes during the last half century - particularly, an increasing number of people dependent on the same supply of water. In other words, the amount of water available has had to be shared with a greater number of people, depriving the Ottos of what once was their fair share.
3. The Ottos have been subjected to unwarranted, libelous statements published by the Silver City Water Board, such as "The Ottos filings are the only ones in opposition to the filing of the home owners of Silver City. Otto's filings jeopardize the city's claims." These allegations were publically announced by the Board without ever having discussed the subject with the Ottos or having asked a representative of the Otto family to be present at a meeting of the Water Board. Furthermore, the Ottos are being denied information on the deliberations and actions of the Board inasmuch as a request for copies of the minutes of the meetings of the Board has been denied on the grounds that the Board's "position is that board meeting minutes are privileged information and we do not feel compelled to disseminate them."
4. The Water Board, in spite of prior commitments to recognize the commercial use of water at the Idaho Power Building, has refused to recognize such use as an historical fact. Rather, it has arbitrarily, without any consultation with the Ottos, assigned such use to a group of users in a Claim which has a priority date of 1990, the most junior date of all filings for Silver City water users (see Notice of Claim to Water Right No. A55-07409).
5. The Water Board has had several meetings with the Department of Water Resources discussing the Ottos' situation, and the Ottos have never been invited to participate.



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

February 9, 1994

Mr. Scott Campbell
Elam & Burke
PO Box 1539
Boise, ID 83701

RE: Adjudication Claims A55-10130 and A55-10237 (Otto)

Dear Scott:

This letter confirms the meeting with you, Dave Tuthill and me at 3:00 on Friday, February 11, 1994, at the Western Region office to discuss Silver City claims and related matters. As mentioned during our recent discussion, region staff intends to convene a meeting if possible in the near future to bring together all of the parties to discuss the Silver City situation(s).

Meanwhile, I will wait for a response from you regarding other information for the above-referenced adjudication claims.

I am transmitting a facsimile copy of this letter to you today in addition to mailing it. I look forward to meeting with you and Dave on Friday.

Sincerely,

Steve Lester
Water Rights Supervisor

c: Dave Tuthill, IDWR Western Region

RECEIVED

FEB 08 1994

WATER RESOURCES
WESTERN REGION

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
Established in 1928

KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

SCOTT L. CAMPBELL

RECEIVED

FEB 07 1994

Department of Water Resources

TELEPHONE
208-343-5454

FACSIMILE
208-384-5844

February 4, 1994

Mr. Steve Lester
Water Rights Supervisor
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706-5082

Re: Adjudication Claims A55-10130 and A55-10237

Dear Steve:

Thank you for your correspondence of February 1, 1994. I have sent a copy of your correspondence to my clients for their review and consideration. After I have received their response, I will provide the required information to you.

I would like to repeat my request for a meeting with you and David Tuthill concerning the adjudication claims filed by Mr. and Mrs. Otto. In this regard, you indicated that you would be discussing my request with David Tuthill on Monday, January 31, 1994. I have not yet received a response to this request. I believe that a personal meeting with you and David Tuthill would provide us with an opportunity for resolving many of the outstanding issues in this matter.

Thank you for your assistance.

Very truly yours,

ELAM & BURKE
A Professional Association


Scott L. Campbell

SLC:ma

cc: Mr. and Mrs. Otto

RECEIVED

FEB 04 1994

WATER RESOURCES
WESTERN REGION

SILVER CITY WATER USERS BOARD OF DIRECTORS
Bob Nettleton, Chairman
HC 79 Box 33
Melba, Idaho 83641

Carl and Gloria Otto
250 Austin Avenue
Atherton, California 94025

Dear Carl and Gloria:

In response to numerous inquiries you have made of the Silver City Water Board and in responding to various filings you have with the Idaho Department of Water Resources we as a Board herein go on record as acquiescing nothing to you pertaining to water rights to Silver City's storage tank's overflow.

Please understand that we do not recognize any agreements presumed or otherwise that you feel you may have with Silver City regarding the overflow.

In this Board's considered opinion, we understand and believe that any and all water going into the water tank is rightfully and entirely the town's to be equitably distributed.

We do not acquiesce to you any rightful claim the town may have to the overflow.

Sincerely yours,

Bob Nettleton

1-31-94

Bob Nettleton
Chairman Silver City Water Board

cc: Steve Lester, Idaho Department of Water Resources

SL 2-3-94
Steve:

*Please add this
to the Silver City
File.*

File in → ASS-¹⁰²⁰⁴~~9011~~ ("City")
→ ASS-~~02212~~⁰⁴¹⁵¹ (Otto)
ASS-10130

Jim Hylop



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

February 1, 1994

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

Mr. Scott Campbell
Elam & Burke
PO Box 1539
Boise, ID 83701

RE: Adjudication Claims A55-10130 and A55-10237 (Silver City)

Dear Mr. Campbell:

I am soliciting additional information in support of the above-referenced adjudication claims in the names of Carl and Gloria Otto. Please consult with your clients regarding the following items.

Claim No. A55-10130 ("City Spring") -- What is the maximum number of people who have used water for commercial purposes in the hostel at the IPB site on any given day prior to November 19, 1987? Also, what is the maximum number of days per year that such use occurred prior to November 19, 1987? Sometimes it is difficult to give exact answers to such questions, and best estimates are frequently supplied to and used by the department.

Claim No. A55-10237 -- This is the same spring found in claim no. A55-04006 but for another use. The use for A55-10237 is commercial at a campground. I cannot find any information in the file(s) to support the priority date for A55-10237. Such information is needed to recommend this claim in the Director's Report.

The claim states that the campground use is for sixty (60) people. What is the maximum number of days per year that this use occurred prior to November 19, 1987? Again, an estimate is sufficient.

A response within thirty (30) days will avoid delays or complications in the adjudication analysis. Please let me know if I can be of assistance in this or other matters.

Sincerely,

A handwritten signature in cursive script that reads "Steve Lester".

Steve Lester
Water Rights Supervisor

RECEIVED

JAN 12 1994

WATER RESOURCES
WESTERN REGION

SCOTT L. CAMPBELL

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
Established in 1928

KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454

FACSIMILE
208-384-5844

January 10, 1994

Mr. Steve Lester
Water Rights Supervisor
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706-5082

Re: Correspondence of December 14, 1993 to Silver City Water Board Concerning
Silver City Water Right

Dear Steve:

First, thank you for sending me a copy of your correspondence of December 14, 1993 to the Silver City Water Board concerning questions posed to you regarding Silver City water rights. While it appeared to me that you attempted to emphasize in your correspondence that you were not providing legal advice, I believe it is necessary to respond to certain points made by you in your correspondence which address legal issues. I do this to avoid any misimpression which a lack of response may cause.

The first issue I would like to address involves your remarks on page 2 of your correspondence. Under the item labelled "Question No. 2 - Specific Overflow from City Tank to Ottos" you state:

The Ottos filed SRBA claim A55-10130 (copy enclosed) that mentions overflow from the city tank as at least part of the delivery method. Overflow by itself is not a source - this is actually water from the city spring where it is a detail of the operation that overflow associated with a tank is involved. I cannot see any basis on which to conclude that overflow must be supplied - that would be analogous, at least to me, to requiring that someone irrigate his or her crops to provide waste water to another person having a waste water right below the cropland.

In my opinion, it is not reasonable to conclude that the city is obligated to provide overflow to anyone. This, and anything else in this letter, is not offered as a legal opinion nor should it be taken as one - legal counsel is recommended if you want an expert legal opinion.

I would like to correct any possible misimpression which might arise from your statements. First, the Ottos do not claim that overflow from the City water tank is the source of their water. Adjudication claim A55-10130 specifically claims the source as a spring (sometimes known as the "City Spring").

Additionally, A55-10130 clearly indicates that the original delivery system from the spring consisted of a separate spring box and service piping to the places of use. Because of the necessary renovation of the City's water system, the Ottos allowed removal of the separate delivery system as long as their water right could still be provided through delivery from the City water tank. This is the basis for the reference to "overflow" from the City water tank. The Ottos have previously been provided with their water from this "overflow" without substantial interference. However, because of expansion of diversions by users of the City water system, occasioned by increasing lawn irrigation and installation of showers, flush toilets, and other water consuming facilities, a negative impact upon the consistency of the "overflow" diversion has occasionally occurred. This does not diminish the Ottos' entitlement to water under their existing right, but only points out the nature of the conflict.

Your statement that you "cannot see any basis to conclude that overflow must be supplied" is therefore incorrect. Moreover, should the Silver City Water Board contest the entitlement of the Ottos to utilize the city delivery system for their water right, the Ottos would claim a prescriptive easement to the use of the system by virtue of the long-standing historic use. Your statement that this use of the City's system is analogous "to requiring that someone irrigate his or her crops to provide waste water to another person having a waste water right below the cropland" is completely incorrect. The Ottos have a valid water right which is delivered through the City delivery system.

You also make the unfounded statement that "it is not reasonable to conclude that the City is obligated to provide overflow to anyone." This statement is insupportable given the historic basis of the Ottos' claim. I assume that you formed this opinion before you undertook a careful review of the documentation supporting claim A55-10130. Obviously, since you did not contact me or the Ottos to discuss this situation with them, your opinion/conclusion was not based upon an investigation of all of the facts or the legal basis for their claim.

I would now like to respond to the portion of your December 14, 1993 correspondence entitled "Question No. 3 - Irrigation Use Versus Ottos' Use of Overflow." Under this portion of your correspondence you state as follows:

This question is really a key one in the disagreements over use of water from the city spring. I cannot answer it except to say the following. There is a difference between a valid water right and valid use of a conveyance system as part of the water right. Generally speaking, water rights do not convey easements or allow rights-of-way through other owners' property.

If the Ottos' claim is recognized by the court in the SRBA process, will the city be obligated to allow use of its conveyance system for delivery of the Ottos' use under A55-10130? I do not know but I think the answer is no. Again, legal counsel is the best source for legal advice on this question.

You have identified one of the many legal issues which will be involved in resolution of the dispute between the Ottos and the Silver City Water Board. That issue is whether the Ottos have a continuing right to utilize the City delivery system to convey their water right from the spring. The Ottos believe they have a well founded factual basis for the right to utilize the City water tank delivery system.

Acquisition of rights-of-way and easements for delivery of water pursuant to valid water rights can occur in a number of ways. Among others, valid easements can be created by prescriptive use. An additional method is the utilization of the right to condemnation of rights-of-way.

In the present circumstances, the Ottos have at least acquired a right to utilize the City water tank delivery system by prescriptive use. Other possible legal theories also exist.

While you have clearly indicated that "legal counsel is the best source for legal advice on these questions," I believe it is important for you to understand that there is a valid legal basis for the Otto's claim for utilization of the City water tank delivery system for conveyance of their water right. Because of your role as reviewing agent for the Snake River Basin Adjudication Claim involving Silver City, you need to be aware of the Otto's position with respect to this issue.

Mr. Steve Lester
January 10, 1994
Page 4

I will be happy to discuss these matters with you at your convenience. Please contact me if you have any questions.

Very truly yours,

ELAM & BURKE
A Professional Association


Scott L. Campbell

SLC:ma

cc: Mr. & Mrs. Carl Otto
Mr. David R. Tuthill, Jr.

00091.ltr



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

December 14, 1993

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

Silver City Water Board
C/O Bob Nettleton, Chairman
HC 79 Box 33
Melba, ID 83641

RE: Questions Regarding Silver City Water Rights

Dear Mr. Nettleton:

This letter is in response to the office visit by you, Jim Hyslop, and Pat Ihli on October 29, 1993, in which you identified three questions for me. Now that the field season is ending, I have some time to respond.

The key point to keep in mind regarding all water rights, in whatever form the rights take, filed upon the city spring is that final details of the rights will be determined within the scope of the Snake River Basin Adjudication (SRBA). The only exception to this statement is permit no. 55-07409, a new right for the property owners association; the right is outside of the scope of SRBA. It is anticipated that department recommendations to the court for SRBA claims will be completed sometime this winter or by early spring, 1994.

Copies of the city water rights and SRBA claims are enclosed. Different rights have shown different names but are all lumped under city rights for purposes of this letter.

Question No. 1, Irrigation Use from the City Spring for City Water Rights

Irrigation from the city spring is part of at least two and perhaps three city water rights. Such use is implied but not yet verified by the city's SRBA claim no. A55-10204, which is a "grandfather" right based on uses in place by 9/1/1968. The claim includes four acres of irrigation for yards associated with 36 domestic units. The claim actually represents a number of individual rights with a number of priority dates up through 1968 but was filed as one right for a group of lots, all of which allegedly had beneficial use of city water by 1968. The validity of this claim will be determined in the SRBA.

Permit no. 55-07011 also implies irrigation for yards. A field exam was conducted on 11/5/1987 for this right in order to issue a license. Soon after that and based on additional questions and information, SRBA claims began to be filed. It became apparent that 55-07011 could not be licensed without completing SRBA recommendations for all uses of the city spring. The final definition of this right will be made within the context of overall SRBA recommendations this winter. Currently we can conclude that 55-07011 provides

an unspecified amount of irrigation for an unspecified number of lots. Furthermore, we can conclude that the right is intended to cover those uses in place after 9/1/1968 but by 11/5/1987 (after grandfather claim and up to field exam for permit).

A third right allows irrigation use for the city system, and this is permit no. 55-07409 filed in 1990 to cover existing or planned uses on-line after the 1987 field exam. The right includes four acres of yard irrigation.

Although not explicitly defined in the two permits, all irrigation listed or implied in city rights probably totals about four acres. This statement is based on a remark in claim A55-10204 ("Same acres as other irrig. from same P/D").

Based on the above information, it is within the city water rights to allow limited irrigation from the system, although the limits are not yet known.

Question No. Two - Specific Overflow from City Tank to Ottos

The Ottos filed SRBA claim A55-10130 (copy enclosed) that mentions overflow from the city tank as at least part of the delivery method. Overflow by itself is not a source - this is actually water from the city spring where it is a detail of the operation that overflow associated with a tank is involved. I cannot see any basis on which to conclude that overflow must be supplied - that would be analogous, at least to me, to requiring that someone irrigate his or her crops to provide waste water to another person having a waste water right below the cropland.

In my opinion, it is not reasonable to conclude that the city is obligated to provide overflow to anyone. This, and anything else in this letter, is not offered as a legal opinion nor should it be taken as one - legal counsel is recommended if you want an expert legal opinion.

Question No. Three - Irrigation Use versus Ottos' Use of Overflow

This question is really a key one in the disagreements over use of water from the city spring. I cannot answer it except to say the following. There is a difference between a valid water right and valid use of a conveyance system as part of that water right. Generally speaking, water rights do not convey easements or allow rights-of-way through other owners' property.

If the Ottos' claim is recognized by the court in the SRBA process, will the city be obligated to allow use of its conveyance system for delivery of the Ottos' use under A55-10130? I do not know but I think the answer is no. Again, legal counsel is the best source for legal advice on this question.

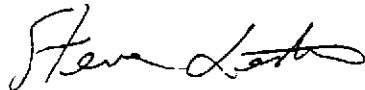
Silver City Water Board
December 14, 1993
Page 3

Well, you asked me to be brief in my reply which I tried to do as much as possible. As you can see, these questions can become complicated rather quickly and often do not have definitive answers. The final disposition of the rights mostly rests with the court, but even then all questions might not be answered. It is most likely that question three is a civil item outside of the jurisdiction of this department. Civil questions usually must be resolved between private parties, including use of the legal system if necessary, and although the department can often play a role it is not the ultimate decision maker in some of these matters.

I would like to ask you for some information at this point. Can you provide me with the name of the current president or chairman or chairwoman, along with a current address, for the Silver City Taxpayers Association and for the Silver City Property Owners Association? It will be helpful in updating the file.

I hope your questions have been addressed in a useful way. Please let me know if you need more information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Lester".

Steve Lester
Water Rights Supervisor

CC: S. Campbell for Ottos

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET • SUITE 700 • BOISE, IDAHO 83702
(208) 338-8200

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APR 26 1993

Department of Water Resources
Western Regional Office

SCOTT L. CAMPBELL
(208) 338-8200

April 26, 1993

VIA HAND DELIVERY

Mr. David Tuthill
Mr. Steve Lester
Department of Water Resources
State of Idaho
Western Region
2735 Airport Way
Boise, ID 83705-5082

Re: Snake River Basin Adjudication Claim No. A55-10130

Dear Gentlemen:

I have enclosed copies of the supporting affidavits to be filed in the Snake River Basin Adjudication process in support of the above-referenced water right claim.

Please contact me if you have any questions.

Very truly yours,

DAVIS WRIGHT TREMAINE


Scott L. Campbell

SLC:ma

cc: Carl and Gloria Otto

33532\00014.LTR
Boise

FAX: (208) 338-8299

ANCHORAGE, ALASKA • BELLEVUE, WASHINGTON • HONOLULU, HAWAII • LOS ANGELES, CALIFORNIA
PORTLAND, OREGON • RICHLAND, WASHINGTON • SAN FRANCISCO, CALIFORNIA • SEATTLE, WASHINGTON • WASHINGTON, D.C.

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APR 26 1993

SCOTT L. CAMPBELL
DAVIS WRIGHT TREMAINE
702 W. Idaho St., Suite 700
Boise, Idaho 83702

Department of Water Resources
Western Regional Office

Attorneys for Claimant
Carl and Gloria Otto

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

In Re THE GENERAL ADJUDICATION OF)	Case No. 39576
RIGHTS TO THE USE OF WATER FROM)	
THE SNAKE RIVER BASIN WATER)	IDENTIFICATION NO. A55-10130
SYSTEM)	
)	AFFIDAVIT OF GLORIA W. OTTO
)	Main Affidavit

Gloria W. Otto, first being duly sworn, hereby deposes
and says as follows:

1. The following statements are based upon my personal
knowledge and belief.

2. This Affidavit is submitted in support of Notice of
Claim to Water Right No. A55-10130, filed under my name, in Civil
Case No. 39576, In Re The General Adjudication of Rights to the
Use of Water from the Snake River Basin Water System, presently
pending in the District Court of the Fifth Judicial District of
the State of Idaho, In and For the County of Twin Falls.

3. I have owned the real property ("this property") listed
as the place of use of the water claimed under Notice of Claim to
Water Right No. A55-10130 since 1956 when my father, M. Ned

Williams, conveyed the property to me (Exhibit 1). This property is located in the Northwest Quarter of the Southeast Quarter of Section 6, Township 5 South, Range 3 West, Boise Meridian (Exhibit 2a), and is the western part of the Tip Top Millsite patented in 1899 (Exhibit 2b). This property is located in the northwest part of the town of Silver City, Idaho (Exhibit 2c).

4. During the 19th century this property received water through a system of wooden conduits, iron pipe and open ditch. Beginning in 1902, this property also received and used water from a wooden tank newly installed at that time and located about 250 feet south of this property. One supply pipe was connected directly to the wooden tank and provided water year-round. Later, another pipe of one-inch iron was installed connecting the Idaho Power Building (this building) with the main supply line between the Idaho Hotel and the wooden tank. At the present time, all this property (3.014 acres of land and three buildings) receives water through a single 1 1/2-inch PVC pipe connected between the Idaho Power Building and a trunk line of a new water system installed by the Silver City Property Owners, Inc. in 1987-88. The place of origin of the water for all these systems is the spring (said spring) designated in Notice of Claim to Water Right No. A55-10130.

5. Notice of Claim to Water Right No. A55-10130 indicates that water from said spring has been, and is now, used for both domestic and commercial purposes on "this property". This dual use has existed since the property was developed as a millsite in

AFFIDAVIT OF GLORIA W. OTTO - 2

1865; then water was used domestically in the homes of employees of the milling company and commercially in the auxiliary buildings of the milling company such as the assay, blacksmith, and bunkhouse buildings. This use of water for both domestic and commercial purposes has continued while the property evolved from a precious metals milling complex to an electric distribution center (including the domicile-substation), to the present time when this property and water are being used commercially for a group hostel and domestically for a vacation home for a family. Although the type of commercial use of the water has changed over time to meet market conditions, the use of this water for a commercial purpose has been consistent throughout its history. It is also true that, even though the ownership of this property has changed many times, the characteristic of water from said spring being used domestically (by company employees whose homes were located on this property or the owners of this property) has been consistent. This duality is borne out by the affidavits and other documents which support the Notice of Claim to Water Right No. A55-10130.

6. Part of my claim to water from said spring is the continuous use of the water by occupants of the land from 1865, when Lincoln Silver Company built the mill complex, until the present. These owners of the land can be traced in documents recorded in the Owyhee County courthouse (Exhibits 3a and b) and in newspaper articles.

7. Part of my claim to water from said spring is based on the use of water at the building which is now a Group Hostel (Exhibits 4a through d). A new PVC line was installed in 1987-88, connecting this building to the new, underground, metal tank and city water distribution system. This building was connected to the wooden water tank from 1902 until 1990, when the wooden tank was emptied of water and abandoned. Prior to 1902, and for a number of years thereafter, the building was connected with said spring through a system of iron pipes, wire-wrapped, wooden conduits and ditches.

8. Part of my claim to water from the spring referred to in Notice of Claim to Water Right No. A55-10130 is based on:

- A. The experiences of my grandfather, William Williams, and my father, Ned Williams (Exhibit 5a and b).
- B. The affidavits of people who lived in the substation-domicile building during the period (1901-1946) when it was being used by electric utility companies (Exhibits 6a, b & c).
- C. The affidavits of persons who had personal experience with the spring, the delivery systems and the use of the water since the 1940s (Exhibits 7a through g).
- D. My personal knowledge and experiences (Exhibits 8a through h).

9. I have conducted several searches of the historical

records pertinent to this property from its beginnings as the Carson ranch in 1863 and as a millsite in 1865, when the Lincoln Silver Company built a 20-stamp quartz mill, residential buildings, a barn, an office and several auxiliary buildings to the present. In the most recent searches my husband and I reviewed records in the Recorder's Office and in the District Court Office in the Owyhee County Courthouse on Oct. 20, 22, 23, 26, 27 and 28, 1992, and, during November and December of 1992, when we read micro-films of the Owyhee Avalanche newspaper of the 1860s.

6. Records in the Owyhee County Courthouse in Murphy, Idaho, are incomplete due to a fire in 1884 which destroyed the Owyhee County Courthouse in Silver City (Exhibit 9a). After the fire, some records were reconstructed and entered into the official county records. My claim to water from the spring noted in Notice of Claim to Water Right No. A55-10130 is based in part on the re-recorded records and references to the destroyed records, as well as recordings made since 1884 which are on file now in the Owyhee County Courthouse in Murphy, Idaho (Exhibit 9b), and, in part, on articles from newspapers published in Ruby City and Silver City between the years 1865 and 1870.

11. I base my claim to the water right claimed in Notice of Claim to Water Right A55-10130 upon the historical use of water on this property from said spring, as described in this affidavit and upon other affidavits which are attached hereto or have been submitted previously in support of this right.

DATED this 15th day of April, 1993.

Gloria W. Otto
GLORIA W. OTTO

SUBSCRIBED AND SWORN to before me this 15th day of April 1993.



Barbara L. Montgomery
NOTARY PUBLIC in and for the State
of California, residing at
Palo Alto, CA
My commission expires Aug. 6, 1993.

SCOTT L. CAMPBELL
DAVIS WRIGHT TREMAINE
702 W. Idaho St., Suite 700
Boise, Idaho 83702

Attorneys for Claimant
Carl and Gloria Otto

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

In Re THE GENERAL ADJUDICATION OF)	Case No. 39576
RIGHTS TO THE USE OF WATER FROM)	
THE SNAKE RIVER BASIN WATER)	IDENTIFICATION NO. A55-10130
SYSTEM)	
)	AFFIDAVIT OF GLORIA W. OTTO
)	Exhibit Number 5a

Gloria W. Otto, first being duly sworn, hereby deposes and says as follows:

1. The following statements are based upon my personal knowledge and belief.

2. This Affidavit is submitted in support of Notice of Claim to a Water Right No. A55-04006, filed under Gloria Otto's name, in Civil Case No. 39576, In Re The General Adjudication of Rights to the Use of Water from the Snake River Basin Water System, presently pending in the District Court of the Fifth Judicial District of the State of Idaho, In and For the County of Twin Falls.

3. The Williams family has a long association with the spring referred to in Notice of Claim to Water Right A55-10130 (said
AFFIDAVIT OF GLORIA W. OTTO (Exhibit #5a) - 1

spring). Four generations of the Williams family have lived close to said spring at various periods of time for over 100 years.

WILLIAM WILLIAMS

4. In 1882, my grandfather, William Williams, traveled from Texas to Silver City to join his elder brother, Sam Williams. They worked at the twenty-stamp quartz mill (Lincoln/Ida Ellmore/Oro Fino) tailoring wood and tree stumps to fit the steam boilers that powered the mill, and as assayers. This activity continued sporadically until about 1902 when the steam system which powered the equipment was replaced with electric-powered machinery.

5. William (Will) Williams owned a home situated on the northern border of the present Tip Top Millsite; the Williams' family home is gone now, but its site is within 1000 feet of said spring. Will raised four sons; two of them were active in Silver City. One was my father, Ned, and the other was my uncle, Karl Williams. Although my father was employed at times outside of Silver City, he was always actively involved in the town, in mining or business, and had a residence in Silver City from 1896 to 1986. Will and his brother, Sam, owned or leased mining property in the Owyhee Mountains until 1934. Will used water from said spring in placer work close to the Tip Top Millsite until 1935. His use of water from said spring was limited to early springtime during snowmelt runoff and depended on the permission of the owners of the Tip Top Millsite to placer their

ground:

6. In June of 1934, William Williams showed me the area northwest of the Lincoln/Ida Ellmore/Oro Fino/Tip Top Millsite where he and his brother Sam had worked and the spring that supplied the water to remove rocks and dirt from the stumps in preparation to be sawed. There were wire-wrapped wooden conduits lying near the spring which Will said he had used to divert water from the spring over ditches and pipes which existed between the spring and his work area. The spring was the same spring that is referred to in Notice of Claim to Water Right No. A55-10130. His work area is located within the boundaries of the Tip Top Millsite.

7. In 1934, William Williams and Ned Williams rebuilt the Potosi mill in Silver City to process ore from dumps and tailings of mines near Silver City. One contract involved transporting the dry tailings from the Lincoln-TipTop Millsite to the Potosi mill. Water from said spring was used to wash the amalgam and mercury out of crevasses in the tailings pond into a catch-basin for processing. The delivery line was a 1 1/2-inch iron pipe connected directly into the wooden tank which is located about 400 feet southwest and uphill from the tailings pond delivering water at approximately sixty pounds pressure.

NED WILLIAMS

8. My father, Ned Williams, also had a long association with said spring and the area in the northwest part of Silver City where the spring is located. Ned's home is located on Lot 87,

AFFIDAVIT OF GLORIA W. OTTO (Exhibit #5a) - 3

near the northern border of the Tip Top Millsite, within a hundred feet of his boyhood home, mentioned above. He owned the house from 1938 until 1980. I own it now.

9. Ned was raised in Silver City and attended grade school there. He worked in mines in the Owyhee Mountains around Silver City after World War I until 1942. Until 1937 his mining activity was small scale due to the Depression and to his work as construction foreman for the Idaho Power Company. During periods when the construction crews were laid off he prospected for potential mines or processed ore from mine dumps and tailings ponds near Silver City. In 1936 he formed Carson Divide Mining Company which activated the Potosi mill in Silver City and later the Rich Gulch mill near DeLamar.

10. In 1942 his mining activities were halted by Executive Order L208, which closed all precious metal mines for the duration of the war. Ned turned to the metal salvage business. He removed all of the power lines and associated property in the Owyhee Mountains for the Idaho Power Company. Most of the material was shipped directly to the buyers. The left-over material was stored at the millsite. Water from said spring was used to prepare insulators and other material for sale.

11. In 1946, the Idaho Power Company transferred title to the property around the substation in Silver City to Ned with the proviso that the company could reclaim the property anytime before 1956. If the company did not reclaim the property, then title would pass to Ned free of encumbrances. From 1943 to 1956,

Ned used the property in the domestic sense as a guest house for family and friends and in the commercial sense as a base for his salvage and rental businesses.

12. Ned's concentration on developing cash producing businesses in Silver City was due to a near-fatal accident in 1945 which left him totally disabled. While he was recuperating, his principal place of residence was Silver City and his business projects were limited by his health and strength. Three of the enterprises he tried which required the use of water from said spring were:

- (1) the preparation of insulators for sale,
- (2) the operation of concentrators for precious metals from placer mining, and
- (3) the rental of the Idaho Power Building to tourists, hunters, bottle collectors, and mine prospectors.

13. In the Sixties, Ned improved the water systems of the Idaho Power Building and on the millsite property. He dug a new trench and installed new pipes which were connected to the main line serving the homeowners of Silver City. The new line operated separately from the all-weather line which the Idaho Power Building had been using for many years. The new line was installed because the old line was difficult to service and repair due to its inaccessability. The old line was buried deep underground and had a discharge system which allowed for a small trickle of water to run all the time. The old line functioned until 1980.

14. Ned Williams managed the millsite property until 1967 when the Otto family returned from overseas to live in the United States.

DATED this 15 day of April, 1993.

Gloria W. Otto
GLORIA W. OTTO

SUBSCRIBED AND SWORN to before me this 15th day of April 1993.



Barbara L. Montgomery
NOTARY PUBLIC in and for the State
of California, residing at
Palo Alto, CA
My commission expires 8-6-93.

SCOTT L. CAMPBELL
DAVIS WRIGHT TREMAINE
702 W. Idaho St., Suite 700
Boise, Idaho 83702

Attorneys for Claimant
Carl and Gloria Otto

Exhibit
6a

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

In Re THE GENERAL ADJUDICATION OF)	Case No. 39576
RIGHTS TO THE USE OF WATER FROM)	
THE SNAKE RIVER BASIN WATER)	IDENTIFICATION NO. A55-10130
SYSTEM)	
)	AFFIDAVIT OF GLORIA W. OTTO
)	Exhibit Number 6(a)

Gloria W. Otto, first being duly sworn, hereby deposes
and says as follows:

1. The following statements are based upon my personal
knowledge and belief.

2. This Affidavit is submitted in support of Notice of Claim
to Water Right A55-10130, filed under my name, in Civil Case No.
39576, In Re The General Adjudication of Rights to the Use of Water
from the Snake River Basin Water System, presently pending in the
District Court of the Fifth Judicial District of the State of
Idaho, In and For the County of Twin Falls.

3. During the period from 1922 to 1939, Ben Kidder, Idaho
Power Company's substation operator, and his family lived in the
building and used the water claimed under Notice of Claim to Water
Right No. A55-10130 throughout the year for domestic and

AFFIDAVIT OF GLORIA W. OTTO (Exhibit 6a) - 1

commercial purposes, for stock water, and for irrigation around the building (see Affidavits of Eudora Terry (Exhibit 6b), and Patrick Kidder (Exhibit 6c)).

4. During the period from 1939 to 1941, Harry Meek was the substation operator and resided in the building with his family. They used the water claimed under Notice of Claim to Water Right No. A55-10130 throughout the year for domestic and commercial purposes. I was a frequent guest of their daughter, Alene Meek. During the Christmas vacation of 1940, I observed that water was used in the kitchen and bathroom, and in the carpenter-machine shop part of the Idaho Power Building to sharpen tools.

5. In the summers of 1940 and '41, Harry Meek paid me to water grass in the yard and the fern garden that had been planted on the rock wall east of the building, as well as the columbines in the shaded patio on the ledge south and east of the building. I used a 3/4-inch hose connected to a faucet on the east side of the building. This water came from the spring in Notice of Claim to Water Right No. A55 - 10130.

5. I base the water right claimed under Notice of Claim to a Water Right No. A55 - 10130 upon the historical use described in this Affidavit and upon other Affidavits which have also been submitted previously in support of this right.

DATED this 15th day of April, 1993.

Gloria W. Otto

Gloria W. Otto

SUBSCRIBED AND SWORN to before me on this 15th day of April, 1993.



Barbara L. Montgomery
NOTARY PUBLIC in and for the
State of ~~Idaho~~ ^{CALIFORNIA}, residing at

Palo Alto, CA.

My commission expires 8-6-93.

SCOTT L. CAMPBELL
DAVIS WRIGHT TREMAINE
702 W. Idaho St., Suite 700
Boise, Idaho 83702

Attorneys for Claimant
Carl and Gloria Otto

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

In Re THE GENERAL ADJUDICATION OF)	Case No. 39576
RIGHTS TO THE USE OF WATER FROM)	
THE SNAKE RIVER BASIN WATER)	IDENTIFICATION NO. A55-10130
SYSTEM)	
)	AFFIDAVIT OF GLORIA W. OTTO
)	Exhibit Number 7a

Gloria W. Otto, first being duly sworn, hereby deposes
and says as follows:

1. The following statements are based upon my personal
knowledge and belief.

2. This Affidavit is submitted in support of Notice of Claim
to Water Right A55-10130, filed under my name, in Civil Case No.
39576, In Re The General Adjudication of Rights to the Use of Water
from the Snake River Basin Water System, presently pending in the
District Court of the Fifth Judicial District of the State of
Idaho, In and For the County of Twin Falls.

3. Many people are familiar with the water systems of Silver
City as they have existed and been used since the 1940s. This
Affidavit names a few of those and how they used the water claimed
in Notice of Claim to Water Right No. A55-10130.

AFFIDAVIT OF GLORIA W. OTTO (Exhibit 7a)

4. My father rented the Idaho Power Building, "the building," to various individuals from 1946 to 1956 - mainly hunters, bottle collectors and people who were attending the Owyhee County Cattlemen's celebrations (Exhibit 7b). During the period from 1975 through 1980 I rented the Idaho Power Building and Log Cabin to various individuals (Exhibits 7c and 7d). These people used the water claimed under Notice of Claim to Water Right No. A55-10130.

5. Mr. James Spencer lived in Silver City between 1965 and 1975. Some of his experiences, as they relate to water are described herein (Exhibit 7e).

6. During the period 1975 through 1988, I employed numerous persons to renovate and convert the Idaho Power Building for use as a group hostel. They included foundation workers (Al Krause, Dave Wilper, Pres Carson, Robert Peterson), water consultant Shirl Chapman, architects David Cooper and Richard Williams, Idaho State historic preservationist Fred Walters, and building contractor Ralph Moore. These people used the water claimed in Notice of Claim to Water Right No. A55-10130 for commercial and domestic purposes during this time frame (Exhibits 7f and 7d).

7. From 1987 to the present, my company, Silver City Lodgings, has rented the Idaho Power Building and the adjoining acreage to groups numbering 3 to 70. Some of these groups include:

University of Idaho - archaeological 'dig'

Jackson Elementary School - history education

Strine Family - wedding celebration

Boise State University - continuing education

Meridian Middle School - eighth grade

These groups used water in the kitchen for drinking and cooking purposes and in the bathrooms (showers, flush toilets, wash bowels); they also used the water for washing artifacts and for dust control during excavation work; part of that water came from the source in Notice of Claim to Water Right No. A55-10130.

5. For various periods of time between 1980 to 1987, I leased this building and the millsite to Leo Hampton and the Hamil-Radjo Company, a placer mining/exploration company. Some of the partners who used water from said spring were Karl Klick and Mitch Lambson; the number of persons from this group who used water from the system at the Hostel and on this property ranged from 4 to 10. They used the water claimed under Notice of Claim to Water Right No. A55-10130 for commercial purposes to operate a gold and silver concentrate separator and provide potable water to the mining camp (Exhibit 7g). The quantity of water used by the separator was a minimum of 4 gpm.

8. I base the water right claimed under Notice of Claim to a Water Right No. A55 - 10130 upon the historical use described in this Affidavit and upon other Affidavits which have also been submitted previously in support of this right.

DATED this 15th day of April, 1993.

Gloria W. Otto
Gloria W. Otto

SUBSCRIBED AND SWORN to before me on this 15th day of April, 1993.



Barbara L. Montgomery
NOTARY PUBLIC in and for the
State of California, residing
at Palo Alto, CA
My commission expires 8-6-93.

SCOTT L. CAMPBELL
DAVIS WRIGHT TREMAINE
702 W. Idaho St., Suite 700
Boise, Idaho 83702

Attorneys for Claimant
Carl and Gloria Otto

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

In Re THE GENERAL ADJUDICATION OF)	Case No. 39576
RIGHTS TO THE USE OF WATER FROM)	
THE SNAKE RIVER BASIN WATER)	IDENTIFICATION NO. A55-10130
SYSTEM)	
)	AFFIDAVIT OF GLORIA W. OTTO
)	Exhibit Number 8a

Gloria W. Otto, first being duly sworn, hereby deposes
and says as follows:

1. The following statements are based upon my personal
knowledge and belief.

2. This Affidavit is submitted in support of Notice of Claim
to Water Right A55-10130, filed under my name, in Civil Case No.
39576, In Re The General Adjudication of Rights to the Use of Water
from the Snake River Basin Water System, presently pending in the
District Court of the Fifth Judicial District of the State of
Idaho, In and For the County of Twin Falls.

3. I have owned the real property (this property) listed as
the place of use of the water claimed under Notice of Claim to
Water Right No. A55-10130 since 1956 when my father, Ned Williams,
AFFIDAVIT OF GLORIA W. OTTO (Exhibit No. 8a) - 1

conveyed the property to me. This property is located in the Northwest Quarter of the Southeast Quarter of Section 6, Township 5 South, Range 3 West, Boise Meridian, and is the western part of the Tip Top Millsite patented in 1899. This property is located in the northwest part of the town of Silver City, Idaho, (Exhibit 8b) and was part of a homestead applied for in 1863 by W.T. Carson, one of the famous, original party of 29 to find gold in the Owyhee Mountains. The application was not acted upon by the U. S. Government Land Office due to the death of Carson in 1866. A. J. Sands, E. H. Clinton et al, acquired a share of the property and subsequently sold some of it to Lincoln Silver Company. (Exhibit 8c). Carson held the property long enough for the name Carson Ranch to become associated with the land filed upon and to be referred to in deeds executed subsequently (Exhibit 8d).

4. I have been familiar with this property since childhood. I visited there often with my father, Ned Williams, who as construction foreman for the Idaho Power Company from 1929 to 1936, supervised the building and repair of properties belonging to the Idaho Power Company. These duties included installations, modifications and repairs at the substation in Silver City. One such project was replacing a part of the water line which broke from freezing when its faucet was accidentally shut off. In order to protect this line from freezing, it was run through the shaft and tunnel of an early lode mining claim. This shaft and tunnel are not to be confused with the cross-cut tunnel excavated in the 1930s. Water for this line came from the spring identified in

AFFIDAVIT OF GLORIA W. OTTO (Exhibit No. 8a) - 2

Notice of Claim to Water Right No. A55-10130 (said spring) and was delivered via the wooden tank on the hill south of the Tip Top Millsite to residences and auxiliary buildings on the millsite. One of those buildings came to be known as the Idaho Power Building.

5. During the period of 1941 to 1953, my father conducted salvage operations under contract with the Idaho Power Company. He removed all transmission lines and portions of substations in Silver City and in the western Owyhee County electric service area. He maintained a string of approximately eight pack animals on this property for use in the salvage operations. I assisted in the feeding and watering of those animals, using water from faucets installed outside the substation as well as water overflowing from the wooden tank.

6. My father used the water in Notice of Claim to Water Right No. A55-10130 to prepare salvaged materials for sale - a commercial use. Watchmen, and up to six people working with the salvage operations, lived in the Idaho Power Building (IPB) at various times from 1943 to 1956. They used water from said spring in the kitchen and bathroom. I assisted James Daly in serving meals there in 1943 and 1945. During this time, the Idaho Power Company leased the Idaho Power Building to my father and he in turn rented it to James Daly, who was in charge of board and room for the work crew. Workers included Jim and John Daly, Roman Laguerra and Karl Williams.

7. I, with other members of my family, resided in the Idaho Power Building and on this property from 1953 to 1959, and in 1962, usually during the summer months. The only years in this period when I did not live on this property were 1960 and 1961, when I was overseas with my family. During the period from 1959 through 1967, some of my furniture was stored in this building and utilized by people who rented the building from my father, or used it with his permission. Most of that business involved hunters and bottle collectors.

8. From 1967 to the present, members of my family have resided on this property, primarily during the summer months, but also during other parts of the year. During the years when my daughter Carlin lived in Treasure Valley, she and her husband used this property and the buildings on it for week-ends and vacations (see Exhibit 8e). My daughter Ruth and her husband, Tom Bingham, (both teachers) have spent several summer vacations in Silver City and stayed at the Idaho Power Building (1977 to 1992, except for 1985 and 1990). These members of my family used water from said spring for domestic purposes during their stays.

9. During the summer months, from 1970 to 1973, I observed Warren Otto and Ned Williams and their partners, Peter Singleton, Fred Cowett and Thomas Chappell, using the water claimed under Notice of Claim to Water Right No. 10130 for processing placer ore concentrates, and in the Idaho Power Building bathroom and kitchen, as in a motel, for commercial purposes. They compensated me for their lodgings in the Idaho Power Building. I estimate that their

AFFIDAVIT OF GLORIA W. OTTO (Exhibit No. 8a) - 4

gas-powered concentrator used four gallons of water per minute; it was connected to a spigot outside the Idaho Power Building, which delivered water through the city system from the spring specified in Notice of Claim to Water Right No. A55-10130.

10. I estimate that the volume of water used for commercial purposes, as described in Paragraphs 5, 6, 7, and 9, has varied from 1 gallon per minute to 20 gallons per minute. The latter amount of water is estimated on the basis of the flow which ran through the two water lines which were connected to the Idaho Power Building before 1985.

11. Since 1902, when the wooden tank was installed, the stand of quaking aspen and shrubbery have been watered principally by water from said spring delivered through the overflow and leakage of the wooden water tank. Some of the leakage and overflow was corralled for more effective usage by the construction of a flume and headgate by my father in the 1960s. Much of the landscape on the 3.014 acres (presently comprising this property) has been watered recently from said spring through the City's delivery system by means of hoses.

12. The water that is being used currently on this property is delivered by a 1 1/2-inch PVC pipe connected to a trunk line of the new city distribution system, carrying water from said spring. The amount of water that we have used in the past has been determined by the available output of water by said spring (which varies from year to year depending on the snowpack) and by our needs for water. Our living requirements are unique in comparison

AFFIDAVIT OF GLORIA W. OTTO (Exhibit No. 8a) - 5

with those of other Silver City families in that we are the only property owners who live full-time in Silver City between May and November who do not have a principal place of residence within a few hours' drive of the town. Until recently, we were the only property owners who had running hot and cold water in the bathrooms, kitchens and laundry, and flush toilets. Our water needs do not diminish because there is a greater demand on the City's system; our minimum water needs remain what they have been over past years and our access to that water has a right based on historical beneficial use.

13. In 1971 I did not file an objection to the Application for a water permit made by the Silver City Taxpayers' Association because we were in accord that I had a traditional, historical right to water from said spring through the wooden tank in the iron pipes to my property, and the overflow and leakage of the wooden tank. My rights included both commercial and domestic uses. Our agreement included an understanding that my rights would be respected and protected. Since then some members of the Water Board have refused to acknowledge my rights and have reneged on commitments previously made by the Board, or its parent organization, the Silver City Taxpayers' Association (now known as the Silver City Property Owners, Inc.). They have not adopted proper procedures for administering and/or operating the water system.

14. This Notice of Claim to Water Right No. A55-10130 is separate from and has no relation to water used to provide steam for the engines which powered the equipment in the Lincoln Mill.

15. Said spring provided water to the Carson Ranch and to the property located by A.J. Sands/E. H. Clinton, and later to the auxiliary buildings and residences of the personnel who operated the mill located on the Lincoln/Ida Ellmore/Oro Fino/TipTop millsite. I saw evidence of the early-day water delivery system in 1939 when Thomas Brunzel exposed, during excavation with a grader, some pipes serving old residences. Also, in 1940, I saw pipes from the old system exposed when Bob Pazetti was digging on his quartz claim, the Florence, near the west boundary of the Tip Top Millsite.

16. Photographs and maps of Silver City show that the northwest part, as compared with the rest of the town, has been relatively free of development. Even though the northwest part was one of the first areas to be claimed from the U. S. Government, the number of structures in that area has always been sparse. With few exceptions, only those buildings related to the mill complex were constructed (Exhibit 8f). In the rest of the town the buildings were built either wall-to-wall in the commercial sections or on very small plots in the residential areas (Exhibits 8g and h). I believe that the reason the land in the northwest part of town has been relatively unencumbered with buildings over the past 130 years is that most of it has been controlled by the miners and the owners of the Lincoln/Ida Ellmore/Oro Fino/Tip Top millsite.

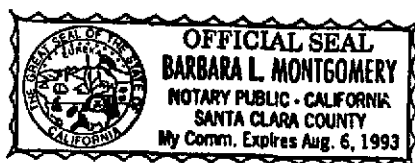
17. I believe that the control which limited building construction in the northwest part of Silver City applies to the use of water from said spring. The water which supplies the millsite has been used by the owners of the millsite since the construction of the original mill in 1865; they controlled that water and its use exclusively during the 19th century. In about 1902, the Idaho Hotel tapped into said spring for its use and those of its customers. This did not destroy or diminish the right of the owners of the millsite to take and use whatever water was necessary to serve their business and domestic needs; those rights have never been challenged until recently.

18. I base the water right claimed under Notice of Claim to Water Right No. A55-10130 upon the historical use described in this Affidavit and upon other Affidavits which have also been submitted previously in support of this right.

DATED this 15th day of April, 1993.

Gloria W. Otto
Gloria W. Otto

SUBSCRIBED AND SWORN to before me on this 15th day of April, 1993.



Barbara Montgomery
NOTARY PUBLIC in and for the
State of California, residing
at Palo Alto, CA
My commission expires 8-6-93

SCOTT L. CAMPBELL
DAVIS WRIGHT TREMAINE
702 W. Idaho St., Suite 700
Boise, Idaho 83702

Attorneys for Claimant
Carl and Gloria Otto

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

In Re THE GENERAL ADJUDICATION OF)	Case No. 39576
RIGHTS TO THE USE OF WATER FROM)	
THE SNAKE RIVER BASIN WATER)	IDENTIFICATION NO. A55-10130
SYSTEM)	
_____)	AFFIDAVIT OF GLORIA W. OTTO

Gloria W. Otto, first being duly sworn, hereby deposes
and says as follows:

1. The following statements are based upon my personal
knowledge and belief.

2. This Affidavit is submitted in support of Notice of
Claim to a Water Right No. A55-10130, filed under my name, in
Civil Case No. 39576, In Re The General Adjudication of Rights to
the Use of Water from the Snake River Basin Water System,
presently pending in the District Court of the Fifth Judicial
District of the State of Idaho, In and For the County of Twin
Falls.

3. I have searched the records in the Owyhee County Court
House in Murphy, Idaho, and have found that the water rights
records begin with Book 3, titled "Millsites, Water Rights and
AFFIDAVIT OF GLORIA W. OTTO - 1

records begin with Book 3, titled "Millsites, Water Rights and Tunnels," which covers the period of 1875 forward. Book 3 records a few entries with earlier dates. Books 1 and 2 are missing.

Books containing the recordings of deeds are also missing. The early-day deeds were recorded in books designated by letters of the alphabet. Deeds Books "A" through "H" are missing; Deeds Book "I" exists, including records from 15 July 1865 through 25 November 1865; Deeds Books "J" through "O" are missing; Deeds Books "P" through "Z" are complete and available. After that, the Deeds Books are designated numerically.

Deeds Books "I", "P" and subsequent ones document not only transfer of ownership of real property, but also, occasionally, water rights.

DATED this 15th day of April, 1993.

Gloria W. Otto
GLORIA W. OTTO

SUBSCRIBED AND SWORN to before me this 15th day of
April, 1993.



Barbara L. Montgomery
NOTARY PUBLIC in and for the State
of California, residing
at Palo Alto, CA.
My commission expires 8-6-93.

SCOTT L. CAMPBELL
DAVIS WRIGHT TREMAINE
702 W. Idaho St., Suite 700
Boise, Idaho 83702

Attorneys for Claimant
Carl and Gloria Otto

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

In Re THE GENERAL ADJUDICATION OF)	Case No. 39576
RIGHTS TO THE USE OF WATER FROM)	
THE SNAKE RIVER BASIN WATER)	IDENTIFICATION NO. A55-10130
SYSTEM)	
_____)	AFFIDAVIT OF MARVIN DUDLEY
	WILLIAMS

Marvin Dudley Williams, first being duly sworn, hereby deposes and says as follows:

1. The following statements are based upon my personal knowledge and belief.
2. This Affidavit is submitted in support of Notice of Claim to Water Right No. A55-10130, filed under Gloria Otto's name, in Civil Case No. 39576, In Re The General Adjudication of Rights to the Use of Water from the Snake River Basin Water System, presently pending in the District Court of the Fifth Judicial District of the State of Idaho, In and For the County of Twin Falls.
3. I am the brother of Gloria Otto and son of M. Ned Williams. I am familiar with the spring referred to in Notice of Claim to Water Right No. A55-10130.

AFFIDAVIT OF MARVIN DUDLEY WILLIAMS - 1

4. I remember well the years that I spent summer vacations in Silver City at my parents' home there. We lived on the east side of town until 1938 when we moved to the west side of town to the Atla Elmer-Knapp house which is closer than any other building in town to the spring referred to in Notice of Claim to Water Right No. A55-10130.

5. I worked for my father, Ned Williams, in the years 1938 to 1942 on several different projects. Those that pertain to Notice of Claim to Water Right No. A55-10130 follow. In 1938, my father began to inventory the property located in the west central part of Owyhee County that belonged to the Idaho Power Company in preparation for submitting a bid to remove the same. I participated in this project as an observer and assistant in counting insulators and other items. Later on, in 1942, after he had been awarded the contract, I worked full-time pulling transmission wire, removing poles, insulators and transformers, and drove truck to take the salvage to market. This operation was seasonal and went on for several years. The regular crew included Karl Williams, James and John Daly, and Roman Lagarra. When I left Silver City in 1946, materials were still being stored on the Idaho Power property and sold.

6. During the removal phase of the salvage project, my father rented a pack string from Archabal's sheep outfit to transport the salvage from remote areas to shipping points. The pack string was kept in a fenced area near the Idaho Power Building when it was inconvenient to return it to its base camp in

Cunningham Gulch. Materials which had not been pre-sold were stored near the Idaho Power Building and on the flat due west of that building.

7. There were several sources of water which we used to water the animals, prepare sorting pads, wash salvage for sale or shipping, and clean equipment. The sources were the outside faucets on the Idaho Power building, the stream that came out of the old tunnel southwest of the Idaho Power Building, the stream that came out of the tunnel due south of the Idaho Power Building (which was used as a food cooler) and a spring on the flat. The water for the Idaho Power Building functioned year around. There was lots of overflow of water from the wooden tank and it ran downhill through the flat and yard in a stream about six inches wide and two inches deep. A stream of water ran in back of the Idaho Power Building, which I believe came from the overflow of the wooden tank.

8. My father hired watchmen to guard the equipment and salvage stored in and around the Idaho Power Building. One of the watchmen was my aunt, Gussie Bergh Patton.

9. In 1939, while my father was running the tailings from the Lincoln mill through the Potosi mill I drove truck and chauffeured for him. I remember driving my father's car to take the man (who was supplying capital for the project) around. Mel Rogers represented the capitalist on day-to-day business. The tailings operation involved trucks and front-loaders and the use of water from the spring named in Notice of Claim to Water Right No. A55-
AFFIDAVIT OF MARVIN DUDLEY WILLIAMS - 3

10130 to flush tailings out of the bedrock. In 1940, I lived in Silver City all summer and served as watchman for my father. The town was deserted and dead.

9. I served in the United States Air Force from August 1943 through November 1945 and from October 1947 through February 1967 as a fighter pilot and retired as a major. Later I worked five years as a stock broker and eleven years as a bus driver. I am now retired.

DATED this 2nd day of MARCH, 1993.

Marvin Dudley Williams
MARVIN DUDLEY WILLIAMS

SUBSCRIBED AND SWORN to before me this 2nd day of March 1993.

Kerrie A. Graham
NOTARY PUBLIC in and for the State
of Idaho, residing at Boise
My commission expires 10/27/1998.

SCOTT L. CAMPBELL
DAVIS WRIGHT TREMAINE
702 W. Idaho St., Suite 700
Boise, Idaho 83702

Attorneys for Claimant
Carl and Gloria Otto

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

In Re THE GENERAL ADJUDICATION OF) Case No. 39576
RIGHTS TO THE USE OF WATER FROM)
THE SNAKE RIVER BASIN WATER) IDENTIFICATION NO. A55-10130
SYSTEM)
_____) AFFIDAVIT OF JAMES SPENCER

James Spencer, first being duly sworn, hereby deposes
and says as follows:

1. The following statements are based upon my personal
knowledge and belief.

2. This Affidavit is submitted in support of Notice of
Claim to a Water Right No. A55-10130, filed under Gloria Otto's
name, in Civil Case No. 39576, In Re The General Adjudication of
Rights to the Use of Water from the Snake River Basin Water
System, presently pending in the District Court of the Fifth
Judicial District of the State of Idaho, In and For the County of
Twin Falls.

3. Silver City was my principle place of residence for
several years between the period of 1965 to 1975. I am familiar
with the spring designated in Notice of Claim to a Water Right
AFFIDAVIT OF JAMES SPENCER - 1

No. A55-10130 and the water delivery system from the spring to the old wooden tank. I spent several winters in Silver City and lived at the Stoddard house, which is located in that part of town which is East of Jordan Creek.

4. I worked on the water system connected to said spring with other residents at various times. In 1966, the delivery system from said spring to the wooden tank claimed by Tom Rock, owner of the Idaho Hotel, consisted of several sections. One section had old iron pipes and another section had several lengths of wire-wrapped wooden-slatted conduits. Another section was an open ditch. We installed pipe in the ditch section and replaced some of the iron pipes that leaked and all the old wooden pipes with old metal pipes. I remember that there was a Y connection between the spring and tank: it was located close to the spring. Among residents who worked on the water lines during those years were Ned Williams, Moose Woods, Walt Adams, Bryan Brunzell, and Hugh Nettleton, plus some of their families and friends.

5. I knew Tom Rock who owned the Idaho Hotel and beer parlor across the street. He claimed to own the city water system. He did not maintain the water system. I don't know anyone who paid him for water, although I know that the following buildings/owners received water from that line: Walt Adams, Rock's Beer Parlor, Williams' building on the TipTop millsite, the Grete House, Lippincott Building, the Drugstore, the Silver Slipper, the Avlanche Building, Oddfellows Hall, Leonard's store,

Hugh Nettleton's house, the Old Post Office building, the Masonic Hall and Stathams.

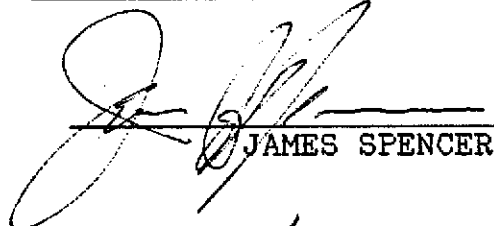
6. Most of the time in the years of 1965 to 1971, the only people in town would be Mrs. and Mrs. Walt Adams, Mr. and Mrs. Ned Williams, Mr. and Mrs. Tom Rock and myself. The Idaho Hotel was closed until the last two years before I moved away from Silver City.

7. I remember that it was common knowledge that the mill company on the TipTop Millsite (where the Idaho Power Building is situated) owned the spring and old delivery system before the Idaho Hotel installed a new system around the turn of the Century. Tom Rock didn't want to spend any money to fix the tank or pipelines except for those that directly served his bar. In 1972 a major repair job was done on the waterline and tank and more people were hooked up to the trunk line. It was at this time that a number of homes on the east side of Jordan Creek who did not have piped-in water attempted to get water from the old system. They attached themselves with PVC pipe, but most of those lines froze and broke the first winter. It was during this time that the old Miners' Union hospital tried to get water but they were unable to make their system work.

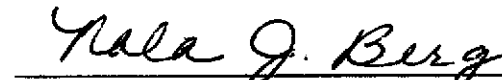
8. Tom and Lillian Rock maintained that the distribution system from the tank to the townsite belonged to the Idaho Hotel and that they sold the system as part of the Idaho Hotel sale agreement.

9. There were threats made by some of the home owners during the 1965-1971 period of time to take the water away from the control of Rocks and Williams, but that effort was not successful during the time that I lived in Silver City.

DATED this 1st day of March, 1993.


JAMES SPENCER

SUBSCRIBED AND SWORN to before me this 1st day of MARCH 1993.


NOTARY PUBLIC, in and for the State
of ~~Idaho~~ ARIZONA, residing at COCHISE
My commission expires 3-6-95.

SCOTT L. CAMPBELL
DAVIS WRIGHT TREMAINE
702 W. Idaho St., Suite 700
Boise, Idaho 83702

Attorneys for Claimant
Carl and Gloria Otto

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

In Re THE GENERAL ADJUDICATION OF) Case No. 39576
RIGHTS TO THE USE OF WATER FROM)
THE SNAKE RIVER BASIN WATER) IDENTIFICATION NO. A55-10130
SYSTEM)
_____) AFFIDAVIT OF CARLIN OTTO

Carlin Otto, first being duly sworn, hereby deposes and says
as follows:

1. The following statements are based upon my personal
knowledge and belief.

2. This Affidavit is submitted in support of Notice of Claim
to a Water Right No. A55-10130, filed under Gloria Otto's name, in
Civil Case No. 39576, In Re The General Adjudication of Rights to
the Use of Water from the Snake River Basin Water System, presently
pending in the District Court of the Fifth Judicial District of the
State of Idaho, In and For the County of Twin Falls.

3. I am the eldest child of Carl and Gloria Otto and am now
employed as a technical writer for Silicon Graphics in Mountain
View, California.

4. I vacationed in Silver City every summer from spring to
fall with my family in the years, 1953 to 1959. Sometimes I stayed
AFFIDAVIT OF CARLIN D. OTTO - 1

with my grandparents (Mr. and Mrs. Ned Williams) and sometimes with my family, usually my mother and four brothers and sisters plus a foster child. My family stayed in the Idaho Power Building and used the piped water there in the kitchen and in the bathroom for the flush toilet, bath and lavatory, and in the yard for irrigation. I remember that as a small child, trying to be independent, I struggled in the dark, scary bathroom to coordinate the use of a flashlight and the handle of the flush toilet with taking care of myself.

5. In 1962, our family lived in the Idaho Power Building from May 20 to November 1. Silver City was our principal place of residence during that period of time.

6. In 1967, 1968, 1969 and 1970, I lived in the Idaho Power Building during summer vacations and entertained guests there occasionally. Some of them were Robert Brookes and his mother, and Patricia Carter Nettleton. We used the water in the kitchen and bathroom and in the yard for the above mentioned purposes.

7. From mid-May until mid-August in 1970, I lived and worked in Caldwell, spending the week-ends in Silver City. That summer, I watched my grandfather, Ned Williams, and Bryan Brunzell repair the water lines to the Brunzell house and to the Idaho Power Building. They did not ask anyone for permission to turn off the water in the main line and no one objected when the main line was out of commission for several days.

8. From May 1974 until the fall of 1977, I taught at Boise

AFFIDAVIT OF CARLIN D. OTTO - 2

State University and worked for the Idaho Migrant Council and Nampa School District. I married in 1976. I remember well that while my husband and I were on our honeymoon we stayed in the log cabin near the Idaho Power Building and he always refused to use the outhouse near the cabin and walked to the Idaho Power Building to use the flush toilet there.

9. From May 1974 until the fall of 1977, my ^{boyfriend, and later, ex} husband, and I lived in Caldwell. We used the Idaho Power Building as a vacation home throughout the year and used the water as described in Paragraph 4 above.

10. When I attended a family reunion in Silver City in 1990, the Idaho Power Building had two new bathrooms with showers, flush toilets and lavatories, which I used. There were 25 guests at the reunion and all of us used the kitchen and bathrooms. Seven of us who slept in tents used the outside water faucets also.

DATED this 10th day of February, 1993.

Carlin D. Otto

CARLIN D. OTTO

SUBSCRIBED AND SWORN to before me this 10th day of February, ¹⁹⁹³~~1992~~.

Barbara L. Montgomery

NOTARY PUBLIC in and for the
State of ^{CALIFORNIA}~~Idaho~~, residing at

CUPERTINO, CA.

My commission expires 8-6-93



SCOTT L. CAMPBELL
DAVIS WRIGHT TREMAINE
702 W. Idaho St., Suite 700
Boise, Idaho 83702

Attorneys for Claimant
Carl and Gloria Otto

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

In Re THE GENERAL ADJUDICATION OF)	Case No. 39576
RIGHTS TO THE USE OF WATER FROM)	
THE SNAKE RIVER BASIN WATER)	IDENTIFICATION NO. A55-10130
SYSTEM)	
_____)	AFFIDAVIT OF PATRICK KIDDER

I, Patrick Kidder, first being duly sworn, hereby deposes
and says as follows:

1. The following statements are based upon my personal
knowledge and belief.

2. This Affidavit is submitted in support of Notice of Claim
to a Water Right No. A55-10130, filed under the name of Gloria W.
Otto, in Civil Case No. 39576, In Re The General Adjudication of
Rights to the Use of Water from the Snake River Basin Water System,
presently pending in the District Court of the Fifth Judicial
District of the State of Idaho, In and For the County of Twin
Falls.

3. I have personal knowledge of the spring located in the
Northwest Quarter of the Southeast Quarter, Section 6, Township 5
South, Range 3 West, Owyhee County, Idaho, and of the use of the

AFFIDAVIT OF PATRICK KIDDER

water produced from that spring.

4. I lived in the Idaho Power Building from the time of my birth, 7 May 1922, until the summer of 1939, when I left Silver City. I am the son of Benjamin P. Kidder, who was the substation manager for the Idaho Power Company. My father became substation manager in Silver City before my birth.

5. The Idaho Power Building was half-substation and half-domicile, where our family lived.

6. Water from the big wooden tank on the hill south of our house was delivered to the Idaho Power Building through a pipe which was connected directly into that tank. We had hot and cold running water throughout the year in the kitchen and in the bathroom for a washbowl, bathtub and flush toilet. Said tank was filled by water from the spring named in Notice of Claim to a Water Right No. A55-10130.

7. We had a fenced-in lawn on the east and north sides of the building and used water from the wooden tank to irrigate it. The water came from spigots on the east and west sides of the Idaho Power Building.

8. My father, Ben Kidder, added the two-story part of the building and the upstairs and downstairs rooms on the northeast corner of the building in 1933, to provide more living space for our family which consisted of two parents, and six children.

9. The Idaho Power Company owned the building, known as the Idaho Power House, and the property around the building. When I

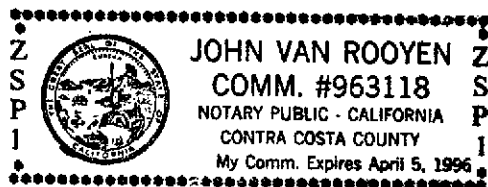
lived in Silver City, I was not aware that the Idaho Power Company did not own the land that we used, which I believe to have been about three acres. Our facilities included a barn, also a haybarn, and a pasture for the horse which was used for powerline patrol, a garage, a fenced yard on the east and north sides of the building, and a cellar-cooler tunnel south of the house.

DATED this 10th day of ~~January~~^{FEBRUARY}, 1993.


PATRICK KIDDER

SUBSCRIBED AND SWORN to before me this 10th day of ~~January~~^{FEBRUARY}, 1993.


NOTARY PUBLIC in and for the
State of California, residing at
Concord, Ca.
My commission expires 04-05-96



SCOTT L. CAMPBELL
DAVIS WRIGHT TREMAINE
702 W. Idaho St., Suite 700
Boise, Idaho 83702

Attorneys for Claimant
Carl and Gloria Otto

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

In Re THE GENERAL ADJUDICATION OF)	Case No. 39576
RIGHTS TO THE USE OF WATER FROM)	
THE SNAKE RIVER BASIN WATER)	IDENTIFICATION NO. A55-10130
SYSTEM)	
_____)	AFFIDAVIT OF EUGENE PERKINS

Eugene Perkins, first being duly sworn, hereby deposes and says as follows:

1. The following statements are based upon my personal knowledge and belief.

2. This Affidavit is submitted in support of Notice of Claim to a Water Right No. A55-10130, filed under the name of Gloria W. Otto, in Civil Case No. 39576, In Re The General Adjudication of Rights to the Use of Water from the Snake River Basin Water System, presently pending in the District Court of the Fifth Judicial District of the State of Idaho, In and For the County of Twin Falls.

3. I have been familiar with Silver City since my childhood because my mother was the sister of William Hansen, who married a member of the Pedracini family who were natives of Silver City. The Hansens lived in a house near the Idaho Power Building.

4. During the years 1948 through 1970 I arranged with Ned Williams or Gloria Otto to stay in the Idaho Power Building while I was hiking or bow-hunting or attending Cattlemen's Conventions or visiting relatives in Silver City.

5. I was occasionally accompanied on my trips to Silver City by my wife and two children and friends.

6. In July of 1962, my wife and family and I shared the Idaho Power Building with Gloria Otto and her five children. I remember that there was running water available in the kitchen and in the bathroom in the Idaho Power Building and that we used those facilities.

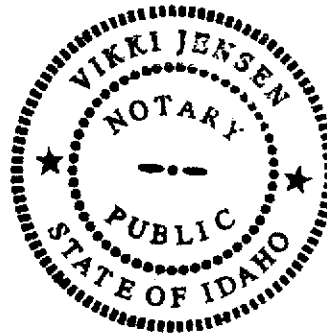
DATED this 5th day of Feb, 1993.

Eugene Perkins
EUGENE PERKINS

SUBSCRIBED AND SWORN to before me this 5th day of Feb 1993.

Vikki Jensen
NOTARY PUBLIC in and for the State
of Idaho, residing at Boise, ID.
My commission expires 5-9-97.

AFFIDAVIT OF EUGENE PERKINS - 2



Possible boundary of
a 1/4 Section Homestead, Land
Claim or Location situated
on the west side of
Jordan Creek

Bluff
of Rocks

Bluff
of
Rocks

SPRING
⚡

APPROX. CENTER
SECTION 6

GLORIA OTTO'S
PROPERTY

TIP TOP
MILLSITE

Lincoln
Mill

Storehouse

Water
Tank

JORDAN CREEK

SILVER
CITY

Idaho
HOTEL

NORTHWEST PART of SILVER CITY

Approx. Scale 1" = 450'
1:5400

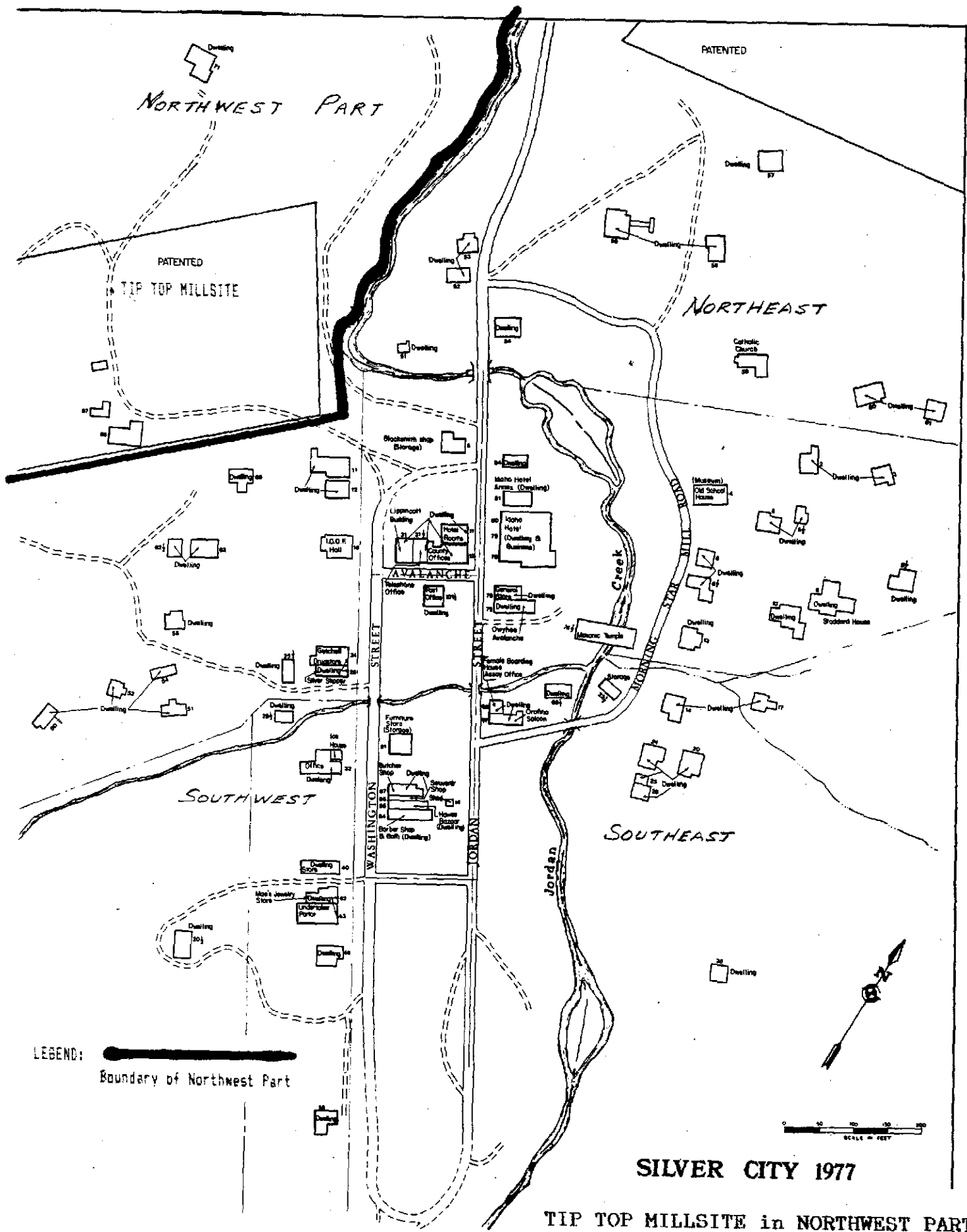
EXCERPT

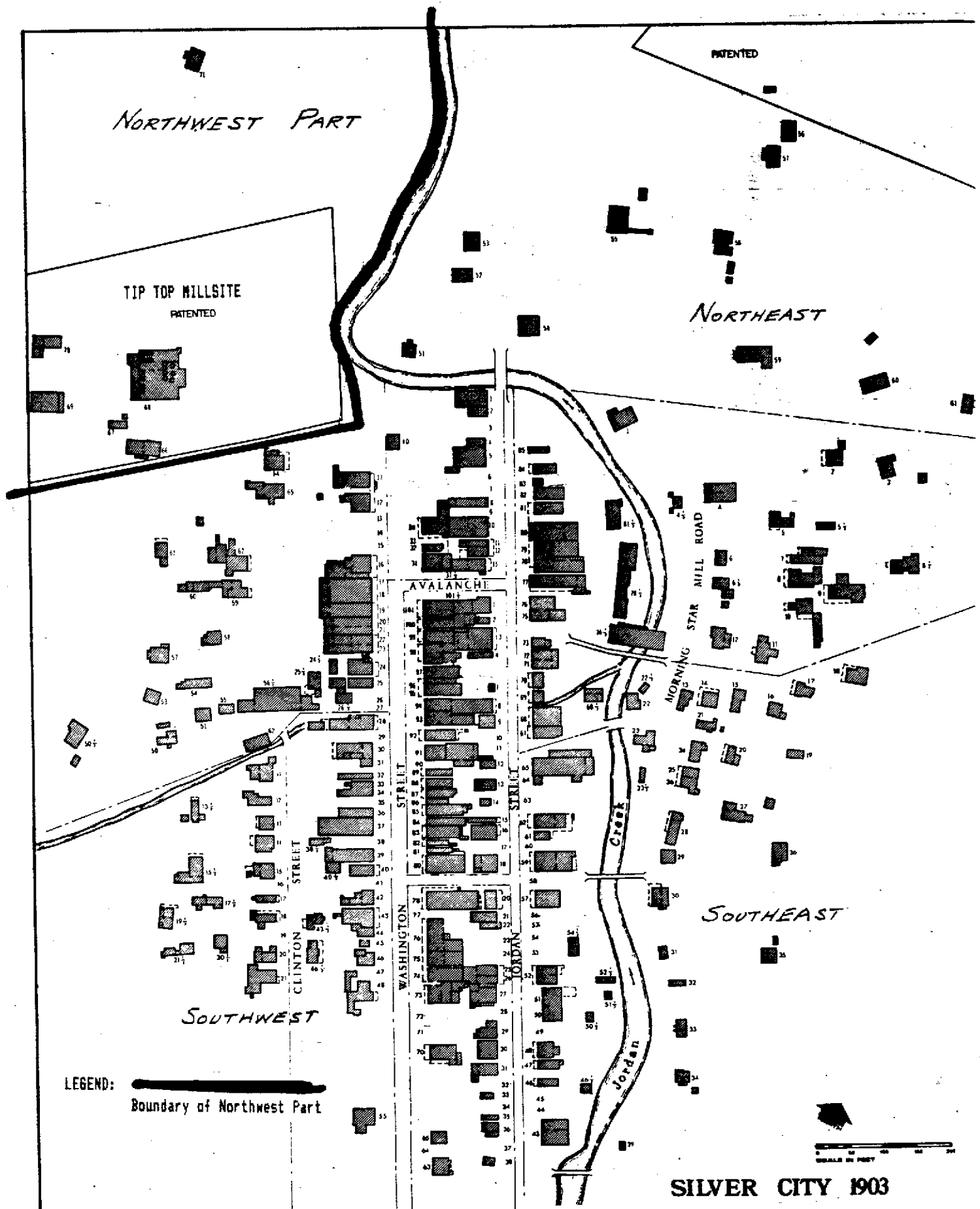
[in quotes, underlining added]
from
DEEDS RECORDS, BOOK P, PAGE 525
(Owyhee County Recorder's Office)

This document is An Indenture whereby H. H. Webb, on 14 October 1870, sold to J. H. Oustott for \$450 that tract of land "beginning at a stake on the upper line of Clinton Street in said Town of Silver City, at the point where the said line intersects the Easterly line of a certain lot of land heretofore sold by E. H. Clinton and others to the Lincoln Gold and Silver Mining Co., thence running South-Westerly along the line of the land so conveyed to said Company 120 feet; thence at right angles with said line Easterly to the corner of the lot of land deeded on 28 July 1868 by said H. H. Webb to Hannah White 33 feet; thence at right angle to Clinton Street 120 feet; thence to place of beginning 33 feet."

EXCERPT
[in quotes, underlining added]
from
DEEDS RECORDS, BOOK P, PAGE 154
(Owyhee County Recorder's Office)

This document is An Indenture whereby Sheriff A. C. Springer, on 10 August 1869, sold, for unpaid taxes and costs in the amount of \$116.84, that property "situate, lying and being near Silver City, Owyhee County, I.T. a tract of land on the west side of Jordan Creek near the Lincoln Mill, containing 100 acres, and known as the Carson Ranch;"







DENSE DEVELOPMENT SOUTH and EAST OF TIP TOP MILLSITE
[Arrow points to Lincoln Mill]

(1896 Photo courtesy of Idaho State Historical Society)

RECEIVED

Claimant Acknowledgement of Change in Attorney DEC 8 1992
in Snake River Basin Adjudication (SRBA)

Name(s) of Claimant (please print):

Carl and Gloria Otto

I/we acknowledge (check one):

☐ The attorney formerly representing me has withdrawn and I/we will be representing myself/ourselves.

☒ I/we are now represented by the attorney at the address below.

Scott L. Campbell

Davis Wright Tremaine

702 West Idaho Street, Suite 700

Boise, Idaho 83702

Attorney's Phone 208-338-8200

The SRBA water right claim notice(s) affected by this change are listed below or on the attached sheet(s).

A55-04006 A55-04151 A55-02212 A55-10000 A55-10130

A55-10237

For Individuals:

Authorized signature(s) Date Nov. 6, 1992

Gloria St. Otto

Carl W. Otto

For Organizations:

I am _____ of _____, and I

Title

Organization

have signed the foregoing document in the space below as

of _____

Title

Organization

Signature of Authorized Agent _____

Title _____

Date _____

Organization _____

IDWR Use:

Date Received 12-8-92

Data Entry 1-4-93

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET • SUITE 700 • BOISE, IDAHO 83702
(208) 338-8200

RECEIVED

DEC 8 1992

Department of Water Resources

December 7, 1992

State of Idaho
Department of Water Resources
1301 North Orchard
Boise, Idaho 83706-2237

Re: Water Right Claims: Claimant Acknowledgement of Change
in Attorney in Snake River Basin Adjudication (SRBA)

Dear Sir or Madam:

Enclosed for filing please find the above-named document
regarding the following SRBA claims: A55-4006, A55-04151, A55-
02212, A55-10000, A55-10130 and A55-10237.

Please return a conformed copy of this item in the
envelope provided. Thank you for your cooperation. If you have
any questions, please do not hesitate to call.

Very truly yours,

DAVIS WRIGHT TREMAINE



Melinda Anderson
Secretary to Scott Campbell

ma:
Enclosures

MLA\00098.LTR
Boise

FAX: (208) 338-8299

ANCHORAGE, ALASKA • BELLEVUE, WASHINGTON • LOS ANGELES, CALIFORNIA • PORTLAND, OREGON
RICHLAND, WASHINGTON • SEATTLE, WASHINGTON • WASHINGTON, D.C.



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 20, 1992

Silver City Property Owners, Inc.
PO Box 74
Murphy, ID. 83650

RE: Adjudication Claim Nos. A55-04151 (Amended) and A55-10130 in the
Name of Gloria Otto

Dear Interested Party:

This letter acknowledges receipt of the information that the property owners submitted on 1/8/92 regarding the above-referenced claims filed by Gloria Otto. I did not realize until today that a letter of acknowledgement was never sent as required by adjudication procedures.

The information is labeled as an Exception to the claims, and it will be evaluated as part of the adjudication review process while making recommendations to the court regarding the Otto claims. Recommendations will be made by evaluating each claim for completeness, accuracy, and supporting or negating information (such as an Exception). The recommendations will be included in the Director's Report to the court, tentatively scheduled to be completed and submitted to the court in late 1993.

If you are dissatisfied with the department recommendations to the court concerning the above claims, you may file an objection with the court at the proper time.

The claimant will be provided a copy of this letter. A copy of your Exception was provided to her on 1/30/92.

Please let me know if you need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Steve Lester".

Steve Lester
Water Rights Supervisor

CC: Gloria Otto

1 SCOTT L. CAMPBELL
1DAVIS WRIGHT TREMAINE
2 702 W. Idaho St., Suite 700
Boise, Idaho 83702
3 (208) 338-8200

4 Attorneys for Claimants
Carl and Gloria Otto
5
6
7

8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO
9 IN AND FOR THE COUNTY OF TWIN FALLS
10

11 In Re THE GENERAL ADJUDICATION OF) Case No. 39576
RIGHTS TO THE USE OF WATER FROM)
12 THE SNAKE RIVER BASIN WATER) IDENTIFICATION NO. A55-10130
SYSTEM)
13) AFFIDAVIT OF EUDORA TERRY

14
15 Eudora Terry, first being duly sworn, hereby deposes and
16 says as follows:

17 1. The following statements are based upon my personal
18 knowledge and belief.

19 2. This Affidavit is submitted in support of Notice of Claim
20 to Water Right A55-10130, in Civil Case No. 39576, In re The
21 General Adjudication of Rights to Use of Water From the Snake River
22 Basin Water System, presently pending in the District Court of the
23 Fifth Judicial District of the State of Idaho, In and For the
24 County of Twin Falls.

25 3. I have personal knowledge of the spring located in the
26 Northwest Quarter of the Southeast Quarter, Section 6, Township 5
South, Range 3 West, Owyhee County, Idaho, and the use of the water

1 produced from that spring.

2 4. The water from this spring is the source of the Silver
3 City water system, but also provided water by means of a one inch
4 diameter pipeline from the city water tank to the Idaho Power
5 building.

6 5. I resided in the Idaho Power building from ^{1932 Eudora Terry} 1922 until
7 1938 with my husband, Ben Kidder, and six children. Water from the
8 spring which I have identified above, was used in the Idaho Power
9 building for domestic purposes on a year round basis.

10 6. Water from the spring was used in the kitchen, a bathroom
11 with a tub, sink and toilet, laundry facility and stock water for
12 one horse.

13 7. Additionally, some water was used for a small placer
14 mining operation, which was conducted by my husband during the non-
15 winter months.

16 DATED this 27th day of October, 1992.

17 Eudora Terry
18 EUDORA TERRY

19 SUBSCRIBED AND SWORN to before me this 27th day of
October, 1992.

20 Connie L. Farwell
21 NOTARY PUBLIC in and for the State
22 of Idaho, residing at Caldwell, Id
23 My commission expires 7-31-94

IN THE MATTER OF:)

AFFIDAVIT

State of Idaho)
County of _____)

_____ being first duly sworn,
deposes and says: _____

SPRING FED AND PARTLY FROM OVERFLOW FROM THE
CITY WATER RESERVOIR. BASED ON THE DATED
PHOTOGRAPH TAKE BY FRED WALTERS I BELIEVE
OUR VISIT TO SILVER CITY TOOK PLACE IN JUNE
OF 1985.


(Signature)

Subscribed and sworn to before me this 30th day of September, 1991.


(Notary Public)

Residing at Boise, Idaho.
My Commission Expires Dec. 4, 1994.

AFFIDAVIT

Ralph Moses Moore being first duly sworn,

From 1980 to 1987 I worked for short periods of time (from a week to four months) on various projects associated with the Idaho Power property. I built a new garage, an outbuilding, two closed-vault type toilets, and rehabilitated the Idaho Power Building. From the latter, I removed the old bathroom (which had a flush toilet, a bathtub and a hand-washing sink) and the kitchen (which was plumbed to both the city water system and the spring). I installed two new bathrooms and plumbed them so that the water for drinking and cooking

I uncovered the water storage box (4x4x6 feet) which serves the IPB and the log cabin and replaced the lumber, built a new top and installed a new overflow pipe. In 1987 the line from this spring to the Idaho Power building was shortened by a backhoe while levelling the west yard of the IPB. I capped the cut and installed a faucet for temporary use. I preferred using this water for drinking purposes because it was a closed system, was pure and ice cold.

Several times in the years when I was not working for the Otto's or Ned I visited them and observed them using the above mentioned water systems. In the summers since 1985 I have used extensively water from the spring serving the log cabin and IPB, from the flume, from the city water system and from the spring at the white house.

Ralph Masco, Jr.
(Signature)

Subscribed and sworn to before me this 20th day of August, 1991.

Marci Myers
(Notary Public)

Residing at Laurel, Id.
My Commission Expires 3/9/93

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

10:09:28
07/17/91

CLAIM NUMBER: 155-10130

PAGE: 1
GENERAL INFORMATION

LAST: OTTO
ADDRESS: P.O. BOX 56
CITY: MURPHY
PHONE NUMBER: 208-495-2868

FIRST: GLORIA

STATE: ID ZIP: 83650

OWNER CODE: C

FIELD EXAM REQUIRED?

FIELD
EXAMINER

VERIFICATION REQUIRED DUE TO REMARKS?

DATABASE
Y

CLAIM REMARKS:

DESCRIP. OF DIVERTING WORKS: SPRING BOX AND SERVICE PIPING FROM SPRINGS TO BUILDINGS WAS CONSTRUCTED IN THE PAST. WITH RENOVATION OF THE SYSTEM, THIS WATER IS NOW CARRIED THROUGH THE CITY WATER SYSTEM TO THE OWNER'S PROPERTY VIA THE CITY WATER TANK NAD THENCE IN PIPING TO OWNERS BUILDINGS AS WELL AS BEING PICKED UP AS OVER FLOW FROM THE CITY WATER TANK AND IS DELIVERED BY A FLUME AND WATER LINES TO VARIOUS POINTS OF USE ON OWNERS PROPERTY. IF THE CITY SYSTEM FAILS TO CONTINUE TO CONVEY THIS WATER THE SPRING BOX AND PIPING SYSTEM MAY BE RECONSTRUCTED AND UTILIZED TO IMPROVE WATER SUPPLY.

DUE TO THE TENUOUS WATER SUPPLY IN THIS AREA, IT IS IMPORTANT THAT ALTERNATIVE WATER SUPPLIES BE DEVELOPED TO ASSURE A CONSTANT SUPPLY.

*See 3/1/98
recommendations
-jc*

CONTACT PERSON: _____ PHONE NUMBER: (____) ____-____
DATE OF FIELD EXAM: ____/____/____ APPOINTMENT MADE: Y(____) N(____) TIME: ____:____ A(____) P(____)
ACCOMPANIED BY: _____ PHONE NUMBER: (____) ____-____
RELATIONSHIP TO CLAIMANT: _____
DIRECTIONS TO PROPERTY / REMARKS:

STAGE: J

PRIORITY DATE: 01-01-1866

A. AJ CLAIM: # A55-10130

B. WR RECORD: NO WATER RIGHT RECORD TO MATCH THIS AJ CLAIM

C. FIELD EXAM REQUIRED?

FIELD EXAMINER

Y

DUE TO PRIORITY DATE DISCREPANCY? (Y/N)

ARE THERE OBVIOUS REASONS TO QUESTION THE PRIORITY DATE CLAIMED? Y() N()

REMARKS:

RECOMMENDED PRIORITY DATE:

REVIEWED BY

DATE

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TMP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A55-10130	05S	03W	6	NE	SE	NW		OWYHEE

OTHER AJ CLAIMS WITH SAME AJ POD
A PREFIX R PREFIX
A55-04003 NONE L55-07011
A55-04007 55-07409
A55-10205
A55-10204

SOURCE: SPRINGS TRIB: JORDAN CREEK

B. WR POINT OF DIVERSION AND SOURCE:

THERE IS NO WATER RIGHT RECORD WITH THE SAME CLAIM NUMBER

SOURCE: NO SOURCE FOR RECORD TRIB: NO TRIBUTARY FOR RECORD

C. FIELD EXAM REQUIRED?

DUE TO POD DISCREPANCY? (Y/N)	DATABASE	FIELD EXAMINER
DUE TO SOURCE DISCREPANCY? (Y/N)	Y	_____
	Y	_____

REMARKS:

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:				
TWP.	RGE.	SEC.	1/4	COUNTY
SOURCE: _____				
REVIEWED BY: _____				
DATE: _____				

A. ROOT WATER RIGHT NUMBERS: A55-10130

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
05S	03W	6	NW	SE		OTTO, GLORIA	A55-10130 /	/			
			NW	SE		OTTO, GLORIA W.	A55-04151 / 2.0	55-04151 / 2.0			
			NW	SE	19	SILVER CITY TAXPAYERS ASSOC.	IA55-10204 / 1.0				
			NW	SE		WILLIAMS, M. NED		55-02212 /			
			NW	SE		OTTO, CARL W.		55-04006 /			
			NW	SE		STATHAM, WILMA L.		55-04108 /			
			NW	SE		STATHAM, WILMA L.		55-04110 /			
			NW	SE		SILVER CITY TAXPAYERS ASSN. IN		55-07011 /			
			NW	SE	19	SILVER CITY PROPERTY OWNERS AS		55-07409 / 1.0			
			NW	SE	19	SILVER CITY PROPERTY OWNERS AS		55-07411 / 1.0			
			NW	SE	19	SILVER CITY PROPERTY OWNERS AS		55-07412 /			
			NW	SE	19	SILVER CITY TAXPAYERS ASSN. IN		L55-07011 /			
05S	03W	6	NW	SE		OTTO, GLORIA	A55-10130 /	/			
			NW	SE		OTTO, GLORIA W.	A55-04151 / 2.0	55-04151 / 2.0			
			NW	SE	19	SILVER CITY TAXPAYERS ASSOC.	IA55-10204 / 1.0				
			NW	SE		WILLIAMS, M. NED		55-02212 /			
			NW	SE		OTTO, CARL W.		55-04006 /			
			NW	SE		STATHAM, WILMA L.		55-04108 /			
			NW	SE		STATHAM, WILMA L.		55-04110 /			
			NW	SE		SILVER CITY TAXPAYERS ASSN. IN		55-07011 /			
			NW	SE	19	SILVER CITY PROPERTY OWNERS AS		55-07409 / 1.0			
			NW	SE	19	SILVER CITY PROPERTY OWNERS AS		55-07411 / 1.0			
			NW	SE	19	SILVER CITY PROPERTY OWNERS AS		55-07412 /			
			NW	SE	19	SILVER CITY TAXPAYERS ASSN. IN		L55-07011 /			
TOTAL ACRES A55-10130											

ARE IRRIGATED ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, Y() N()
IF YES SEE ATTACHED SHEET:

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE
Y

FIELD
EXAMINER

PRESUMPTION FLAG:

REMARKS:

RECOMMENDATIONS:

TOTAL ACRES: _____

REVIEWED BY: _____

DATE: _____

A. AJ CLAIMED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
A55-10130 DOMESTIC	FROM 01-01 TO 12-31	.020 CFS
A55-10130 COMMERCIAL	FROM 01-01 TO 12-31	.040 CFS
TOTAL DIVERSION RATE/VOLUME CLAIMED		.060 CFS
		45.00 AF/A

B. WR RECORDED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
----------	-----------	--------------------

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

	DATABASE	FIELD EXAMINER
DUE TO WATER-USE DISCREPANCY? (Y/N)	Y	_____
DUE TO DIVERSION RATE DISCREPANCY? (Y/N)	Y	_____
DUE TO PERIOD FROM/TO DISCREPANCY? (Y/N)	Y	_____

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y() N()

RECOMMEND TO WR STANDARDS OR OTHER?

Y() N() Explain in remarks, below.

REMARKS:

$$Y(\overline{})N(\overline{})$$

0.060 CFS

*** IF NO or IF STATUTORY CLAIM or BENEFICIAL USE then flow measurement required. ***
 ** If an amount smaller than the original diversion rate is **
 ** claimed and an exam is NOT required, explain in remarks. **

FLOW MEASUREMENT REQUIRED?

**FIELD
DATABASE EXAMINER
Y**

FLOW MEASUREMENT

MEASUREMENT METHOD _____, SEE ATTACHED CALCULATIONS.

C. ARE OTHER WATER RIGHTS USED? Y (Y) N () IF YES COMPLETE OVERLAP REVIEW.

OTHER RIGHTS LISTED IN CLAIM: 57-7011, 55-4006, 55-4151.

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

CLAIM	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A55-04151	SPRING	OTTO , GLORIA W.	0.070	0.035	33.00	16.50
NO RIGHTS WITH SAME POB BUT NOT USED FOR IRRIGATION						

D.

1a. IRRIGATION RATE

ACRES x 0.02 CFS/ACRE = CFS

(Taken from p/u review)

1b. CALCULATIONS

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y() N()

*** IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y() N() ***

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = AF/A

ACRES x CONSUMPTIVE VOL. AF/A FOR AREA =

TOTAL CONSUMPTIVE USE AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = 45.00 AF/A

ACRES x DIVERSION VOL. AF/A FOR AREA =

TOTAL DIVERSION VOLUME AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y() N()

REMARKS: (Include limitations on CONSUMPTIVE USE for combined rights.)

**REC.
PURPOSES**

REC. PERIOD
FROM TO

REC. DIV
RATE CFS

REC. DIV
VOL. AF/A

**REC. CONS.
USE**

DATABASE EXAMINER

DATABASE EXAMINER

DATABASE EXAMINER

TOTAL FOR THIS RIGHT

REVIEWED BY:

DATE:

1

A. CHECK ONLY THE FOLLOWING THAT APPLY:

OWNERSHIP _____
FORFEIT/ABANDON _____
ADDITIONAL DIV. AMOUNT _____

ACCEPTED AS CLAIMED	NEEDS REVIEW
()	()
()	()
()	()

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 55-10130

TOTAL DIVERSION RATE OF WR SPLITS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
-	A55-10130	0.060	-	-	-

TOTAL CFS 0.060

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)
IF NO, is the written review sheet attached? (Y/N)

DATABASE
N

FIELD
EXAMINER

REMARKS:

AUTHENTICATION:

SIGNATURE: _____

DATE: _____

NAME OF FIELD EXAMINER: _____

TITLE: _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

10:09:28
07/17/91

PAGE: 13
QUICKLOOK INFORMATION

CLAIM NUMBER: A55-10130

WR ELEMENT	FIELD EXAM Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	VERIFIED BY CODE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE	Y							
POINT OF DIV	Y							
SOURCE	Y							
PLACE OF USE	Y							
DIV. AMOUNT CFS/VOLUME	Y							
CONSUMPTIVE USE	-							
PURPOSES	Y							
PERIOD OF USE	Y							
BASIS OF CLAIM	Y							
REMARKS	Y							

"VERIFIED BY" CODES

TOPO MAP/ORTHO-PQ = 1
ASCS MAP = 2
WATERMASTER RECORDS = 3
NAPP PHOTOS = 4
FIELD EXAM = 5
OTHER (SEE REMARKS) = 6

THESE CODES ARE USED TO INDICATE HOW THE FIELD EXAMINER VERIFIED THE INFORMATION
USED FOR THIS FIELD EXAMINATION. INDICATED ARE ALL CODES WHICH APPLY.



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

November 27, 1990

CECIL D. ANDRUS

Mr. Bruce M. Smith
Rosholt, Robertson, Tolman & Tucker
Attorneys at Law
P.O. Box 2139
Boise, ID. 83701-2139

GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

RE: Permit 55-07011

Dear Bruce:

In response to your 11/20/90 letter requesting a copy of the field exam and license recommendation for the above permit, please refer to my 11/19/90 letter and the following summary. Licensing of the permit will be delayed but addressed in the adjudication review period during 1991 and possibly early 1992.

The field exam report is not complete enough to provide a meaningful copy; a summary is provided instead. At this point, the preliminary license recommendation includes the following points.

1. Point of diversion - spring (locally known as City Spring) in T5S, R3W, S. 6 SENW.
2. Place of use - 11 domestic units in T5S, R3W, S. 6 SWNE (Gov't. Lot 17), SENE (Lot 18), NESE, NWSE (Lot 19).
3. Use - domestic (internal and external), 1/1-12/31, 0.20 cfs, 13.2 afa (yearly volume). Refer to the attached map for the 11 units.

All other units on the map are covered by the association's a) beneficial use adjudication claim A55-10204, which includes domestic use for one unit at Ottos' IPB, with a 9/1/1968 priority date, or b) permit 55-07409, which covers commercial use at Otto's IPB, with a 4/23/1990 priority. An adjudication claim is not required for new permits such as 55-07409. Additional claims for the City Spring were filed by several parties to portray uses at individual units, e.g. Ottos' A55-10130 claim for commercial and domestic uses at IPB. The conflicting and/or overlapping claims, along with permit 55-07011, should be resolved via the adjudication field work, review, and recommendations.

The Ottos will be contacted prior to any field work related to their claims. You are certainly welcome to be present during such field exams. Please let me know if additional information is needed.

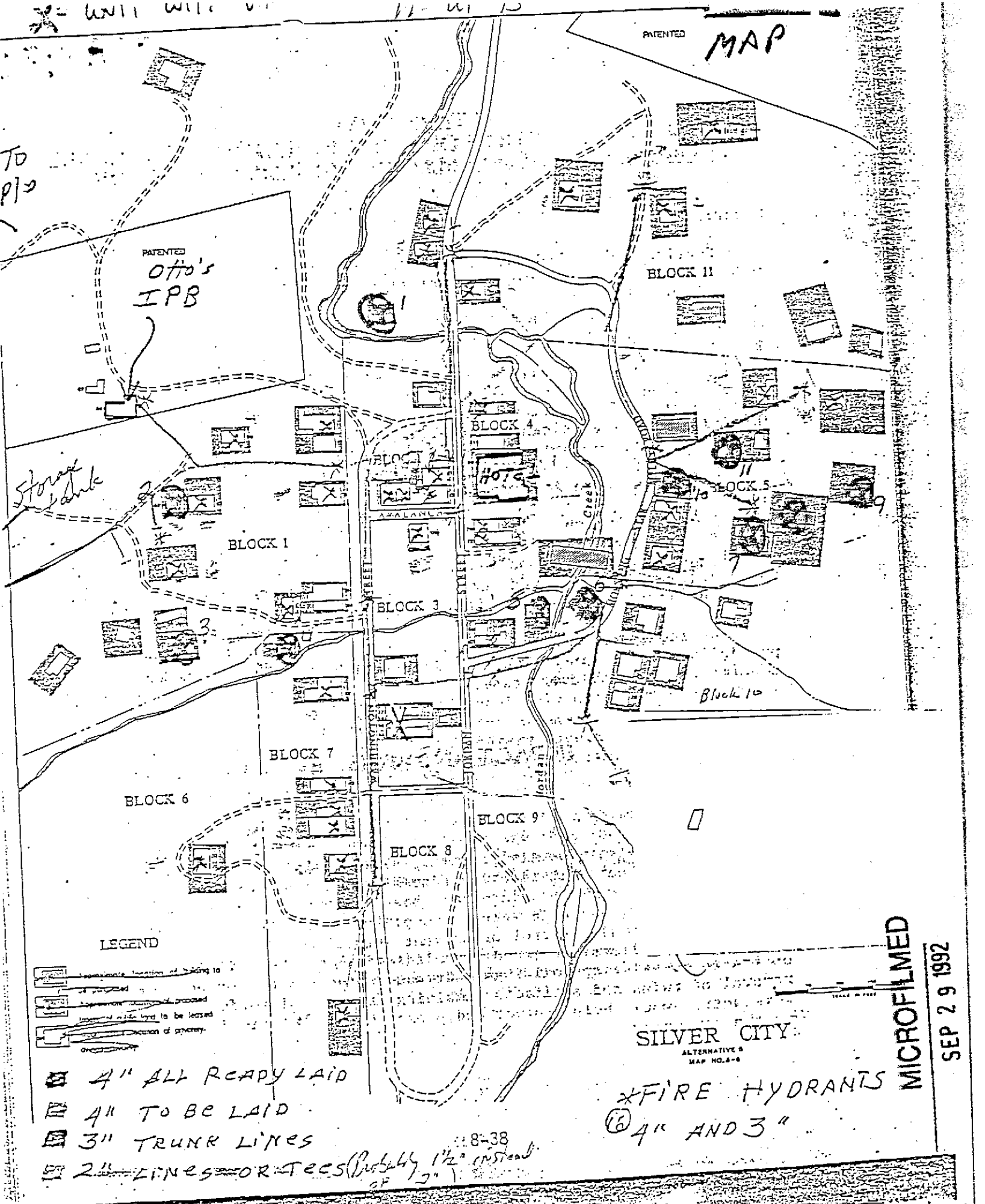
Sincerely,

Steve Lester
Sr. Water Resource Agent

Enclosure

MICROFILMED

SEP 29 1992



MICROFILMED

SEP 29 1992

THIS SHOWS UP GRADING IN PROCESS TO IMPROVE WATER DELIVERY TO HOME

ROSHOLT, ROBERTSON, TOLMAN & TUCKER

Chartered

ATTORNEYS AT LAW

1020 MAIN STREET

SUITE 400

P.O. BOX 2139

BOISE, IDAHO 83701-2139

TELEPHONE (208) 336-0700

FAX (208) 344-6034

Twin Falls Office

142 3rd AVENUE NORTH

P.O. BOX 1906

TWIN FALLS, IDAHO 83303-1906

TELEPHONE (208) 734-0700

FAX (208) 736-0041

JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER
TERRY R. McDANIEL
GARY D. SLETTE
JERRY JENSEN
F. BRUCE COVINGTON
CAROLYN M. MINDER
BRUCE M. SMITH
G. RICHARD BEVAN
GARY L. QUIGLEY
TIM J. WILLIAMS
JUSTIN R. SEAMONS
JOHN O. FITZGERALD

November 20, 1990

Steve Lester
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: Carl and Gloria Otto Water Rights/Claim Nos:
A55-10204, A55-10130, Permit No. 55-7011

Dear Steve:

Thanks for meeting with me to discuss the Silver City water rights situation. Mr. and Mrs. Otto are very interested in the situation and simply want to make sure their water rights are protected.

As part of this process, would you please send me a copy of the field exam and recommendation for licensing of permit No. 55-7011. Also, please accept this letter as notice that the Otto's would like to participate when you get ready to do the field exam on their adjudication claim in the summer of 1991. Thanks again for your help in addressing this matter.

Sincerely,



Bruce M. Smith

BMS/dj
54831

cc: State Office - adjudication section
Dave Tuthill

MICROFILMED
SEP 29 1992



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

November 8, 1989

Gloria and Carl Otto
 P.O. Box 56
 Murphy, ID. 83650

Paul Nettleton, President
 Silver City Taxpayers Association, Inc.
 Murphy, ID. 83650

Re: Permit 55-07011

Dear Interested Parties:

The above permit concerns the city spring and domestic use for 40 units in the Silver City area. I conducted a licensing field exam on 11/5/87 and made licensing recommendations to the department's State Office. The report was returned to me to clarify some details.

The rate of flow recommended for licensing is 0.20 cfs or 90 gpm as confirmed by D. Eytchison's telephone response to my 8/2/89 letter to the Silver City Taxpayers Association, Inc. (SCTA). The final issue to resolve concerns the particular units to be licensed. For the remainder of this letter, the Otto's Idaho Power Building will be the IPB, and the historic downtown hotel will be called the Hotel. Please refer to the attached revised map. The map identifies 40 domestic units hooked to the SCTA water system. Also shown are the IPB and Hotel, which I realize are connected to the SCTA water system. What to do about the latter two connections is the question to be resolved.

I address both parties because you need to reach an agreement that will allow me to make a final license recommendation for permit 55-07011. The complex and disputed situation cannot be resolved without a consensus. I urge you to review the following information and reach an agreement. The key point to remember is that the license to be issued cannot exceed the limits of the permit. Domestic use for 40 units or the equivalent thereof may be licensed. For example, any non-domestic use included in licensing must be accompanied by an equivalent reduction in the amount of domestic water provided by this right. Any other interpretation would be an expansion of the water right and cannot be condoned in the licensing process. In this respect, my previous recommendation to license 40 homes and the commercial use at the Hotel was incorrect.

According to the adjudication claims filed by Gloria, water use at the IPB has included irrigation, industrial, commercial, and domestic uses via three water rights. Two statutory claims and one beneficial use (grandfather) adjudication claim cover the IPB. The statutory claims 55-04006 and 55-04151 and their subsequent adjudication filings are not an issue in permit 55-07011. Thus, irrigation and industrial uses are not an issue in licensing the permit. However, the beneficial use adjudication claim A55-10130 is an issue. The claim states the following:

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SEP 29 1992

Permit 55-07011, 11/8/89 letter
page 2

date of priority = 1/1/1866; source = city spring as in Permit 55-07011;
amount = 0.02 cfs domestic and 0.04 cfs commercial for 0.06 cfs total; and
use = domestic 1 home and commercial 1 hostel for up to 14 people (both
uses within the IPB).

Thus, the claim records domestic and commercial use of the city spring at the IPB dating to 1866. This is the same domestic and commercial use indicated by the Ottos et al for permit 55-07011. Various correspondence and telephone conversations mention that the IPB has been connected to the SCTA system for some time. It is possible to include domestic and perhaps commercial use at the IPB in licensing the permit. It is possible to include the uses in adjudication claim A55-10130. However, the inclusion cannot occur under both rights. A choice must be made.

Claim A55-10130 refers to 0.02 cfs for one domestic and 0.04 cfs for the hostel. The allowable rate for each domestic use within the limits of the permit is 0.005 cfs or 2.2 gpm (0.20 cfs divided by 40 units equals 0.005 cfs per unit). If the domestic use at the IPB is included on permit 55-07011, then the allowable rate for the IPB domestic use is 0.005 cfs, and the last home of the 40 hooked to the SCTA system must be removed from the permit to maintain the 0.20 cfs limit. Removal from the permit does not mean to disconnect the pipes; the reference applies to proper water right coverage only. Likewise, if the commercial use at the IPB is to be licensed in the permit at 0.04 cfs (as shown in the adjudication claim), the equivalent domestic users must be removed from the permit. This means that the eight homes connected to the system just prior to the last home as mentioned above would be removed from the SCTA permit (0.04 cfs divided by 0.005 cfs equals 8 units). To determine the number of homes that would be removed from the permit beginning with the most recent homes hooked up and working backwards in time, divide any non-domestic use cfs rate by 0.005 cfs. If the IPB domestic and/or commercial use is included in the permit, the homes removed from the permit will need some type of water right coverage, most likely applications for permit for new appropriations.

If, however, the domestic and commercial uses at the IPB are to be covered by the 1866 priority in A55-10130, the 40 units marked on the attached map can be recommended for licensing. This scenario implies that the two uses at the IPB have a prior call on the water delivered by the SCTA system (older priority of A55-10130 versus 55-07011). Please remember that statutory claims and adjudication claims are water rights not verified by this department. Such claims are only verified by ripening into decreed rights through a court action. Licenses, on the other hand, are verified rights through department field work and related licensing procedures. An attorney should be consulted on any points of law in question.

The same reasoning applies to the Hotel. It may be possible that the Hotel has received water through the SCTA system at least since 8/16/1971 when the permit was filed and should therefore be included in the license. If so, the appropriate number of junior domestic sites would be eliminated from the permit. An alternative to the preceeding thought concerns filing an adjudication claim for the city spring for use at the Hotel (similar concept

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SEP 29 1992

Permit 55-07011, 11/8/89 letter
page 3

found in the Otto claim A55-10130). This could be done if use at the Hotel occurred by 5/20/1971, which allows establishing a grandfather right, and if water use continued for at least once every five years. As in the IPB, such a claim implies a priority to the water before the SCTA permit. If a late adjudication claim is filed for the city spring and Hotel, the late fee might be waived due to my earlier recommendation to include the Hotel in the permit. Again, water use at the Hotel may be covered in the permit or an adjudication claim but not in both. A choice must be made.

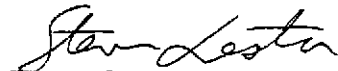
You should be aware that adjudication claims may be protested. Similarly, applications for permit for new appropriations may be protested. The department will respond to any protests received.

To summarize this confusing situation, some decisions must be made before licensing proceeds. Currently, the following is found.

- 1) Permit 55-07011 with a 1971 priority for 0.20 cfs or 90 gpm for 40 domestic units or the equivalent thereof using the SCTA system;
- 2) Adjudication claim A55-10130 with a 1866 priority for 0.06 cfs or 27 gpm for domestic and commercial uses at the IPB using the same SCTA system;
- 3) Beneficial use from the same SCTA system for the Hotel with an unspecified priority for a suggested 0.04 cfs for commercial purposes.
- 4) Numbers 1 through 3 must be reconciled to provide:
 - a) no more than 0.20 cfs for uses in permit 55-07011, and
 - b) proper water right coverage for all users supplied through the SCTA system.

Gloria visited this office recently and indicated that she and her husband will be in California for several months. Please discuss the situation and inform me of your decision as soon as your schedules allow. If I do not receive a reply by June 1, 1990, I will recommend that the license include domestic use for the 40 units indicated with a X on the enclosed map. Let me know if I can provide additional help.

Sincerely,



Steve Lester
Sr. Water Resource Agent

Sl: sl

Enclosure: map

CC: B. Bruegman, B.L.M., Boise District Office

MICROFILMED

SEP 29 1992

X = UNIT WITH WATER

Revised MAP

55-7011

11/8/89

PATENTED

TO
P/O

PATENTED
OTTO'S
IPB

BLOCK 11

Storage
tank

BLOCK 1

BLOCK 4

BLOCK 5

BLOCK 3

BLOCK 7

BLOCK 6

BLOCK 9

BLOCK 8

BLOCK

LEGEND

- Approximate location of building to be purchased
- Approximate location of proposed tracts of public land to be leased
- Approximate location of privately owned property

4" ALL READY LAID

4" TO BE LAID

3" TRUNK LINES

2" LINES OR TEES (Probably 1 1/2" instead of 2")

8-38

SILVER CITY

ALTERNATIVE 5
MAP NO. 8-6

* FIRE HYDRANTS
⑥ 4" AND 3" MICROFILMED

SEP 20 1992

THIS SHOWS UPGRADING IN PROCESS TO IMPROVE WATER DELIVERY TO HOME

A F F I D A V I T

I, Leo Hampton, of P.O. Box 1603, Edmund, OK 73034
Post Office Address

do hereby affirm that I have personal knowledge of the spring located in
the 1/4, 1/4, Section 6, Township 5S, Range 3W.

Information I can formally attest to is as follows:

1. Source of water City water system
2. Date of first use of water 1922 (for us 1980)
3. Nature of use domestic and commercial
4. Quantity of water diverted one-inch pipe at pressure of 175 feet
below city water tank.
5. Use of water by this owner domestic-commercial, camp for four to ten people in summers,
gold and silver concentrator, mining.
6. Other information We leased placer mining claims from Gloria
Olbo from 1980 - 1985 and worked 1986 - 87 also.

X Leo Hampton
Signature

STATE OF OKla
County of Okla

Subscribed and sworn to before me this 23 day of Nov, 1988.

(NOTARY SEAL)

Glenda Lyle
Notary Public
8-27-89

AFFIDAVIT

I, Jean O'Neill, of 199 Brown, Providence, RI 02906
Post Office Address

do hereby affirm that I have personal knowledge of the spring located in
the NW 1/4, SE 1/4, Section 6, Township 5S, Range 3W.

Information I can formally attest to is as follows:

1. Source of water spring, tunnel and flume
2. Date of first use of water 1922
3. Nature of use domestic and agricultural
4. Quantity of water diverted variable, about two gallons per minute
5. Use of water by this owner _____

6. Other information My family had a vegetable garden during the
summers of 1972 and 1973. We used the water for domestic
purposes in 1972.

Jean O'Neill
Signature

STATE OF Rhode Island
County of Providence

Subscribed and sworn to before me this 27 day of November, 1987.

(NOTARY SEAL)

Dennis J. McShane
Notary Public

Commission expires June 30, 1991

BY HIS EXCELLENCY EDWARD D. DiPRETE

Governor, Captain-General and Commander-in-Chief of the

f Rhode Island and Providence Plantations.

McSWEENEY

GREETING:

N.N.I.S. F. M.C.S.W.E.E.N.E.V. having been duly appointed to the place

NOTARY PUBLIC

said, for the term ending June 30, 1991 are hereby, in the name of the State of Rhode Island and
ations, commissioned, authorized and empowered to do all things by law required and appointed
tate aforesaid; and for so doing this Commission shall be your sufficient warrant and discharge.

Edward D. DiPrete

Governor.

Susan L. Farmer

Secretary of State.

INTRODUCTION

This Exhibit 4 provides data on the building, "this building," which was originally built as a Storehouse; subsequently it was converted into a domicile/substation and became known as the Idaho Power Building; it was rehabilitated in the 1980s and is now a Group Hostel, catering to students and groups of all ages who are interested in the history, archaeology, geology, plants and animals of Owyhee County, in Silver City and its environs, and in the cattle and mining industries.

Exhibit 4b (a photograph) shows "this building" as it appeared in 1887 as a 20 x 50 foot, one-story structure. Fred Walters, Idaho State Historic Preservation officer, recommended a date prior to 1875 as the time of original construction based on a photograph which he submitted to the Owyhee County Commissioners and to the National Trust for Historic Preservation.

Exhibit 4c is a copy of a portion of the Map of Silver City prepared by the Sanborn Map Company and published in 1903; its primary purpose was to show the water/fire protection facilities in the town. Note that it shows this building as being half substation and half domicile.

Exhibit 4d is a photograph which shows the building as it appeared in 1985.

This building nestles in a secluded cove in the northwest section of Silver City, Idaho. In the background is a grove of quaking aspen trees formerly nurtured by the overflow and leakage from the city water system. The old wooden tank which leaked profusely has been abandoned, and when there is no precipitation, the grove now depends solely on the overflow from the new tank and the water furnished through pipes and hoses connected to the city's distribution system.

Part of the foundation of this building rests on stones identical to those of the foundation of the Lincoln Mill. The two-story part of the building was added in the 1930's by Ben Kidder, substation operator for the Idaho Power Company, to provide more living space for his wife and family of six children.

Gloria Otto rehabilitated the building under the guidance of Fred Walters (Chairman of the Idaho State Historical Preservation Commission) and David Cooper, an architect with CSW Associates of Boise. The color design and the original archaeological measurements and drawings were done by Karl Richard Williams, architect with Williams and York of Boise, Idaho. The building contractor was Ralph Moore of Boise, Idaho. Work was done in increments beginning in 1979. The landscaping has not been finished.



WASHINGTON

CLINTON

WAR EAGLE HOTEL

LINCOLN STAMP MILL.

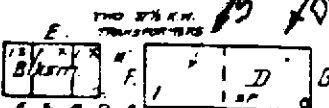
TOP TOP MINING CO. OWNED.
POWER STATION - WATER FOR MILLING PURPOSES ONLY.
NO FIRE APPS. - FIRE FIGHTER LIVES ON PREMISES.
NOT IN OPERATION.

50

SEE ABOVE

ONYHEE ELE. LY. CO'S
TRANSFORMER STATION.

SUB-STATION
DOMICILE



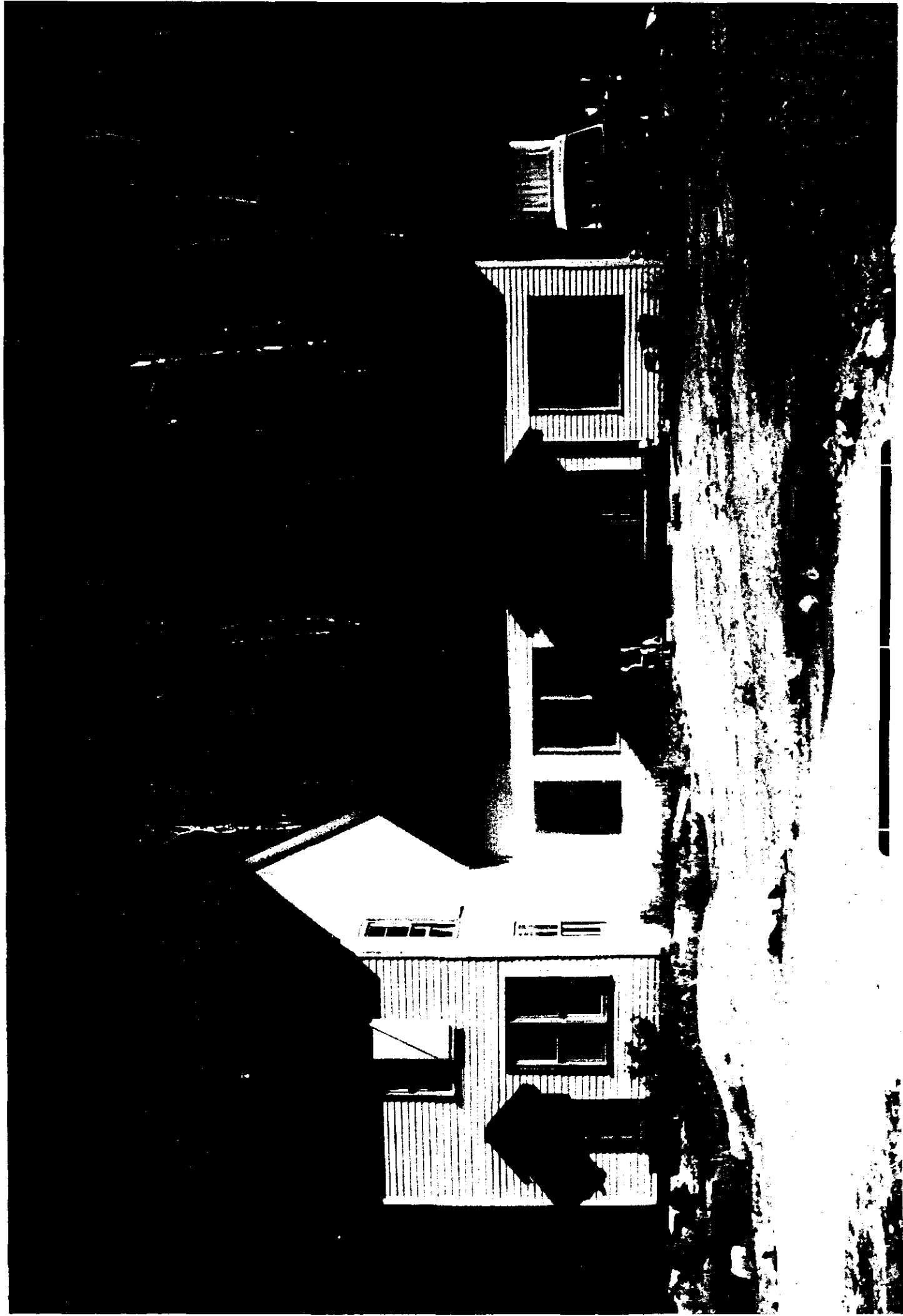


EXHIBIT 4 d

FILED
11:41 AM P.M.
FEB 12 1981
BARBARA JAYO, CLERK
Mary Taylor

DAVID E. COMSTOCK
ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 BANK OF IDAHO BUILDING
P. O. Box 1559 BOISE, IDAHO 83701
PHONE (208) 343-8454

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF OWYHEE

CARL OTTO and GLORIA OTTO,
husband and wife,

Plaintiffs,

v.

TIP-TOP GOLD MINING AND
MILLING COMPANY, a defunct
Idaho corporation; BANNER
MINING AND MILLING COMPANY,
an Idaho corporation; THE
UNITED STATES OF AMERICA,
DEPARTMENT OF INTERIOR,
BUREAU OF LAND MANAGEMENT;
and DOES I through V,

Defendants.

Case No.: 4231

ORDER OF DEFAULT AND
JUDGMENT QUIETING TITLE
TO REAL ESTATE

THIS MATTER Having come before the Court upon Plaintiffs'
Motion for Order of Default and Judgment and the Court having
requested an evidentiary hearing to establish Plaintiffs' claim
of title and adverse possession and the Court having heard the
testimony of Joseph Gawron, Bureau of Land Management, Surveying
Department Director, Carl Otto and Gloria Otto, the Plaintiffs,
Joan Bachman, Owyhee County Treasurer and Tax Collector, and
Tom Brunzel, Owyhee County Assessor, and it further appearing to
the Court from the records, files and affidavits herein that
Defendants Tip-Top Gold Mining and Milling Company, Banner Mining
and Milling Company, and Does I through V were served by publication
of the Summons in the Owyhee Nugget once a week and every week for
four (4) consecutive weeks, the first publication being on the
6th day of March, 1980 and the last publication being on the
27th day of March, 1980, and that a copy of the Summons and

ORDER - 1

1 Complaint was mailed to the last-known addresses of Defendants
2 Tip-Top Gold Mining and Milling Company and Banner Mining and
3 Milling Company within the ten (10) days following the Order for
4 Service by Publication of Summons, that in addition, Richard
5 Ludovic, Registered Agent for Defendant Banner Mining and Milling
6 Company, was personally served with Another Summons and Complaint
7 on July 16, 1980, and that said Defendants have failed to appear,
8 answer or otherwise plead in person or at all; and the Plaintiffs
9 having filed herein an Affidavit from which it appears that the
10 Defendants are not in the military service of the United States or
11 of the State of Idaho and are not incompetent persons, and that the
12 allegations of Plaintiffs' Complaint are true and good cause appear-
13 ing therefor:

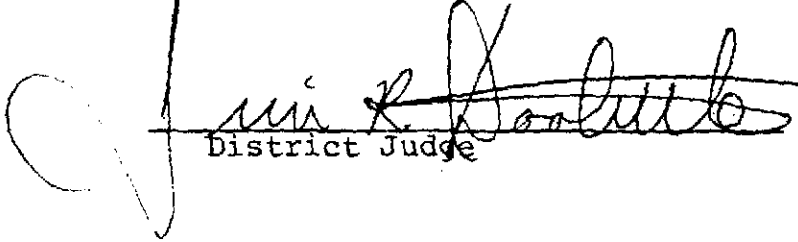
14 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
15 DECREED, That the Defendants, Tip-Top Gold Mining and Milling
16 Company and Banner Mining and Milling Company and Does I through
17 V, are in default and default judgment is hereby entered as and
18 against said Defendants, and

19 IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED,
20 That the Plaintiff Gloria Otto owns absolutely and is entitled to
21 quiet and peaceful possession as against Defendants Tip-Top Gold
22 Mining and Milling Company, Banner Mining and Milling Company and
23 Does I through V and all unknown persons and those claiming by or
24 under them; to the property legally described in Exhibit "C" of
25 Plaintiffs' Complaint as follows:

26 Commencing at the 1/4 Section Corner common
27 to Section 6, T5S, R3W, B.M. and Section 1,
28 T5S, R4W, B.M.; thence S. 80°38'17"E., 3,500.806
29 feet to Corner No. 1 of the Tip Top Mill Site
30 Survey 1303B, which corner is THE REAL POINT OF
31 BEGINNING; thence N. 32°25'09" W. 330.88 feet;
32 thence N. 48°09'34" E. 375.00 feet; thence S.
32°25'09" E. 205 feet; thence N. 48°09'34" E.
65.00 feet; thence S. 32°25'09" E. 125.88 feet;
thence S. 48°09'34" W. 440.00 to THE REAL POINT
OF BEGINNING. The above described tract of land
contains 3.016 acres, more-or-less.

That Defendants and all unknown persons and those claiming by or under them have no estate, right, title, lien or interest in or to said property or any part thereof, and that title to said property be quieted in Plaintiffs against all claims of said Defendants and all unknown persons and those claiming by or under them; and that said Defendants and all unknown persons and those claiming by or under them are hereby permanently enjoined from asserting any estate, right, title, lien or interest in or to said property or any part thereof adverse to Plaintiffs. Plaintiffs to bear their own costs.

DATED this 11th day of February, 1981.


District Judge

FILED
FEB 10 1981
BARBARA LAY, CLERK
Mary Taylor

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ELAM, BURKE, JEPPESEN, EVANS & BOYD
1010 BANK OF IDAHO BUILDING
P. O. BOX 1859 BOISE, IDAHO 83701
AREA CODE 208 343-5454

Plaintiffs
Attorneys for _____

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF OWYHEE

CARL OTTO and GLORIA OTTO,
husband and wife,

Plaintiffs,

v.

TIP-TOP GOLD MINING AND
MILLING COMPANY, a defunct
Idaho corporation; BANNER
MINING AND MILLING COMPANY,
an Idaho corporation; THE
UNITED STATES OF AMERICA,
DEPARTMENT OF INTERIOR,
BUREAU OF LAND MANAGEMENT;
and DOES I through V,

Defendants.

Case No. 4231

JUDGMENT AS TO DEFENDANT
UNITED STATES OF AMERICA,
DEPARTMENT OF INTERIOR,
BUREAU OF LAND MANAGEMENT

This matter having come before the Court upon plaintiffs'
Motion for Entry of Judgment as to Defendant United States of
America, Department of Interior, Bureau of Land Management, and
the stipulation by and between Warren S. Derbidge, Assistant
United States Attorney, attorney for said defendant, and David E.
Comstock, attorney for plaintiffs, and the Court having reviewed
the pleadings and documents already on file herein and good cause
appearing therefor:

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
That the plaintiffs ~~Carl Otto and~~ Gloria Otto ^{is} ~~owns~~ ^{is} absolutely and
~~are~~ ^{is} entitled to quiet and peaceful possession of the property

legally described in Exhibit "C" of plaintiffs' Complaint on file herein as follows:

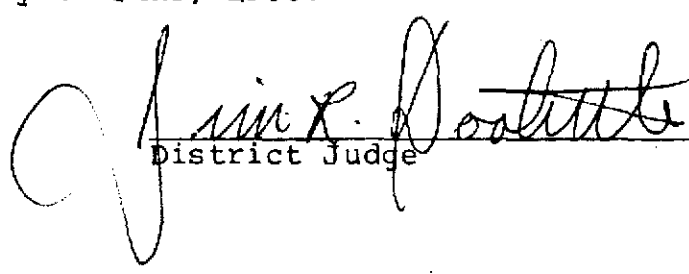
Section 6, T5S, R3W, B.M.

Commencing at the 1/4 Section Corner common to Section 6, T5S, R3W, B.M. and Section 1, T5S, R4W, B.M.; thence S. 80°38'17" E., 3,500.806 feet to Corner No. 1 of the Tip Top Mill Site Survey 1303B, which corner is THE REAL POINT OF BEGINNING; thence N. 32°25'09" W. 330.88 feet; thence N. 48°09'34" E. 375.00 feet; thence S. 32°25'09" E. 205 feet; thence N. 48°09'34" E. 65.00 feet; thence S. 32°35'09" E. 125.88 feet; thence S. 48°09'34" W. 440.00 feet to THE REAL POINT OF BEGINNING. Tyhe above described tract of land contains 3.006 acres, more-or-less.

as against defendant United States of America, Department of Interior, Bureau of Land Management, and all persons, whether known or unknown, claiming by or under said defendant; that said defendant and all persons known or unknown claiming by or under them have no estate, right, title, lien or interest in or to said property or any part thereof and that title to said property is hereby quieted in plaintiffs ^{Gloria Otto JMA} against all claims of said defendant and all persons known or unknown claiming by or under said defendant; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED That said defendant and all persons known or unknown claiming by or under them is and are permanently enjoined from asserting any estate, right, title, lien or interest in or to said property or any part thereof adverse to plaintiffs.

DATED This 6th ^{February, 1981} day of ~~June~~, 1980.


District Judge



ELAM, BURKE, JEPPESEN, EVANS & BOYD
ATTORNEYS AT LAW
1010 BANK OF IDAHO BUILDING
P. O. BOX 1259
BOISE, IDAHO 83701

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FIRE! FIRE! FIRE!!!

The Court House and Jail Burned to the ground, and two human beings perished in the flames.

On Sunday last, at about 1:30 o'clock, P. M., the cry of fire was heard, and as the excited populace rushed out of doors, they beheld a small volume of smoke breaking from the northwest corner of the jail underneath the courthouse. As quickly as possible the scene of the conflagration was reached, by the excited crowd, when it was found that the jail door could not be reached, by the door opening into the jailor's room, by reason of the flames and smoke, a window was, however, broken out, and through this Mr. J. W. Stoddard and Sheriff Leonard reached the jail door, which Mr. Stoddard unlocked and swung open. The jail was in flames on the inside, and nothing of the two prisoners could be seen. One was heard groaning. Mr. Stoddard and Mr. Leonard shouted at the top of their voices for them to come out, but there was no response other than a groan. Mr. Leonard and Stoddard were powerless to render any assistance, and as they were nearly suffocated with smoke, they had to retreat to the outside, where an anxious crowd were looking for the prisoners to emerge from the burning jail. When the two gentlemen returned without them, a picture of despair could be seen upon each expectant countenance. Everything was done to save the building that could be, but so rapidly did the flames grow but few of the records were saved from the Recorder's office. Mr. Harley, the assessor, and J. H. Wickersham, probate judge saved nearly all their books and papers. Judge Lynam Auditor and Recorder, through excitement and fatigue became completely exhausted, and fell upon the floor in the hallway of the court house, and was carried out by Sam Slate. In less than fifteen minutes after the alarm of fire was given the court-house could not be entered. Many of our citizens worked nobly to extinguish the flames but to no purpose. Among them were, Jack Stoddard, Jim Conkley, Prof Robertson, Alex, McDonald, John Conkley, Frank McMahon, E. Lewis, and many others whose names we have forgotten. No water was to be had and in lieu thereof, snow was used. By 2 o'clock the old court house, with its furniture, books and papers, that had stood the weather and Owyhee storms for nearly twenty years, was wrapped in flames, and our citizens gazed upon the scene, and witnessed being burned to the ground a building that had cost the county over \$40,000 in hard cash. The old records were all destroyed together with papers of every description. The wind wafted the flames away from the Grand Jury room and the residence of Capt. Drew, which would otherwise have been consumed by the flames. At 3 o'clock the inside of the building fell and one of the four chimneys. At dark the upper part of the building had all burned, and men commenced to shovel snow on the floor of the jail. At about 8 o'clock the body of (Ah Moq) a Chinaman, committed for burglary, was found partly burned, in the southwest corner of the jail, and the next morning that of Fred Woodworth was found on the floor opposite. Both had fallen on their faces. A knife, with the blade open was found near the head of Woodworth, which has led some to think that he killed himself after setting the jail on fire. This, however, is merely an opinion. The sheriff says it was not possible for the fire to originate from the stove, and that it must have caught from a pipe of Woodworth or the Chinaman. If the latter hypothesis is the correct one, could not the prisoners have extinguished the same without any difficulty? The loss to the county is a serious one, which the tax-payers will feel for many days to come. The board of County Commissioners met on Tuesday and purchased the building connected with the Avalanche Office, renting the Idaho Hotel, which is now being converted into offices for the various county officials.

NOTICE TO THE PUBLIC.—Notice is hereby given to those having conveyances or other documents that have been recorded in the office of the Recorder of Owyhee County, Idaho Territory, it is to their interest to examine and ascertain if they are recorded in the following books, to-wit: I. P. Q. R. S. T., of deeds; books 1, 2, 3 and 6, of mining claims; book 3, of land claims and water rights; book 1, of chattel mortgages; book 2, of leases and liens; book 4, of land and pre-emption claims; book 4, of assignments, and, if not, it would be better for such parties to have them re-recorded, as all of the balances of the records were destroyed by the fire which consumed the Court House on Sunday, the 13th day of April, 1884. JAMES LYNAM, County Recorder.

EXHIBIT 9 a

The above was
printed in the
Owyhee Avalanche
of April 18, 1884