

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A37-00353D  
Date Received: 10/17/1988  
Receipt No: S003007  
Received By: SCC

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: ROBERT GARDNER 208-788-2568  
Address: BOX 470  
BELLEVUE, ID 83313  
OR  
Name: KATHRYN GARDNER 208-788-2568  
Address: BOX 470  
BELLEVUE, ID 83313

2. Date of Priority: JUN 12, 1886

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

4. Point of Diversion:

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

5. Description of diverting works:  
DISTRICT #45 CANAL

6. Water is used for the following purposes:

| Purpose    | From  | To    | C.F.S | (or) | A.F.A. |
|------------|-------|-------|-------|------|--------|
| IRRIGATION | 04/01 | 11/01 | 3.600 |      |        |

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

8. Total consumptive use is 800.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

| Township | Range | Section | 1/4 | of | 1/4 | Lot | Use           | Acres |
|----------|-------|---------|-----|----|-----|-----|---------------|-------|
| 01N      | 19E   | 18      | SW  |    | NE  |     | IRR           | 40.0  |
|          |       |         | SE  |    | NE  |     | IRR           | 40.0  |
|          |       |         | NE  |    | SE  |     | IRR           | 40.0  |
|          |       |         | NW  |    | SE  |     | IRR           | 40.0  |
|          |       |         | SW  |    | SE  |     | IRR           | 40.0  |
|          |       |         | SE  |    | SE  |     | IRR           | 40.0  |
|          |       |         |     |    |     |     |               |       |
|          |       |         |     |    |     |     | Section Acres | 240.0 |
|          |       | 19      | NE  |    | NE  |     | IRR           | 40.0  |
|          |       |         | NW  |    | NE  |     | IRR           |       |
|          |       |         |     |    |     |     | Section Acres | 40.0  |
|          |       |         |     |    |     |     | Total Acres   | 280.0 |

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:

A37-00418D, A37-00419D, A37-02345, SEE REMARKS.

14. Remarks:

OTHER WR; A37-00667K, A37-11671.

THIS IS A PART OF WR #37-00353A, UNRECORDED TRANS. TO P/U LISTED.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: 12/13/1909

S.C. FROST

Decree Plaintiff

vs

ALTURAS WATER CO.

Decree Defendant

16. Signature(s)

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

Number of attachments: 1

**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): Robert Gardner Date: 10-17-88  
\_\_\_\_\_  
Date: \_\_\_\_\_

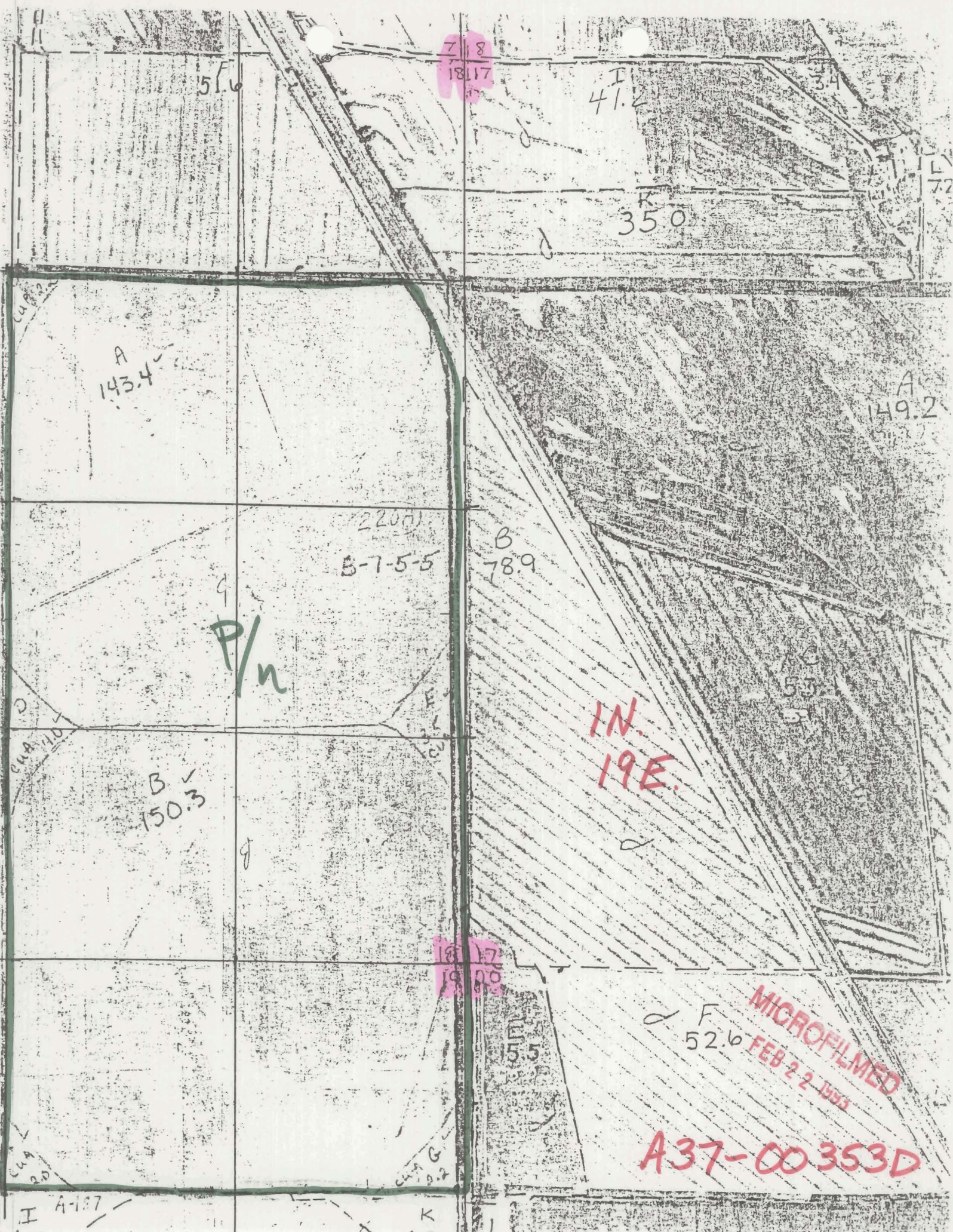
State of Idaho )  
County of Twin Falls ) SS.

Subscribed and sworn (or affirmed) before me this 17th day  
of October 19 88

Roxanne Storey  
Notary Public

Seal

Residing at Buhl, Id.  
My Commission Expires 6-30-94



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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A37-00353A  
Date Received: 7/28/1988  
Receipt No: X777777  
Received By: SEC

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: SPLIT RIGHT

Address:

X, ID

0

2. Date of Priority: JUN 12, 1886

3. Source: BIG WOOD RIVER  
SPLIT RIGHT

Trib. to: MALAD RIVER

4. Point of Diversion:

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

5. Description of diverting works:  
HEADGATE #45, DISTRICT CANAL

6. Water is used for the following purposes:

| Purpose    | From | To | C.F.S | (or) | A.F.A. |
|------------|------|----|-------|------|--------|
| IRRIGATION |      |    | 6.000 |      |        |

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

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

| Township | Range | Section | 1/4 of | 1/4 | Lot | Use | Acres |
|----------|-------|---------|--------|-----|-----|-----|-------|
| 01N      | 18E   | 13      | NE     | SE  |     | IRR |       |
|          |       |         | SE     | SE  |     | IRR |       |
|          |       | 24      | NE     | NE  |     | IRR |       |

A37-00353A

Page

1

Date: 01/16/90

MICROFILMED  
FEB 22 1993

10. Place of Use: Continued

| Township | Range | Section | 1/4 of | 1/4 | Lot | Use | Acres |
|----------|-------|---------|--------|-----|-----|-----|-------|
| 01N      | 18E   | 24      | SE     | NE  |     | IRR |       |

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:

14. Remarks:

TRANS. 2948.

P/D NOT GIVEN IN DECREE BUT SHOWN ON TRANSFER.

THIS CLAIM IS FOR REFERENCE ONLY. IT HAS BEEN SPLIT AS BELOW:

(A37-00353B) THIS IS A SEPARATE WR SPLIT BY TRANS. 2948

A37-00353C, 1.0 CFS, GUS CHEK

A37-00353D, 3.6 CFS, ROBERT GARDNER

A37-00353E, 0.4 CFS, HARRY OPPENHEIMER, JR.

A37-00353F, 0.2 CFS, WILLIAM R. LONG

15. Basis of Claim:

16. Signature(s)

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

Number of attachments: \_\_\_\_\_

**For Individuals:**

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

Signature of Claimant(s): \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_ Date: \_\_\_\_\_

State of Idaho )  
County of \_\_\_\_\_ ) SS.

Subscribed and sworn (or affirmed) before me this \_\_\_\_\_ day  
of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Seal

Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

#7  
June 25, 1982

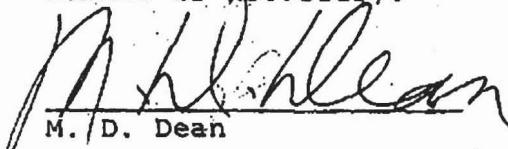
Mr. & Mrs. Robert Gardner  
Star Route  
Bellevue, Idaho 83313

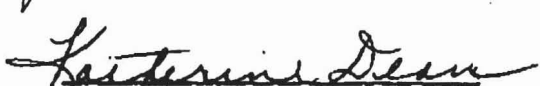
Mr. & Mrs. Gardner:

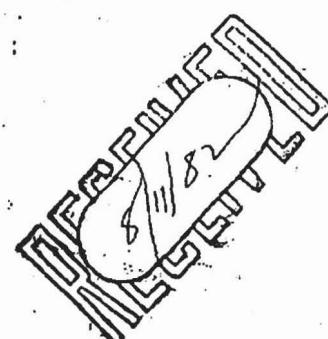
This will confirm the sale of one hundred Eighty (180) inches of our 1886 water, assigned to Wood River Valley Irrigation District #45, to addressee. 37-0353

Copies of this letter will be forwarded to Reid Newby, Watermaster, Shoshone, Idaho and to Grace Eakin, Secretary-Treasurer, Wood River Valley Irrigation District, so that their records may be changed accordingly.

We are having this notarized so that this may be recorded if necessary.

  
M. D. Dean

  
~~Katherine Dean~~  
KATHARINE



STATE OF OKLAHOMA  
County of \_\_\_\_\_

On this 2nd day of July, in the year 19-82  
before me Sherry K. Diddens, a Notary  
Public in and for said State, personally appeared M. D. Dean  
& Katherine Dean known to me to  
be the persons whose names subscribed to the within  
Instrument, and acknowledged to me that she 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.

  
Notary Public for Oklahoma, residing at  
Oklahoma City, OK



# State of Idaho

## DEPARTMENT OF WATER RESOURCES

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

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

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

December 20, 1999

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

RECEIVED  
DEC 28 1999  
Department of Water Resources  
Southern Region

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

Dear Lee:

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

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

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

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

A37-00353D

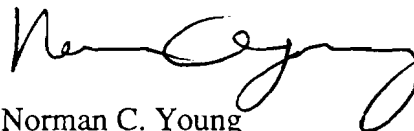
It is my understanding that the Water District Records also at one time listed Robert Keirstad as the owner of 40 miners inches. Because Mr. Keirstad has not filed a claim in the SRBA, the county records cast doubt on his continued ownership of any of the right, and he has not called for water for many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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Norman C. Young", with a stylized, flowing script.

Norman C. Young  
Administrator  
Water Management Division

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

A37-00353D

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

JUL 24 1997  
DEPARTMENT OF WATER RESOURCES

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

**PRELIMINARY ORDER**

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

FINDINGS OF FACT

1. Water Right No. 37-0353 was decreed to James Johnson in the case of S. C. Frost, et al vs. Alturas Water Co., et al. The right is for 6.4 cfs to be diverted from the Big Wood River for irrigation of the E1/2SE1/4 of Section 13 and the E1/2NE1/4, Section 24, T1N R18E, B.M., Blaine County (approximately 160 acres). The water right has been diverted into the Wood River Valley Irrigation District No. 45 canal located within the SW1/4NW1/4, Section 36, T2N, R18E, for delivery to users of the water. The priority of right No. 37-0353 is June 12, 1886.
2. The decreed place of use for right No. 37-0353 was divided in the early 1970's into an 18 lot subdivision known as the Dean Ranch Subdivision. The records of the Department and Water District 37 indicate that right No. 37-0353 was appurtenant to and used upon the decreed place of use up to the time the land was subdivided and on some of the subdivision lots and other land each year thereafter. Lot 2, Block 1 of the subdivision has not been irrigated for more than 10 years as evidenced by a review of aerial photographs and other information available to the department.
3. Olsen Livestock Consultants, Inc. claims ownership of Lot 2, Block 1, Dean Ranch Subdivision. The deeds in the chain of title filed with Blaine County for this lot from the creation of the subdivision to the present are summarized as follows:
  - a. M.D. and Katherine Dean deeded Lot 1 (approximately 8 acres) and Lot 2 (approximately 10 acres) with appurtenances to Charles A. and Debra Anne Curtis on November 1, 1974. Appurtenant water rights were not specifically described.

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

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

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

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

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

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

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

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

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

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

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

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

### CONCLUSIONS OF LAW

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

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

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

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

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

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

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

## ORDER

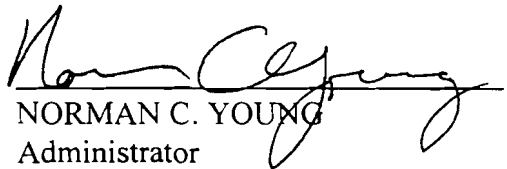
### IT IS, THEREFORE, HEREBY ORDERED:

1. The watermaster of Water District 37 is instructed to deliver 0.20 cfs of water right 37-0353 with a June 12, 1886 priority date to the Wood River Valley Irrigation District No. 45 headgate in the SW1/4NW1/4, Section 36, T2N, R18E for use by Olsen Livestock Consultants, Inc. Prior to delivery of the water under this order, Olsen Livestock Consultants, Inc. shall have paid any applicable Water District 37 assessments.

2. This Order does not constitute a determination that Olsen Livestock Consultants, Inc. has a right-of-way, easement, or other necessary authorities and approvals needed to convey water through the Wood River Valley Irrigation District headgate and canal system.

3. This Order is a preliminary determination subject to revision if additional information is submitted indicating that water right No. 37-0353 is no longer appurtenant to Lot 2, Block 1, Dean Ranch Subdivision. All persons receiving this order and others using or claiming the use of water under right No. 37-0353 have the opportunity to seek reconsideration or file exceptions in accordance with Rule 730 of the "Rules of Procedure of the Department of Water Resources," IDAPA 37.01.01.

Signed at Boise, Idaho, this 22<sup>ND</sup> day of July, 1997.

  
NORMAN C. YOUNG  
Administrator  
Water Management Division

CERTIFICATE OF MAILING

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

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