

**SUPPLEMENTAL DIRECTOR'S REPORT
REGARDING SUBCASE NO. 74-179C, -179D, 180B,
-4006, 15520, and -15521**

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

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

October 24, 2008

I. INTRODUCTION

In accordance with Idaho Code § 42-1412(4), Administrative Order 1, and Special Master Dolan's oral request for a 706 Report on September 25, 2008, the Director of the Idaho Department of Water Resources ("IDWR" or "Department") submits this Supplemental Director's Report ("Report") regarding subcase number 74-179C, -179D, -180B, -4006, -15520, and -15521. The Report was prepared under the supervision of David R. Tuthill, Jr., Director, and Donald V. Shaff, Adjudication Bureau Chief.

The following Department employee has knowledge of the information contained in the Report: Nathaniel Arave, Senior Water Resource Agent.

II. DISCUSSION

Water right nos. 74-179C, -179D, -180B, -4006, -15520, and -15521 were decreed in the Lemhi Adjudication to Betty and Dean Stokes. In 1986, Stokes sold land appurtenant to water right nos. 74-179C, -180B, and -4006 to Charles and Margaret Freel. The warranty deed, which was recorded in Lemhi County and attached hereto as Attachment 1 ("1986 Warranty Deed"), states as follows:

For Value Received . . . the grantors [Stokes] do hereby grant, bargain, sell and convey unto . . . the grantees [Freel], the following described premises in Lemhi County Idaho, to wit:

Lot 1 of the Sunrise Hills Subdivision according to the official plat thereof filed for record in Book 5 of Plats at pages 63 through 65 inclusive, records of Lemhi County, Idaho . . .

*** It is mutually understood and agreed that the only water rights transferred with the above described Real Estate, will be waste water only. Waste water from 900 acres formerly known as the Kaufman ranch.

On May 10, 1990, Stokes claimed water right nos. 74-179C, -179D, -180B, -4006, -15520, and -15521 in the SRBA as they were decreed in the Lemhi. Therefore, the SRBA claims for water right nos. 74-179C, -180B, and -4006 included “Lot 1 of the Sunrise Hills Subdivision.” The land in the Sunrise Hills Subdivision that was appurtenant to those water rights, totaling 22.9 acres, is as follows: T.21N, R.23E, S.29, NWNE (2.0 acres), SWNE (4.2 acres), NENW (6.0 acres), and SENW (10.7 acres).

Water right nos. 74-179C, -180B, and -4006 were partially decreed in the SRBA on July 9, 2007 as unobjected recommendations. Based on the conveyance of property, Stokes arguably should have claimed water right nos. 74-179C, -180B, and -4006 to have excluded Lot 1 of the Sunrise Hills Subdivision or should have filed objections to the Department’s recommendations. However, the Department also erred by failing to process a change of ownership form filed by Stokes and Eagle Valley Ranch (“EVR”) in 2006, which would have prevented those rights from moving forward to partial decree. Pursuant to the sale, an agreement was reached regarding certain water rights. In Paragraph 5 of the Water Rights Agreement, attached hereto as Attachment 2 (“2006 Water Rights Agreement”), Stokes and EVR describe which water rights are subject to the Agreement:

STOKES

- a. 74-179D – All
- b. 74-180B – 50 miner’s inches or 1.0 cfs

....

EVR

- c. 74-179C – All
- d. 74-180B – 80 miner’s inches or 1.6 cfs
- e. 74-15520 – All
- f. 74-15521 – All

Again, despite the change of ownership filed with the Department, which the Department failed to notify the Court of through a Notice of Completed Administrative Proceeding, water right nos. 74-179D, -15520, and -15521 were partially decreed by the SRBA on July 9, 2007 to Stokes. Therefore, water right nos. 74-179C, -179D, -180B, -4006, -15520, and -15521 were each partially decreed in the SRBA despite the 1986 Warranty Deed removing Lot 1 of the Sunrise Hills Subdivision from the place of use and the 2006 Water Rights Agreement. A map depicting the places of use for EVR, Stokes, and the Sunrise Hills Subdivision is attached hereto as Attachment 3.

The Department did not become aware of the errors in the partial decrees until after it processed a change of ownership form filed by Malinda Tracy, a property holder in the Sunrise Hills Subdivision. After processing the change of ownership, Stokes called Mr. Arave and informed him of the 1986 Warranty Deed and its reservation of water rights. Tracy is a successor-in-interest to Freel. Stokes then filed a motion to set aside partial decrees in water right nos. 74-179C, -180B, and -4006. In the course of discussing Stokes' motions to set aside, EVR learned of the discrepancies in its water rights (74-179D, -15520, and -15521) and became involved in the matter through its attorney, Robert L. Harris.

During the September 25, 2008 hearing, Stokes' motion to set aside partial decrees in water right nos. 74-179C, -180B, and -4006 was granted. Mr. Harris' oral motion to set aside partial decrees in water right nos. 74-179D, -15520, and -15521 was also granted. It was agreed at the hearing that it would be proper for the Department to draft new recommendations consistent with the 1986 Warranty Deed and the 2006 Water Rights Agreement. To be consistent with the 2006 Water Rights Agreement, water right no. 74-

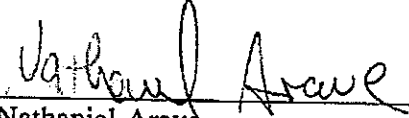
180B should be recommended disallowed to split the water right between EVR and Stokes.

The water right numbers assigned by the Department to the splits are 74-15890 and 74-15891.

Attached hereto as Attachment 4 are the Department's recommendations for water right nos.

74-179C, -179D, -180B, -4006, -15520, -15521, -15890, and -15891.

Submitted this 24TH day of October 2008



Nathaniel Arave
Water Resource Agent

Attachment 1

INDIV.

WARRANTY DEED

For Value Received

KARL DEAN STOKES AND BETTY STOKES, husband and wife

the grantors, do hereby grant, bargain, sell and convey unto

CHARLES DAVID FREEL AND MARGARET GAYLE FREEL, husband and wife

whose current address is

P.O. BOX 1070

SALMON, IDAHO 83467

the grantees, the following described premises, in Lemhi County Idaho, to wit:

Lot 1 of Sunrise Hill Subdivision according to the official plat thereof filed for record in Book 5 of Plate at pages 63 through 65 inclusive, records of Lemhi County, Idaho. . .

*** It is mutually understood and agreed that the only water rights transferred with the above described Real Estate, will be waste water only. Waste water from 900 acres formerly known as the Kaufman ranch.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises; that they are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: AUGUST 26, 1986

Karl Dean Stokes
EARL DEAN STOKES

Betty Stokes
BETTY STOKES

STATE OF IDAHO, COUNTY OF Lemhi
On this 26th day of Aug., 1986,
before me, a notary public in and for said State, personally
appeared

EARL DEAN STOKES AND
BETTY STOKES

known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they have executed the same.

Steven R. Gott
STEVEN R. GOTT Notary Public
Residing at SALMON, Idaho
Comm. Expires 12-14-1991

State of Idaho }
County of Lemhi } ss. No. 152636

This instrument was filed for record at the request of American Land Title at 2:55 o'clock P.M. AUG 28, 1986 and duly filed and indexed in the records of Lemhi County.

Alta Vista Recorder
By *David G. [Signature]* Deputy
Pages 2, 000 pd

Recorded by the American Land Title Co., Salmon, Idaho

Attachment 2

WATER RIGHTS AGREEMENT

THIS AGREEMENT IS MADE and entered into this 21st day of August, 2006, by and between Earl Dean Stokes and Betty W. Stokes, husband and wife, of 19 N. Barracks Ln., Salmon, ID 83467, referred to hereafter in this agreement as "STOKES", and Eagle Valley Ranch, LLC, an Idaho Limited Liability Company of 446 Bohannon Creek Rd., Salmon, ID 83467, referred to hereafter in this agreement as "EVR".

WITNESSETH:

That for and in consideration of the mutual covenants and promises contained in this agreement, the parties hereto agree as follows:

- I. STOKES are the record title holders of the following described real property, situate in the County of Lemhi, State of Idaho, to wit:

A parcel of land in Sections 29 and 30, T21N., R23E.B.M., Lemhi County, Idaho, more particularly described as follows:

Commencing at the southwest corner of said Section 29, a distance of 1074.29 feet on a bearing of N. 0E06°55' W, along the west boundary of said Section 29 to a point on the north right-of-way of Idaho State Highway No. 28, and being the real point of beginning. From this real point of beginning, a distance of 416.67 feet on a bearing of N. 54E22°16' W. along said right-of-way to a point on the east right-of-way barracks lane:

Thence the following courses and distances along the east right-of-way of barracks lane:

N. 36E 03' 22" E., 990.00 feet;

N. 34E 24' 17" E., 657.06 feet;

Thence the following courses and distances along the south fence boundary of the County road:

N. 53E 41' 49" E., 341.08 feet;

N. 31E 35' 03" E., 483.83 feet;

N. 41E 27' 01" E., 170.92 feet;

N. 53E 18' 33" E., 149.67 feet;

N. 81E 14' 15" E., 93.67 feet;

S. 83E 35' 14" E., 405.49 feet;

S. 82E 47' 09" E., 1456.59 feet;

S. 36E 48' 39" E., 474.17 feet;

S. 24E 33' 25" E., 245.87 feet;

S. 17E 09' 53" E., 175.89 feet;

S. 40E 12' 36" E., 163.60 feet;

S. 67E 35' 12" E., 213.83 feet;

S. 65E 24' 49" E., 276.17 feet;

S. 54E 29' 36" E., 279.75 feet;

S. 42E 03' 27" E., 325.08 feet;
S. 34E 02' 14" E., 272.74 feet;

Thence S. 32E 58' 38" W., 637.00 feet;
Thence N. 57E 01' 35" W., 600.82 feet;
Thence S. 27E 59' 38" W., 139.80 feet;
Thence S. 89E 23' 36" W., 11.92 feet to a point on the east boundary
of the SW¼SE¼;
Thence N. 0E 06' 55" W., 138.95 feet along said boundary to the
northeast corner of the SW¼SE¼;
Thence S. 89E 23' 36" W., 70.00 feet along the north boundary of the
SE¼SE¼;
Thence S. 50E 00" W., 1755.99 feet to a point on the south bank of
the Lemhi River;
Thence the following courses and distances along the south bank of
the Lemhi River;
N. 83E 38' 16" W., 797.70 feet
S. 56E 11' 44" W., 452.00 feet to a point on the north right-of-way of
Idaho State Highway No. 28;
Thence N. 34E 22' 16" W., 1719.36 feet to the real point of
beginning.

Except the following described 25 foot easement:

Commencing at the southwest corner of said Section 29, a distance
of 5148.62 feet on a bearing of N. 72E 23' 41" E., to the real point of
beginning.
From this real point of beginning, a distance of 637.00 feet on a
bearing of S. 32E 58' 38" W.;
Thence N. 57E 01' 35" W., 25.00 feet;
Thence N. 32E 58' 38" E., 647.61 feet;
Thence S. 34E 02' 14" E., 27.17 feet to the real point of beginning.

2. EVR is the record title holder of the following described real property, recently purchased
by EVR from Stokes, situate in the County of Lemhi, State of Idaho, to wit:

Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,
22, 23 and 24 of Sunrise Hills Subdivision, according to the official
plat thereof, filed on Book 5 of Plats at Page(s) 63, Official Records
of Lemhi County, Idaho.

Also Including:

That Certain lot, piece, or parcel of land, situate, lying and being in
Salmon, County of Lemhi, State of Idaho, bounded and particularly
described as follows to wit:

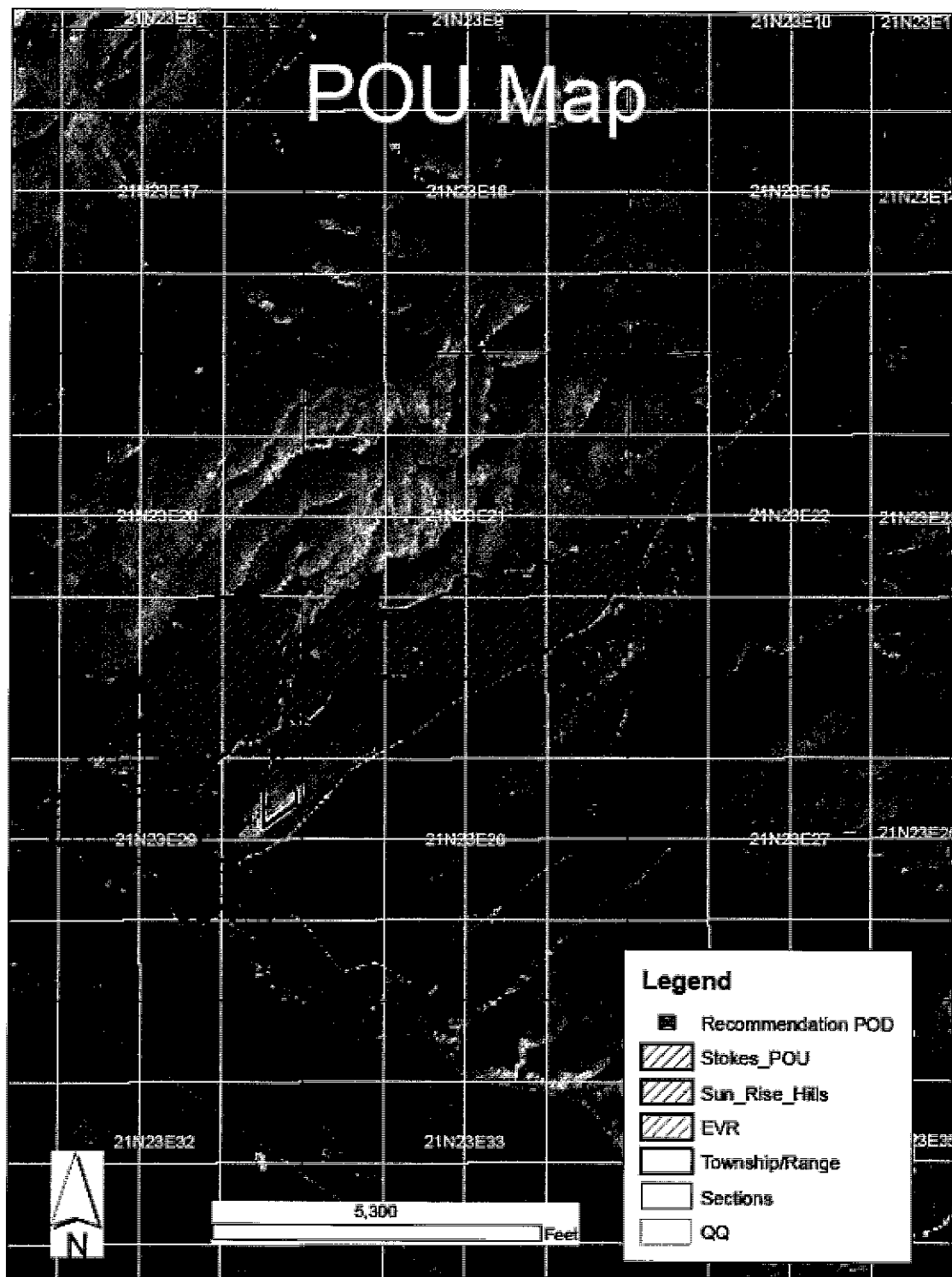
All that portions of the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Twenty-One (21), Township Twenty-One (21) North, Range Twenty-Three (23), East, Boise Meridian, lying and being on the Northwestern side of Bohannon Creek Road.

3. Based upon recommendations recently made by the Idaho Department of Water Resources (hereafter IDWR), to the Snake River Basin Adjudication Court (hereafter SRBA Court), the following water rights are appurtenant of record to the above described real property of STOKES:
 - a. 74-179C
 - b. 74-180B
 - c. 74-15520
4. Based also on recommendations recently made by the IDWR to the SRBA Court, the following rights are appurtenant of record to the above described real property of EVR:
 - a. 74-179D
 - b. 74-15521
5. At the time of the conveyance by STOKES to EVR of the real property described in Paragraph 2 above, there was a misunderstanding between the parties as to how the water rights listed in Paragraph 3 and 4 above had been used historically. The parties desire to correct the errors that resulted from such misunderstanding to the end that the following water rights or portions thereof shall become appurtenant to the above described property of STOKES:
 - a. 74-179D - All
 - b. 74-180B - 50 miner's inches or 1.0 cfs;and that the following water rights or portions thereof shall be appurtenant to the above described real property of EVR:
 - c. 74-179C - All
 - d. 74-180B - 80 miner's inches or 1.6 cfs
 - e. 74-15520 - All
 - f. 74-15521 - All
6. In order to accomplish the objectives of the parties set forth in Paragraph 5 above, the parties agree to do the following:
 - a. EVR shall execute a Quitclaim Deed for water right number 74-179D to STOKES, in the form attached hereto as Exhibit "1", which Deed shall be recorded in the records of Lemhi County, Idaho.
 - b. STOKES shall execute a Quitclaim Deed for water right number 74-179C to EVR, in the form attached hereto as Exhibit "2", which Deed shall be recorded in the records of Lemhi County, Idaho.
 - c. STOKES shall execute a Quitclaim Deed for 80 miner's inches (1.6 cfs) of water right number 74-180B to EVR, in the form attached hereto as Exhibit "3", which Deed shall be recorded in the records of Lemhi County, Idaho.

- d. STOKES shall execute a Quitclaim Deed for water right number 74-15520 to EVR, in the form attached hereto as Exhibit "4", which Deed shall be recorded in the records of Lemhi County, Idaho.
 - e. STOKES shall, pursuant to Idaho Code §§ 42-108 and 42-222, file with IDWR, an application in the form attached hereto as Exhibit "5", to transfer the place of use for the remainder of water right number 74-179C, all of 74-15520, and 80 miner's inches (1.6 cfs) of water right number 74-180B to lands of EVR, and shall prosecute the same diligently to the end that the same receives formal approval of IDWR as soon as may be.
 - f. EVR shall, pursuant to Idaho Code §§ 42-108 and 42-222, file with IDWR an application in the form attached hereto as Exhibit "6", to transfer the place of use of the remainder of water right number 74-179D to lands of STOKES, and shall prosecute the same diligently to the end that the same receives formal approval of IDWR as soon as may be.
 - g. The parties further agree to fully cooperate with each other to accomplish the objectives set out above and to provide any additional information that might be required by IDWR to complete such objectives, including the filing of any required Notices of Change of Water Rights Ownership.
7. Should either party default in the performance of any of the covenants or agreements contained herein, such defaulting party shall pay to the other party all costs and expenses, including, but not limited to, a reasonable attorney fee, including such fees on appeal, which the offended party may incur in enforcing this agreement or in pursuing any remedy allowed by law for breach hereof, whether such is incurred by the filing of suit or otherwise.
 8. This agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, administrators, successors in interest and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

Attachment 3



Attachment 4

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

RIGHT NUMBER: 74-179D

NAME AND ADDRESS: EARL DEAN STOKES
19 N BARRACKS LN
SALMON ID 83467

BETTY W STOKES
19 N BARRACKS LN
SALMON ID 83467

SOURCE: BOHANNON CREEK

TRIBUTARY: LEMHI RIVER

QUANTITY: 2.000 CFS

PRIORITY DATE: 06/01/1897

POINT OF
DIVERSION:

T21N R23E S15 SESE Within LEMHI County
T21N R23E S28 SENE Within LEMHI County

PURPOSE AND
PERIOD OF USE:

	<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
	IRRIGATION	3/15 11/15	2.000 CFS
PLACE OF USE:	<u>IRRIGATION in LEMHI County</u>		
	T21N R23E S29 SWNE 14.80	T21N R23E S29 SWNW	3.00
	T21N R23E S29 SENW 24.30	T21N R23E S29 NESW	13.00
	T21N R23E S29 NESE 13.00	T21N R23E S29 NWSE	30.00
	T21N R23E S29 SESE 7.00		

105.1 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NOS. 74-180B-2, and 74-4006 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 105.1 ACRES IN A SINGLE
IRRIGATION SEASON.

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

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

IDAHO DEPARTMENT OF WATER RESOURCES
CLAIMS / RIGHTS NOT RECOMMENDED

<u>W.R. NUMBER</u>	<u>NAME AND ADDRESS</u>	<u>CLAIM DISPOSITION REASON</u>
74-180B	BETTY W STOKES 19 N BARRACKS LN SALMON ID 83467 EARL DEAN STOKES 19 N BARRACKS LN SALMON ID 83467	Parent Split into 74-15890 and 74-15891

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

RIGHT NUMBER: 74-4006

NAME AND ADDRESS: EARL DEAN STOKES
19 N BARRACKS LN
SALMON ID 83467

BETTY W STOKES
19 N BARRACKS LN
SALMON ID 83467

SOURCE: LEMHI RIVER

TRIBUTARY: SALMON RIVER

QUANTITY: 2.570 CFS

PRIORITY DATE: 04/01/1959

POINT OF
DIVERSION:

T21N R23E S29 SESESE Within LEMHI County

PURPOSE AND
PERIOD OF USE:

	<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
	IRRIGATION	3/15 11/15	2.570 CFS
PLACE OF USE:	<u>IRRIGATION in LEMHI County</u>		
	~~T21N R23E S29~~ ~~NWNE~~ ~~2.00~~	T21N R23E S29	SWNE ~~19-14.8~~
	~~T21N R23E S29~~ ~~NENW~~ ~~6.00~~	T21N R23E S29	SWNW 3.00
	T21N R23E S29 SENW ~~35~~ <u>24.3</u>	T21N R23E S29	NESW 13.00
	T21N R23E S29 NESE 13.00	T21N R23E S29	NWSE 30.00
	T21N R23E S29 SESE 7.00		
	~~120~~ 105.1 ACRES TOTAL		

USE OF THIS RIGHT WITH RIGHT NO. 74-179D and 74-180B-2 IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 105.1 ACRES IN A SINGLE
IRRIGATION SEASON.

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

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

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

RIGHT NUMBER: 74-15520

NAME AND ADDRESS: BETTY W STOKES
19 N BARRACKS LN
SALMON ID 83467

EARL DEAN STOKES
19 N BARRACKS LN
SALMON ID 83467

SOURCE: BOHANNON CREEK

TRIBUTARY: LEMHI RIVER

QUANTITY: 0.680 CFS

PRIORITY DATE: 03/09/1912

POINT OF
DIVERSION:

T21N R23E S22 NWNENE Within LEMHI County

PURPOSE AND
PERIOD OF USE:

	<u>PURPOSE OF USE</u>		<u>PERIOD OF USE</u>		<u>QUANTITY</u>
	IRRIGATION		03/15 11/15		0.680 CFS
PLACE OF USE:	<u>IRRIGATION in LEMHI County</u>				
	T21N R23E S20	SWSE	24.70	T21N R23E S20	SESE 27.50
	T21N R23E S21	NESW	1.00	T21N R23E S21	NWSW 2.00
	T21N R23E S21	SWSW	25.00	T21N R23E S21	SESW 36.00
	T21N R23E S21	NESE	20.00	T21N R23E S21	NWSE 10.00
	T21N R23E S29	SWSE	37.00	T21N R23E S21	SESE 14.00
	T21N R23E S28	NWNW	6.30	T21N R23E S29	NENE 19.20
	T21N R23E S29	NWNE	36.00	T21N R23E S29	SENE 9.70

268.4 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NOS. 74-179C, 74-180B-1 and 74-15521 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 268.4 ACRES IN A SINGLE IRRIGATION SEASON.

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

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described document on the persons listed below by United States mail with the correct postage affixed thereto on this 24TH day of October 2008.

Document Served:

Supplemental Director's Report Regarding Subcase No. 74-179C et al.

Persons Served:

Water District 74-C
c/o Boyd Stokes
646 Lemhi Road
Salmon, ID 83467

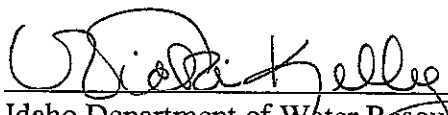
Betty and Earl Stokes
19 N. Barracks Ln.
Salmon, ID 83467

Malinda Tracy
3 Prairie Rd.
Salmon, ID 83467

Melvin Domko
752 Lemhi Rd.
Salmon, ID 83467

Eagle Valley Ranch LLC
446 Bohannon Creek Rd
Salmon, ID 83467

Eagle Valley Ranch LLC
6 Stewart Rd
Short Hills, NJ 07078


Idaho Department of Water Resources