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Attorneys for Claimants Gary Ingram and Jackie Ingram

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

In Re SRBA	)	Subcase No. 72-16784
	)	
	)	
Case 38576	)	AFFIDAVIT OF GARY INGRAM IN SUPPORT OF
	)	MOTION TO FILE LATE NOTICE OF CLAIM
_____	)	
STATE OF IDAHO	)	
	) ss	
COUNTY OF CUSTER	)	

GARY INGRAM , being first duly sworn upon his oath, deposes and says that:

1. My name is Gary Ingram. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.
2. My wife, Jackie Ingam, and I own water rights that have been decreed by the SRBA court. **Exhibit A**, attached hereto, contains a table that shows our diversions, water rights, late claims and measurements, and tables that show water rights, claims and measurements for the two (2) diversions from the East Fork of the Salmon River ("East Fork") that we use with other East Fork water users. Exhibit A also contains unofficial copies of our partial decrees for water right nos. 72-00226A and 72-00227A.

COPY

3. The aerial photographs attached hereto as **Exhibit B** are marked to show the locations of our East Fork diversions (designated as EF-3 and EF-4) and the land we own and irrigate from those diversions.

4. I have lived along the East Fork since 1974 and have observed our EF-3 and EF-4 diversions, ditch systems and our irrigated fields every year since then. Our land was formerly owned by Raymond Gossi. From 1974 to the present, all of the land my wife and I own has been irrigated to raise hay and for pasture. From 1974 to the present, all of our land has been irrigated with water diverted from the East Fork through the EF-3 and EF-4 diversions. Today, the ditches that convey water from EF-3 and EF-4 are the same size as they were in 1974, and convey the same quantities of water.

5. It is my understanding that our land has been irrigated with East Fork water diverted through EF-3 and EF-4 since our earliest water right was established in 1880. This understanding is confirmed by Dick Baker, who has also signed an affidavit in support of our claims for conveyance losses.

6. Our irrigated fields are located within a canyon along the East Fork, at or only a few feet above the water level of the river. The soil in the ditches is very porous gravel and river rock. Seepage loss from the ditches has always been very high. Water lost through seepage returns to the river. For these reasons, the majority of the water we have diverted has always been lost to seepage.

7. The only significant change in our diversions has been that, in recent years, fish screens have been added at or near the diversions. The screens were sized so that we could continue to divert the quantities of water that we had historically diverted. Attached hereto as

Exhibit C are our “Flow Agreements” with the Idaho Department of Fish and Game which state the flows Fish and Game measured through our East Fork diversions shortly before the fish screens were installed.

8. Our water rights authorize us to divert a combined maximum of 5.11 cfs through the EF-3 and EF-4 diversions. Although the water rights do not apportion this quantity of water between EF-3 and EF-4, in practice we irrigate approximately 45% of our land through EF-3 and 55% of our land through EF-4. For purposes of estimating our share of the conveyance losses through the ditches, we estimate that we divert 45% of our water rights through EF-3 and 55% through EF-4.

9. Attached hereto as **Exhibit D** are photographs of the EF-3 diversion and ditch. The bed and banks of the ditch are river rock and gravel, so there is a very large amount of seepage loss in conveying water from the point of diversion to the place of use.

10. Attached hereto as **Exhibit E** are photographs of the EF-4 diversion and ditch. As with EF-3, the bed and banks of the ditch are river rock and gravel, so there is a very large amount of seepage loss in conveying water from the point of diversion to the place of use.

11. The water quantities in our partial decrees are far less than the quantities we have historically diverted and used, as established by the measurements taken by the Idaho Department of Fish and Game for our “Flow Agreements,” and by Brian Hamilton with the Bureau of Reclamation. Due to the seepage losses through our ditch systems, we cannot effectively irrigate our fields with the water quantities provided by our decrees. I understand that our SRBA claims were based on a prior decree that did not provide sufficient water quantities to account for actual seepage loss. Like our ditches, the ground we irrigate is very porous and does not retain water,

requiring application of significant quantities of water by flood irrigation to maintain our pastures and grow hay.

12. Clearly, we need and have always diverted and beneficially used, more water than is provided by our decrees. We respectfully request that the IDWR recommend, and the SRBA Court issue decrees for, the late claims we are filing in order to account for seepage losses and continue to provide for irrigation of our fields.

Further your affiant sayeth naught.

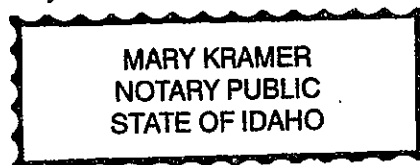
Dated this 23 day of October, 2008.

Gary Ingram
Gary Ingram

STATE OF IDAHO)
)ss.
County of Custer)

On this 23rd day of Oct, 2008, before me, the undersigned, a notary public in and for said state, personally appeared GARY INGRAM, known to me to be the individual that executed the foregoing affidavit, and acknowledged to me that he 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.



Mary Kramer
Notary Public for
Residing at Custer County
My Commission Expires: 7-30-14

EXHIBIT A

Ingram Diversions, Water Rights, Claims & Measurements

East Fork Salmon River

Diversions/Water Rights/Late Claims

Measurements

<u>Diversions</u>	<u>Water Rights</u>	<u>Diversion Rates</u>	<u>Split</u>	<u>Conveyance Loss</u>	<u>Claim</u>	<u>Diversion Max.</u>	<u>IDFG</u>	<u>BOR</u>
EF-3	72-00226A	4.63 cfs						
	72-00227A	<u>.48 cfs</u>						
		45% x 5.11 cfs =	2.30 cfs ¹	+ 5.91 cfs	=	8.21 cfs	20.75	25.10
EF-4	72-00226A	4.63 cfs						
	72-00227A	<u>.48 cfs</u>						
		55% x 5.11 cfs =	<u>2.81 cfs</u>	+ <u>11.79 cfs</u>	=	<u>14.60 cfs</u>	24.00	
				17.70 cfs				
			5.11 cfs	+	17.70 cfs	= 22.81 cfs		

Exhibit A

¹Ingrams' water rights are diverted through EF-3 and EF-4. Conveyance loss is apportioned to Ingrams' based upon their diversion of 55% of these water rights at EF-4 to irrigate approximately 55% of the acres within the place of use.

EF-3 Water Rights, Claims & Measurements

EF-3 conveyance loss total:

$$25.10 \text{ cfs (BOR)} - 7.49 \text{ cfs (decrees)} = 17.20 \text{ cfs}$$

<u>Decrees</u>	<u>Rates</u>	<u>Decrees</u>		<u>%¹</u>	<u>Conveyance</u>		<u>Total</u>	<u>Ditch Measurements</u>	
		<u>Total</u>			<u>Total</u>	<u>Claims</u>		<u>IDFG</u>	<u>BOR</u>
								20.75 cfs	25.10 cfs
72-00224 (Baker)	3.60 cfs								
72-00225 (Baker)	<u>.60 cfs</u>	<u>4.20 cfs</u>	.6278	x 17.20 cfs =	10.80 cfs	+ 4.20 cfs =	15.00 cfs		
72-00226A (Ingram)	4.63 cfs								
72-00227A (Ingram)	<u>.48 cfs</u>								
	45% x <u>5.11 cfs</u>	<u>2.30 cfs²</u>	.3438	x 17.20 cfs =	5.91 cfs	+ 2.30 cfs =	8.21 cfs		
72-00226B (Long)	.17 cfs								
72-00227B (Long)	.02 cfs								
72-10537 (Idaho)	<u>.80 cfs</u>	<u>.99 cfs</u>						<u>.99 cfs</u>	
All Rights total:		7.49 cfs		+	16.71 cfs	=	24.20 cfs		

¹For purposes of apportioning conveyance losses to the Baker and Ingram diversions, this is the percentage which the owner's diversion bears to the total irrigation EF-4 diversions (water right no. 72-10537, for bypass flow through the IDFG fish screen, is not included in this calculation.

²Ingrams' water rights are diverted through EF-3 and EF-4. Conveyance loss is apportioned to Ingrams' based upon their diversion of 45% of these water rights at EF-3 to irrigate approximately 45% of the acres within the place of use.

EF-4 Water Rights, Claims & Measurements

EF-4 conveyance loss total:

$$24.00 \text{ cfs (IDFG)} - 5.42 \text{ cfs (decrees)} = \mathbf{18.58 \text{ cfs}}$$

<u>Decreases</u>	<u>Rates</u>	<u>Decreases</u> <u>Total</u>	<u>%¹</u>	<u>Conveyance</u> <u>Total</u>	<u>Claims</u>	<u>Total</u>	<u>Ditch Measurements</u> <u>IDFG</u> 24.00 cfs
72-00226A (Ingram)	4.63 cfs						
72-00227A (Ingram)	<u>.48 cfs</u>						
	55% x <u>5.11 cfs</u>	= <u>2.81 cfs</u> ²	.6343	x 18.58 cfs	= 11.79 cfs	+ 2.81 cfs	= 14.60 cfs
72-00228A (Sherwood)	1.26 cfs						
72-00229 (Sherwood)	<u>.30 cfs</u>	<u>1.56 cfs</u>	.3521	x 18.58 cfs	= 6.54 cfs	+ 1.56 cfs	= 8.10 cfs
72-00228B (Anderson)	.06 cfs						
72-10538 (Idaho)	<u>.80 cfs</u>	<u>0.86 cfs</u>				<u>0.86 cfs</u>	
All Rights total:		5.23 cfs		+	18.33 cfs		23.56 cfs

¹For purposes of apportioning conveyance losses to the Ingram and Sherwood diversions, this is the percentage which the owner's diversion bears to the total irrigation EF-4 diversions (water right no. 72-10538, for bypass flow through the IDFG fish screen, is not included in this calculation).

²Ingrams' water rights are diverted through EF-3 and EF-4. Conveyance loss is apportioned to Ingrams' based upon their diversion of 55% of these water rights at EF-4 to irrigate approximately 55% of the acres within the place of use.

SRBA
PARTIAL DECREE 72-00226A

Issued on 02-15-2000.

This is not an official copy.

Contact IDWR or the Court for a Certified Copy.

Choose Landscape Orientation when printing.

NAME AND ADDRESS: GARY INGRAM
JACKIE INGRAM
HC 68 BOX 320
CLAYTON, ID 83227

SOURCE: SALMON RIVER, EAST FORK TRIBUTARY: SALMON RIVER

QUANTITY: 4.63 CFS

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 5.11 CFS. COMBINED RIGHT NOS.:
72-00227A.

PRIORITY DATE: 05/01/1880

POINT OF DIVERSION: T10N R18E S12 NESWNE Within Custer County
S13 SWSWNW

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Irrigation 04-01 TO 10-31 4.63 CFS

PLACE OF USE: Irrigation Within Custer County

T10N R18E S01 LOT 4 (NWNW) 11.0 SWNW 25.0
SENW 10.0 NESW 18.7
NWSW 11.0 SESW 13.0
SWSE 3.7
NWNE 11.5
S12

103.9 Acres Total

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 101 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE 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. I.C. SECTION 42-1412(6).

[Return to SRBA Home Page](#)

**SRBA
PARTIAL DECREE 72-00227A**

Issued on 02-15-2000.

This is not an official copy.

Contact IDWR or the Court for a Certified Copy.

Choose Landscape Orientation when printing.

NAME AND ADDRESS: GARY INGRAM
JACKIE INGRAM
HC 68 BOX 320
CLAYTON, ID 83227

SOURCE: SALMON RIVER, EAST FORK TRIBUTARY: SALMON RIVER

QUANTITY: 0.48 CFS

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 5.11 CFS. COMBINED RIGHT NOS.:
72-00226A

PRIORITY DATE: 05/01/1936

POINT OF DIVERSION: T10N R18E S12 NESWNE Within Custer County
S13 SWSWNW

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Irrigation 04-01 TO 10-31 0.48 CFS

PLACE OF USE: Irrigation Within Custer County

T10N R18E S01 LOT 4 (NWNW) 11.0 SWNW 25.0
SENW 10.0 NESW 18.7
NSW 11.0 SESW 13.0
SWSE 3.7
S12 NWNE 11.5

103.9 Acres Total

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 101 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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

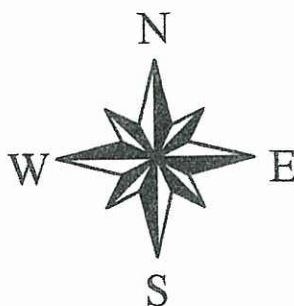
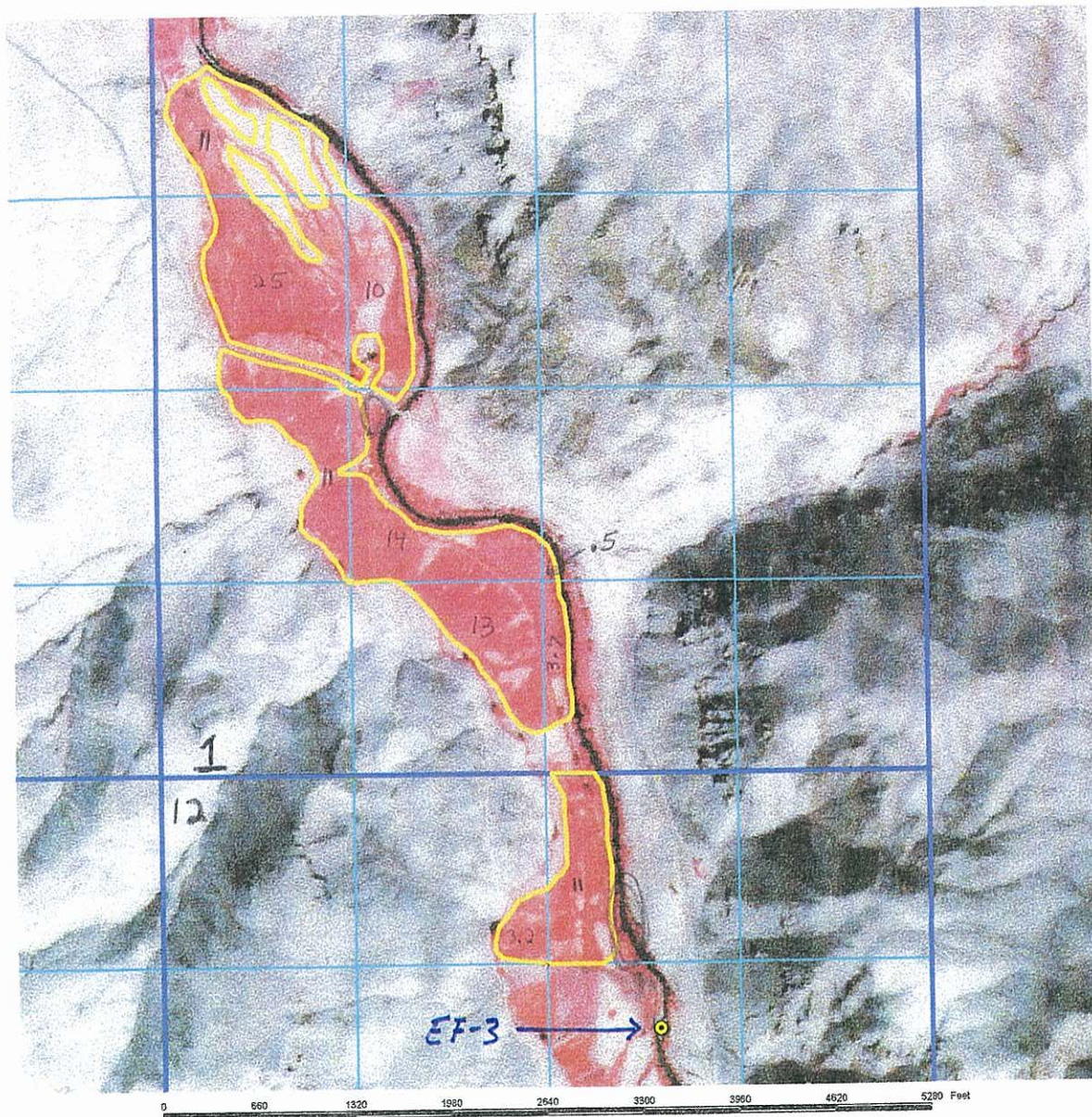
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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EXHIBIT B

**RIGHT 72-00226A
and 72-00227A
INGRAM**

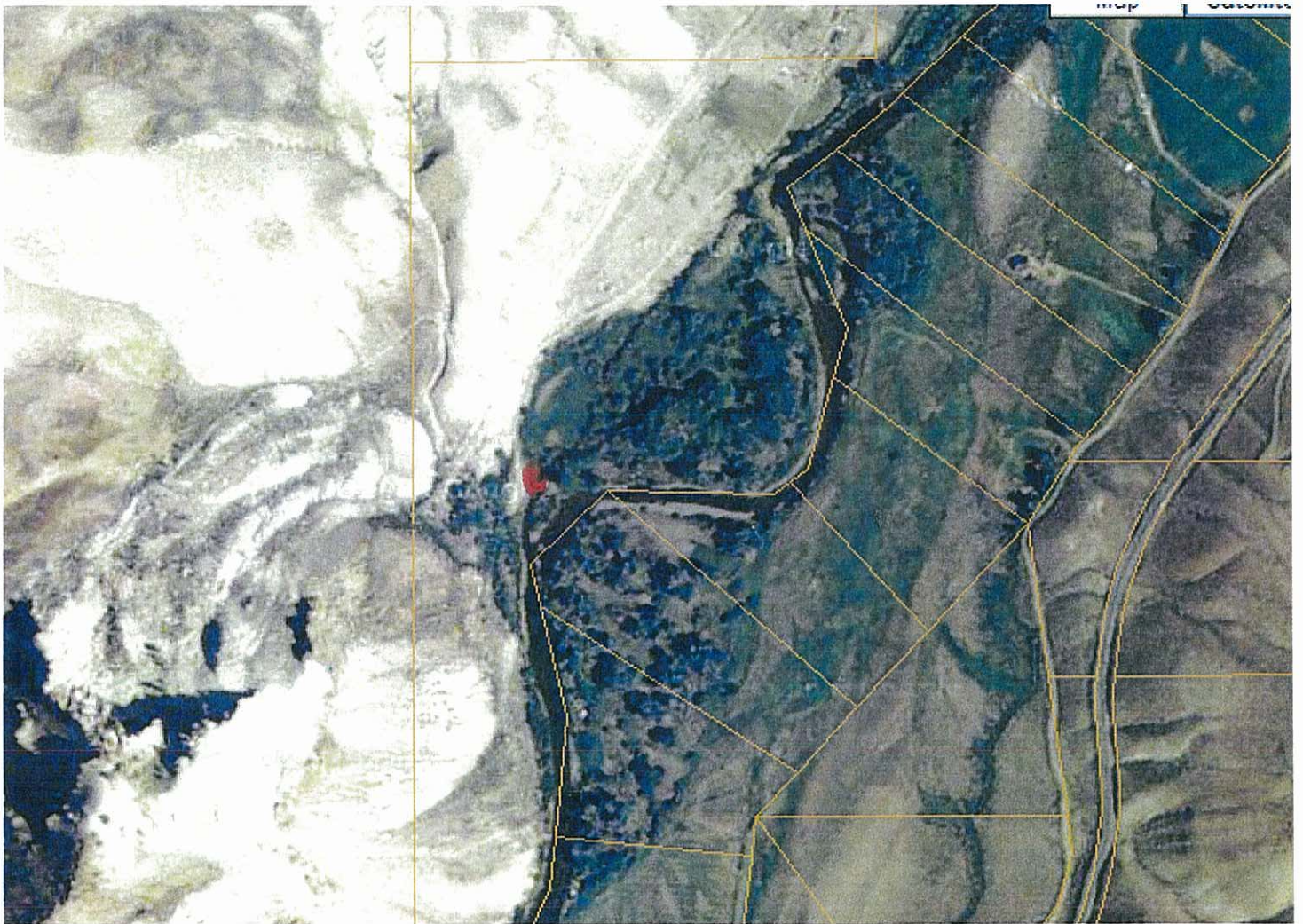
**RECOMMENDED PLACE OF USE
TWP 10N, RNG 18E, SEC 1 AND 12
data entry on September 29 1998**



- RECOMMENDED PLACE OF USE**
- RECOMMENDED POINT OF DIVERSION**
- SECTION LINES**
- QUARTER/QUARTER LINES**
- SUBDIVISION LOT BOUNDARIES**

Exhibit B

**GIS PLACE OF USE PRESENTATION
1987 OR 1988 NAPP AERIAL PHOTOGRAPHY
DATA ENTRY BY VIKIE HANCOCK**



EF-4 diversion marked in red

EXHIBIT C

OPTIMUM MAXIMUM DIVERSION FLOW AGREEMENT

20.75 CFS

Between: Idaho Fish and Game and Gary Ingram Wayne Baker
owner(s) Salmon East Fork diversion SEP 03

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

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

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

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

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

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

Whereas: When the approximate maximum flow is exceeded, the 0.4 foot per second criteria is not met, and

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

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

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

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

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

Exhibit C

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

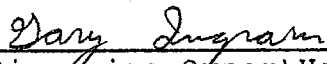
Whereas: If there is no such agreement, Idaho Department of Fish and Game will design and build the fish screen to meet the approximated maximum flow, which may or may not be the correct optimum flow. It is

Therefore: Agreed that the maximum diverted flow for the above diversion will not exceed 20.75 CFS (1037.5 Idaho's Miners Inches)



Idaho Department of Fish and
Gary Power, Region 7 Supervisor

Date: 6/14/95



Diversion Owner\User

6-6-95

Date

Diversion Owner\User

Date

OPTIMUM MAXIMUM DIVERSION FLOW AGREEMENT

24510

Between: Idaho Department of Fish and Game and Allen Anderson, Gary Ingram and Archie Sherwood, owner/users) of Salmon East Fork River diversion 04.

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

Whereas: Irrigators have the right to divert flows above their decreed right during maximum flows from the East Fork of the Salmon River, and

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

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

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

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

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

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

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

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

Flow Agreement
Cont.

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

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

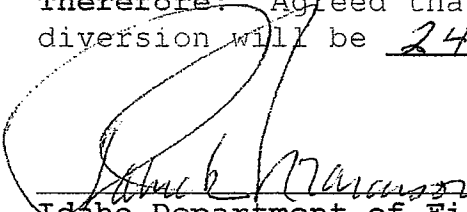
Whereas: Screens which are built to meet maximum flows that are available only during a short period of time or only during occasional years, do not operate efficiently at or near decreed flow levels, and

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

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

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

Therefore: Agreed that the optimum diverted flow for the above diversion will be 24 CFS (1200 Idaho's Miners Inches)


Idaho Department of Fish and Game
Pat Marcuson Program Coordinator

1/18/01
Date

Dary Ingram
Water User

1-17-2001
Date

Archie Sherwood
Water User

1. 17 2001
Date

Allen B. Johnson

1-17-01

EXHIBIT D



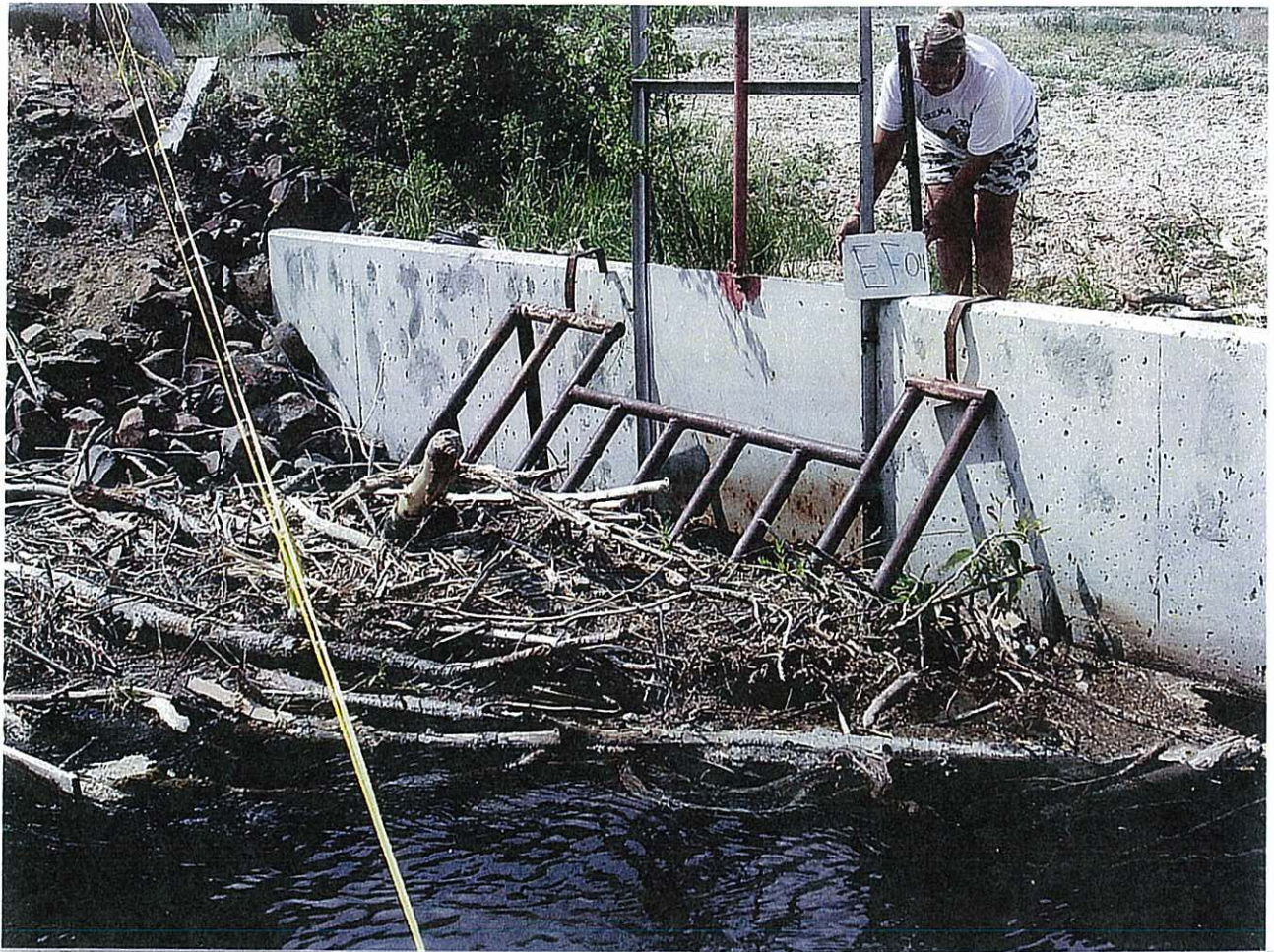
EF
03



EF
03

Exhibit D

EXHIBIT E



EF
04



EF
04

Exhibit E