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Attorneys for Claimants David Wayne Baker and Melodie L. Baker

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

In Re SRBA	)	Subcase 72-16782
	)	(Insert water right number)
	)	
Case 38576	)	STANDARD FORM 4
	)	
	)	MOTION TO FILE
	)	X LATE NOTICE OF CLAIM
	)	☐ AMENDED NOTICE OF CLAIM

INSTRUCTIONS

This form is used to file a late Notice of Claim or an amendment to a Notice of Claim in a reporting area where the Director's Report has been filed. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even-number pages upside down.

The water tight number for your late or amended claim must be indicated above in the blank space following "Subcase." You must use a **separate form for each** late or amended Notice of Claim.

This form has been adopted by the court in *SRBA Administrative Order 1, Rules of Procedure* (amended Sept. 30, 1996), Section 4, which may be consulted for further information.

By filing a *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim*, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

COPY

X I have read *SRBA Administrative Order 1, Rules of Procedure* (amended Oct. 10, 1997).

My name is _____

My address is _____

My phone number is: Work _____ Home _____

I am an attorney representing David Wayne Baker and Melodie L. Baker

My name is Daniel V. Steenson

My address is Ringert Law Chartered, 455 S. Third St., P.O. Box 2773, Boise, ID 83701-2773

My phone number is (208) 342-4591

MOTION TO FILE A LATE NOTICE OF CLAIM

A Motion to File a Late Notice of Claim will require a hearing before the Presiding Judge.

X I did not file a Notice of claim to the use of water in the SRBA because:

The claimants were unaware that the quantities that were claimed, recommended and decreed for their water rights were insufficient to provide for conveyance losses. The inadequacy of the decreed quantities has become clear in recent years, after the issuance of the partial decrees, as a result of measurements, the installation of fish screens in diversions, and notice from IDWR that diversions from the East Fork of the Salmon River will be subject to administration by a Water Master beginning in 2009.

☐ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of claim for domestic or stock watering use.

X I am providing legal and factual documentation for my claimed use of water. You must describe these documents and attach a readable copy. (You do not need to fill this out if you are reinstating a Notice of Claim for domestic or stock watering use, but you **must** attach a copy of your Notice of Claim.)

(1) Late Notice of Claim, (2) Affidavit of David Wayne Baker, (3) Affidavit of Richard L. Baker, (4) Affidavit of Larry Weeks, and (5) Affidavit of Brian Hamilton.

I have attached:

- ☒ A fully completed Notice of Claim (available for IDWR).
- ☐ A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I. C. § 42-1414. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$_____.
- ☒ A claim filing fee and late claim for those claims other than a domestic or stock watering use for which a notice of claim was not filed. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$100 (\$50 flat fee and \$50 late fee). (Water rights for irrigation of the acres referenced in the claim have been decreed.)

Follow these instructions regarding the hearing on this motion.

1. Contact the Clerk of the SRBA Court (208-736-3011) to request a hearing date and time.
2. Fill in the following information:

This motion will be heard on Tuesday, January 20, 2009, at 1:30p.m.
(Insert Date and Time)

at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A Motion to File an Amended Notice of Claim may require a hearing before the Presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires.

- ☐ I must amend my Notice of Claim to the use of water in the SRBA because:

- ☐ I am providing legal and factual documentation to support my amended Notice of Claim. You must describe these documents and attach a readable copy.

I have attached:

- ☐ An amended Notice of Claim (available from IDWR).
- ☐ Payment of the following additional fees required by IDWR:

VERIFICATION (Must be completed)

State of Idaho

County of ADA

Daniel V. Steenson, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

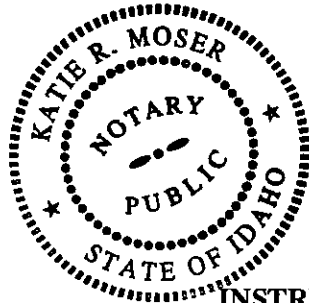
That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I. C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

Signature of person filing motion

Daniel Steenson

Attorney signing in representative capacity

Subscribed and sworn to before me on October 28, 2008
(Insert Date)



Katie R. Moser

Notary Public for Idaho
Residing at: Oasis, ID
My Commission expires: 2/20/2014

INSTRUCTIONS FOR MAILING

You must mail this form, including all attachments, to the Clerk of the SRBA Court. **FAX filings will not be accepted by the SRBA Clerk of the Court.** You must also send a copy to all parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on October 28, 2008 I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or a Special Master, you must serve a copy on all parties to that subcase.

(Insert Names/address of parties)



Signature of person or attorney mailing form

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 72-16782
Date Received _____
Receipt Number _____

LATE
**NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW**

Please type or print clearly

1. Name of Claimant(s) D. Wayne Baker, Melodie L. Baker Phone (208) 838-2440
Mailing Address HC 68 Box 304, Clayton, Idaho Zip 83227
2. Date of Priority only (1) per claim) April 1, 1930
3. Source of water supply (a) Salmon River, East Fork
which is tributary to (b) Salmon River
4. a. Location of existing point of diversion is: Township 10N Range 18E Section 12,
_____ 1/4 of SW 1/4 NE 1/4, Govt. Lot, _____ B.M., County of Custer (aka EF-3)
Additional points of diversion if any: All from the Salmon River, East Fork: T. 09N, R. 18E, Sec. 5, Lot 3,
NE1/4NW1/4 (aka EF-11); T. 10N, R. 18E, Sec. 31, SE1/4SW1/4SE1/4 (aka EF-12); T10N, R. 18E, Sec. 31,
SW1/4SW1/4SW1/4 (aka EF-13)
b. If instream flow, beginning point of claimed instream flow is:
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 enlargement in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. There are four (4) diversion works covered by this claim,
designated as EF-3, EF-11, EF-12, and EF-13. Each diversion has a headgate in the East Fork of the Salmon
River. Each diverts water into a ditch that has a fish screen installed by the Idaho Department of Fish and Game.
Each diversion is described in greater detail in the Affidavit of D. Wayne Baker in Support of Motion to File Late
Notices of Claims.
6. Water is claimed for the following purposes:
(both dates are inclusive) (cfs) (acre feet)
For Irrigation (conveyance loss) purposes from 4/1 to 10/31 amount 52.86 or _____
For _____ purposes from _____ to _____ amount _____ or _____
For _____ purposes from _____ to _____ amount _____ or _____

Last Name Baker Ident. Number 72-16782

COPY

7. Total quantity claimed (a) 52.86 (cfs) and/or (b) _____ (acre feet)
8. Total consumptive use claimed is N/A acre fee per annum.
9. Non-Irrigation uses; describe fully (e.g. Domestic: Give number of households served; Stockwater Type and number of livestock etc.) This water right is for conveyance losses in conveying water from the points of diversion to the places of use. There is no consumptive use associated with this claim.
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.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Total
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
9N	18E	4	8.8 lot 1	12.0 lot 2				2.1 lot 4											22.9
9N	18E	5						2.4											2.4
9N	18E	6	6.6 lot 1	4.8 lot 2			0.5 lot 3												11.9
10N	18E	31												7.0			5.7	12.0	24.7
10N	18E	32											15.0	18.0			20.0	22.0	75.0
10N	18E	33											15.0 lot 4	10.3 lot 5			8.2 lot 6		33.5

Total number of acres irrigated 170.4

11. In which county(ies) are lands listed above as place of use located? Custer
12. Do you own the property listed above as place of use? Yes X No _____
13. Describe any other water rights used at the same place and for the same purposes as described above.
The following rights are for irrigation from these diversions: 72-224 (EF-3), 72-225 (EF-3), 72-196 (EF-11), 72-197 (EF-11), 72-199 (EF-11 & EF-12), 72-200 (EF-11 & EF-12), 72-202F (EF-12), 72-201C (EF-13), 72-201F (EF-13), 72-202D (EF-13), 72-202E (EF-13), 72-202G (EF-13) or None ()
14. Remarks:

The maximum combined diversion for irrigation and conveyance loss at each point of diversion under the claimants water rights is limited as follows (see **Exhibit A**):

EF-3: this claim, 72-224 and 72-225 = 15.00 cfs

EF-11: this claim, 72-196, 72-197, 72-199 and 72-200 = 17.0 cfs

EF-12: this claim, 72-199, 72-200, 72-202F = 23.80 cfs

EF-13: this claim, 72-201C, 72-201F, 72-202A, 72-202D, 72-202E and 72-202G = 7.84 cfs

SCALE: 2 inches equal 1 mile. Draw plan in ink. See Exhibit B.

[illegible]

15. Basis or 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 _____

Last Name Baker Ident. Number 72-16782

Form No. 42-1409 (2) a 9/88 (Internet)

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 _____

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

Signature or Claimant (s) D. Wayne Baker Date 10-22-08
Melodie Baker Date 10-22-08

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

_____ Title
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.

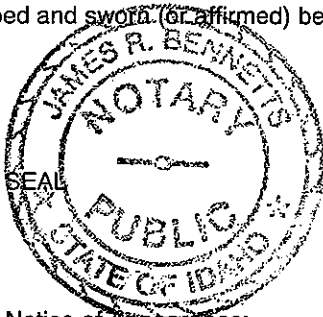
Signed of Authorized Agent _____

Title and Organization _____ Date _____

State of Idaho/or _____)

County of Custer) SS.)

Subscribed and sworn (or affirmed) before me this 22nd day of October 2008



Notary Public James R. Bennett

Residing at Challis, Idaho

My Commission Expires 1-21-11

16. Notice of Appearance:

Notice is hereby given that I, Daniel V. Steenson will be acting as attorney at law on behalf of the claimant signing above, and 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 Daniel Steenson

Address P.O. Box 2773, Boise, Idaho 83701

Date 10-27-08

Last Name Baker Ident. Number 72-16782

EXHIBIT A

Wayne Baker Diversions, Water Rights, Claims & Measurements

<u>East Fork Salmon River</u>							
<u>Diversions/Water Rights/Late Claims</u>						<u>Measurements</u>	
<u>Diversions</u>	<u>Water Rights</u>	<u>Diversion Rates</u>	<u>Conveyance Loss</u>	<u>Late Claim</u>	<u>Diversion Max.</u>	<u>IDFG</u>	<u>BOR</u>
EF-3	72-00224	3.60 cfs					
	72-00225	<u>0.60 cfs</u>					
		4.20 cfs	+ 10.80 cfs	=	15.00 cfs	20.75 cfs	25.10 cfs
EF-10/11 ¹	72-00196	1.20 cfs					
	72-00197	1.20 cfs					
	72-00199	1.50 cfs					
	72-00200	<u>1.30 cfs</u>				EF-10: 6.12 cfs	
	5.20 cfs - 2.40 cfs ²		+ 14.60 cfs	=	17.00 cfs	EF-11: 17.00 cfs	8.40 cfs
EF-12	72-00199	1.50 cfs					
	72-00200	1.30 cfs					
	72-00202F	<u>0.27 cfs</u>					
	3.07 cfs - 0.27 cfs ³		+ 20.73 cfs	=	23.80 cfs	16.00 cfs	24.60 cfs
EF-13	72-00201C	0.12 cfs					
	72-00201F	0.12 cfs					
	72-00202A	0.186 cfs					
	72-00202D	0.20 cfs					
	72-00202E	0.12 cfs					
	72-00202G	<u>0.36 cfs</u>					
		<u>1.106 cfs</u>	+ <u>6.73 cfs</u>	=	<u>7.836 cfs</u>	<u>9.20 cfs</u>	<u>16.50 cfs</u>
			52.86 cfs				
	Total:	10.776 cfs	+	52.86	= 63.636 cfs	69.07 cfs	74.60 cfs

¹EF-10 has been consolidated into EF-11.

²Authorized diversion range with 72-00199 and 72-00200 split between EF-11 and EF-12.

³Authorized diversion range with 72-00199 and 72-00200 split between EF-11 and EF-12.

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-12 Water Rights, Claims & Measurements

EF-12 conveyance loss total:

$$24.60 \text{ cfs (BOR)} - 3.87 \text{ cfs (decrees)} = \mathbf{20.73 \text{ cfs}}$$

<u>Decreases</u>	<u>Decreases</u>			<u>Conveyance</u>			<u>Ditch Measurements</u>	
	<u>Rates</u>	<u>Total</u>	<u>%</u>	<u>Total</u>	<u>Claims</u>	<u>Total</u>	<u>IDFG</u>	<u>BOR</u>
72-00199 (Baker)	1.50 cfs						16.00 cfs	24.6 cfs (6/08)
72-00200 (Baker)	1.30 cfs							
72-00202F (Baker)	<u>0.27 cfs</u>	<u>3.07 cfs</u>		20.73 cfs	20.73 cfs	+ 3.07 cfs = 23.80 cfs		
72-10533 (Idaho)	<u>0.80 cfs</u>	<u>.80 cfs</u>				<u>.80 cfs</u>		
All Rights total:		3.87 cfs		+	20.73 cfs	= 24.60 cfs		

EF-13 Water Rights, Claims & Measurements

EF-13 conveyance loss total:

$$16.50 \text{ cfs (BOR)} - 3.016 \text{ cfs (decrees)} = \mathbf{13.484 \text{ cfs}}$$

<u>Decreases</u>	<u>Rates</u>	<u>Decreases</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>
								9.20 cfs	16.5 cfs (10/08)
72-00201C (Baker)	.12 cfs								
72-00201F (Baker)	.12 cfs								
72-00202A (Baker)	.186 cfs								
72-00202D (Baker)	.20 cfs								
72-00202E (Baker)	.12 cfs								
72-00202G (Baker)	.36 cfs	1.106 cfs							
$.4990 \times 13.484 \text{ cfs} = \mathbf{6.73 \text{ cfs}} + 1.106 \text{ cfs} = \mathbf{7.836 \text{ cfs}}$									
72-00201D (Gillette)	.07 cfs								
72-00202C (Gillette)	.04 cfs	.11 cfs						0.11 cfs	
72-00202J (Guffy)	.12 cfs	.12 cfs						0.12 cfs	
72-10532 (Idaho)	.80 cfs	.80 cfs						0.80 cfs	
72-11760(Goicoechea)	.02 cfs	.02 cfs						0.02 cfs	
72-16652 (Sho Ban)	.66 cfs								
72-16653 (Sho Ban)	.20 cfs	.86 cfs						0.86 cfs	
All Rights total:		3.016 cfs			+	6.73 cfs	=	9.746 cfs	

¹For purposes of apportioning conveyance losses to the Bakers' diversions, this is the percentage which the owner's diversion bears to the total irrigation EF-4 diversions (water right no. 72-10532, for bypass flow through the IDFG fish screen, is not included in this calculation.

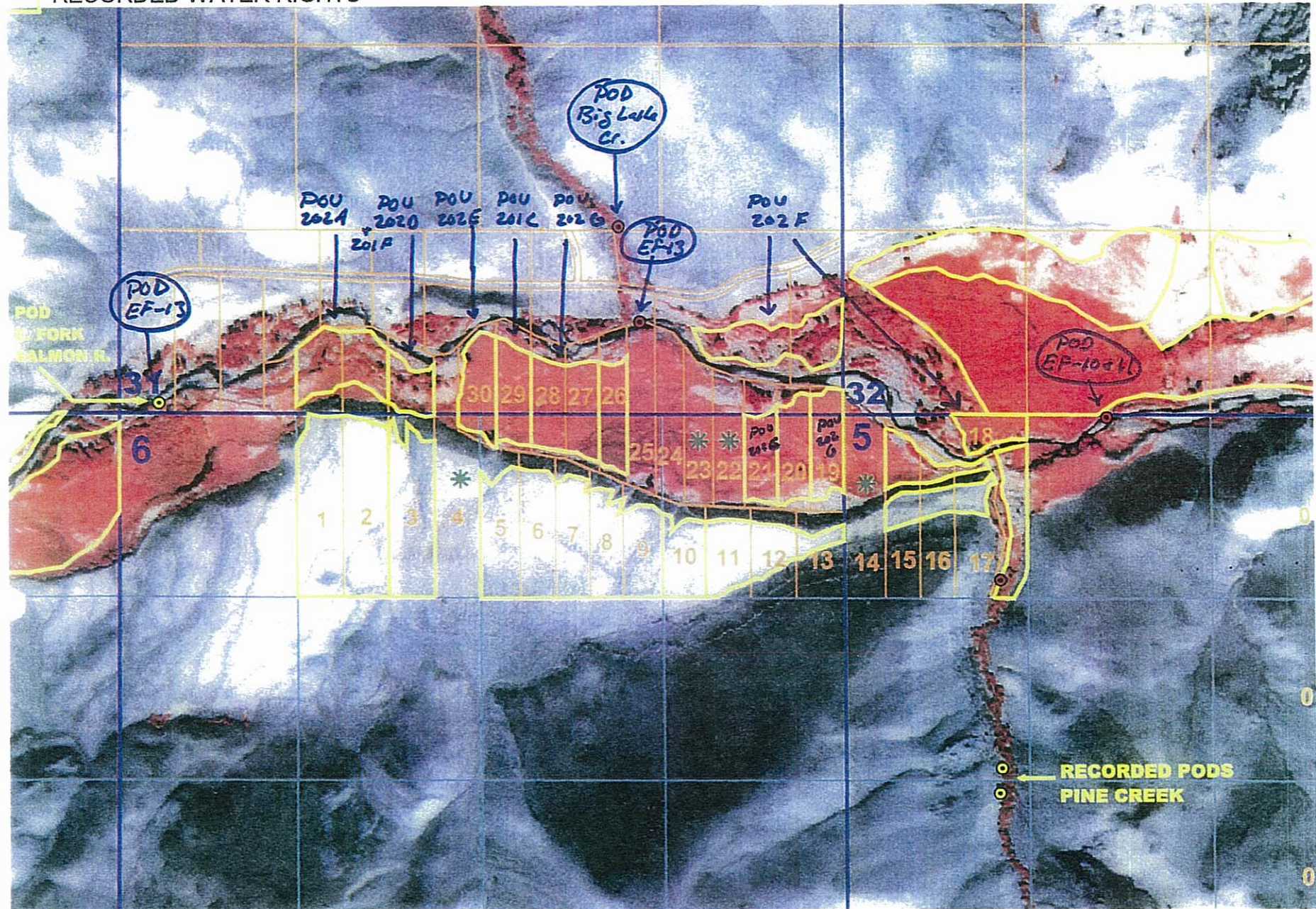
EXHIBIT B

PINE CREEK SUBDIVISION

★ LOTS OWNED BY SHOSHONE / BANNOCK TRIBE
RECORDED WATER RIGHTS

RIGHTS: 72-00201 C
72-00201 F
72-00202 A
72-00202 D
72-00202 E
72-00202 F
72-00202 G

TWP 09N RNG 18E SEC 5, 6
TWP 10 N RNG 18E SEC 31



V. HANCOCK

Exhibit B

1987 NAPP AERIAL PHOTOGRAPHY

IDaho DEPARTMENT OF WATER RESOURCES

**RIGHTS 72-00199
and 72-00200**

RECOMMENDED PLACE OF USE

TWP 10N, RNG 18E, SEC 32, 33

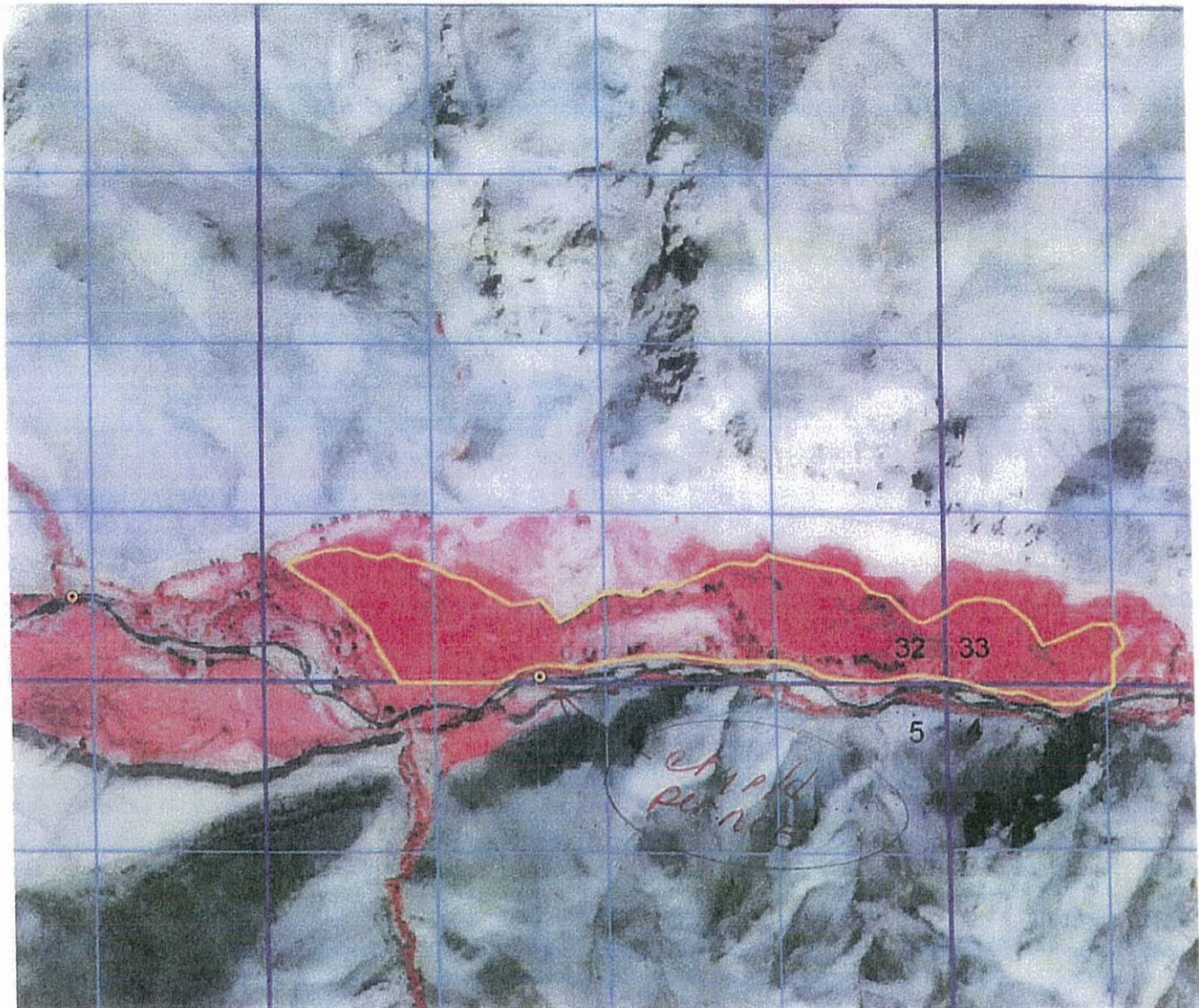
TWP 09N, RNG 18E, SEC 4

data entry on October 28, 1998

PODs are:

EF-11 in TWP 09N, RNG 18E, Sec. 5

EF-12 in TWP 10N, RNG 18E, Sec. 31



0 1320 2640 3960 5280 Feet



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

GIS PLACE OF USE PRESENTATION

1987 OR 1988 NAPP AERIAL PHOTOTGRAPHY

DATA ENTRY BY VIKIE HANCOCK

SUPERCEDED PER NOE 12/28/98

**RIGHTS 72-00196,
and 72-00197**

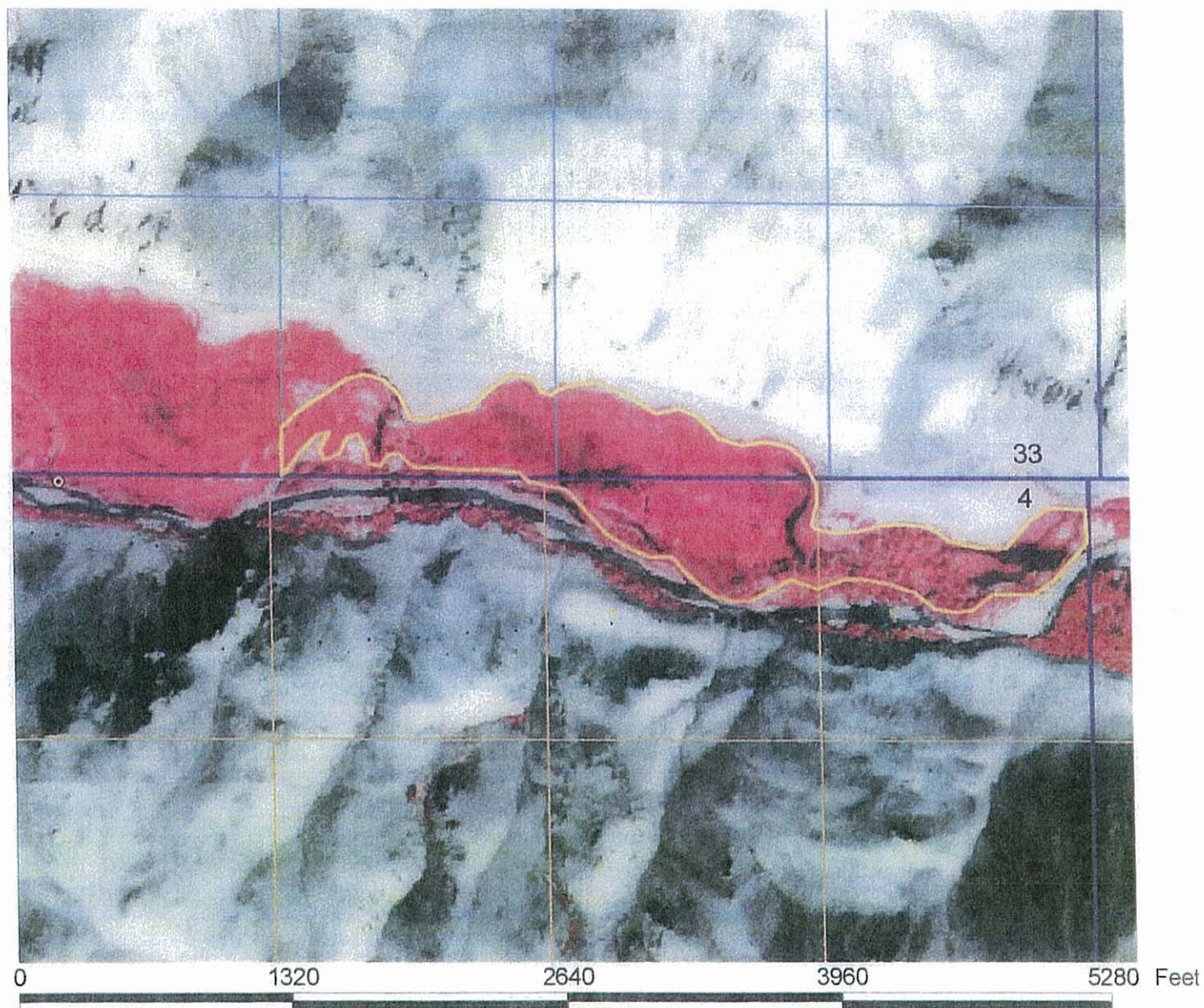
RECOMMENDED PLACE OF USE

TWP 10N, RNG 18E, SEC 33

TWP 09N, RNG 18E, SEC 4

data entry on October 28, 1998

*Point of Diversion is
EF-11 in TWP 09N, RNG 18E, Sec. 5*



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

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

ZIGHTS 72-00204

nd 72-00205

ZIEGLER
BASIN V24

18E

POU

11N
10N

DECREE

POU: NE SW § 35
W 1/2 SE 11N
SE SE 18E

POD: ~~NE~~ NE § 12
SW 10N

3.606 04-01-1881 18E

EF-3 POD

MAPS USED:

DATE:

ASCS

ORTHO

NAPP

BLM

1974 ZIEGLER BASIN
V24

SHAKER, WAYNE

DECREE TRACTS

44-00224