

State of Idaho

License and Certificate of Water Right

POOR ORIGINAL

Water License No. 18429

Water District No.

Amount 120 second feet

Priority December 18, 1936

THIS IS TO CERTIFY that WEISER IRRIGATION DISTRICT of Weiser, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated December 18, 1936; that Permit No. 18429 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 120 second feet, was issued thereunder on January 23, 1939, showing that said works were completed on the 12th day of March, 1938; and that on the 12th day of March, 1938,

WEISER IRRIGATION DISTRICT

of Weiser, State of Idaho, made proof to the satisfaction of the Commissioner of Reclamation of Idaho, of the right to use the waters of Weiser River, a tributary of Snake River, for the purpose of irrigation and domestic use, under Use Permit No. 18429 of the Commissioner of Reclamation and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in Volume 7 of Licenses, at page 3913, on the 23rd day of January, 1939; The right hereby confirmed dates from December 18, 1936; The Point of Diversion is located S 49° 30' W. 1360 feet distant from the NE corner Sec. 36, T. 11 N., R. 4 W., B. M. in the NE 1/4 NE 1/4, Sec. 35, T. 11 N., R. 4 W., B. M.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 120 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
N7°N4'	Sec. 2; N4°N4'	SW1/4 Sec. 3; N4'	NE1/4 Sec. 4; N4°N4'	SW1/4 Sec. 5; N4°N4'	SW1/4 Sec. 1; N4°N4'
N4°N4'	Sec. 6; All in Twp. 10 N., R. 4 W., B. M.	NE1/4 Sec. 1; N4°N4'	Sec. 2; SE1/4 Sec. 3; S4°S4'	Sec. 34; S4°S4'	Sec. 35; All in Twp. 11 N., R. 4 W., B. M.
S4°S4'	Sec. 29; S4°S4'	Sec. 30; N4'	NE1/4 Sec. 31; N4'	NE1/4 Sec. 32; N4°N4'	SW1/4 Sec. 33; S4°S4'
Sec. 33; SW1/4 Sec. 34; N4°N4'	SE1/4 Sec. 35; S4°S4'	Sec. 36; N4°N4'	SW1/4 Sec. 37; S4°S4'	Sec. 38; N4°N4'	SW1/4 Sec. 39; S4°S4'
R. 5 W., B. M.	SW1/4 Sec. 14; S4°S4'	Sec. 15; N4'	SW1/4 Sec. 16; S4°S4'	Sec. 17; S4°S4'	Sec. 18; N4°N4'
SE1/4 Sec. 19; S4°S4'	Sec. 20; N4°N4'	SW1/4 Sec. 21; S4°S4'	Sec. 22; N4°N4'	SW1/4 Sec. 23; S4°S4'	Sec. 24; N4°N4'
N4'	NE1/4 Sec. 25; All Secs. 26, 27 & 28; N4'	NE1/4 Sec. 29; N4°N4'	SW1/4 Sec. 30; N4°N4'	SW1/4 Sec. 31; N4°N4'	SW1/4 Sec. 32; N4°N4'
in Twp. 11 N., R. 6 W., B. M.	A total of 10,890.9 acres				

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNES3 the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho, this 23rd day of January, 1939

(SEAL)

(SEAL)

JAMES SPOFFORD

Commissioner of Reclamation

67 2169

MICROFILMED

OCT 25 1996

Kelly's portion of this license - claimed under No 7-02169C

Idaho Department of Water Resources

67-2169C



900 0 900 1800 2700 Feet

T10N, R 04W, S6



Prepared by Anita L. Warntjes
January 12, 2004
1993/94 True Color Photo

Note to reviewer
see "Objection"
from Weiser
Irrigation Dist.

RECEIVED

SEP 25 1996

WATER RESOURCES
WESTERN REGION

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: A67-02169C
Date Received: 9/26/1989
Receipt No: W021538
Received By: [Signature]

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: VAUGHN W KELLEY 208-549-2317
Address: PO BOX 413
WEISER ID 83672-0

2. Date of Priority: DEC 18, 1936

3. Source: WEISER RIVER Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
11N	04W	35	SE	NE	NE		WASHINGTON

5. Description of diverting works:
CANAL WITH FLOOD IRRIGATION.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	1.140		

7. Total Quantity Appropriated is:
1.140 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 of	Lot	Use	Acres
10N	04W	6	NE	NW		IRR	10.0
			NW	NW		IRR	2.0
			SW	NW		IRR	29.0
			SE	NW		IRR	16.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	57.0
					Total Acres	57.0

11. Place of use in counties: WASHINGTON

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

13. Other Water Rights Used:
A67-00615, A67-10316 & A67-10319.

14. Remarks:

15. Basis of Claim: DECREED

Water Right Number: 18429

Case Number:

Court :

Decree date: / /

Decree Plaintiff

vs

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 _____ 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): Vaughn W. Helley Date: 9-23-96

Date: _____

A67-02169C

Page

Date: 09/20/96

MICROFILMED

OCT 25 1996

State of Idaho)
County of Washington) SS.

Subscribed and sworn (or affirmed) before me this 23rd day
of September 19 96

Norman E. Baker
Notary Public

Seal

Residing at Wenatchee, Idaho
My Commission Expires 5-6-2000

State of Idaho

POOR ORIGINAL

License and Certificate of Water Right

Water License No. 18429

Water District No.

Amount 120 second feet

Priority December 18, 1936

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WEISER IRRIGATION DISTRICT

of Weiser, Idaho

made application for a permit to appropriate the

public waters of the State of Idaho, dated December 18, 1936; that Permit No. 18429

was issued under said application; that Certificate of Completion of works, with a carrying capacity of

120 second feet, was issued thereunder on January 23, 1939, showing that said works

were completed on the 12th day of March, 1939; and that on the 12th

day of March, 1939,

WEISER IRRIGATION DISTRICT

of Weiser

State of Idaho

made proof to the satisfaction of the

Commissioner of Reclamation

of Idaho, of the right to use the waters of Weiser

River

a tributary of Snake River

for the purpose of irrigation and domestic

use

under Use Permit No. 18429

of the Commissioner of Reclamation

and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is

hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in Volume 7

of Licenses, at page 3913, on the 23rd day of January, 1939;

The right hereby confirmed dates from December 18, 1936;

The Point of Diversion is located S 49° 30' W, 1360 feet distant from the NE corner Sec. 35, T. 11 N., R. 4 W., B. M. in the NE 1/4, Sec. 35, T. 11 N., R. 4 W., B. M.

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N7/4	Sec. 2; N4/4	Sec. 3; N1/2	NE1/4 Sec. 4; N1/2	NE1/4 Sec. 5; N1/2	NE1/4 Sec. 6; N1/2
N1/2	Sec. 6; N1/2	Sec. 7; N1/2	NE1/4 Sec. 8; N1/2	NE1/4 Sec. 9; N1/2	NE1/4 Sec. 10; N1/2
N1/2	Sec. 11; N1/2	Sec. 12; N1/2	NE1/4 Sec. 13; N1/2	NE1/4 Sec. 14; N1/2	NE1/4 Sec. 15; N1/2
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WEISER IRRIGATION DISTRICT,
a public corporation,

Plaintiff,

vs.

T. G. WOOD, Water Master of
Water District No. 41 of the
State of Idaho,
Defendant.

1000 ORIGINAL

DEGREE
(COPY)

3724

Row 1

Roll 23/272

Not a part of attached.

1936 - Denver
for may
H-2

This cause came on regularly for hearing before the court in open court at the hour of ten o'clock in the forenoon of this date.

Plaintiff appeared in person of Ed. R. Coulter, its attorney of record. Defendant appeared neither in person nor by attorney, and the following proceedings were had:

It appearing from the records and files in this action that due process in this action was had upon defendant T. G. Wood, as Water Master of Water District No. 41 of the State of Idaho, within Washington County, Idaho, on the 20th day of March, 1939, and that time for answer has long since expired and that the defendant has not answered or otherwise appeared, on motion of Ed. R. Coulter, attorney for the plaintiff, the default of the defendant T. G. Wood, Water Master of Water District No. 41 of the State of Idaho, is hereby entered.

And it further appearing from the records and files that the plaintiff did cause to be published in the Weiser American, a weekly newspaper of general circulation published in Washington County, Idaho, in three weekly issues of said paper, beginning with the issue of March 23,

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1938, and ending with the issue of April 13, 1939, of a notice containing the title of said court and cause, the name of the stream of water in which plaintiff claims an interest, date of priority of claim and short title consisting of the name of the first plaintiff and the first defendant of the decree heretofore entered in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Washington, adjudicating the waters of Weiser River and fixing the permanent rights in said stream; that said notice was in the form provided for and contained all of the statements required under the provisions of Section 41-1305 I C A.

And it further appearing that there has been no appearance in said action of anyone protesting the matters and things set forth in the complaint of plaintiff, on motion of Ed. R. Coulter, attorney for the plaintiff, the default of all water users of Water District No. 41 of the State of Idaho, and of all people claiming rights adverse to the rights of plaintiff as set forth in said notice and application, are hereby entered.

Thereupon the hearing was had of said petition. Witnesses were sworn and examined on behalf of the plaintiff and the taking of evidence was closed and the cause was submitted to the court for decision.

After due deliberation thereon by the court the court doth find, adjudge and decree as follows:

I.

That during all the times mentioned in said complaint plaintiff was and still is a public corporation organized under the irrigation district laws of the State of Idaho, and situated, lying and being wholly within Washington County, Idaho.

II.

That T. C. Wood was the duly elected and qualified

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district embracing all the irrigable land in Washington and Adams Counties, Idaho.

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III.

That heretofore an action was instituted in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Washington, by R. T. Muir et al, plaintiff, v. William Allison, et al, defendant, for the adjudication of the waters of Weiser River and its tributaries; therein such proceedings were had that the cause was tried and finally on the 11 day of May, 1918, a final decree was duly entered in said cause wherein the waters of Weiser River were adjudicated; that appeal was taken from said decree to the Supreme Court and opinion was handed down by the Supreme Court reversing said decree of the lower court in part and sustaining it in other parts, and thereafter a supplemental decree was rendered in the District Court in conformity with the remitter of the Supreme Court and said decree, as corrected, is now in full force and effect and has never been annulled, vacated or set aside, and said plaintiff accepts said decree and the findings of fact and conclusions of law upon which it is based as being binding upon it and its rights.

IV.

That by said decree aforesaid, the duty of water was fixed at five-eighths ($5/8$) inch to the acre with a high duty of water during period of scarcity of three-eighths ($3/8$) inch to the acre.

V.

That under said decree adjudicating the waters of Weiser River there was adjudicated to the plaintiff Weiser Irrigation District and the lands thereunder, the following amounts of water, to-wit:

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Dated and amount of priorities awarded the Weiser Irrigation District in the decree adjudicating the waters of Weiser River.

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	Date of Priority	Amount 5/8ths	Amount 3/8ths
No. 1	5-1-68	100 inches	60 inches
No. 27	5-28-83	1500 "	900 "
No. 43	5-1-87	250 "	150 "
No. 47	5-1-88	250 "	150 "
No. 52	5-1-89	300 "	180 "
No. 57	5-1-90	200 "	120 "
No. 63	5-1-91	200 "	120 "
No. 66	5-1-92	150 "	90 "
No. 69	5-1-93	200 "	120 "
No. 71	5-1-94	150 "	90 "
No. 76	5-1-95	150 "	90 "
No. 79	5-1-96	150 "	90 "
No. 81	5-1-97	150 "	90 "
No. 82	5-1-98	250 "	150 "
No. 103	5-1-04	2000 "	1200 "
		6000	3600

VI.

That all of the lands embraced in the Weiser Irrigation District are within Water District No. 41, of which the defendant P. G. Wood is the water master, and all of said lands receive the direct natural flow irrigation from the waters of Weiser River and its tributaries.

VII.

That since the rendition of said decree so adjudicating the waters of Weiser River, as aforesaid, a great change has come over the farming practices in the Weiser Irrigation District; that when said decree so adjudicating the waters of Weiser River was rendered, hay and grain were the principal crops raised upon the lands of Weiser Irrigation District and the quantity of five-eighths (5/8) inch to the acre as low duty and three-eighths (3/8) inch high duty was sufficient for the raising of said crops.

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That especially in late years the raising of hay and grain on the lands within Weiser Irrigation District has ceased to be the major or a substantially large portion of the crops raised on said lands; that at the present time the best paying and the

POOR ORIGINAL

said lands are sugar beets and late potatoes. That these crops require a large amount of water late in the season, so that at the present time said lands require a great deal more water than under the conditions as they existed at the time said decree was rendered.

That since the rendition of said decree and at the present time the Weiser Irrigation District is supplying irrigation water for some 3,000 more acres of land than were being irrigated by the works of said irrigation district at the time said decree was rendered.

VIII.

That in the decree adjudicating the waters of the Weiser River no provision is made to take care of ditch losses incidental to transportation of water between the point where the water is taken from the Weiser River and the point where the same is applied upon the lands. That the canal system supplying the lands within the Weiser Irrigation District with irrigation water is some fifty miles in length; for many miles the ditch is all of side hill construction and the ditch losses will average in excess of 25% of the amount of water turned into the canal at the point where same is taken out of the Weiser River, with the result that the amount of water adjudicated to the lands in the Weiser Irrigation District under the decree does not supply to the lands for actual use thereon the quantity of water to which said lands are entitled under the duty water as fixed by the decree.

IX.

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That on or about the 18th day of December, 1936, Weiser Irrigation District made application No. 25683 before the Commissioner of Reclamation of the State of Idaho, for 120 second feet of water of Weiser River for the irrigation of the said lands within and without the Weiser Irrigation District which were then being irrigated by and out

POOR ORIGINAL

of the works of the Weiser Irrigation District; that on said application there issued from the office of the Commissioner of Reclamation of the State of Idaho permit No. 18429 authorizing the diversion of 120 second feet of water from Weiser River with the date of priority of December 18, 1936; that thereafter such acts and things were done and proceedings had so that on the 23rd day of January, 1939, water license and certificate of water right No. 18429 with a priority of December 18, 1936, for 120 second feet of the waters of Weiser River was issued to the Weiser Irrigation District and for the irrigation of the lands in said license and certificate described,

X.

That it requires said additional 120 second feet of the waters of Weiser River, in addition to the water adjudicated and awarded to the lands within Weiser Irrigation District by the decree adjudicating the waters of Weiser River in order to supply said lands with ample and sufficient water each irrigation season for the irrigation of ~~same and in order to supply said lands with the quantity of water~~ awarded to the district and fixed by the decree fixing and establishing the duty of water.

XI.

That said complaint was brought under and by virtue of the authority of, and provisions contained in, Section 41-1305, I. C. A., and for the purpose of having adjudicated to the Weiser Irrigation District to supply with irrigation water the lands described in said license and water certificate No. 18429, being the water not covered by and included in the waters adjudicated in the decree adjudicating the waters of Weiser River.

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It is further ordered, adjudged and decreed that hereby there is adjudicated and awarded to the plaintiff for the irrigation of the land in plaintiff irrigation district a supplemental water right from the

POOR ORIGINAL

for 120 second feet of the waters of Weiser River under and by virtue of the water license and certificate of water right No. 18429 which issued from the office of the Commissioner of Reclamation of the State of Idaho on the 23rd day of January, 1939.

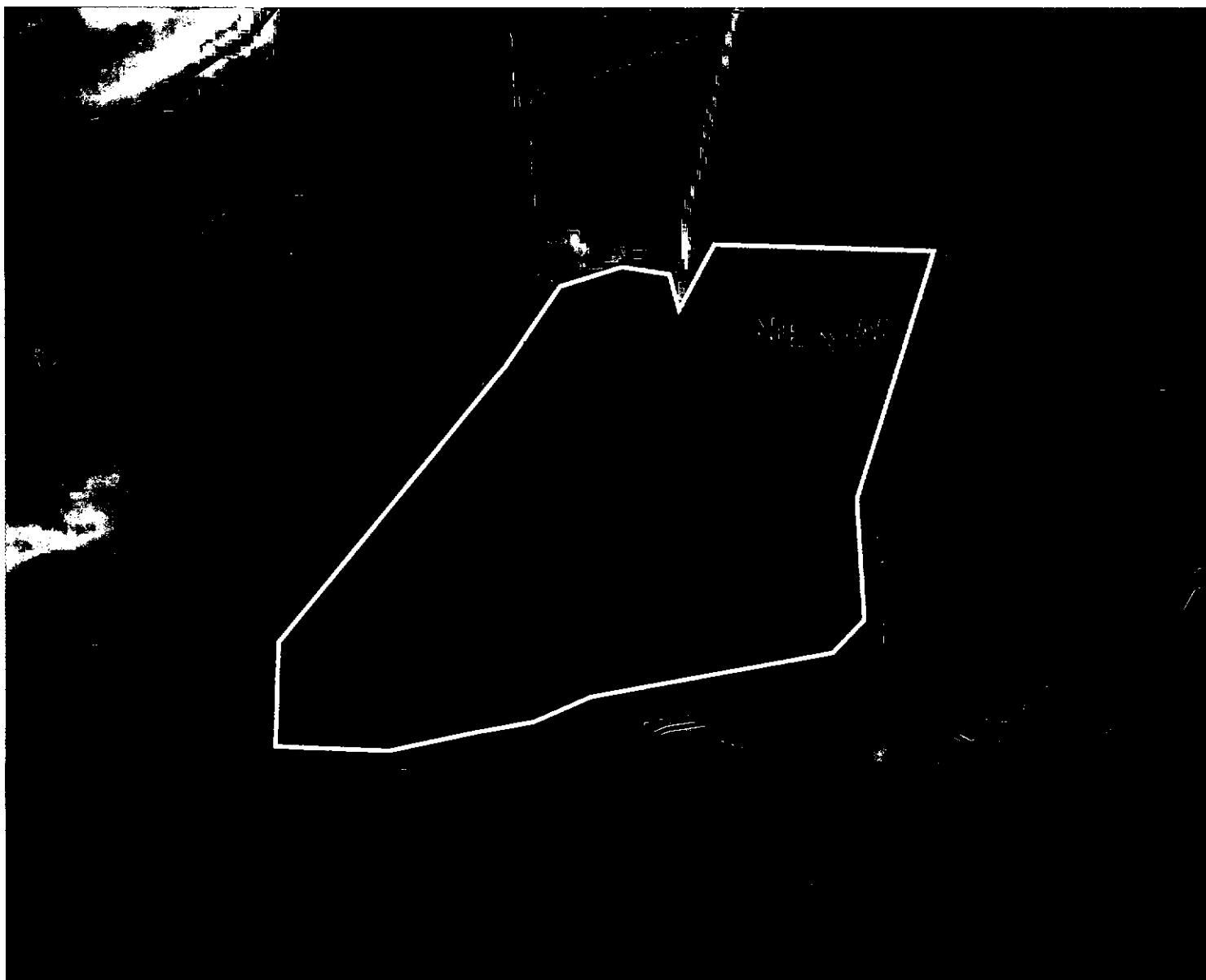
Done in open court this the 16 day of May, 1939.

A. O. BUTTON
District Judge.

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OCT 25 1996

Idaho Department of Water Resources

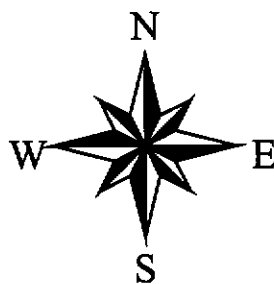
67-2169C



900 0 900 1800 2700 Feet

A horizontal scale bar with alternating black and white segments, corresponding to the numerical values above it.

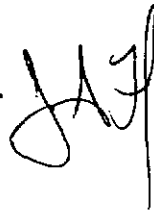
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**Prepared by Anita L. Warntjes
January 12, 2004
1993/94 True Color Photo**

***** C O N F I D E N T I A L *** ATTORNEY COMMUNICATION *****

To: Jan Shurte
From: J. Andrew Helmlinger
Re: Claim 67-02169
Date: October 1, 1996



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WATER RESOURCES
WESTERN REGION

MEMORANDUM

I. Issue Presented

1. Whether IDWR should review a claim as licensed or decreed when the right was originally licensed and subsequently decreed in a supplemental adjudication?

II. Brief Answer

1. IDWR should review the claim as a decree when the right was the subject of an otherwise valid adjudication and decree and if the claimant was a party to or otherwise was bound by the decree.

III. Facts

On May 11, 1918 the Seventh Judicial District Court for the State of Idaho issued a decree in the water right adjudication Muir v. Allison. The Idaho State Supreme Court reversed and remanded a portion of the decree, which the District Court amended in conformity with the Supreme Court ruling. The resulting decree is now in full force and effect.

Because of changing crop patterns and growing conveyance losses, Weiser Irrigation District (Weiser) applied for a permit to appropriate 120 cfs in addition to the

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water right the district owned under the Muir decree (Weiser River decree). Weiser received a permit for the appropriation of 120 cfs with a priority date of December 18, 1936. Weiser received a license and certificate for water right No. 18429 on January 23, 1939, which stated the same rate and priority as the permit. Weiser filed an adjudication of this supplemental right, and on May 16, 1939 obtained by default a decree for a water right of 120 cfs with a priority date of December 18, 1936, appurtenant to the lands described in the license and certificate.

IV. Discussion

1. Whether IDWR should review a claim as licensed or decreed when the right was originally licensed and subsequently decreed in a supplemental adjudication?

If the claimant was a party to, or is otherwise bound by a decree, IDWR should review the claim as a decree when the right was the subject of an otherwise valid adjudication and decree. As stated in the IDWR CLAIM INVESTIGATION MANUAL 22, "If the water right was determined in [a subsequent decree], then the owner at the time of the adjudication was clearly a party to the adjudication and the claimant is bound by the decree. The basis of the claim should be changed to decree, and the claim should be reviewed as a claim based on the decree."

Once the claimant is established to have been a party or to have been bound to a decree, the claim should be reviewed a decreed right claim.

You may also wish to review the discussion of *res judicata* in the IDWR CLAIM INVESTIGATION MANUAL.

VI. Conclusion

IDWR should review as a decreed claim any claim that was originally licensed and the subject of a subsequent decree. This right was licensed in January, 1939, and

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decreed in May, 1939. Therefore, IDWR should review this claim as a decreed right claim.

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Weiser Irrigation District
P.O. Box 591
Weiser, Idaho 83672
208-414-1792
fax 208-414-1794

October 24, 2002

Lori Graves
Sr. Water Resource Agent
2735 Airport Way
Boise, Idaho 83705-5082

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OCT 25 2002

**WATER RESOURCES
WESTERN REGION**

Re: V Kelly Claim A67002169C

Dear Lori:

During the early 1940's the Weiser Irrigation District thought they had extra water. They entered into several contracts outside the District to provide water. Enclosed is an agreement with Annie Kelley. She purchased both Crane Creek storage water (#62230) and 50 inches of water from the Irrigation District's 120 cfs under licence No. 18429. Since then her son Vaughn has expanded the right to irrigate about 57 acres. He has also filed a claim on water delivered through our canal. We object to his claim A67002169C. For years he has been paying \$12.00 for the water. I am including a copy of our mediation with him, Green, Smith, Bakers Brothers and Institute Canal Co. under case CV98-00496.

Sincerely yours,

Jay Edwards
Sec.

Enc.

Washington County Title

47 Min. past 1:00 o'clock P. M.

This 7th day of April 1982

BK 10 OF Misc PG342

MARY KAUTZ, Recorder. Fee: \$6.00

By Shirley Joney Deputy

Return to: W.C.P.

INDEXED

THIS CONTRACT, executed in duplicate this the 15th day of January, 1941, by and between WEISER IRRIGATION DISTRICT, a quasi-municipal corporation, of Weiser, Idaho, party of the first part, and ANNIE KELLEY, a widow, of Weiser, Idaho, party of the second part, WITNESSETH:

WHEREAS, the party of the second part is the owner of the fee title to, and in the possession of, the following described lands located in Washington County, Idaho, to-wit:

Beginning at a point 548 feet north, 350 feet W of the SE $\frac{1}{4}$ corner of NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6, Township 10, North of Range 4 W. B. M., thence S 4 6' east 168 feet, S 32 40' W 36.5 feet, S 37 5' W 728 feet, S 33 48' W 327 feet, S 37 5' W 155.5 feet, S 49 10' E 391 feet, S 70 15' 120 feet to Weiser River, North 89 57' East 263.6 feet N 77 52' 210.8 feet N 65 2' E 226.8 feet N 25 20' E 198 feet N 58 45' E 209 feet S 87 26' E 121.7 feet N 29 45' 187.9 feet N 19 42' 181.9 feet, thence 68 22' E 93.3 feet N 58 38' E 400 feet N 10 51' E 294 feet N 18 13' E 435.6 feet W 1339 feet to the place of beginning, containing 50.15 acres.

and,

WHEREAS, in 1937 the party of the first part made application to the Commissioner of Reclamation of the State of Idaho for a permit to appropriate a large quantity of flood waters of the Weiser River and on which application Permit # 18425 issued from the office of the Commissioner of Reclamation of the State of Idaho to the party of the first part, and since said time formal proof of beneficial use of the water under said permit has been made and license therefor has been duly issued by the Commissioner of Reclamation of the State of Idaho unto the party of the first part; and,

WHEREAS, the party of the second part is desirous of obtaining late and supplemental water from the Crane Creek reservoir for irrigation of said tract of land, and if same is obtained it will be necessary that said water, and in fact, all of the water to be used in irrigation

of the said lands of the second party shall be transported from the Weiser River to said lands through the irrigation canal of the party of the first part;

NOW, THEREFORE, in consideration of the premises and of the sum of \$300.00, cash in hand paid by the second party to the first party, the receipt whereof is hereby acknowledged, the party of the first part does hereby contract and agree with the party of the second part that it will cause Frank D. Ryan, as trustee, by proper deed of conveyance duly approved by the court, to convey to the party of the second part storage capacity in the Crane Creek reservoir sufficient to annually impound in said reservoir one hundred (100) acre feet of the primary storage rights in the Crane Creek reservoir;

And in consideration of said sum above set forth, the party of the first part does hereby sell and grant to the party of the second part an interest in said water permit license # 18426 hereinbefore referred to, sufficient to give to the party of the second part fifty (50) miners inches of said water right and which water right is from the flood waters of the Weiser River, and does hereby also grant and convey to the party of the second part the perpetual right to transport through the irrigation canal of the party of the first part annually, said fifty miners inches of flood water and said storage water which the party of the first part hereby agrees to have Frank D. Ryan convey to the party of the second part.

It is agreed that annually the party of the second part shall pay to the party of the first part twelve (\$12.00) dollars maintenance charge, same to be paid one-half on or before the first day of April each year, and the balance on or before the first day of October each year.

It is further agreed that the delivery of water hereby conveyed shall be made by the ditch tender of the first part, who shall have the sole right to operate and manage all headgates leading from the canal of the party of the first part.

It is agreed that in the event in the future it shall become necessary that any improvements shall be made in the canal of the party of the first part at any place between the head of said canal and the lands of the party of the second part, the party of the second part shall pay her pro rata part of the expense of such improvements.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands signing this contract in duplicate the day and year first above written.

WEISER IRRIGATION DISTRICT,
a corporation.

By

John J. McCreary
President.

ATTEST:

Secretary

Annie Kelley

STATE OF IDAHO :
: ss.
County of Washington :

On this the 10 day of January, 1941, before me, the undersigned, a Notary Public in and for said State, personally appeared John J. McCreary and Oliver J. Smith, known to me to be the president and secretary respectively of the Weiser Irrigation District, the corporation whose name is subscribed to the within instrument, and acknowledged to me that such corporation executed the same.

And at the same time and place also appeared Annie Kelley, known to me to be the person whose name is 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 notary seal this the day and year first above written.

E. C. Lawrence
Notary Public for Idaho,
Residing at Weiser, Idaho.



THIS INDENTURE, Made this 29th day of January, 1941, by and between Frank D. Ryan and Luella N. Ryan, his wife, of Weiser, Washington County, Idaho, parties of the first part, and Annie Kelly, a widow, of Weiser, Washington County, Idaho, party of the second part.

WITNESSETH: That whereas, the said Frank D. Ryan did, under date of the 16th day of September, 1938, purchase, at Receiver's Sale in the case of Joseph F. Rhodes, Ray C. Eberhard and Ida I. Bellow, plaintiffs, vs. Washington County Irrigation District and others, defendants, in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Washington, property and real estate, described in that certain deed dated the 4th day of October, 1938, made by J. D. Neale, Receiver in said action, to said Frank D. Ryan, which said deed was duly filed for record in the office of the County Recorder of Washington County, Idaho, and recorded in said Recorder's Office in Book 58 of Deeds at page 365 and following pages necessary to record said instrument, and which said instrument conveyed to the said Frank D. Ryan, particularly 33,000 acre feet out of a primary water right of 45,400 acre feet of storage in what is known as the Crane Creek Reservoir, the land, real estate, water filings, etc., being described in said Neale Deed and the said second party desiring to purchase One Hundred (100) acre feet of said primary storage so conveyed to said Frank D. Ryan as aforesaid, the said acre feet of primary storage hereby conveyed sharing proportionately as the same bears to 45,400 acre feet of said primary storage, reference hereby being made to said Neale Deed recorded in Book 58 of Deeds at page 365, for further particulars, except, however, no interest whatsoever is hereby conveyed in any rights in said Reservoir above the 45,400 acre feet primary storage nor in any distributing works and rights of way leading from Crane Creek, formerly owned by said Washington County Irrigation District.

NOW, THEREFORE, said first parties for and in consideration of the sum of Two Hundred and no/100 DOLLARS, (\$200.00) to them in hand paid by the said second party, receipt of which is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part, her heirs and assigns forever, one hundred (100) acre feet of the primary storage in said reservoir with all appurtenant impounding rights and storage facilities in said reservoir, dams and structures used in impounding the same. In the proportion as said acre feet of primary storage hereby conveyed bears to the total primary storage of 45,400 acre feet, then said acre feet hereby conveyed shall, in the event of shortage, share equal diminution with all other interests in said primary storage of 45,400 acre feet.

This deed is given subject to the provisions of contracts of record in Washington County, Idaho, providing for the creation of and administration by a reservoir administration board for the operation of said reservoir and distribution of water therefrom, and the levying of assessments to pay the expenses of reservoir administration, and the water hereby conveyed shall bear its proportionate expense of said reservoir administration and operation.

Together with the tenements, hereditaments, water rights, water filings and appurtenances whatsoever to the same belonging or in anywise appertaining.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described acre feet of water, together with the appurtenances to the party of the second part, her heirs and assigns forever.

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

Frank D Ryan (Seal)

Luella N. Ryan (Seal)

STATE OF IDAHO }
County of Washington) ss

On this 30th day of January, 1941, before me, Ed. R. Coulter, a Notary Public in and for the said State, personally appeared Frank D. Ryan and Luella N. Ryan, his wife, 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.

Seal
(Ed. R. Coulter, Notary Public)
(State of Idaho)

Ed. R Coulter, Notary Public
For Idaho
Residing at Weiser, Idaho

APPROVAL OF DISTRICT COURT OF
SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR WASHINGTON COUNTY.

**ROBERT W. TALBOY
ELLSWORTH, KALLAS & TALBOY, P.L.L.C.**

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ATTORNEYS FOR PLAINTIFFS AND THIRD-PARTY DEFENDANTS KERNER

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF WASHINGTON**

VAUGHN W. KELLEY, an individual;
HENRY P. GREEN and ANN C. GREEN,
husband & wife; SMITH LAND &
LIVESTOCK CO., an Idaho corporation;
LON BAKER & JACK BAKER,
dba BAKER BROTHERS, an Idaho
general partnership; and INSTITUTE
CANAL COMPANY, an Idaho Corporation

Plaintiffs,

vs.

WEISER IRRIGATION DISTRICT,

Defendant.

Civil No. CV98-00496

**MEDIATION
STIPULATION
AND CONSENT
TO JUDGMENT**

WEISER IRRIGATION DISTRICT,

Third-Party Plaintiff,

vs.

MILTON KERNER and LOLA KERNER,
husband and wife, BRUCE KERNER and
JULIE KERNER, husband and wife,
ROBERT A. SHIRTS and RONALD W.
SHIRTS dba SHIRTS BROTHERS,

Third-Party Defendants

Come now, Robert W. Talboy of ELLSWORTH, KALLAS & TALBOY, P.L.L.C. and Randall C. Fredricks, Attorney-at-Law, attorneys for the Plaintiffs; and Third Party Defendant Milton Kerner and Lola Kerner, husband and wife, and Bruce Kerner and Julie Kerner, husband and wife; and Lary W. Walker of Lary C. Walker Law Office, attorney for Defendant Weiser Irrigation District.

WHEREAS Stephen W. Drescher, District Judge under I.R.C.P. 16(a)(6) ordered that the parties mediate certain issues for which District Judge Dennis E. Goff was appointed as mediator; and

WHEREAS the parties were present at the mediation session held on July 20, 1999 in compliance with the order of Stephen W. Drescher which mediation resulted in an agreed compromise settlement;

NOW THEREFORE it is stipulated and agreed as follows:

1. It is acknowledged by the parties hereto that any water rights claimed or owned by the parties are subject to the pending Snake River Adjudication Proceeding. Once such rights have been finally determined in the Snake River Adjudication Proceeding that this agreement be amended to comply therewith,

2. That the basic issue for mediation was to determine a reasonable fee to be paid to the Weiser Irrigation District for the transportation of the Plaintiffs' and Third Party Defendant Kerners' private water by the Weiser Irrigation District in the District's canal known as the Galloway Canal., *Crocker Creek water*

3. The mediation officer Judge Dennis E. Goff made a determination that the formula set out hereafter would in his opinion result in a reasonable fee for the transportation of Plaintiffs' and Third Party Defendant's water in the Galloway Canal.

4. That the parties accepted the finding of the mediation officer and agreed that the formula to be utilized by the Weiser Irrigation District for calculation of the transportation charges to be paid by the individual Plaintiffs and Third Party Defendant Kerner shall be as follows:

a. From the total net annual expenses of the Weiser Irrigation

District (after deduction of any reimbursements and credits) that the following expenses be deducted in order to determine the approximate cost of the maintenance of the Galloway Canal: (1) all Crane Creek Reservoir costs paid by the Weiser Irrigation District; (2) all utility expenses; (3) all expenses related to any laterals maintained by the District and for the year 1999 only deduct \$2,600.00 of attorney fees.

b. Multiply the figure obtained above by sixteen percent (16%) representing the approximate volume of the Galloway Canal utilized by the said Plaintiffs and Third Party Defendant as a group.

1600 inch
10,000

c. Multiply the figure obtained above by 44% representing the percentage of the length of the canal (11/25ths) utilized by the Plaintiffs and Third Party Defendant as a group (11 miles being the Institute Canal diversion point). NOTE: In order to take into consideration any seepage or evaporation losses the assumption was made that the entire volume of water being carried for the Plaintiffs and Third Party Defendant was being transported the entire 11 miles when in fact approximately 45% of the total would be diverted within the first five (5) miles of the Galloway Canal.

How H₂O
will make
up loss

d. The figure obtained above (being the total cost for transportation of the Plaintiffs' and Third Party Defendant's water to the Institute Canal diversion point) would be divided by the total amount of

miner's inches of water being carried on the Plaintiffs and Third Party Defendant's behalf to determine the amount to be paid by each said party on a miner's inch basis.

5. Based on the above formula the agreed transportation charge to be paid per miner's inch for the year 1999 based on the net 1998 District expenses is the following:

a. Net total expenses for the year 1998 = \$136,230.00

(taking into account \$9,916.00 reimbursement).

Less: Crane Creek	\$2,745.00	
Attorney fee	\$2,600.00	
Utility Charge	\$7,959.00	
Laterals	\$ 0.00	
Total deduction	=	<u>13,304.00</u>
Total		\$122,926.00

b. \$122,926.00 times 16% = \$ 19,668.16

c. \$19,668.16 times 44% = \$ 8,653.99

d. \$ 8,653.99 divided by 1470.6 = \$ 5.88

(rounded to \$6.00)

For the year 1999 the Plaintiffs and Third Party Defendant shall pay the sum of \$6.00 per miner's Inch based on the 1998 expenses as set out above.

The following is the agreed diversion rate and transportation charge for the year 1999 for each Plaintiff and the Third Party Defendant Kerner:

Plaintiff Kelley 50 miner's inches = \$ 300.00

Plaintiff Green 181 miner's inches = \$1,086.00

Plaintiff Smith 188 miner's inches = \$1,128.00

Dick & Don

Plaintiff Baker 151.6 miner's inches = \$ 909.60

Plaintiff Institute Canal 800 miner's inches = \$4,800.00

*157.00
Chimney
Chandler*

Third Party Kerner 100 miner's inches = \$ 600.00

6. That subsequent years shall be calculated on the same basis with the year 2000 based on the maintenance expenses for the year 1999 and annually thereafter.

7. That any claim by the Weiser Irrigation District for prior transportation charges be waived.

8. It is further acknowledged by the parties that the Weiser Irrigation District, through its designated water master, has the legal duty to measure the water being delivered to each party according to each party's pro rata share as set out in paragraph 5 above.

In order to do so, the Weiser Irrigation District by law retains control over the diversion points of each party and has previously required gates/weirs to be installed in order to render possible and practicable a measurement of the quantity of water being delivered. The parties agree that any such devices not already installed shall be installed during the off-irrigation season as soon as possible and shall be installed in conformity with NRCS (Natural Resources Conservation Service) standards. Regarding any pumps being utilized by the parties, the Weiser Irrigation District will contact each party and determine the most reasonable and practical method of measuring the water so being diverted, which may require, at the user's expense, the installation of an in-line measuring device meeting NRCS standards.

The parties further acknowledge that under Idaho law once the District water master has either set or shut any diversion device, no party can change same without the previous permission of the said water master. The District

does reserve the right to require locking devices to be installed on such diversion works if deemed necessary.

The Weiser Irrigation District by law is required to deliver the requested water to each party upon proper demand being made by each party. In this regard, at such time as each party may want to begin the irrigation of their lands, they will first order the delivery of water by notifying the District, which will then take steps to comply with such order. The procedure for doing so will be determined by the District. The same procedure shall be utilized when each party wants to shut off the delivery of irrigation water or to shut one gate and open another.

In regards to any Crane Creek storage water, the same procedure will take place as has been done in the past, with each party to first notify the Crane Creek Reservoir manager of the amount of storage water being ordered, with the Crane Creek manager then notifying the District water master of such order.

*Not
good*

No part of this Stipulation or Order shall require the District to furnish any water other than water and water rights owned or claimed by the contract users as may be finally determined in the pending Snake River Adjudication Proceeding.

*they
may
not
lose*

9. That the Weiser Irrigation District will continue to provide sufficient carrying capacity in the Galloway Canal to provide the rate of diversion as set out above for the non-district parties.

10. That Plaintiff Institute Canal Co. shall forthwith present said agreement to their members for approval acknowledging that same has been approved by said Plaintiff's Board of Directors.

11. That Judgment be entered in accordance with this stipulation with each party paying their own attorney fees and costs.

Dated this _____ day of July, 1999.

APPROVED:

ATTORNEYS FOR PLAINTIFFS AND
THIRD PARTY DEFENDANTS KERNER
ELLSWORTH, KALLAS &
TALBOY, P.L.L.C.

Robert W. Talboy Of the Firm

Date

Randall C. Fredricks
Attorney at Law

Date

APPROVED:
ATTORNEY FOR DEFENDANT

Lary C. Walker

Date

RECEIVED

SEP 25 1996

WATER RESOURCES
WESTERN REGION

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: A67-02169C
Date Received: 9/26/1989
Receipt No: W032538
Received By: [Signature]

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: VAUGHN W KELLEY 208-549-2317
Address: PO BOX 413
WEISER ID 83672-0

2. Date of Priority: DEC 18, 1936

3. Source: WEISER RIVER Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
11N	04W	35	SE	NE	NE		WASHINGTON

5. Description of diverting works:
CANAL WITH FLOOD IRRIGATION.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	1.140		

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

8. Total consumptive use is Acres Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
10N	04W	6	NE	NW		IRR	10.0
			NW	NW		IRR	2.0
			SW	NW		IRR	29.0
			SE	NW		IRR	16.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	57.0
					Total Acres	57.0

11. Place of use in counties: WASHINGTON

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

13. Other Water Rights Used:
A67-00615, A67-10316 & A67-10319.

14. Remarks:

15. Basis of Claim: DECREED

Water Right Number: 18429

Case Number:

Court :

Decree date: / /

Decree Plaintiff

vs

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 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): Vaughn W. Zolley Date: 9-23-96
Date:

State of Idaho

County of Washington

) SS.
)

Subscribed and sworn (or affirmed) before me this 23rd day

of September 19 96

Norman F. Becker
Notary Public

Seal

Residing at Wenatchee, Idaho

My Commission Expires 5-6-2000