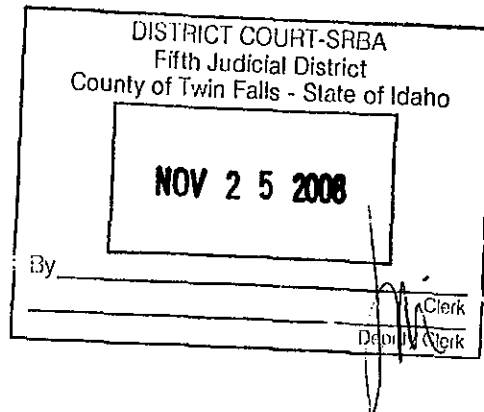




75-2091D
Joseph E. Hoy
Shirley R. Hoy
303 So. Saint Charles St.
Salmon, Idaho 83467
Tel: 1-208-756-2657
Fax: 1-208-756-2657
November 16, 2008

Terrence A. Dolan
Special Master
Snake River Basin Adjudication
P. O. Box 2707
Twin Falls, Idaho 83303-2707

RE: Case No. 39576, Specifically Sub Case 75-2091D,
Lot 8, Lost Trail Lodge Subdivision

Dear Sir:

We wish to file a MOTION TO ALTER OR AMEND the SPECIAL MASTER'S RECOMMENDATION, to request the increase of irrigable acres and sufficient water to maintain a small meadow lying between our home and the North Fork of the Salmon River.

On October 23, 2008, we received Special Master Report, Findings of Fact and Conclusions of Law adjusting cfs and acreage allowances, including increase from .05 to .07 for Lot 6 of above referenced subdivision (75-2091E, Bryant).

Our Lot (8) was included as a part of the Findings of Fact, the resultant being no change to the .05 cfs water right.

Until now, we have been satisfied with the status quo, believing each lot owner was allotted equal usage as part of the initial water allocation for the subdivision, 2 1/2 irrigable acres and .05 cfs per lot, except those with lesser acreage.

There are seventeen (17) lots in this subdivision; Diversion #13 affects one through twelve (1 - 12). Each lot has 4.63 acres, except ten (10), which has one (1) acre. Our irrigable land includes the entire lot, minus a small triangle of land to the west of the North Fork, which flows at the base of the mountain. Our understanding that lot equality was the reason our irrigable land was limited was erroneous since, as the Findings of Fact shows, irrigable areas are variable by Lot, as are cfs allowances and that our approximately 1 1/2 acres appear to have been excluded due to mapping discrepancy.

Believing the 'equality' factor, we attended the IDWR meeting held in Salmon, at the Stagecoach Inn Conference Room, on December 6, 2006. Property owners were assigned to members of the IDWR, but, regrettably, there was no correlation to the total use. We were told that to include all (an additional 1 1/2 acres) of our irrigable land would require our going through the application process for additional

water rights. Believing such action would deprive others, we decided against making application. We were not advised of the possibility to alter or amend.

We have studied IDWR information, received October 23, 2008, and found the data cites North Fork Diversion #13, not all it's users, and does not deal with all existing water sources to these properties. Diversion #13, North Fork of the Salmon River, serves, in addition to Lots 12 through 1, properties on the east side of Hwy 93N, and, logically a large property area south of the Lost Trail Lodge subdivision on the west side of the highway.

Other sources within the subdivision are:

One: License and Certificate of Water Right No. 17747 reflects two water sources: North Fork diversion, sized at 3 feet wide by 1 foot deep and Buster Gulch, sized at 1 foot wide and 1 foot deep. Buster Gulch, then, supplies 25% of the water allocation and it's application is to acreage lying west of the North Fork on the original HES No. 91. This allocation is not reflected in the Findings of Fact. There is no indication that this allocation has been designated, acreage and cfs, to subdivision lots bisected by the North Fork.

Comment: Upon receipt of the Special Master's Recommendation, we requested from Bob Foster of the Salmon IDWR office, a copy of the original Wenzig water right filing, applicable to H.E.S. 91. The map accompanying that documentation, #17747, has Buster Gulch on the wrong side (west) of the North Fork. Buster Gulch lies east of Hwy 93N and the North Fork, and is typically dry. The true water source for this right is Friedorf Gulch (Ref. U. S. Geological Survey map wherein placement is correct). See enclosure.

Two: Existing, and in use, an additional east side ditch diversion from the North Fork, serving at least Lots 3 and 4. There is no indication this ditch is considered in the whole.

Three: Existing, and in use, an additional east side ditch diversion from seepage from a small side channel of the North Fork surfacing on Lots 11 & 12, and a man-made pond on Lot 9, exiting to the North Fork through an eroded irrigation ditch through Lot 8, rejoining the North Fork at the southern side boundary of Lot 8. There is no indication this diversion is considered in the whole, yet the ditch location provides water for a significant sized meadow extending from Lots 11/12 into Lot 7.

The water in this ditch through Lot 8, could be (and at one time was) used on Lot 8 to irrigate the approximately 1 ½ acres of irrigable land to the west of the cut. As it is, the ditch has eroded into a narrow slough. Use of this water for the 1 ½ additional acres would also control further erosion.

On November 14, 2008, we requested user information for the entire subdivision. Mr. Nate Arave of the Idaho Falls office of the IDWR faxed most. By comparing perimeters of adjoining lots (#7 and #9), it became immediately clear that the western irrigable perimeter of Lot 8 had mistakenly been established without correlation to Lot 9's common line with Lot 8. Apparently, by using an aerial map, the ditch line was mistaken for the North Fork proper, which caused the exclusion of the irrigable land west of the ditch line. This mistake did not occur on Lot 9, where use allowance continues to the North Fork.

Placement of the aeriels side by side readily shows the discrepancy:

Lot 9 correctly includes all acreage to the North Fork, since the North Fork is located along the west property boundary. In fact, the SW corner marker lies just at

the west side of the North Fork. This point constitutes the NW corner of Lot 8, and the actual location of the North Fork, rather than the ditch line. Hence, Lot 9's common boundary with Lot 8 is designated irrigable to the North Fork, while Lot 8's irrigable allotment is stopped half way. Thus, the same meadow is split; one side "wet", the other "dry", based on property line, not topography. This resulted in Lot 9 receiving four (4) acres of irrigable land, to Lot 8's two and one half (2 ½) acres, when both lots have about equal amounts of irrigable lands.

The North Fork then enters Lot 7 at the point shown: the same point where the ditch ends at the river. Lots 8 and 9 are the only lots not substantially bisected by the North Fork.

The meadow between the ditch and the North Fork has been a continual concern as to weed control and potential fire suppression, which was of concern to us and to the Forest Service, in the year 2000 when the fire was raging just five miles up canyon. Property value is also affected. These issues, we feel, are sufficiently important to cause us to pursue resolution, whatever process is required.

We ask that the Special Master's Recommendation be amended on behalf of Lot 8, that the irrigation line be moved west to the North Fork of the Salmon River, to include the additional approximately one and one half acres (1 ½) for irrigation and that the cfs be increased accordingly.

If the additional cfs required were allowed from the existing ditch, there would be no impact upon North Fork Diversion No. 13.

The same separate acreage/cfs allotment could also be applied to both Lot 9, and approximately one(1) acre of Lot 7. It is unlikely these issues could have surfaced sooner, based on the information supplied us. More complete data is always helpful and we have tried to provide sufficient to support our request. If we can be of further help, please ask, or if we need to make a trip, we would do so, willingly.

Respectfully,

Joseph E. Hoy

Joseph E. Hoy

Shirley R Hoy

Shirley R. Hoy

Enclosures:

1. License and Certificate of Water Right #17747, Priority 09-01-1932,
Witness and Seal, 04-27-1945.
Report of Engineer, #17747, 07-10-1944.
Drawing of Points of Diversion, #17747, showing Buster Gulch erroneously positioned.
2. Partial copy USGS Topo map, showing true gulch identification.
3. Aerial photographs of area, from Lemhi County Assessor's office.
4. Photos of irrigable acres to be added, if granted.
5. Scale map of area.
6. Scale map indicating meadow and acreage in question.

State of Idaho

License and Certificate of Water Right

Water License No. 17747

Amount 0.5 sec. ft.

Water District No.

Priority September 1, 1932

THIS IS TO CERTIFY that LILLIAN G. WENZIG

of Gibbonsville, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated September 1, 1932; that Permit No. 17747 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 1.4 second feet, was issued thereunder on December 2, 1937, showing that said works were completed on the 6th day of November, 1937; and that on the 29th day of November, 1943,

LILLIAN G. WENZIG

of Gibbonsville, State of Idaho, made proof to the satisfaction of the State Reclamation Engineer of Idaho, of the right to use the waters of No. fork Salmon River and Buster Culeh, a tributary of Salmon River, for the purpose of irrigation and domestic use, under Use Permit No. 17747 of the Department 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 State Reclamation Engineer of Idaho and entered of record in Volume 7 of Licenses, at page 4261, on the 27th day of April, 1945:

The right hereby confirmed dates from September 1, 1937;

The Point of Diversion is located in unsurveyed Township 26 North, Range 21 East, B.M. in the 1/4 Sec. 14, Tp. 26 N., R. 21 E., 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 0.5 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
			25 acres of the 70 acres included in Applicant's Homestead Entry, described by metes and bounds, and located approximately in Unsurveyed Section 26, Township 26 North, Range 21 East, E. M.		

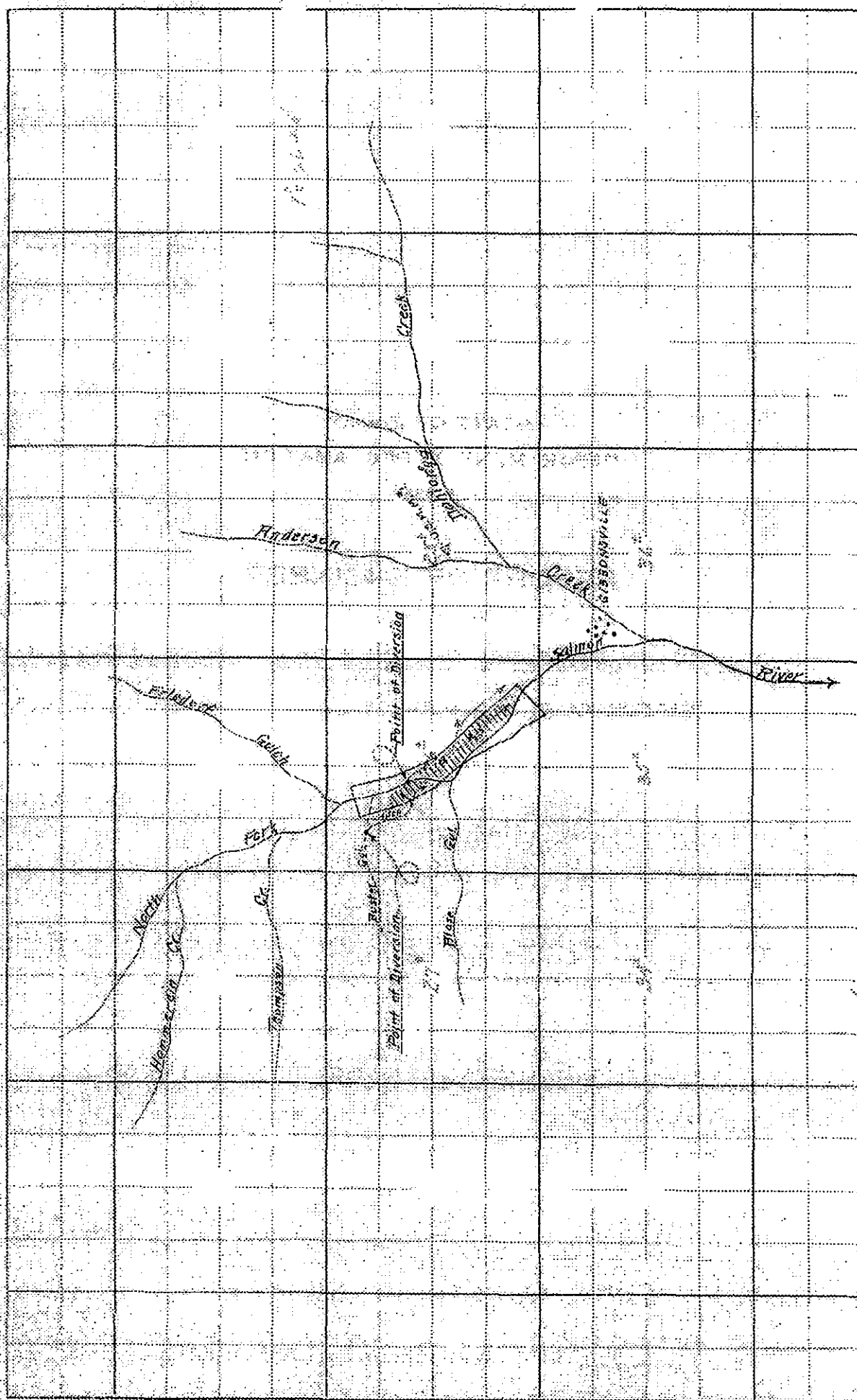
The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

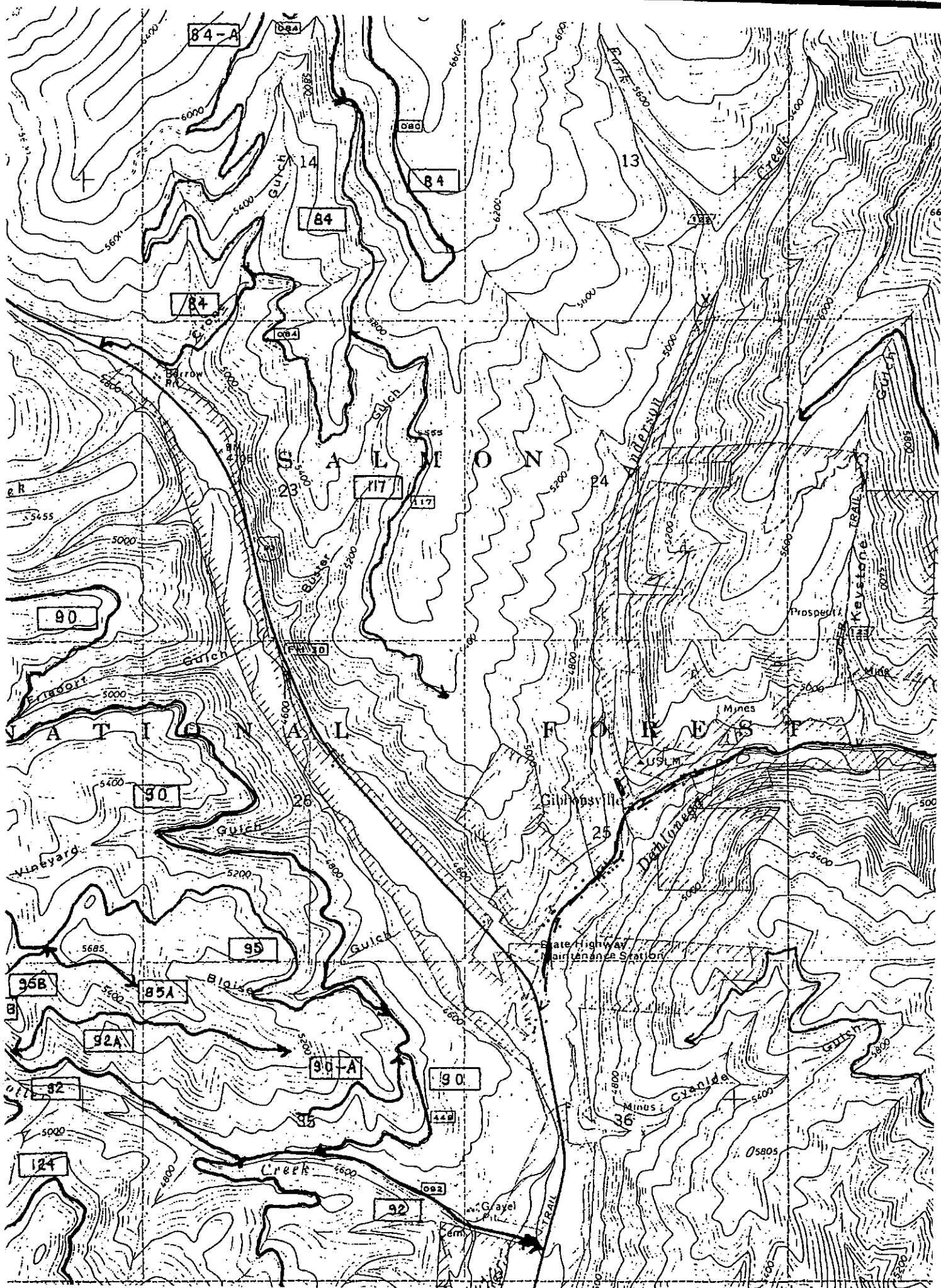
State Reclamation Engineer

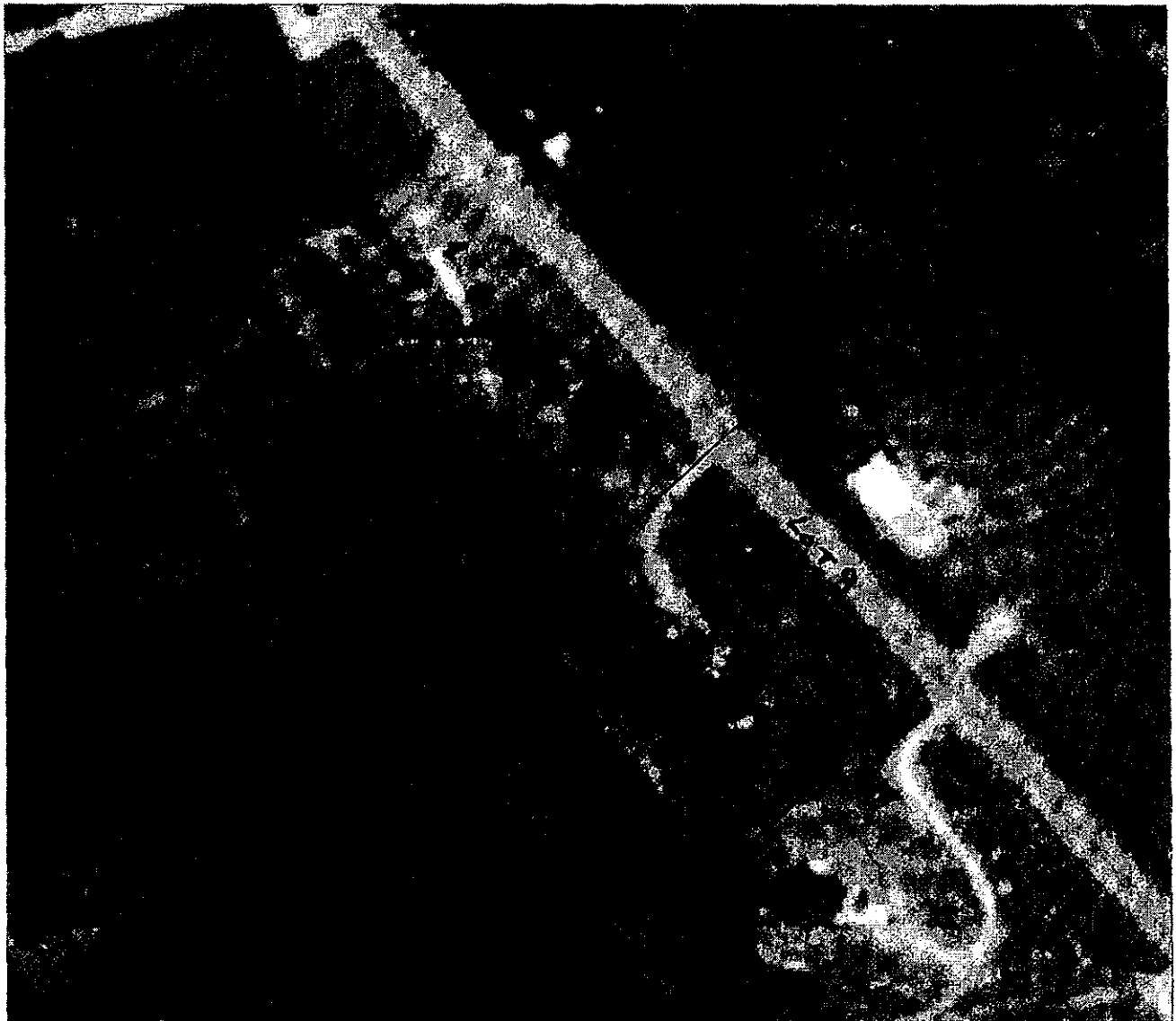
WITNESS the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho, this 27th day of April, 1945

(SEAL)

MARK R. KULP
~~State Reclamation Engineer~~
 State Reclamation Engineer







MEADOW AREA