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Paul L. Arrington, ISB #7198
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RECEIVED

DEC 22 2008

Department of Water Resources
Adjudication Bureau

Attorneys for Petitioner Barbara Barry

**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

Case No. 39576

)
) **Subcases: 37-353F, 37-353J, 37-353K**
) **& 37-353L**

) **AFFIDAVIT OF PAUL L.**
) **ARRINGTON IN SUPPORT OF**
) **MOTION TO FILE LATE**
) **OBJECTION**
)

I, PAUL L. ARRINGTON, being first duly sworn upon oath, deposes and hereby states
as follows:

1. I reside in Twin Falls County and I am over the age of 18. I am an attorney representing Barbara Barry in this matter.
2. Attached hereto, as Exhibit A, is a true and correct copy of excerpts from the *Frost Decree*, dated December 13, 1909, showing the Johnson Water Right.
3. Attached hereto, as Exhibit B, is a true and correct copy of a summary of the ownership interests in Johnson Water Right retrieved from the back file for water right 37-353 on the Idaho Department of Water Resources' ("IDWR") website.

4. Attached hereto, as Exhibit C, is a true and correct copy of a December 5, 1977 letter from Reid J. Mewby, Watermaster for Water District 37, to M.D. Dean.

5. Attached hereto, as Exhibit D, is a true and correct copy of the February 5, 1990, *Notice of Claim to a Water Right Acquired Under State Law*, filed with the SRBA Court, by Gus Chek, for water right 37-353C.

6. Attached hereto, as Exhibit E, is a true and correct copy of the *Application for Transfer of Water Right* (Transfer No. 3678), which was approved on September 9, 1991.

7. Attached hereto, as Exhibit F, is a true and correct copy of Transfer No. 3679, dated November 3, 1993.

8. Attached hereto, as Exhibit G, is a true and correct copy of the November 16, 1993 letter from Jeanie Robertson, IDWR Record Clerk, to Douglas Driever.

9. Attached hereto, as Exhibit H, is a true and correct copy of the *Amended Notice of Claim to a Water Right Acquired Under State Law*, for water right 37-353G, filed by Douglas Driever.

10. Attached hereto, as Exhibit I, is a true and correct copy of the summary of the ownership interests in Johnson Water Right retrieved from the back file for water right 37-353 on the IDWR's website (Exhibit B, *supra*), with notations by counsel correlating the ownership with claims to the Johnson Water Right, filed in the SRBA.

11. Attached hereto, as Exhibit J, is a true and correct copy of the *Amended Preliminary Order*, dated August 25, 1997, *In the Matter of a Call for Delivery of Water Right No. 37-353 to Olsen Livestock Consultants, Inc.*

12. Attached hereto, as Exhibit K, is a true and correct copy of the *Amended Notice of Claim to a Water Right Acquired Under State Law*, filed on August 25, 1998, by Olsen Livestock Consulting, Inc. for water right 37-353J.

13. Attached hereto, as Exhibit L, is a true and correct copy of the *Notice of Claim to a Water Right Acquired Under State Law*, filed on February 23, 1998, by Bruce and Sherry Price, for water right 37-353K.

14. Attached hereto, as Exhibit M, is a true and correct copy of the *Notice of Claim to a Water Right Acquired Under State Law*, filed on August 5, 1998, by Tom and Annette Goicoechea, for water right 37-353L.

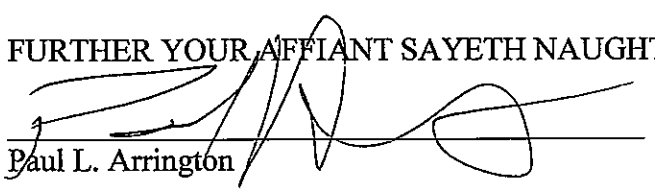
15. Attached hereto, as Exhibit N, is a true and correct copy of the *Preliminary Order*, dated December 29, 1999, *In the Matter of a Call for Delivery of Water Right No. 37-00353 to Richard and Paula Ziker, Trustees*.

16. Attached hereto, as Exhibit O, is a true and correct copy of the July 30, 1997, letter from Lee Peterson, Watermaster of Water District 37, to Norm Young, and the April 6, 1999, letter from Norma Peterson, Secretary/Treasurer of Water District 37, to Norm Young.

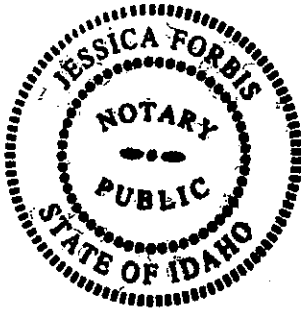
17. Attached hereto, as Exhibit P, is a true and correct copy of the December 20, 1999, letter from Norman Young, IDWR Administrator, to Lee Peterson, Watermaster.

18. Attached hereto, as Exhibit Q, is a true and correct copy of the January 3, 2007, letter from James E. Stanton, IDWR Senior Water Resource Agency, to Tom Goicoechea.

FURTHER YOUR AFFIANT SAYETH NAUGHT


Paul L. Arrington

SUBSCRIBED & SWORN to before me this 18th day of December, 2008.




Notary Public in and for the State of Idaho
My Commission Expires: 4/3/12

CERTIFICATE OF SERVICE

I certify that on this 18th day of December, 2008, I served the foregoing **AFFIDAVIT OF PAUL L. ARRINGTON IN SUPPORT OF MOTION TO FILE LATE OBJECTION**, including all attachments, to the following persons, via first class mail:

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

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

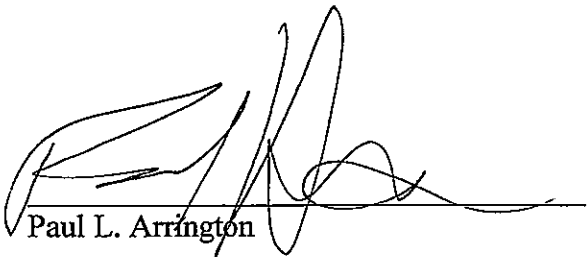
Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449

James M. Oosting
PO Box 386
Bellevue, ID 83313

Scott Campbell
Moffatt Thomas Barrett Rock & Fields Chtd.
PO Box 829
Boise, ID 83701-0829
Attorney for Olsen Livestock Consultants, Inc. (37-353J)

Fritz Haemmerle
PO Box 1800
Hailey, ID 83333
Attorney for Mark & Dannette Fisher (37-353K)

Tom & Annette Goicoechea
PO Box 193
Hailey, ID 83333



Paul L. Arrington

Exhibit A

Ivie, A. S.	260	Inches.	June 1, 1887	East Fork of Big Wood River
Ivie, John A.	105	"	May 1, 1900	Sig Wood River
Jeffers, Benjamin F.	150	"	May 1, 1888	Soldier Creek
"	75	"	May 9, 1901	"
Jenkins, Mrs. Emily	25	"	May 29, 1883	"
"	75	"	Nov. 20, 1883	"
Johnson, Andrew	240	"	May 1, 1889	Dyer Creek, a tribu- tary of Upper Malad
Johnson, C. P.	230	"	Apr. 6, 1883	Little Wood River
"	60	"	Apr. 1, 1887	"
"				(Also shares in Big Cottonwood Canal Co.)
Johnson, George F.	150	"	June 15, 1886	Soldier Creek
"	10	"	June 1, 1892	"
Johnson, H. P.	40	"	Apr. 1, 1888	Mallett Branch of Silver Creek
"	80	"	Apr. 1, 1890	Mallet Branch of Silver Creek
Johnson, H. P.	100	"	June 15, 1891	Gannett Creek, a tributary of Silver Creek
Johnson, H. P., and Christian Nisson	25	"	June 1, 1886	Butte Creek, a trib- utary of Silver Creek
Do.	60	"	June 15, 1887	Butte Creek, a trib- utary of Silver Creek
Johnson, James	320	"	June 12, 1886	Big Wood River
Johnson, James E.	95	"	June 1, 1887	Silver Creek
Johnson, Lily	280	"	May 17, 1883	Big Wood River
Johnson, Louis	140	"	Nov. 13, 1907	Little Wood River
Johnson, Niels	40	"	Nov. 13, 1907	"
Johnson, W. F.	80	"	Feb. 10, 1906	Big Wood River
Jones, Charles A.	150	"	June 1, 1884	"
Jones, John W.	160	"	Oct. 31, 1889	"
Jones, L. C.	120	"	Apr. 1, 1890	Little Wood River (Also shares in Big Cottonwood Canal Co.)
Jones, Thomas. J.	320	"	May 20, 1902	Big Wood River
Justus, U. S.	160	"	Apr. 12, 1883	"
"	120	"	May 1, 1887	"
Kaiser, Jennie M.	150	"	June 1, 1888	"
"	70	"	Apr. 15, 1896	"
"	80	"	Apr. 15, 1902	"
Katzenmeyer, Eva K.	160	"	June 15, 1884	Three Mile Creek or Four Mile Creek, a trib- utary of Upper Malad River

Exhibit B

WATER RIGHT 37-00353 ORIGINALLY DECREED TO JAMES
JOHNSON DATED 6/12/1886

- 20 → 1. Oct. 27, 1977 letter from M. D. Dean, confirming sale of 20 inches
1886 water to Jerry Lee Johnson.
2. Feb. 16, 1978 Warranty Deed from Jerry Lee Johnson to Marvin
Lotspeich, confirming sale of 20 inches of 1886 water. Lot 17 Block 1.
3. March 10, 1980 Warranty Deed from Marvin Lotspeich to Harry L.
Oppenheimer, confirming sale of 20 inches of 1886 water. Lot 17 Blk 1.
- 40 → 4. Oct. 28, 1977 letter from M. D. Dean, confirming sale of 40 inches
1886 water to Robert Kierstad. Lot 9 Block 1.
- 20 → 5. Oct. 29, 1977 letter from M. D. Dean, confirming sale of 20 inches
1886 water to Ed Stricker. Block 1.
- 20 → 6. Nov. 1, 1977 letter from M. D. Dean, confirming sale of 20 inches
1886 water to Gus Chek.
7. Oct. 4, 1991 letter confirming Gus Chek sold 10 inches 1886 water to
Douglas Driever. Also see TR# 3679.
- 180 → 8. June 25, 1982 notarized letter from M. D. Dean, confirming sale of
180 inches 1886 water to Robert Gardner.
- 20 → 9. June 25, 1982 notarized letter from M. D. Dean, confirming sale of 20
inches of 1886 water to John Peterson.
- 300" 10. Nov 3, 1993 Quit Claim deed from John Peterson to J Karl Bick,
confirming sale of 20 inches 1886 water
- 20 11. Approved transfer of 20 inches of 6/12/1886 #37-00353 in the
name of Robert Fosnot.
- 320"

Current Ownership according to Watermaster Records.

Harry L. Oppenheimer	20 inches	753 E	✓	
Robert Kierstad	40 inches			
Ed Stricker	20 inches	353 B	✓	
Gus Chek	10 inches			
Douglas Driever	10 inches	753 G	✓	
Robert Gardner	180 inches	753 D	✓	
J Karl Bick	20 inches	353	✓	
Robert Fosnot	20 inches	11688	✓	
Total	320 inches			

(Powers) Kintner

The water rights listed above are shown as reflected in the Water District's records. This compilation is provided for your information only and is not a representation, guaranty, warranty or opinion that the water rights are valid or in effect and should not be relied upon as such.

Kintner well H
Long F
Olson J

Exhibit C

DEPARTMENT OF WATER ADMINISTRATION

WATER DISTRICT NO. 37 & 37M

P.O. Box N
Shoshone, Idaho 83352
886-2041



REID J. NEWBY
Watermaster

Dec. 5, 1977

Mr. M.D. Dean
4907 North Brunsen
Oklahoma City, Oklahoma 73112

Dear Mr. Dean:

As per your letters of October 27, 1977, Oct. 28,
October 29 and November 1, 1977 you state that
you have sold water to the following:

10 acres 20 inches to Johnston for Lot 17, Block 1
10 acres 40 inches to Keirstead for Lot 9 Block 1
20 acres 20 Inches to Stricker for Lot 1
20 acres 20 Inches to Chek for Lot 11

Approx 18 acres All of the above being in the Dean Subdivision.

This office has no way of knowing how many acres
of land or what the legal description of the lands
in the Dean Subdivision you have sold are. Could
you please supply us with the legal description
of what land each new owner is going to apply
the water that they purchased.

Very truly yours,

Reid J. Newby, Watermaster

RJN:blln

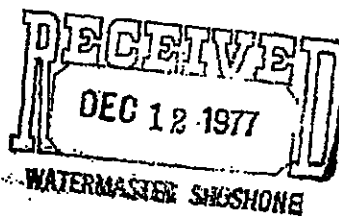


Exhibit D

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: A37-00353C
Date Received: 7/28/1988
Receipt No: S001142
Received By: AD

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: GUS A. CHEK
Address: P.O. BOX 1984
HAILEY, ID

208-788-3779

83333

RECEIVED

2. Date of Priority: JUN 12, 1886

3. Source: BIG WOOD RIVER

Trib. to: MALAD RIVER 5 - 1990

4. Point of Diversion:

Department of Water Resources
Southern Region Office
County
BLAINE

Township	Range	Section	1/4 of	1/4 of	1/4	Lot
02N	18E	36	SW		NW	

5. Description of diverting works:
DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	10/15	0.400		

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

A.F.A.

8. Total consumptive use is 45.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
01N	18E	13	SE	SE		IRR	15.0

Section Acres 15.0

Total Acres 15.0

A37-00353C

Page 1

Date: 01/23/90

MICROFILMED
FEB 22 1993

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:
A37-00363D

14. Remarks:
CLAIM BASED ON 37-0353 DECREE, SPLIT OFF FROM PART A.

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date:

Decree Plaintiff

vs

Decree Defendant

MICROFILMED
FEB 22 1993

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): Cyrus A Chok Date: 2-5-90

Date: _____

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 5th day
of Feb. 19 90

[Signature]
Notary Public

Seal

Residing at Kimberly, ID.
My Commission Expires 6/30/92

Exhibit E

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 3678APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

APPROVED

Name of applicant Gus Chek Phone 788-3779Post Office address P. O. Box 1984, Hailey, ID 83333

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes The 1886 water is not needed on the property, as there is enough 1883 to take care of the place.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>37-00353 Part 1</u>	<u>6-12-1886</u>	<u>0.20</u>	<u>Irrigation</u>	<u>Apr 1</u> to <u>Nov 1</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred 0.400.20 cubic feet per second and/or _____ acre-feet per annum.3. Source of water Big Wood River tributary to Malad River4. Point(s) of Diversion: No Change

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	NW	36	2N	18E	Blaine	Headgate & Bellevue Canal
		NE	SE	13	1N	18E	"	Re-diversion from Bellevue Canal

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
1N	18E	13																6	6

Total acres 6

PART 1

6. General Information:

- a. Description of diversion system Existing canal & ditch to P/U. Additional ditch & ditch pump to be installed.
- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? XX Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.
- c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:
Land will continue to be irrigated with 1883 decreed water.
- d. Remarks:
Water is being sold to Douglas Driever for use on Lot 9 of Dean Ranch Subdiv.
Transfer is made to split SRBA Claim A37-00353C. Please send copy of transfer with final action to Mr. Driever at P. O. Box 2072, Hailey, ID 83333.
This transfer application is based on data claimed under SRBA.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 37-00353AAnd said application is hereby APPROVED, subject to the following limitations and conditions:See attached sheet for conditions of approval.Witness my hand this 9th day of September, 19 91J. New Saxon
Chief, Water Allocation Bureau

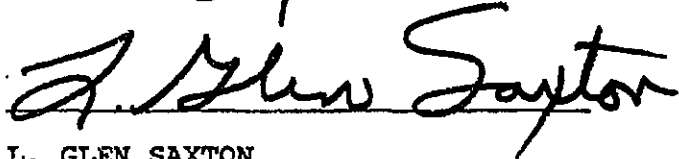
ATTACHMENT
CONDITIONS OF APPROVAL

Transfer of Water Right No. 37-00353A

Transfer No. 3678

1. The change authorized by this transfer shall be accomplished within (1) year of the date of this approval.
2. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.
3. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
4. Use of water under this water right is subject to control by the watermaster of State Water District No. 37, Big Wood River.
5. This right when combined with all other rights shall provide no more than 3.0 afa per acre for the lands above.

Dated this 9th day of September, 1991.



L. GLEN SAXTON
Chief, Water Allocation Bureau

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 37-00353A Decreed to James Johnson
 In case of S. C. Frost, Et. Al. vs. Alturas Water Company, Et. Al.
 dated 12-13-1909 in Fourth District county of Lincoln
 b. License No. _____ issued by the Idaho Department of Water Resources.
 c. Claim No. _____ on file with the Idaho Department of Water Resources.
 d. Transfer No. 2948 which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☐ Warranty Deed ☒ Other Deed of Sale

3. Source of water Big Wood River tributary to Malad River

4. Date or priority 6-12-1886

5. Water is used for the following purpose:

amount 6.0 cfs for Irrigation purposes from Apr 1 to Nov 1
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

6. Total amount of water under right 6.0 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	NW	36	2N	18E	Blaine	Headgate #45 & District Canal

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
1N	18E	13													X			X	
		24	X			X													

Total acres _____

9. Describe any other water rights used for the same purpose as described above

37-0363

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

Unknown If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.20 cfs for Irrig. purposes from Apr 1 to Nov 1
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	NW	36	2N	18E	Blaine	Headgate #45 & District Canal
		NE	SE	13	1N	18E	"	Re-diversion from District Canal

3. Lands Irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
1N	18E	13																7.5	7.5

Total acres 7.5

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount 5.8 cfs for Irrig. purposes from Apr 1 to Nov 1
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion: Same

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

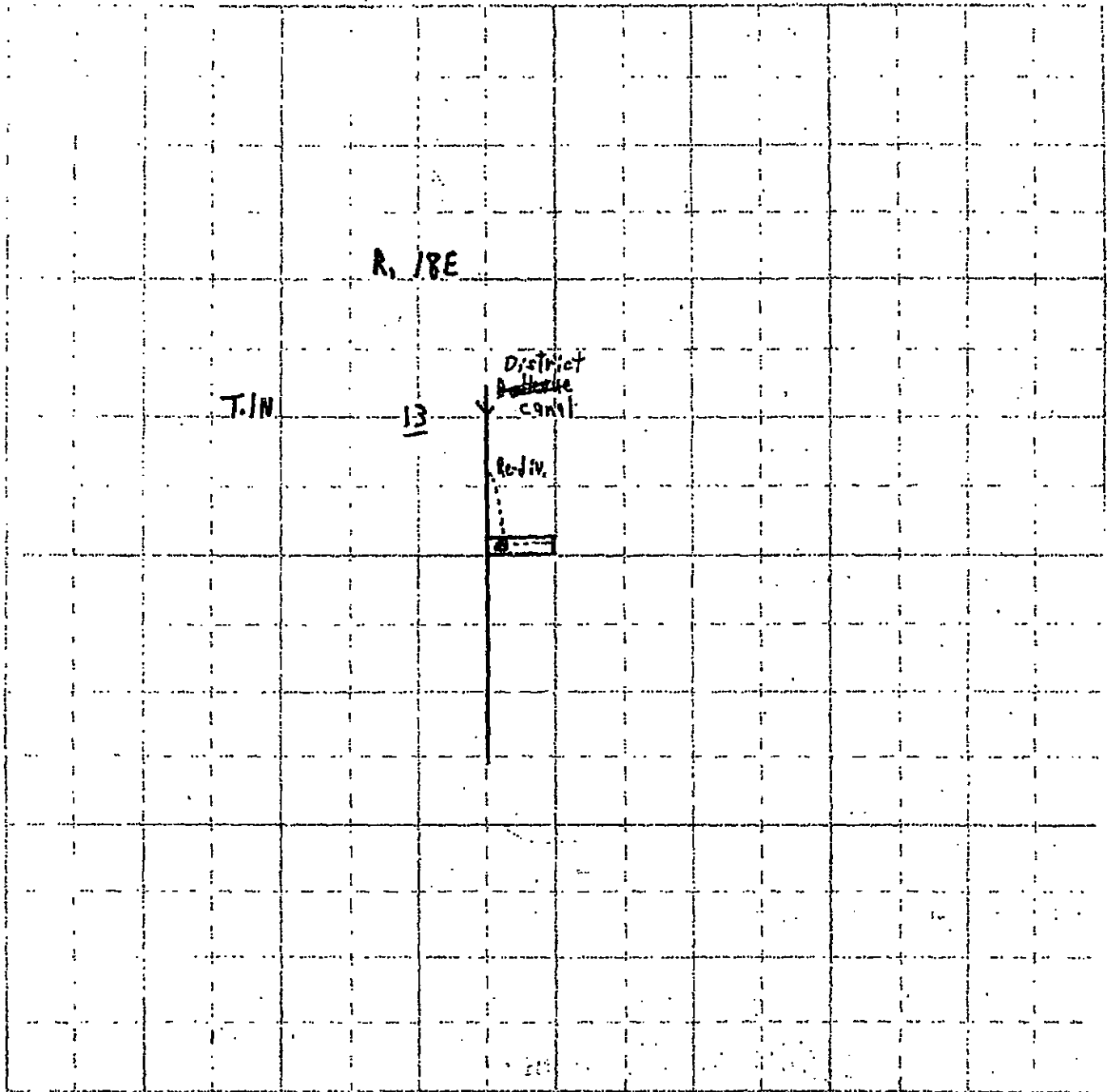
3. Lands irrigated or place of use: Same

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.



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

PART 3

B. CHANGES IN NATURE OF USE

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to
				to

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

Gus Chok
(Signature of Applicant)

Subscribed and sworn to before me this January day of 11, 1990.

Twin Falls, Idaho

James G. Gossard
(Notary Public)

My commission expires July 18, 1995

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 4 attachments

Received by J. E. Stanton Date 1-22-90

Protest filed by _____

Prelim. check by DRS Fee \$30. 50/1025

Received by DRS Date 1-22-90

Published in Wood River Journal

Copies of protest forwarded by _____

Pub. dates 5/9 & 5/16/90

Hearing held by _____ Date _____

Watermaster recommendation requested on 5/1/90

Recommended for ☐ approval ☐ denial

_____ rec'd. 5/9/90

by _____

Copy of transfer sent to lien holder _____

Exhibit F

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 3679
WATER RIGHT NO. 37-00353F

This is to certify that: GUS CHEK
PO BOX 1984
HAILEY ID 83333

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/15 to 10/15	0.20 CFS	26.3 AF

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
BIG WOOD RIVER	MALAD RIVER

Priority: 06/12/1886

LOCATION OF POINT(S) OF DIVERSION: SWNW , Sec. 36, Township 02N, Range 18E
BLAINE County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
01N	19E	18	SWSW	7.5		7.5
Total number of acres irrigated:						7.5

CONDITIONS/REMARKS:

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 37.
2. This right when combined with all other rights shall provide no more than 3.5 afa per acre for the lands above.
3. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
4. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
5. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.

TRANSFER NO. 3679
WATER RIGHT NO. 37-00353F

CONDITIONS/REMARKS:

Dated this 3rd day of November, 1993.

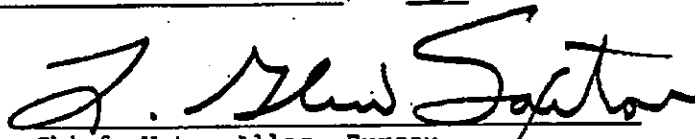

Chief, Water Alloc. Bureau

Exhibit G



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

16-Nov-1993

DOUGLAS DRIEVER
PO BOX 2072
HAILEY ID 83333

RE: Amendment of SRBA Claim #A37-00353C - GUS CHEK

Dear Claimant:

Pursuant to the approval of Transfers No. 3678 & 3679, the above referenced Notice of Claim in the Snake River Basin Adjudication has been amended to conform with the transfers and resulted in a split of that right into parts ~~3678-00353C (Driever)~~ and A37-00353H (Kantenwein). Please find enclosed a printout of the way your claim record has been modified. Please look the modified record over carefully to be sure it correctly reflects your intended change. If you have questions please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Jeanie'.

Jeanie Robertson
Records Clerk

Encl:

cc: GUS A. CHEK
PO BOX 1984
HAILEY ID 83333

MICROFILMED
OCT 24 1994

Exhibit H

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: A37-00353G
Date Received: 7/28/1988
Receipt No: X777777
Received By: _____

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: DOUGLAS DRIEVER 208-788-2991
Address: PO BOX 2072
HAILEY ID 83333

2. Date of Priority: JUN 12, 1886

3. Source: BIG WOOD RIVER Trib. to: MALAD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
02N	18E	36	SW	NW			BLAINE

5. Description of diverting works:

EXISTING CANAL & DITCH TO P/U, ADD. DITCH & PUMP TO BE INSTALLED

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.200		18.00

7. Total Quantity Appropriated is:

0.200 C.F.S. (and/or) 18.00 A.F.A.

8. Total consumptive use is 15.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
01N	18E	13	SE	SE		IRR	6.0

Section Acres 6.0

Total Acres 6.0

MICROFILMED
OCT 24 1994

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:
A37-00363D

14. Remarks:

CLAIM BASED ON 37-0353 DECREE, SPLIT OFF FROM PART A.

THIS CLAIM RESULT OF APPROVED TRANSFER NO. 3678:

1. THE CHANGE AUTHORIZED BY THIS TRANSFER SHALL BE ACCOMPLISHED WITHIN ONE (1) YEAR OF THE DATE OF THIS APPROVAL.
2. FAILURE TO COMPLY WITH THE CONDITIONS OF THIS TRANSFER IS CAUSE FOR THE DIRECTOR TO ISSUE AN ORDER TO SHOW CAUSE WHY THE APPROVAL OF THE TRANSFER SHOULD NOT BE RESCINDED.
3. APPROVAL OF THIS TRANSFER DOES NOT PRECLUDE THE OPPORTUNITY FOR REVIEW OF THE VALIDITY OF THE WATER RIGHT(S) IN THE ONGOING SRBA.
4. USE OF WATER UNDER THIS WATER RIGHT IS SUBJECT TO CONTROL BY THE WATERMASTER OF STATE WATER DISTRICT NO. 37, BIG WOOD RIVER.
5. THIS RIGHT WHEN COMBINED WITH ALL OTHER RIGHTS SHALL PROVIDE NO MORE THAN 3.0 AFA PER ACRE FOR THE LANDS ABOVE.

15. Basis of Claim: DECREED

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: _____

Exhibit I

WATER RIGHT 37-00353 ORIGINALLY DECREED TO JAMES
JOHNSON DATED 6/12/1886

- 20" →
1. Oct. 27, 1977 letter from M. D. Dean, confirming sale of 20 inches 1886 water to Jerry Lee Johnson.
 2. Feb. 16, 1978 Warranty Deed from Jerry Lee Johnson to Marvin Lotspeich, confirming sale of 20 inches of 1886 water. Lot 17 Block 1.
 3. March 10, 1980 Warranty Deed from Marvin Lotspeich to Harry L. Oppenheimer, confirming sale of 20 inches of 1886 water. Lot 17 Blk 1. [#1-3 = Claim No. 37-353E]

40" →

 4. Oct. 28, 1977 letter from M. D. Dean, confirming sale of 40 inches 1886 water to Robert Kierstad. Lot 9 Block 1. [#4 = Not Claimed in SRBA, see Arrington Affidavit at Ex. N. at 4]

20" →

 - 5. Oct. 29, 1977 letter from M. D. Dean, confirming sale of 20 inches 1886 water to Ed Stricker. Block 1. [#5 = Claim No. 37-353B]

20" →

 - 6. Nov. 1, 1977 letter from M. D. Dean, confirming sale of 20 inches 1886 water to Gus Chek. [#6 = Originally claimed as 37-353C. Subsequently split into 37-353G and 37-353H.]
 - 7. Oct. 4, 1991 letter confirming Gus Chek sold 10 inches 1886 water to Douglas Driever. Also see TR# 3679. [#7 = Claim No. 37-353G]

180" →

 - 8. June 25, 1982 notarized letter from M. D. Dean, confirming sale of 180 inches 1886 water to Robert Gardner. [#8 = Claim No. 37-353D]

20" →

300"

 - 9. June 25, 1982 notarized letter from M. D. Dean, confirming sale of 20 inches of 1886 water to John Peterson.
 - 10. Nov 3, 1993 Quit Claim deed from John Peterson to J Karl Bick, confirming sale of 20 inches 1886 water [#9-10 = Claim Nos. 37-353]

20" →

320"

 - 11. Approved transfer of 20 inches of 6/12/1886 #37-00353 in the name of Robert Fosnot. [#11 = Claim No. 37-11688, which was split into rights 37-21145 and 37-21146. Subsequently 37-21165 was split into 37-22042 and 37-22043.]

Exhibit J

Department of Water Resources
Southern Region

7/31

07/28/97
7/30/97
7/31/97
7-28-97
7-28-97
✓
7-28-97
✓
7-28-97
DAN
ADM

to

- b. Charles A. and D. Anne Curtis deeded Lot 1 with appurtenances to Robert E. Fosnot on October 19, 1978. Appurtenant water rights were not specifically described.
 - c. Charles A. and Debra Anne Curtis deeded Lot 2 with appurtenances to Dean R. and Judene Call on December 5, 1978. A water right with an 1887 priority date for 20 inches was specifically included.
 - d. Dean R. and Judene Call deeded Lot 2 with appurtenances to Robert D. and Sharyl M. Head on August 5, 1991. A water right with an 1887 priority date for 20 inches was specifically included.
 - e. Robert D. and Sharyl M. Head deeded Lot 2 with appurtenances to Olsen Livestock Consultants, Inc. on September 25, 1996. Appurtenant water rights were not specifically described.
4. Blaine County does not have any record of deeds transferring title of any part of Water Right No. 37-0353 separately from the appurtenant land during the time period of December 15, 1969 (the date the land was deeded to M. D. Dean) to November 1, 1974 (the date of the initial sale of Lot 1 and 2).
5. As of July 22, 1997, Water District 37 records listed the following as the current owners of water right No. 37-0353:
- a. Harry L. Oppenheimer (20 miners inches) based upon a letter dated October 27, 1977 from M. D. Dean confirming the sale of the water to Jerry Lee Johnson, a February 16, 1978 warranty deed from Jerry Lee Johnson to Marvin Lotspeich, and a 1980 warranty deed from Marvin Lotspeich to Harry L. Oppenheimer.
 - b. Ed Stricker (20 miners inches) based upon an October 29, 1977, letter from M. D. Dean confirming sale of the water to Mr. Stricker.
 - c. Reid Kantenwein (10 miners inches) based upon IDWR approved transfer No. 3679 filed by Gus Chek. Mr. Chek's ownership was based upon a November 1, 1977, letter confirming sale of 20 inches of water to Mr. Chek by Mr. Dean. Mr. Chek subsequently sold 10 inches to Douglas Driever. The water is to be used upon 10 acres in the SW1/4SW1/4, Section 18, T1N R19E. Based upon approved permit No. 37-08660, the 10 inches of water held by Kantenwein under right No. 37-0353 is to be left undiverted from the Big Wood River to mitigate depletions in flow of the river resulting from pumping ground water under Permit No. 37-08660.

d. Douglas Driever (10 miners inches) based upon an October 4, 1991 letter from Gus Chek confirming sale of the water and Transfer No. 3679 approved by the department.

e. Robert Gardner (180 miners inches) based upon a June 25, 1982 letter from M. D. Dean confirming sale of the water to Mr. Gardner.

f. J Karl Bick (20 miners inches) based upon a June 25, 1982 letter from M. D. Dean to John Peterson and a quit claim deed dated November 3, 1993 from John Peterson to J Karl Bick.

g. Robert Fosnot (20 miners inches) based upon Transfer No. 2948 approved by the department.

6. The records of Water District 37 list a current owner for 280 inches of the 320 miners inches) of right No. 37-0353. Olsen Livestock Consultants, Inc. is not listed as a current owner by the water district. The watermaster records indicate that an assessment has not been paid for delivery of water for use on Lot 2, Block 1, Dean Ranch Subdivision since 1982 or earlier.

7. The following have claimed portions of right 37-0353 in the Snake River Basin Adjudication (SRBA):

- | | | |
|------|---|--------------------|
| ✓ a. | A37-0353 J Karl & Judith G. Bick
(This claim was originally filed by John Peterson.) | 20 miners inches |
| ✓ b. | A37-0353B Edward & Jeannine Stricker | 20 miners inches |
| ✓ c. | A37-0353D Robert & Kathryn Gardner | 180 miners inches |
| ✓ d. | A37-0353E Harry L. Oppenheimer, Jr. | 20 miners inches |
| e. | A37-0353F William R. Long | 10 miners inches |
| ✓ f. | A37-0353G Douglas Driever
(This is one half of claim A37-0353C filed by Gus Chek.) | 10 miners inches |
| ✓ g. | A37-0353H Reid Kantenwein
(This is one half of claim A37-0353C filed by Gus Chek.) | 10 miners inches |
| h. | A37-0353J Tom Olsen | 13.5 miners inches |
| ✓ i. | A37-11688 Paul R. & Robert E. Fosnot
(This claim is based upon water right No. 37-0353.) | 20 miners inches |

8. The SRBA claims on file total 303.5 miners inches.
9. The Water District 37 records show that Wood River Valley Irrigation District No. 45 has paid the Water District 37 assessments for 1997 for Gus Chek and for 1996 and 1997 for Robert Kierstad. The chain of title for Lot 9, Block 1, Dean Ranch Subdivision indicates that the ownership interest of Robert Kierstad was reassumed by M. D. Dean in 1978 or 1979. Letters in the files of Water District 37 indicate that any ownership interest of Mr. Kierstad in the 40 inches of water was also reassumed by Mr. Dean.
10. The Department, Water District 37, and Blaine County records do not show the transfer of an 1887 water right to Lot 2, Block 1, Dean Ranch Subdivision.
11. Water District 37 has been active each year since 1974 and earlier.
12. Rule 104 of the "Rules of Procedure of the Idaho Department of Water Resources", IDAPA 37.01.01, authorize the department to initiate a formal proceeding by issuing an informal determination that will become final in the absence of further action by the person(s) to whom the document is addressed.
13. Wood River Valley Irrigation District #45 indicates that because of the long delivery ditch, a right of less than 20 inches cannot be delivered to Lot 2, Block 1, Dean Ranch Subdivision. District #45 recommends that the ownership records be clarified for the 40 miners inches attributed to Robert Kierstad under Water District 37 records by dividing it between Olsen Livestock Consultants and Tom Goicoechea, owner of Lot 3, Block 1, Dean Ranch Subdivision.

CONCLUSIONS OF LAW

1. Water right No. 37-0353 has not been forfeited as evidenced by the Water District 37 records of delivery and use, although use has not occurred on Lot 2, Block 1 Dean Ranch Subdivision for many years.
2. Lot 2, Block 1 Dean Ranch Subdivision was included in the decreed place of use of water right No. 37-0353. Unless a change in place of use was made in accordance with a valid transfer procedure, water right No. 37-0353 is prorated uniformly to the place of use; i.e., 2 miners inches to each acre of the place of use, *Crow v. Carlson*, 107 Idaho 461 (1984).
3. A water right is an appurtenance to the land and passes by conveyance of the land unless it was specifically reserved in the deed or it can be clearly shown that it was known to both parties that the water right was not intended to be conveyed. *Russell v. Irish*, 20 Idaho 194, 118 P. 501 (1911). Because the 1974 deed from M. D. and Katherine Dean to Charles A. and Debra Anne Curtis did not specifically reserve water rights from the sale, a proportionate share of water right 37-0353 remained appurtenant to the parcel. Deeds and letters confirming the sale of portions of the decreed water right issued by M. D. Dean subsequent to the 1974 deed to Curtis purporting to convey water rights could not have moved the water right from Lot 2.

4. The reference to an "1887" water right in the chain of title to Lot 2, Block 1, Dean Ranch Subdivision, appears to be a typographical error in describing the appurtenant May 12, 1886 priority water right because documentation has not been found to associate an 1887 priority water right with Lot 2, Block 1, Dean Ranch Subdivision. The inclusion of this reference to a water right in the deed to Mr. Call indicates that Mr. Curtis understood that a water right was appurtenant to Lot 2, Block 1, Dean Ranch Subdivision.

5. Section 42-607, Idaho Code, provides that a water user can not adversely possess the water rights of another user in an active water district.

6. The information available to the department indicates that a proportionate share of water right No. 37-0353 is appurtenant to Lot 2, Block 1, Dean Ranch Subdivision owned by Olsen Livestock Consultants, Inc. The watermaster of Water District 37 should be instructed to deliver the water to the authorized point of diversion for delivery and irrigation use.

7. Because some of the persons presently owning part of water right No. 37-0353 are not claiming ownership and are not calling for delivery under the right, the watermaster can satisfy the Olsen Livestock Consultant, Inc. call without otherwise changing the delivery to those entitled to use the water.

8. Mr. Tom Goicoechea has not asserted a claim to own a part of right No. 37-0353. If he or others having a potential ownership claim to right No. 37-0353 make a call for delivery and provide information to support ownership, IDWR will consider the validity of the call by providing notice to other affected users and providing opportunity to participate. A ruling by IDWR with respect to a call, including the present Olsen Livestock Consultants, Inc. call, is an interim determination subject to review and revision by the SRBA Court.

9. IDWR is not authorized to divide or otherwise assign the 40 miners inches at one time shown in the Water District 37 records as owned by Robert Keirstad to satisfy the call by Olsen Livestock Consultants, Inc. or any other claimant. The order to deliver 20 miners inches to Olson Livestock Consultants, Inc. should not be viewed as making such a determination.

ORDER

IT IS, THEREFORE, HEREBY ORDERED:

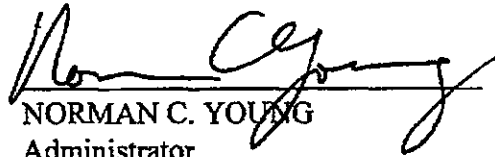
1. The watermaster of Water District 37 is instructed to deliver 0.40 cfs of water right 37-0353 with a June 12, 1886 priority date to the Wood River Valley Irrigation District No. 45 headgate in the SW1/4NW1/4, Section 36, T2N, R18E for use by Olsen Livestock Consultants, Inc. Prior to delivery of the water under this order, Olsen Livestock Consultants, Inc. shall have paid any applicable Water District 37 assessments.

2. This Order does not constitute a determination that Olsen Livestock Consultants, Inc. has a right-of-way, easement, or other necessary authorities and approvals needed to convey water through the Wood River Valley Irrigation District headgate and canal system.

3. This Order is a preliminary determination subject to revision if additional information is submitted indicating that water right No. 37-0353 is no longer appurtenant to Lot 2, Block 1, Dean Ranch Subdivision. All persons receiving this order and others using or claiming the use of water under right No. 37-0353 have the opportunity to seek reconsideration or file exceptions in accordance with Rule 730 of the "Rules of Procedure of the Department of Water Resources," IDAPA 37.01.01.

4. Ownership of water right no. 37-0353 will be finally fully determined by the SRBA District Court.

Signed at Boise, Idaho, this 25th day of August, 1997.


NORMAN C. YOUNG
Administrator
Water Management Division

CERTIFICATE OF MAILING

I hereby certify that on the 25th day of August, 1997, I served a true and correct copy of the foregoing document on the following person(s) by mailing in the U.S. mail, first class, with the correct postage affixed thereto:

Scott Campbell
Elam & Burke
PO Box 1539
Boise, Idaho 83701

J Karl and Judith G. Bick
PO Box 2014
Sun Valley, Idaho 83353

Gus Chek
PO Box 1984
Hailey, Idaho 83333

Robert and Kathryn Gardner
PO Box 470
Bellevue, Idaho 83313

William R. Long
11710 Mayfield Avenue
Los Angeles, California 90049

Robert Earl Fosnot
PO Box 290
Bellevue, Idaho 83313

E. Lee Schlender
PO Box 296
Hailey, Idaho 83333

Edward and Jeannine Sticker
10767 State Highway 75
Bellevue, Idaho 83313

Douglas Driever
PO Box 2072
Hailey, Idaho 83333

Harry L. Oppenheimer, Jr.
246 Summit Drive
Corde Madera, California 93925

Reid Kantenwein
PO Box 1525
Hailey, Idaho 83333

Paul R. Fosnot
837 Laurel Avenue
Pomona, California 91767


DEBORAH DREW-ELLIS
Legal Secretary

Exhibit K

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 37-00353J

Date Received Amend 9/2/98

Receipt Number

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

RECEIVED

SEP 02 1998

Department of Water Resources
Southern Region

Please type or print clearly

1. Name of Claimant (s) Olsen Livestock Consulting Phone (208) 323-1555

Mailing Address 228 S. Cole Road, Boise, ID Zip 83709

2. Date of Priority (Only one (1) per claim) 6-12-1886

3. Source of water supply (a) Big Wood River
which is tributary to (b) Malad River

4. a. Location of existing point of diversion is: Township 02N Range 18E Section 36,
NE 1/4 of SW 1/4 of NW 1/4, Govt. Lot, _____ B.M., County of Blaine

Additional points of diversion if any: _____

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 enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. Wood River Irrigation District, headgate,
canal, unnamed lateral ditch

COPY

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from 4/14 to 10/15 amount .40 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) .40 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) _____

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	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
01N	18E	24				10													10

Total number of acres irrigated 10

11. In which county (ies) are lands listed above as place of use located? Blaine

12. Do you own the property listed above as place of use? Yes XX No _____

If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.

none or None ()

14. Remarks:

Also known as Lot 2, Block 1, Dean Ranch Subdivision

COPY

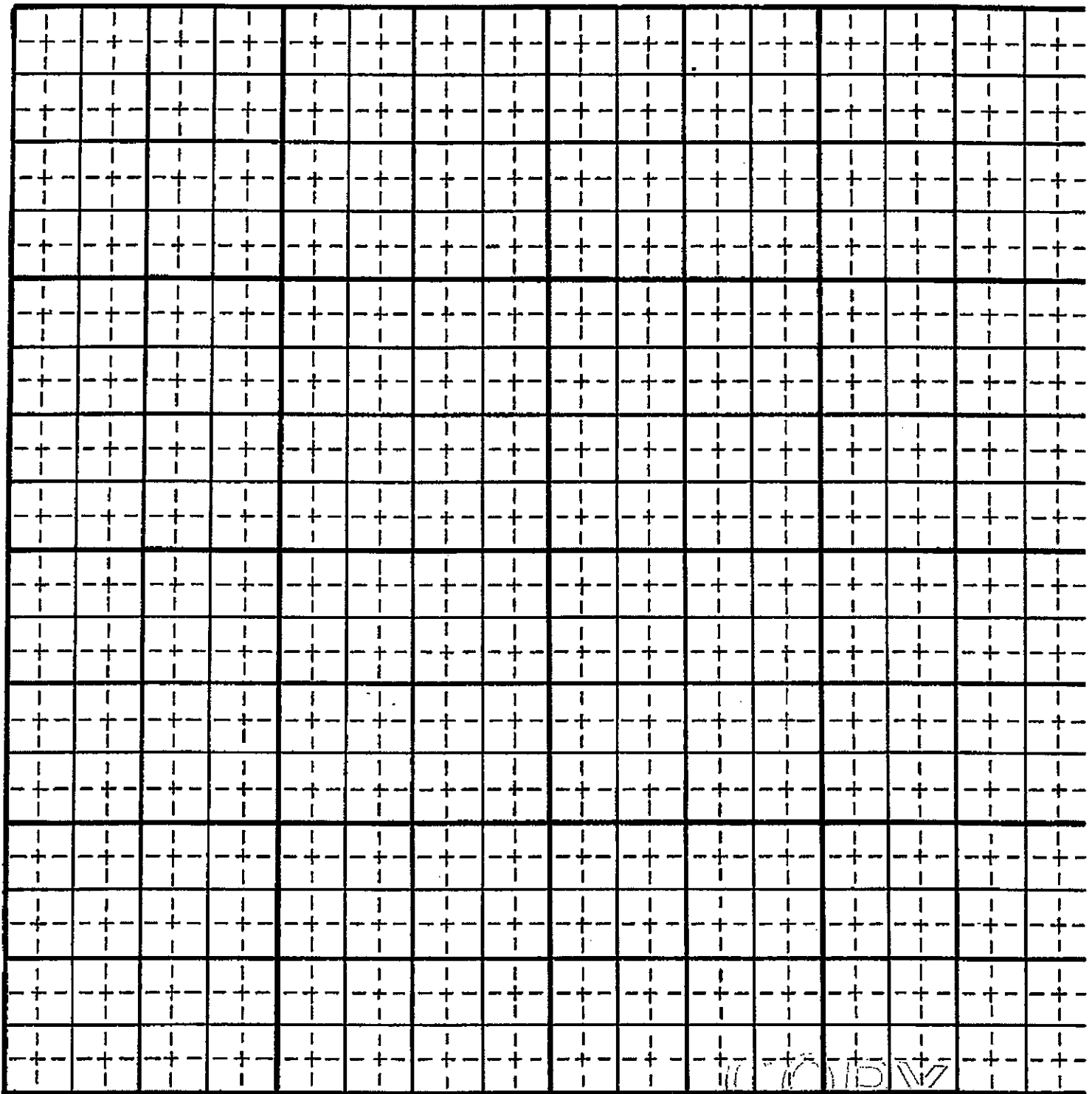
Last Name Olsen Livestock Consulting Ident No. 37-00353J

Copies: White -State, Yellow-Claimant

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

Please see attached Exhibit A



Last Name Olsen Livestock Consulting Ident No. 37-003531

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License _____ Permit _____

Decree xx

If applicable provide IDWR Water Right Number 37-00353J

Court Lincoln Cnty Dist. Ct. Case Number _____ Decree Date 10-06-09

Plaintiff vs Defendant S.C. Frost, et al. v. Alturas Water Co., et al.

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 do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date _____

_____ Date _____

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

Title

of Olsen Livestock Consulting _____, that I have signed the foregoing

Organization

document in the space below as President _____ of Olsen Livestock Consulting _____

Title

Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent Tom Olsen _____

Title and Organization President, Olsen Livestock Consulting Date 8-25-98

State of Idaho/or _____ }
County of Ada } SS.

Subscribed and sworn (or affirmed) before me this 25th day of August 19 98

SEAL

Notary Public Francine Church _____

Residing at Boise _____

My Commission Expires 5/17/99

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, Scott L. Campbell will be acting as attorney at law on behalf of the claimant signing above, and that 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 Scott L. Campbell _____

Address Elam & Burke, PO Box 1539, Boise, ID 83701

Date 9/1/98

COPY

Last Name Olsen Livestock Ident. Number 37-00353J
consulting

Copies White-State, Yellow-Claimant

Exhibit L

IN THE DISTRICT COURT OF THE JUDICIAL DISTRICT OF THE STATE OF IDAHO,
RECEIVED IN AND FOR THE COUNTY OF

FEB 23 1998

Department of Water Resources
Southern Region

Ident. Number: A37-00353K

Date Received: 2/23/98

Receipt No: 5029901

Received By: *[Signature]*

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

1. Name: SHERRY PRICE 208-788-4740
Address: PO BOX 1022
BELLEVUE ID 83313
OR
Name: BRUCE PRICE 208-788-4740
Address: PO BOX 1022
BELLEVUE ID 83313

2. Date of Priority: JUN 12, 1886

3. Source: BIG WOOD RIVER Trib. to: MALAD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
02N	18E	36	SW	NW			BLAINE

5. Description of diverting works:
DISTRICT 45 CANAL

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/15	10/15	0.360		

7. Total Quantity Appropriated is:
0.360 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	Lot	Use	Acres
01N	18E	24	NE	NE		IRR	9.0
Section Acres							9.0

10. Place of Use: Continued

Total Acres 9.0

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:

14. Remarks:

PLACED CLAIM ON HOST TEMP AS SHE DECIDED TO RESEARCH WARRANTY
DEED AND WATERMASTER RECORDS TO DETERMINE HISTORY OF WATER USE.
SHE MAY COME IN LATER TO FILE THE CLAIM. KKC 2-17-98

2/23/1998, DJ: CLAIM FILED THIS DAY. PLACE OF USE ALSO KNOWN AS
LOT 7, BLOCK 1 DEAN RANCH SUBDIVISION.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: 12/13/1909

S. C. FROST, ET. AL.
Decree Plaintiff

ALTURAS WATER COMPANY, ET. AL
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): Sherry Price Date: 2-23-98

Date: _____

State of Idaho

County of Twin Falls

SS.

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

of February 19 98

Douglas Jones
Notary Public

Seal

Residing at Buhl Id

My Commission Expires 8/8/2001

Exhibit M

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: **A37-00353L**
Date Received: 8/ 5/1998
Receipt No: S021400
Received By: *Se*

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

1. Name: TOM GOICOECHEA 208-788-4892
Address: PO BOX 193
HAILEY ID 83333

AND/OR

Name: ANNETTE GOICOECHEA 208-788-4892
Address: PO BOX 193
HAILEY ID 83333

2. Date of Priority: JUN 12, 1886

3. Source: BIG WOOD RIVER Trib. to: MALAD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
02N	18E	36	NE	SW	NW		BLAINE

5. Description of diverting works:

WOOD RIVER IRR. DIST., HEADGATE, CANAL, UNNAMED LATERAL DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/14	10/15	0.360		

7. Total Quantity Appropriated is:

0.360 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	Lot	Use	Acres
01N	18E	24	SE	NE		IRR	10.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	10.0
					Total Acres	10.0

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:

14. Remarks:

ALSO KNOWN AS LOT 3, BLOCK 1, DEAN RANCH SUBDIVISION

15. Basis of Claim: DECREEED

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): Tom Goriocha Date: 8/5/98

Date: _____

State of Idaho

County of

TWIN FALLS)

SS.

Subscribed and sworn (or affirmed) before me this 5th day

of Aug. 19 98

Shirley Collopy
Notary Public

Seal

Residing at Twin Falls

My Commission Expires 12/7/2000

Exhibit N

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

COPY

IN THE MATTER OF A CALL FOR	)	
DELIVERY OF WATER RIGHT NO.	)	PRELIMINARY ORDER
37-00353 TO RICHARD AND PAULA	)	
ZIKER, TRUSTEES	)	
_____	)	

James Speck, an attorney representing Richard and Paula Ziker, requested delivery of 0.20 cfs (10 miners inches) of water from the Big Wood River under water right No. 37-00353. After reviewing the files and records of the Department, Water District 37, and Blaine County, the Department of Water Resources enters the following Findings of Fact, Conclusions of Law, and Preliminary Order.

FINDINGS OF FACT

1. Water Right No. 37-00353 was decreed to James Johnson in the case of S. C. Frost, et al v. Alturas Water Co., et al. The right is for 6.4 cfs to be diverted from the Big Wood River for irrigation of the E1/2SE1/4 of Section 13 and the E1/2NE1/4, Section 24, T1N, R18E, B.M., Blaine County (approximately 160 acres). The water right has been diverted into the Wood River Valley Irrigation District No. 45 canal located within the SW1/4NW1/4, Section 36, T2N, R18E, for delivery to users of the water. The priority of right No. 37-00353 is June 12, 1886.

2. The decreed place of use for right No. 37-00353 was divided in the early 1970's into an 18 lot subdivision known as the Dean Ranch Subdivision. The records of the Department and Water District 37 indicate that right No. 37-00353 was appurtenant to and used upon the decreed place of use up to the time the land was subdivided and on some of the subdivision lots and other land each year thereafter. Lot 8A, Block 1 of the subdivision has not been irrigated for more than 10 years as evidenced by a review of aerial photographs and other information available to the department.

3. Richard and Paula Ziker, as Trustees of the Ziker Family Trust, dated July 20, 1992, claim ownership of Lot 8A, Block 1, Dean Ranch Subdivision. The deeds in the chain of title filed with Blaine County for this lot from the creation of the subdivision to the present are summarized as follows:

- a. On November 19, 1974, M.D. and Katherine J. Dean conveyed by warranty deed approximately 20 acres in the NE1/4NE1/4, Section 24, T1N, Range 18E including what is now Lot 8A, Block 1, of Dean Ranch Subdivision to M. Allyn Dingel and Robert J. Koontz, as tenants in common. The deed includes appurtenances, but does not describe appurtenant water rights.
- b. On October 30, 1979, M. Allyn Dingel and Robert J. Koontz, as tenants in common, conveyed by warranty deed Lot 8A, Block 1, Dean Ranch Subdivision (about 10 acres) to Cecil L. Potter and Marguerite Potter, husband and wife. The deed includes appurtenances, but does not describe appurtenant water rights.
- c. On October 17, 1983, Cecil L. Potter and Marguerite Potter, husband and wife, conveyed by warranty deed Lot 8A, Block 1, Dean Ranch Subdivision to James B. Stockman. The deed is silent concerning appurtenances.
- d. On December 18, 1989, James B. Stockman conveyed by warranty deed Lot 8A, Block 1, Dean Ranch Subdivision to William R. Long and Richard Ziker. The deed includes appurtenances, but does not describe appurtenant water rights.
- e. On January 19, 1990, Richard Ziker conveyed by quit-claim deed Lot 8A, Block 1, Dean Ranch Subdivision to William R. Long. The deed includes appurtenances, but does not describe appurtenant water rights.
- f. On January 29, 1993, Richard Ziker conveyed by quit-claim deed his ownership interest in Lot 8A, Block 1, Dean Ranch Subdivision to Richard Ziker and Paula Ziker, as trustees of the Ziker Family Trust. The deed is silent concerning appurtenances.
- g. On June 2, 1993, William R. Long conveyed by quitclaim deed a one-half (1/2) undivided interest in Lot 8A, Block 1, Dean Ranch Subdivision to Richard Ziker, a married man as his sole and separate property. The deed is silent concerning appurtenances.
- h. On June 3, 1994, Richard and Paula Ziker, as trustees of the Ziker Family Trust, conveyed by warranty deed Lot 8A, Block 1, Dean Ranch Subdivision to themselves as husband and wife. The deed includes appurtenances, but does not describe appurtenant water rights.
- i. On June 3, 1994, William R. Long conveyed by warranty deed Lot 8A, Block 1, Dean Ranch Subdivision to Richard and Paula Ziker, as husband and wife. The deed includes appurtenances, but does not describe appurtenant water rights.

j. On January 22, 1999, Paula Ziker conveyed by quitclaim deed Lot 8A, Block 1, Dean Ranch Subdivision to Richard Ziker, a married man as his sole and separate property. The deed includes appurtenances, but does not describe appurtenant water rights.

k. On October 14, 1999, Richard Ziker conveyed by quitclaim deed Lot 8A, Block 1, Dean Ranch Subdivision to Richard and Paula Ziker, as trustees for Ziker Family Trust. The deed is silent concerning appurtenances.

4. Blaine County does not have any record of deeds transferring title of any part of Water Right No. 37-00353 separately from the appurtenant land during the time period of December 15, 1969 (the date land was deeded to M. D. Dean) to November 19, 1974 (the date of the initial sale of Lot 8).

5. Water District 37 records list the following as the current owners of water right No. 37-00353:

a. Harry L. Oppenheimer (20 miners inches) based upon a letter dated October 27, 1977 from M. D. Dean confirming the sale of the water to Jerry Lee Johnson, a February 16, 1978 warranty deed from Jerry Lee Johnson to Marvin Lotspeich, and a 1980 warranty deed from Marvin Lotspeich to Harry L. Oppenheimer.

b. Ed Stricker (20 miners inches) based upon an October 29, 1977 letter from M. D. Dean confirming sale of the water to Mr. Stricker.

c. Reid Kantenwein (10 miners inches) based upon IDWR approved transfer No. 3679 filed by Gus Chek. Mr. Chek's ownership was based upon a November 1, 1977 letter confirming sale of 20 inches of water to Mr. Chek. Mr. Chek subsequently sold 10 inches to Douglas Driever. The water is to be used upon 10 acres in the SW1/4SW1/4, Section 18, T1N, R19E. Pursuant to permit No. 37-08660, the 10 inches of water held by Kantenwein under right No. 37-00353 is to be left undiverted from the Big Wood River to mitigate depletions in flow of the river resulting from pumping of ground water under permit No. 37-08660.

d. Douglas Driever (10 miners inches) based upon an October 4, 1991 letter from Gus Chek confirming sale of the water and Transfer No. 3679 approved by the department.

e. Robert Gardner (180 miners inches) based upon a June 25, 1982 letter from M. D. Dean confirming sale of the water to Mr. Gardner.

f. Judy Grigsby (20 miners inches) based upon a June 25, 1982 letter from M. D. Dean to John Peterson, a quitclaim deed dated November 3, 1993 from

John Peterson to J. Karl Bick, and warranty and quitclaim deeds dated April 17, 1998 from J. Karl Bick to Judy Grigsby.

g. Robert Fosnot (20 miners inches) based upon Transfer No. 2948 approved by the department.

h. Olsen Livestock Consulting (20 miners inches) based upon an amended preliminary order issued by the Department on August 25, 1997.

6. Water District 37 records include documents indicating that Robert Kierstad had an ownership interest in 0.8 cfs (40 miners inches) of right No. 37-00353. Mr. Kierstad has not filed a claim in the Snake River Basin Adjudication (SRBA), has not called for water for many years, and the county records indicate that his ownership interest may no longer exist.

7. The records of Water District 37 do not list Ziker Family Trust as an owner of part of right No. 37-00353. The watermaster records indicate that an assessment has not been paid for delivery of water for use on Lot 8A, Block 1, Dean Ranch Subdivision since 1982 or earlier.

8. The following have claimed portions of right No. 37-00353 in the Snake River Basin Adjudication (SRBA):

- | | | |
|----|--|-------------------|
| a. | A37-00353 J. Karl & Judith G. Bick | 20 miners inches |
| b. | A37-00353B Edward & Jeannine Stricker | 20 miners inches |
| c. | A37-00353D Robert & Kathryn Gardner | 180 miners inches |
| d. | A37-00353E Harry L. Oppenheimer, Jr. | 20 miners inches |
| e. | A37-00353F Ziker Family Trust | 10 miners inches |
| f. | A37-00353G Douglas Driever | 10 miners inches |
| g. | A37-00353H Reid Kantenwein | 10 miners inches |
| h. | A37-00353J Olsen Livestock Consult. | 20 miners inches |
| i. | A37-00353K Sherry Price | 18 miners inches |
| j. | A37-00353L Tom Goicoechea | 18 miners inches |
| k. | A37-11688 Paul R. & Robert E. Fosnot
(This claim is based upon water right No. 37-00353.) | 20 miners inches |

9. The SRBA claims on file total 346 miners inches. The claims exceed the amount of the diversion rate authorized by Right No. 37-00353 by 26 miners inches.

10. The Water District 37 records show that Wood River Valley Irrigation District No. 45 has paid the Water District 37 assessments for 1997 for Gus Chek and for 1996 and 1997 for Robert Kierstad.

11. Water District 37 has been active each year since 1974 and earlier.

12. Rule 104 of the "Rules of Procedure of the Idaho Department of Water Resources," IDAPA 37.01.01, authorize the department to initiate a formal proceeding by issuing an informal determination that will become final in the absence of further action by the person(s) to whom the document is addressed.

CONCLUSIONS OF LAW

1. Water right No. 37-00353 has not been forfeited as evidenced by the Water District 37 records of delivery and use, although use has not occurred on Lot 8A, Block 1 Dean Ranch Subdivision for many years.

2. Lot 8A, Block 1 Dean Ranch Subdivision was included in the decreed place of use of water right No. 37-00353. Unless a change in place of use was made in accordance with a valid transfer procedure, water right No. 37-00353 is prorated uniformly to the place of use; i.e., two miners inches to each acre of the place of use, Crow v. Carlson, 107 Idaho 461 (1984).

3. A water right is an appurtenance to the land and passes by conveyance of the land unless it was specifically reserved in the deed or it can be clearly shown that it was known to both parties that the water right was not intended to be conveyed. Russell v. Irish, 20 Idaho 194, 118 P. 501 (1911). Because the 1974 deed from M. D. and Katherine Dean to M. Allyn Dingel and Robert J. Koontz does not specifically reserve water rights from the sale, a proportionate share of water right 37-00353 remains appurtenant to the parcel. Deeds and letters confirming the sale of portions of the decreed water right issued by M. D. Dean subsequent to the 1974 deed to Curtis purporting to convey water rights could not have moved the water right from Lot 8A.

4. Section 42-607, Idaho Code, provides that a water user can not adversely possess the water rights of another user in an active water district.

5. The information available to the department indicates that a proportionate share of water right No. 37-00353 is appurtenant to Lot 8A, Block 1, Dean Ranch Subdivision. The watermaster of Water District 37 should be instructed to deliver the water to the authorized point of diversion for delivery and irrigation use.

6. The department is not able with the information presently available to determine which of the persons presently listed in the Water District 37 records as owning a portion of water right No. 37-00353 are not entitled to the full amount attributed to them. This matter is left for further determination by the department or the district court. Because some of the persons listed as owning part of the right are not calling for delivery under the right and have not done so for several years, the watermaster can satisfy Richard and Paula Ziker's call without otherwise changing the delivery to those entitled to use the water. If calls for water by those entitled to receive the water exceed the total amount of the right, delivery to each user will be proportionately reduced until the ownership issue is resolved.

7. A ruling by the Department with respect to a call, including the present Ziker Family Trust call, is an interim determination subject to review and revision by the SRBA Court.

ORDER

It is, therefore, hereby ordered:

1. The watermaster of Water District 37 is instructed to deliver 0.20 cfs of water right 37-00353 with a June 12, 1886 priority date to the Wood River Valley Irrigation District No. 45 headgate in the SW1/4NW1/4, Section 36, T2N, R18E for use by Richard and Paula Ziker, as trustee for Ziker Family Trust. Prior to delivery of the water under this order, Richard and Paula Ziker, as trustees for Ziker Family Trust, shall have paid any applicable Water District 37 assessments.

2. This Order does not constitute a determination that Ziker Family Trust has a right-of-way, easement, or other necessary authorities and approvals needed to convey water through the Wood River Valley Irrigation District headgate and canal system.

3. This Order is a preliminary determination subject to revision if additional information is submitted indicating that water right No. 37-00353 is no longer appurtenant to Lot 8A, Block 1, Dean Ranch Subdivision. All persons receiving this order and others using or claiming the use of water under right No. 37-00353 have the opportunity to seek reconsideration or file exceptions in accordance with Rule 730 of the "Rules of Procedure of the Department of Water Resources," IDAPA 37.01.01.

Signed at Boise, Idaho this 29TH day of December, 1999.


NORMAN C. YOUNG
Administrator
Water Management Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of December, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

James P. Speck
Speck & Aanestad
P.O. Box 987
Ketchum ID 83340

Scott Campbell
Elam & Burke
P.O. Box 1539
Boise, ID 83701

Robert and Kathryn Gardner
P.O. Box 470
Bellevue, ID 83313

Robert Earl Fosnot
P.O. Box 290
Bellevue, ID 83313

Paul R. Fosnot
837 Laurel Avenue
Pomona, CA 91767

Reid Kantenwein
P.O. Box 1525
Hailey, ID 83333

Harry L. Oppenheimer, Jr.
246 Summit Drive
Corde Madera, CA 93925

Edward and Jeannine Stricker
10767 State Highway 75
Bellevue, ID 83313

Douglas Driever
P.O. Box 2072
Hailey, ID 83333

J. Karl and Judith G. Bick
P.O. Box 2014
Sun Valley, ID 83353

Judith Grigsby
P.O. Box 254
Bellevue, ID 83313

E. Lee Schlender
P.O. Box 296
Hailey, ID 83333

Jim Eakin
Wood River Valley
Irrigation District 45
P.O. Box 296
Bellevue, ID 83313-0296

Bruce & Sherry Price
P.O. Box 1022
Bellevue, ID 83313

Tom & Annette Goicoechea
P.O. Box 193
Hailey, ID 83333

Lee Peterson
Watermaster
Water District 37
P.O. Box T
Shoshone, ID 83352


Deborah Drew-Ellis
Administrative Asst., Legal Services

Exhibit O

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER DISTRICT NO. 37 & 37 M

P.O. Box T
Shoshone, Idaho 83352
(208) 886-2451



LEE R. PETERSON
Watermaster

RECEIVED
AUG 04 1997
Department of Water Resources

Norm Young
Idaho Department
Of Water Resources
P O Box 83720
Boise, Idaho 83720-0098

July 30, 1997

Dear Norm,

I thought I should touch base with you concerning the Tom Olson matter. We received the preliminary order and as a result I have a couple of questions.

As long as the priority is good we presently deliver the entire 6.40 CFS to the head of the District 45 Canal diversion. If we deliver an additional .20 CFS won't that in effect be expanding the water right? Otherwise whose water are we delivering to Mr. Olson?

Also, Norma and I thought Mr. Olson was claiming right to 20 inches of water deeded to Dean R. Call, during the meeting held in our office? We understand that his adjudication claim is for 13.50 inches and the preliminary order is for 10 inches?

We also are concerned about what kind of precedence this will set for other disputes?

We really are indifferent as to who receives the water, but how do we enter this in our Decree Book that is used by our deputy to determine those individuals that are entitled to the water and how much each one is to receive? If we simply add 10 inches to the record that will expand the right. The only other alternative we can figure is to decrease one of the other individuals water by 10 inches? Which one do we decrease?

We realize that only 303.5 inches of this water is claimed in the adjudication but is it acceptable to use this before the courts has ruled on it? Aren't they considered as just claims until the court rules on them?

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER DISTRICT NO. 37 & 37 M

P.O. Box T
Shoshone, Idaho 83352
(208) 886-2451



LEE R. PETERSON
Watermaster

Page 2

We will continue the delivery of 320 inches to the head of the District Canal until we hear from you. Thank you for your help in this matter.

Sincerely,

A handwritten signature in cursive script, reading "Lee R. Peterson". The signature is written in dark ink and is positioned above the printed name and title.

Lee R. Peterson
Watermaster

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

APR 09 1999

Department of Water Resources



LEE R. PETERSON
Watermaster

WATER DISTRICT NO. 37 & 37 M

P.O. Box T
Shoshone, Idaho 83352
(208) 886-2451

April 6, 1999

Norm Young
IDWR
1301 North Orchard St.
P O Box 83720
Boise, Idaho 83720-0098

RE: Water Right 37-00353

Dear Norm:

We are writing once again for direction as to how to enter the information in our decree book. The ditch rider, for Dist 45 Canal Co., uses the District 45 section of this book to determine how much water to deliver and to whom. The water right 37-00353 originally decreed, by the Frost Decree, to James Johnson was decreed for 320 inches, 6.40 CFS. On the chart I have enclosed you will note that this water right is now over allocated. We need guidance from the Department as to how to handle this matter.

At your earliest convenience please drop us a line and let us know what to do.

It seems people are coming out of the woodwork to claim a portion of this right, since the Tom Olson matter.

Thank you for your help.

Sincerely,

A handwritten signature in cursive script that reads "Norma Peterson".

Norma Peterson
Secretary/Treasurer

WATER RIGHT 37-0353 ORIGINALLY DECREED TO JAME JOHNSON

DATE 6/12/1886

320 Inches

6.40 CFS

NAME	PROOF OF OWNERSHIP	AJ NO	INCHES	CFS
Douglas Driever	None	A37-00353G	10	0.20
Robert Fosnot	Deed	A37-00353B	20	0.40
Robert Gardner	Notarized Letter	A37-00353D	180	3.20
J Karl Bick/ Judith Grigsby	Deed	A37-00353	20	0.40
Tom Goicoechea	Deed Coming	A37-0353L	18	0.36
Reid Kantewein	Receipt of Purchase	A37-00353H	20	0.40
William R. Long	None	A37-00353F	10	0.20
Tom Olson	Deed	A37-00353J	20	0.40
Harry Oppenheimer	Deed	A37-0353E	20	0.40
Bruce Price		A37-0353K	18	0.36
Ed Stricker	Letter	A37-00353B	20	0.40
			356	6.72

Exhibit P

Water All



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

December 20, 1999

Lee Peterson, Watermaster
Water District 37
P.O. Box P
Shoshone, Idaho 83352

Re: Assessment of Claims to Right No. 37-00353 (Frost Decree – James Johnson)

Dear Lee:

You have requested guidance from the Department of Water Resources on which claimants to parts of Right No. 37-00353 should be included in the Water District 37 "Decree Book." Claims to various parts of the right have been filed in the Snake River Basin Adjudication. The claims, in total, exceed the decreed amount of the right. Some of the new claimants were not previously identified in the Water District records as having an ownership interest in the water right and have not been previously assessed by the Water District. Some of the claimants not previously identified in the Water District's records have called for water delivery based upon their claims. It is my understanding that the right is delivered by the Water District to the head of the District 45 canal along which most of the claimants are located. Because the Water District does not control delivery from the canal, your records do not verify use of water under the rights by the claimants.

Based upon this understanding Water District 37 should include in its Decree Book each of the water users claiming a part of Right No. 37-00353 that have demonstrated a probable ownership. Those having a probable ownership in the right include:

a. Water users listed in the Water District Records as having an ownership interest. These include:

1. Gardner	180 inches
2. Fosnot	20 inches
3. Grigsby (formerly Bick)	20 inches
4. Kantenwein	10 inches
5. Oppenheimer	20 inches
6. Stricker	20 inches
7. Driever	10 inches

Lee Peterson, Watermaster
December 20, 1999
Page 2

It is my understanding that the Water District Records also at one time listed Robert Keirstad as the owner of 40 miners inches. Because Mr. Keirstad has not filed a claim in the SRBA, the county records cast doubt on his continued ownership of any of the right, and he has not called for water for many years, I suggest that Mr. Keirstad not be listed in the Decree Book until these issues are resolved.

b. Claimants not previously listed in the Water District records which have now filed a claim in the SRBA and for which IDWR has entered a preliminary order in response to a petition for distribution by the watermaster. Olsen Livestock Consulting falls into this category.

Other claimants who have not demonstrated a probable ownership to a part of the right, even though they have claims pending in the SRBA, should not be include in the Decree Book until such time as the court confirms their right or IDWR has entered a preliminary order recognizing, at least for the interim period prior to action by the court, that a probable ownership exists by the claimant. The claims filed by Ziker, Price, and Goicoechea are in this category. Ziker has a pending petition calling for distribution of water and has supplied some ownership information. If an order to deliver results from the petition, Ziker should then be included in the Decree Book.

At this time the claimants calling for water that have demonstrated a probable ownership in the right do not exceed the amount of the right. It is easy to see that this will not be the case if all existing claimants call for delivery of water. The preliminary order entered in response to the Olsen Livestock Consulting petition indicates that the amount of water would be prorated among all the claimants if others demonstrate probable ownership to the amounts they are claiming. It is important that all claimants be advised of petitions calling for water under the new claims to allow them to participate in administrative actions. IDWR will provide copies of all preliminary orders to all claimants. Action to resolve the matter in the SRBA is still off in the future because the preliminary Director's Report for Basin 37 is scheduled to be available in December 2002.

Sincerely,



Norman C. Young
Administrator
Water Management Division

Exhibit Q



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

January 3, 2007

Tom Goiocoechea
PO Box 193
Hailey, ID 83333

JAMES E. RISCH
Governor

KARL J. DREHER
Director

RE: SRBA Recommendation 37-353L

Dear Mr. Goiocoechea:

My initial recommendation of this claim was for a diversion rate of 0.36 cfs, which was what you claimed. However, Water Right 37-353 is now over-claimed by 0.28 cfs. The excess amount cannot be allowed, so it is necessary to reduce some claims by 21.2% in order to stay within the original decreed rate of 6.4 cfs. Four claims that have been recommended cannot be traced back to known previous owners, and your claim is one of these. I am therefore revising my recommendation for your claim to 0.28 cfs. The original acreage recommendation remains the same.

If you have questions, feel free to contact me. Once the Director's Report for you area comes out (it is presently scheduled to be released during the third week in January), you can file a formal objection to the recommendation if you so desire.

Regards,

James E. Stanton
Sr. Water Resource Agent