

Robert L. Harris, Esq. (ISB # 7018)
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Dr., Ste. 200
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

RECEIVED

FEB 20 2009

DEPARTMENT OF
WATER RESOURCES

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

Subcase No.: 74-1557

**AFFIDAVIT OF ATTORNEY
ROBERT L. HARRIS**

STATE OF IDAHO)
) ss.
County of Bonneville)

I, Robert L. Harris, do solemnly swear (or affirm) that the testimony given in this sworn statement is the truth, the whole truth, and nothing but the truth, that it is made on my personal knowledge, and that I would so testify in open court if called upon to do so.

And being so sworn I depose and say:

1. I am an attorney licensed to practice law in the state of Idaho. I am a member of the firm of

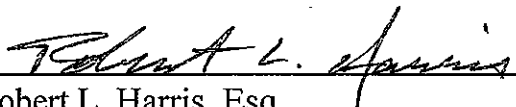
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C..
2. Attached hereto are true and correct copies of the following documents referenced in the

Motion to Set Aside Partial Decree for Subcase No. 74-1557:

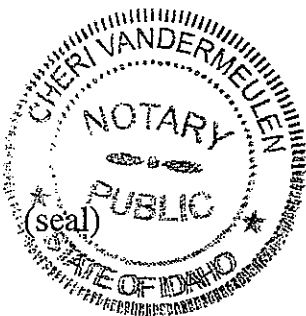
COPY

- a. Exhibit A: A water right report for Water Right No. 74-1557 obtained from the Idaho Department of Water Resources' website, which shows the elements of 74-1557 as decreed in the SRBA.
- b. Exhibit B: A copy of a water right abstract page from the Lemhi Decree, which shows Water Right No. 74-1557.
- c. Exhibit C: A copy of a water right summary from what is commonly called the "Green Book," which is another document listing the water rights decreed in the Lemhi Adjudication.
- d. Exhibit D: A copy of one of the maps prepared by IDWR in conjunction with the Lemhi Adjudication, which depicts the point of diversion for Water Right No. 74-1557 (E-21).
- e. Exhibit E: A copy of the legend for the map found at Exhibit D.

DATED this 17th day of February, 2009.


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

SUBSCRIBED AND SWORN TO before me this 17th day of February, 2009.




Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: July 7, 2009

CERTIFICATE OF MAILING

I certify that on this 17th day of February, 2009, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

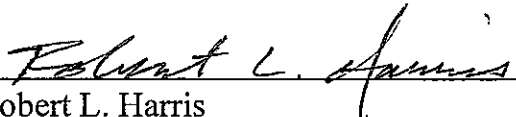
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

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

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


Robert L. Harris

G:\WPDATA\RLH\12318 McFarland Livestock (Tex Kauer)\02\Affidavit.RLH.wpd:cdv

Exhibit A

[Close](#)IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

2/17/2009

WATER RIGHT NO. 74-1557

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MC FARLAND LIVESTOCK CO INC C/O TEX J KAUER PO BOX 50 LEMHI, ID 83465 (208)768-2711

Priority Date: 06/01/1940

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
EIGHTEENMILE CREEK	LEMHI RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
STOCKWATER	5/01	11/01	0.1 CFS	
Total Diversion			0.1 CFS	

Location of Point(s) of Diversion:

EIGHTEENMILE CREEK	NENW Lt 3	Sec. 02	Township 13N	Range 28E	LEMHI County
--------------------	-----------	---------	--------------	-----------	--------------

Place(s) of use:

Place of Use Legal Description: STOCKWATER LEMHI County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
13N	28E	10		NESW										

Conditions of Approval:

1.	N13	THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.
2.	N11	THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
3.		PARCEL NO. 13N28E020001A STOCKWATER, UNSPECIFIED

Dates:

Licensed Date:

Decreed Date: 08/25/2000

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

Exhibit B

05/04/83

S T A T E O F I D A H O
DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ABSTRACT

INDICATES TOTAL

SOURCE: EIGHTEENMILE CREEK

TRIBUTARY TO: LEMHI RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
74-1625	REMARKS: AC. IRR.=527.9. P/U: T15N R27E S33 NWNE(20) S32 SWNE(13) NWSE(22) P/U: T14N R27E S05 SWNE(37) LT02 (NWNE)(42)	SWNE(38) NENW(16) SWSE(36) SENE(26) LT03 (NENW)(25)	NENW(39) SENE(25) NESE(01)	SENE(40) NESW(24) NWSE(26)	NWSW(07) SESW(17)	T14N R27E SWSE S05 T14N R27E SENE S05 T14N R27E	NESE(34) LT01 (NENE)(37)	
74-0998	PURCELL, KERMIT P.O. BOX 5 LEADORE ID 83464 REMARKS: AC. IRR.=55.2. P/U: T14N R27E S25 SWSE(19) P/U: T14N R28E S31 LT01 (NENW)(11) S30 LT04 (SESW)(05)	07-02-1923	IRRIGATION	03-15 11-15	1.20 CFS	SESW S30 T14N R28E NENW S31 T14N R28E	* 530 ACRES*	DECREE
74-1624	SKELTON RANCH CO. INC. P.O. BOX 1138 IDAHO FALLS ID 83401 REMARKS: AC. IRR.=314.5. P/U: T15N R27E S33 NWNE(20) P/U: T14N R27E S04 NESW(31) S05 LT01 (NENE)(16) P/U: T15N R27E S32 NESE(34)	04-01-1932	IRRIGATION	03-15 11-15	4.50 CFS	SESE S33 T14N R28E	* 55 ACRES*	DECREE
74-1557	MC FARLAND LIVESTOCK CO. INC. C/O T. L. MC FARLAND P.O. BOX 50 LEMHI ID 83465 REMARKS: P/U IN S3 & 16, T13N, R28E.	06-01-1940	STOCKWATER	05-01 11-01	.10 CFS	NENW S02 LT04 T13N R28E S02 T13N R28E	* 316 ACRES*	DECREE
74-2290	FAYLE, DALE FAYLE, WILLIAM L. P.O. BOX 114 LEADORE ID 83464	06-17-1944	IRRIGATION	03-15 11-15	3.90 CFS	SENE S29 T15N R27E	NENW(34) NNNW(03) S29 T15N R27E SNNW(03) SEVW(01) NESW(14) NWSW(11) SWSW(06) SESW(28)	DECREE

Exhibit C

PROPOSED FINDING OF WATER RIGHTS - LEMHI RIVER DRAINAGE

SOURCE: Eighteenmile Creek & Tribs.

IDENT. NO.	NAME AND ADDRESS	PRIORITY	PURPOSE	PERIOD OF USE		MAXIMUM RATE OF DIVERSION (cfs)	POINT OF DIVERSION	PLACE OF USE and LANDS IRRIGATED		BASIS OF RIGHT and REMARKS
				From	To					
74-1624	Skelton Ranch Co., Inc. Box 1138 Idaho Falls, Idaho	4- 1-1932	Irrigation	4/1	11/1	4.5	SE $\frac{1}{4}$ SE $\frac{1}{4}$, S.33 T14N, R28E	Sec. 4 NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 5 Lot 1, T14N, R27E Sec. 32 NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 33 NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, T15N, R27E	30.9 19.7 5.1 40.0 25.8 16.0 33.8 20.0 38.0 38.6 40.0 6.6 314.5	Beneficial Use 18 Mile Creek
~~74-1557~~	MC FARLAND LIVESTOCK CO., INC. c/o T. L. McFarland Box 50 Lemhi, Idaho	6- 1-1940	Stockwater	5/1	11/1	0.1	Lot 3, S.2 T13N, R28E	Sec. 2 Lot 4 Sec. 3 Sec. 16 ~~*~~ - School Section T13N, R28E		Beneficial Use 18 Mile Creek
74-2290	FAYLE, Dale and/or William L. Box 114 Leadore, Idaho	6-17-1944	Irrigation	4/1	11/1	3.9	SE $\frac{1}{4}$ NW $\frac{1}{4}$, S.29 T15N, R27E	Sec. 20 SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 29 NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, T15N, R27E	3.0 0.7 14.0 11.0 6.3 27.9 34.4 3.0 100.3	License 18 Mile Creek

Exhibit D

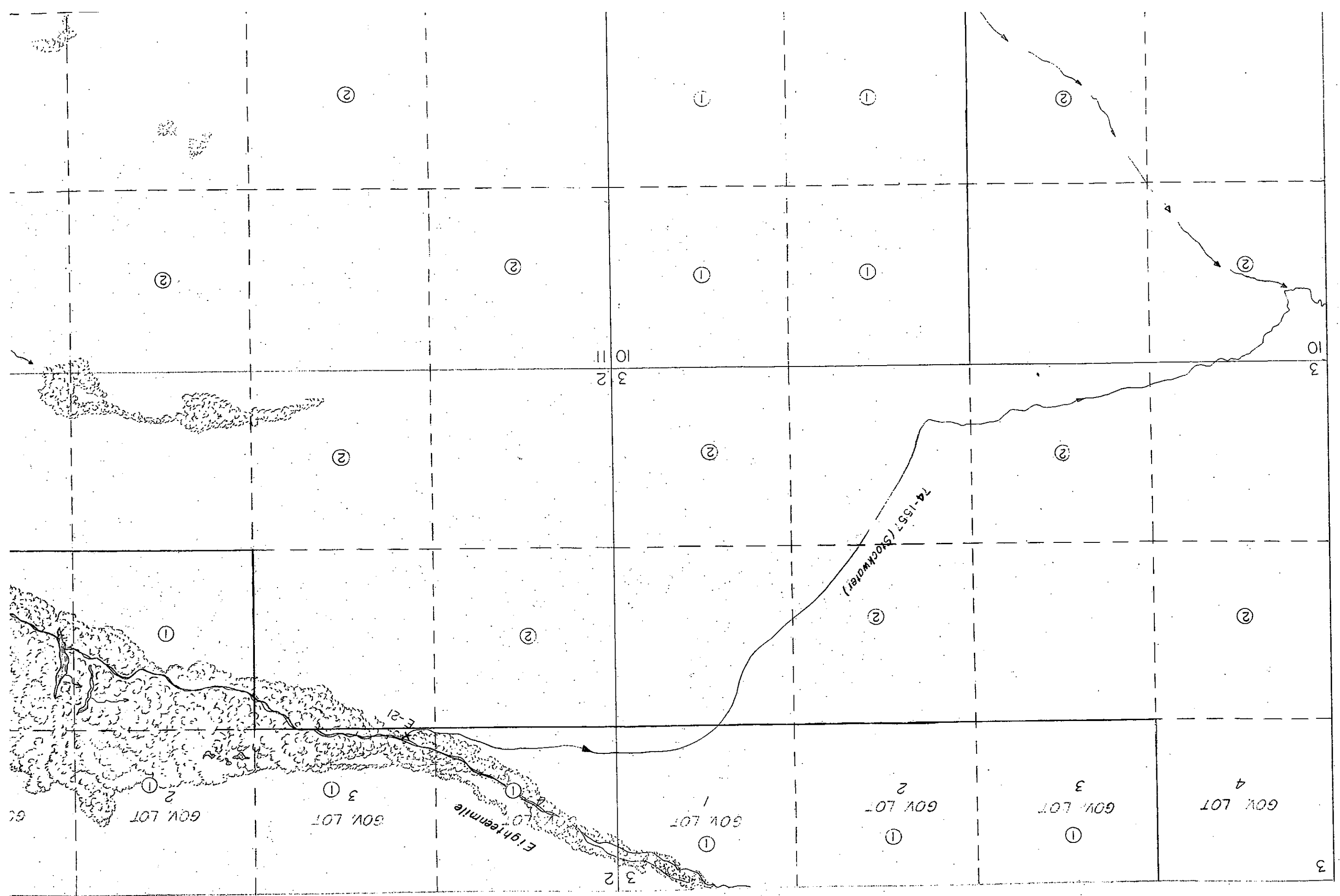
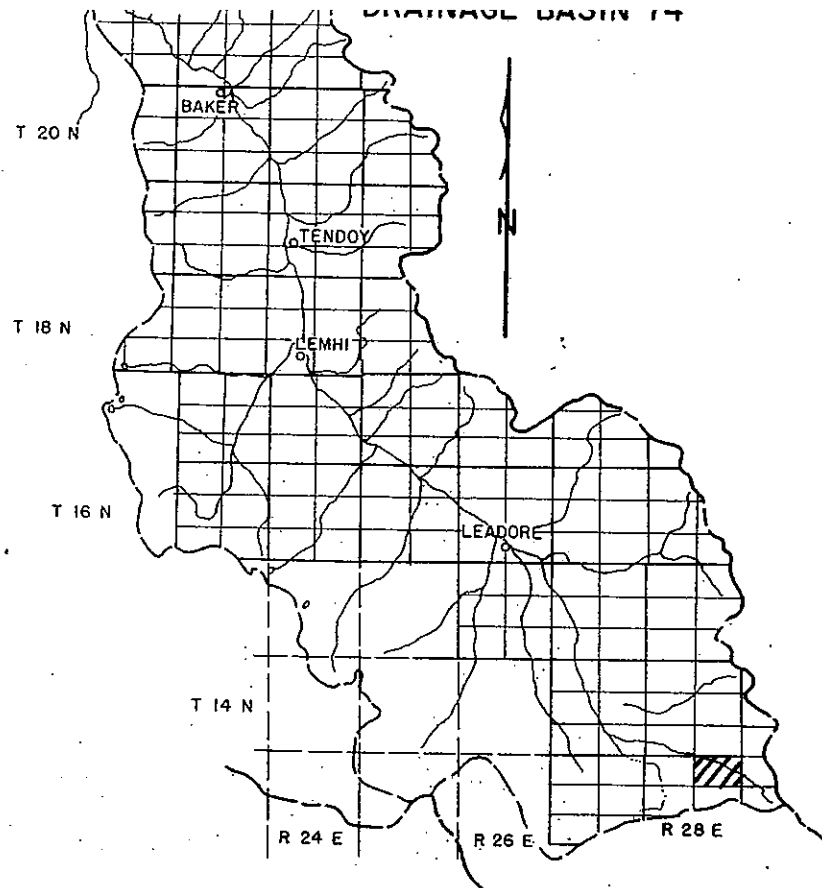


Exhibit E

EGK-3W-93

" -13W-43



STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION
DIVISION OF ADJUDICATIONS

LEMHI RIVER

DRAWN BY: GLF DATE: 4/29/71

CHECKED BY: *dy* DATE:

SCALE 1:7920

1 INCH = 660 FEET

0 660 1320

T 13 N , R 28 E, Map A