

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: **A37-00353J**
Date Received: 12/16/1996
Receipt No: W021812
Received By: See

AMENDED

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

AMENDED

1. Name: OLSEN LIVESTOCK CONSULTING 208-323-1555
Address: 228 S COLE ROAD
BOISE ID 83709

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	0.400		

7. Total Quantity Appropriated is:
0.400 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
Section Acres							10.0

10. Place of Use: Continued

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:
NONE

14. Remarks:

ALSO KNOWN AS LOT 2, BLOCK 1, DEAN RANCH SUBDIVISION
**** CORRECTED ADDRESS LINE TO DATA ENTRY STANDARDS FOR ROD TO RD
KKC 12-13-96 ****
*AMENDED 09-03-98: ADDED ATTORNEY, NEW NAME, AND CHANGE QUANTITY.

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: _____

For Organizations:

I do solemnly swear or affirm that I am _____ of
_____, that I have signed the foregoing
Organization document in the space below as _____ of
_____ Title
_____ and that the statements contained in the
Organization foregoing document are true and correct.

Signature of Authorized Agent

Title and Organization

Date

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

17. Notice of Appearance:

Notice is hereby given that I, _____ will be
_____ Print Name
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 _____

Address _____

Date _____

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 9/3/98 su

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

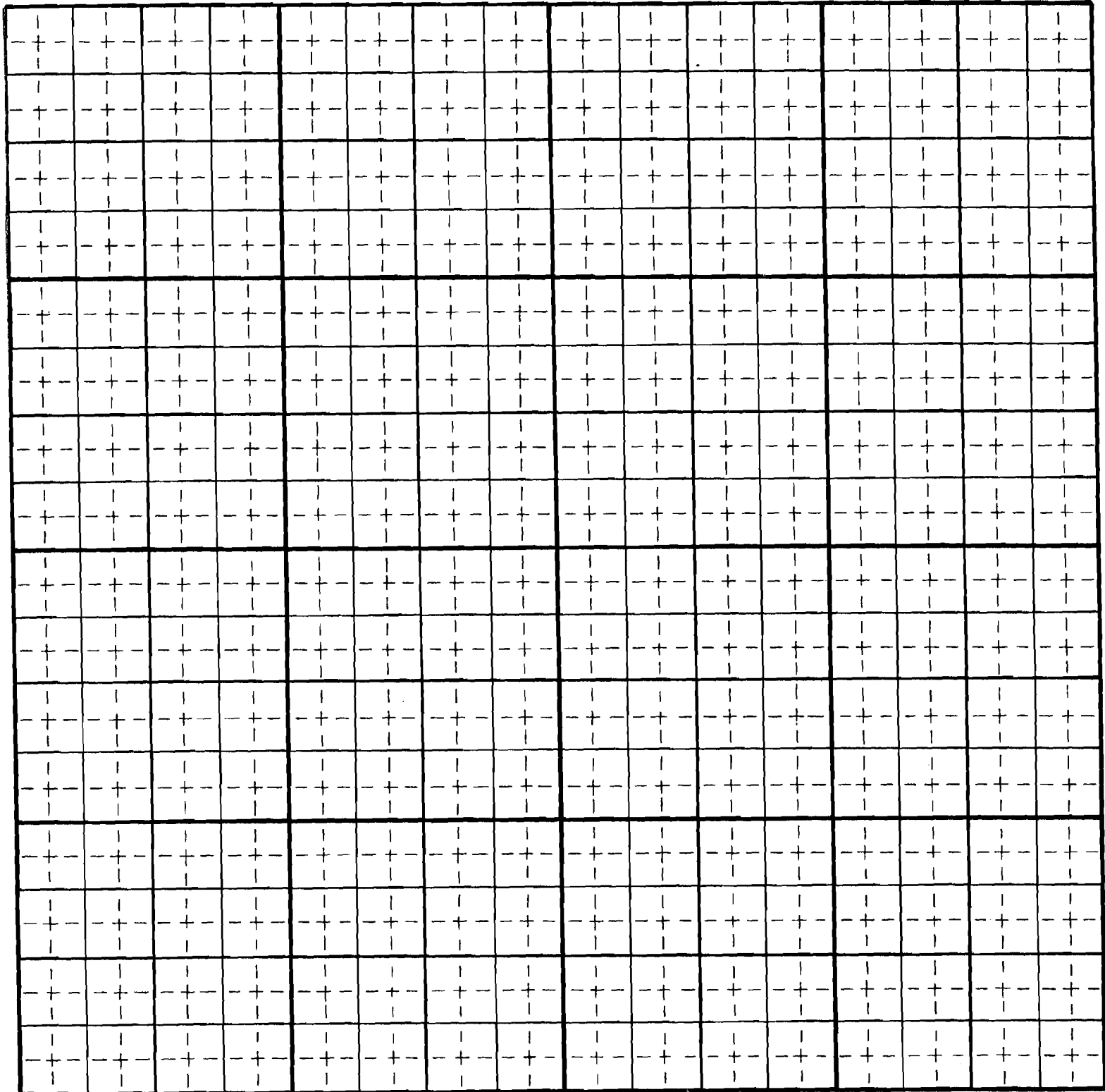
Last Name Olsen Livestock Consulting Ident No. 37-00353J

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



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 Organization _____, that I have signed the foregoing document in the space below as President Title _____ of Olsen Livestock Consulting 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 Frank 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.

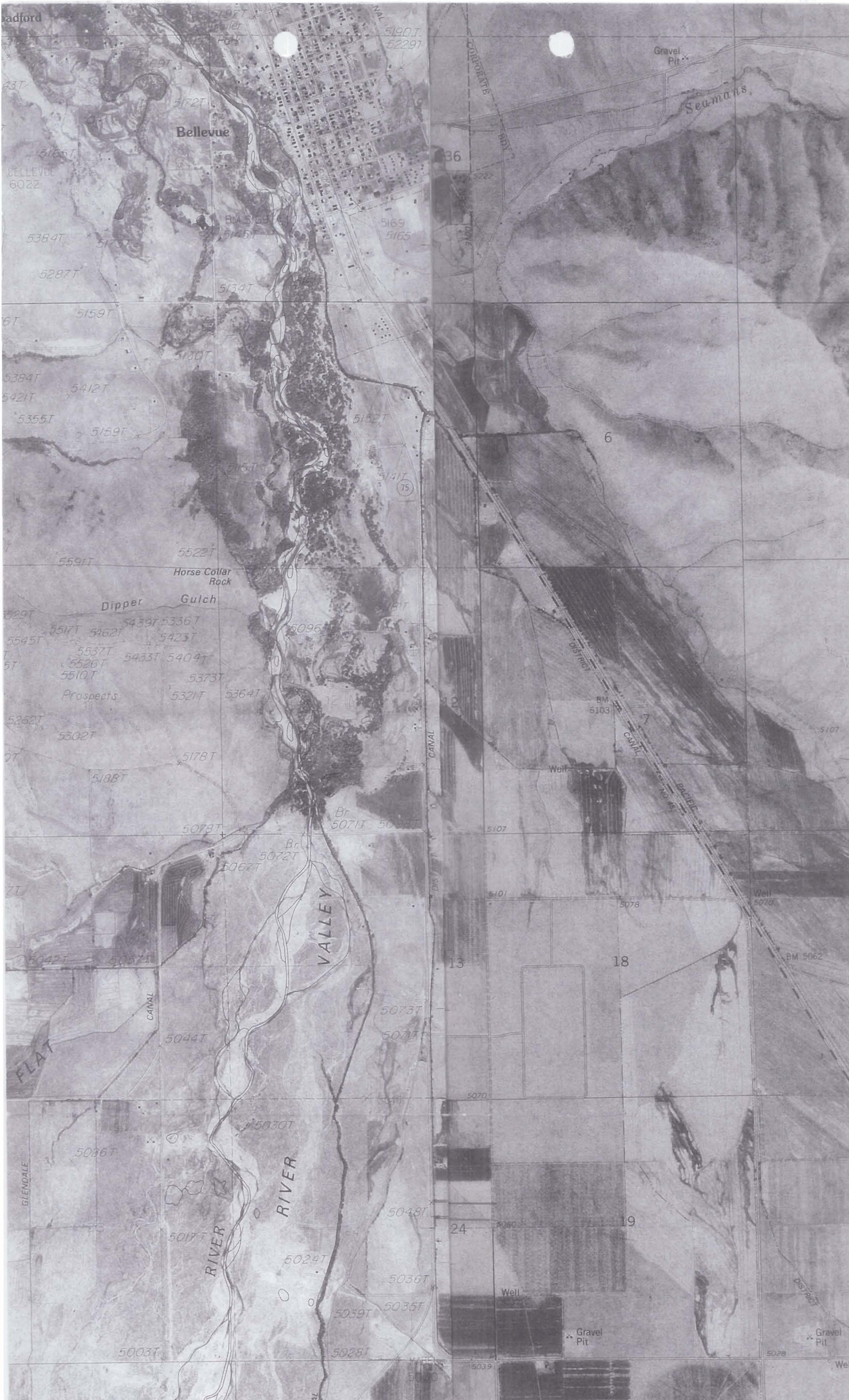
Signature Scott L. Campbell

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

Date 9/1/98

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

Copies White-State, Yellow-Claimant



RECEIVED

DEC 18 1996

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: A37-00353J

Date Received: 9/20/1988

Receipt No: X777777-1021812

Received By: MTS 12/16/96

Should questions arise during
the processing of this applica-
tion please contact:

SHIRLEY L. CHAPMAN
410 S. Orchard, Suite 144
Boise, ID 83705
344-6690

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: TOM OLSEN

Address: 228 S COLE RD
BOISE ID

changed to RD
12-31-96
KKC

208-323-1555

83709

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	0.270		

7. Total Quantity Appropriated is:

0.270 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

Section Acres 10.0

10. Place of Use: Continued

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 2, BLOCK 1, DEAN RANCH SUBDIVISION

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: / /

Decree Plaintiff

vs

Decree Defendant

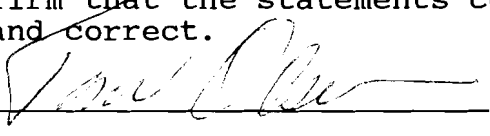
16. Signature(s)

(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: _____

For Individuals:

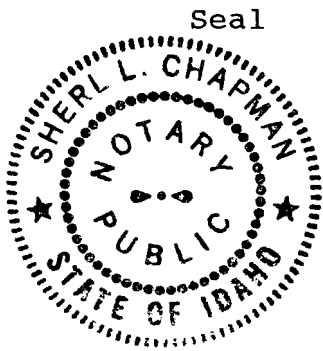
I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s):  Date: 12-6-96

Date: _____

State of Idaho)
) SS.
County of Adair)

Subscribed and sworn (or affirmed) before me this 6 day
of December 19 96 Sherl L Chapman
Notary Public



Residing at Mendham Idaho
My Commission Expires 4/14/2000

AFFIDAVIT

DEC 18 1996

I, Robert E. Fosnot, of P.O. Box 290 Bellevue, Id.

Post Office Address

63313

Department of

do hereby affirm that I have personal knowledge of licensed water right

_____ located in the _____ 1/4, _____ 1/4, Section _____,

Township _____, Range _____, commonly known as the _____ right.

Information I can formally attest to from personal knowledge and recorded water rights files is as follows:

1. Date established 1886
2. Source of water BIG WOOD CANAL.
3. Date of first use of water unknown
4. Nature of use surface agricultural irrigation
5. Quantity of water diverted 30"
6. Use of water by this owner surface agricultural irrigation
7. Other information Property previously (1978) irrigated prior to subdivision for agricultural use ie grain crop.

Robert E. Fosnot
Signature

STATE OF Idaho

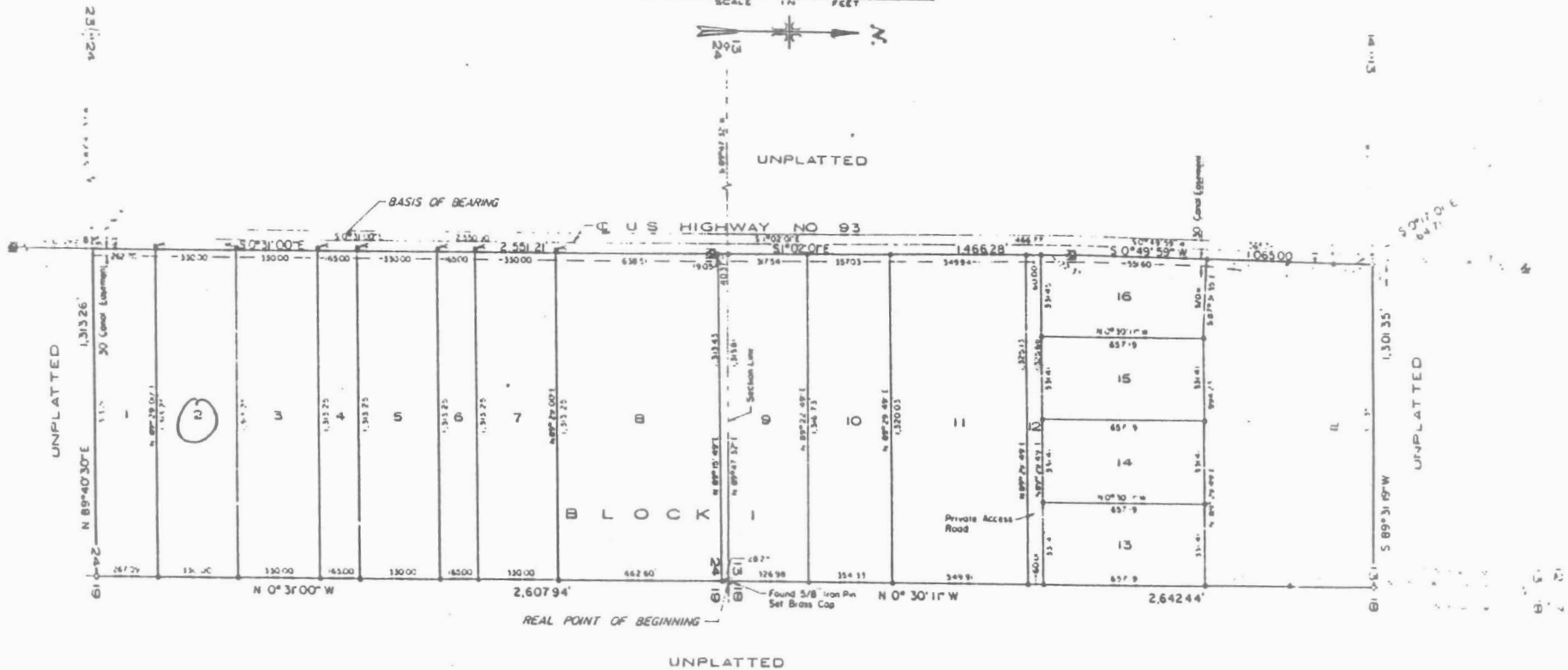
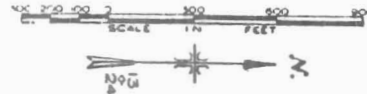
COUNTY OF Blaine

Subscribed and sworn to before me this 23rd day of October, 1996

(NOTARY SEAL)

Nicky Saezfeld
Notary Public

PLAT SHOWING
DEAN RANCH SUBDIVISION
PORTIONS OF
THE E1/2 SE1/4, SECTION 13, AND E1/2 NE1/4, SECTION 24, T1N, R18E, B1N,
BLAINE COUNTY, IDAHO
1975



This map is a photographic reproduction of that on file in either the Recorder's or the Surveyor's Office. The company assumes no liability for variation, if any, with another or re-survey.
Courtesy Of:
First American Title Co.
Box 756
Ketchum, Idaho 83340

STATE OF IDAHO)
COUNTY OF ADA)

I, Harold J. Cox, being first duly sworn, deposes and says that he is a professional engineer, licensed to practice by the State of Idaho, that he has compared the above copy with the original plat and that the same is a true and exact copy of said plat.

Subscribed and sworn before me this 2nd day of December, 1975.

Notary Public for Idaho My Commission Expires Residing at Boise, Idaho 2-11-78

LEGEND

- Brass Cap
- Found Stone Monument
- Found Highway R. W. Monument
- 5/8" Found Iron Pin
- 5/8" x 30" Set Iron Pin
- Set 5/8" x 30" Iron Pin in Brass Corner 1000 West of Property Corner

I-U-B ENGINEERS, INC.
Engineers Planners
Boise, Idaho

18
TWIN R 18E

18E
TWIN R 18E
Sec 24
SE NE

14/13
23/24

T 47
27.2
P
NI

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ALS

24/19

3
4.7
24
25.7

5
19.6

AL

35.9

23/24
26/25

T 18

T 17

24/19
25/30

19.5

19.6

30.4

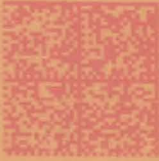
2
26.7

3
24.7

Dept. of Water Resources
Adjudication Bureau
P. O. Box 83720
Boise, ID 83720-0098

ADDRESS SERVICE
REQUESTED

FIRST CLASS



02 1A

0004310839

NOV 27 2006

\$ 00.87⁰

MAILED FROM ZIP CODE 83702



RECEIVED
NOV 30 2006
DEPT. OF
WATER RESOURCES

37-353J

OLSEN LIVESTOCK CONSULTING

228 S COLE RD
BOISE ID 83709

UNDELIVERABLE AS
ADDRESSED
FORWARDING ORDER
EXPIRED



Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Eugene C. Thomas
John W. Barrett
R. B. Rock
Richard C. Fields
John S. Simko
John C. Ward
D. James Manning
Gary T. Dance
Larry C. Hunter
Randall A. Peterman
Mark S. Prusynski
Stephen R. Thomas
Glenna M. Christensen
Gerald T. Husch
Scott L. Campbell
Robert B. Burns

Michael E. Thomas
Patricia M. Olsson
Bradley J. Williams
Lee Radford
Michael O. Roe
David S. Jensen
James L. Martin
C. Clayton Gill
Michael W. McGreaham
David P. Gardner
Julian E. Gabiola
Angela Schaefer Kaufmann
Kimberly D. Evans Ross
Paul D. McFarlane
Jon A. Stenquist
Tyler J. Henderson

Jason G. Murray
Mark C. Peterson
Andrew J. Waldera
Tyler J. Anderson
Dylan B. Lawrence
Russell G. Metcalf
Benjamin C. Ritchie
Rebecca A. Rainey

Robert E. Bakes, *of counsel*
Morgan W. Richards, *of counsel*

Willis C. Moffatt, 1907-1980
Kirk R. Helvie, 1956-2003

RECEIVED

JAN 22 2007

DEPARTMENT OF
WATER RESOURCES

Boise
Idaho Falls
Pocatello
Twin Falls

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829

208 345 2000
800 422 2889
208 385 5384 Fax
www.moffatt.com

January 19, 2007

CEIVED

JAN 19 2007
DEPT. OF WATER RESOURCES
SOUTHEAST REGION

Idaho Department of Water Resources
Idaho Water Center
322 E. Front Street, 6th Floor
P.O. Box 83720
Boise, ID 83720-0098

**Re: Snake River Basin Adjudication
Water Right No. 37-353J- In the Name of Olsen Livestock Consulting**

Dear Sir or Madam:

Enclosed please find the original Notice of Error Reply form for water right number 37-353J, which was submitted to the Department via facsimile on this date. Also enclosed please find a copy of the form to be received-stamped (January 19, 2007) and returned in the envelope provided.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Tiffany M. Hudak
Paralegal

/tmh
Enclosure

2007
JAN 23 2007
CEIVED

BOI_MT2-639035.1

RECEIVED

01/04/2007

RECEIVED

JAN 22 2007

DEPARTMENT OF
WATER RESOURCES

NOTICE OF ERROR
REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: 01/18/2007.

Water right number: 37-353J

OLSEN LIVESTOCK CONSULTING
2228 S. COLE ROAD
BOISE ID 83709

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

Quantity; Purpose & Period of Use; and Place of Use

2. Describe the changes you wish to make in the proposed recommendation:

Quantity: Increase the quantity from 0.32 cfs to 0.40 cfs, as claimed.

Purpose & Period of Use: Increase the quantity from 0.32 cfs to 0.40 cfs, as claimed.

Place of Use: Increase the place of use to the entire 10 acres claimed.

3. Give a brief explanation as to why you disagree with these portions:

Quantity: There is no legal basis for reduction in the historical amount of water used to irrigate the property.

Purpose & Period of Use: There is no legal basis for reduction in the historical amount of water used to irrigate the property.

Place of Use: There is no legal basis for reduction in the number of irrigated acres.

 I AGREE with this proposed recommendation: no changes need to be made.

DATE: 1/19/07

SIGNATURE: Scott L. Campbell

Please print your name:

Scott L. Campbell
Moffatt, Thomas, Barrett, Rock & Fields, Chartered
PO Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Attorneys for Olsen Livestock Consulting

RECEIVED
JAN 23 2007

IDWR Regional Office, 322 E. Front St, PO Box 83720, Boise, Idaho 83720-0098, (208) 287-4800



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Web Site: www.idwr.idaho.gov

SOUTHERN REGION

January 22, 2007

Moffatt Thomas Chtd
ATTN: Scott Campbell
PO Box 829
Boise, ID 83701-0829

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

RE: SRBA Claim Recommendation 37-353J, Tom Olsen/Olsen Livestock Consulting

Dear Mr. Campbell;

As I explained to Mr. Olsen, it was necessary to recommend less than the claimed diversion rate because Right 37-353 is over-claimed in the SRBA. While a diversion rate of 6.4 cfs was established in the Frost Decree in 1909, 6.66 cfs was claimed in the SRBA for the claims that could be recommended. I made the necessary reductions as fairly as I could, and do not plan to change my recommendations at this time.

With regard to the place of use, I recommended only those areas that appeared to be irrigated by the red-diversion works in the District Canal. Areas taken out for homes, driveways, etc., were not recommended. All my recommendations for the Dean Ranch Subdivision were done this same way, and I do not plan to change this either.

Regards,

James E. Stanton
Sr. Water Resource Agent

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829208 345 2000
208 385 5384 Fax
208 385 5435 Direct**FACSIMILE****From:** Tiffany M. Hudak
Paralegal**Date:** January 19, 2007**Re:** Snake River Basin Adjudication
Water Right No. 37-353J- In the Name of Olsen
Livestock Consulting**File No.:****Number of pages being transmitted including the cover page: 3**
Please call fax operator at (208) 345-2000 if all pages are not received.

	Name	Organization	Fax No.	Voice No.
To:	Idaho Department of Water Resources		287-6700	287-4800

Message:

Please see attached letter.

PLEASE DELIVER IMMEDIATELY

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If you have received this communication in error, please immediately notify us by telephone to arrange for return of the original document to us. Thank you.

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Boise
Idaho Falls
Pocatello
Twin FallsEugene C. Thomas
John W. Barrett
R. B. Rock
Richard C. Fields
John S. Simko
John C. Ward
D. James Manning
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Mark C. Peterson
Andrew J. Walders
Tyler J. Anderson
Dylan B. Lawrence
Russell G. Metcalf
Benjamin C. Ritchie
Rebecca A. RaineyRobert E. Bakes, *of counsel*
Morgan W. Richards, *of counsel**Willis C. Moffatt*, 1907-1980
Kirk R. Helvie, 1956-2003January 19, 2007
*via Facsimile*US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829208 345 2000
800 422 2889
208 385 5384 Fax
www.moffatt.comIdaho Department of Water Resources
Idaho Water Center
322 E. Front Street, 6th Floor
P.O. Box 83720
Boise, ID 83720-0098**Re: Snake River Basin Adjudication
Water Right No. 37-353J- In the Name of Olsen Livestock Consulting**

Dear Sir or Madam:

Enclosed please find an original Notice of Error Reply form which we are submitting on behalf of our client, Olsen Livestock Consulting, concerning water right number 37-353J. A copy of the form to be received-stamped will follow via U.S. Mail.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

Tiffany M. Hudak
Paralegal/tmh
Enclosure

01/04/2007

NOTICE OF ERROR
REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: 01/18/2007.

Water right number: 37-353J

OLSEN LIVESTOCK CONSULTING
2228 S. COLE ROAD
BOISE ID 83709

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

Quantity; Purpose & Period of Use; and Place of Use

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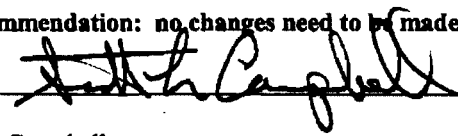
Quantity: There is no legal basis for reduction in the historical amount of water used to irrigate the property.

Purpose & Period of Use: There is no legal basis for reduction in the historical amount of water used to irrigate the property.

Place of Use: There is no legal basis for reduction in the number of irrigated acres.

____ I AGREE with this proposed recommendation: no changes need to be made.

DATE: 1/19/07

SIGNATURE: 

Please print your name:

Scott L. Campbell
Moffatt, Thomas, Barrett, Rock & Fields, Chartered
PO Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Attorneys for Olsen Livestock Consulting

IDWR Regional Office, 322 E. Front St, PO Box 83720, Boise, Idaho 83720-0098, (208) 287-4800



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 Olsen
PO Box 1145
Bellevue, ID 83313

JAMES E. RISCH
Governor

KARL J. DREHER
Director

RE: SRBA Recommendation 37-353J

Dear Mr. Olsen;

My initial recommendation of this claim was for a diversion rate of 0.40 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 0.32 cfs. The original acreage recommendation remains the same.

If you have questions, feel free to contact me. Once the Director's Report for your 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

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

REVISED

This right is a portion of former Right 37-353.

12/01/2006

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER:	37-353J								
NAME AND ADDRESS:	TOM OLSEN PO BOX 1145 BELLEVUE ID 83313 OLSEN LIVESTOCK CONSULTING 228 S COLE RD BOISE ID 83709								
SOURCE:	BIG WOOD RIVER	TRIBUTARY: MALAD RIVER							
QUANTITY:	0.400 CFS								
PRIORITY DATE:	06/12/1886								
POINT OF DIVERSION:	T02N R18E S36 NESWNW Within BLAINE County								
PURPOSE AND PERIOD OF USE:	<table><tr><td><u>PURPOSE OF USE</u></td><td><u>PERIOD OF USE</u></td><td><u>QUANTITY</u></td></tr><tr><td>IRRIGATION</td><td>04/15 10/31</td><td>0.400 CFS</td></tr></table>			<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>	IRRIGATION	04/15 10/31	0.400 CFS
<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>							
IRRIGATION	04/15 10/31	0.400 CFS							
PLACE OF USE:	<u>IRRIGATION in BLAINE County</u> T01N R18E S24 SENE 7.80								

7.8 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

The place of use is also known as Lot 2 of the Dean Ranch Subdivision.

This right is a portion of former Right 37-353.

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

This right is a portion of former Right 37-353.



Idaho Department of Water Resources

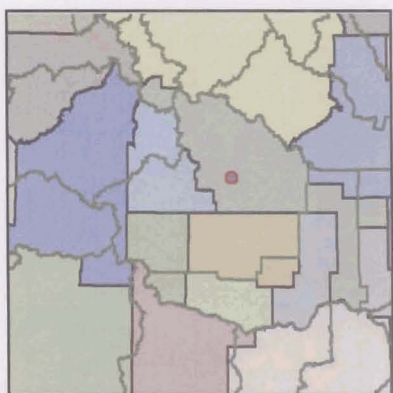
SRBA Recommendation:

37-353J

(Irrigation)

Legend

-  Point of Diversion
-  Place of Use
-  Townships
-  PLS Sections
-  Quarter Quarters



Blaine County
IDWR Basin 37



0 0.1 0.2 Miles

Owner: Olsen Livestock Consulting (Tom Olsen Present Owner)

NOTE: Only one owner is listed. There may or may not be more than this in the IDWR database.

Prepared by J. Stanton
On Saturday, November 18, 2006
2004 Aerial Photography

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

RETURN SERVICE REQUESTED

Fosella + Associates
208-336-6773
404 South 8th St
Boise Id 83702



Southern
Department of Water Resources
Southern Region
RECEIVED
SEP 16 2004

37-353J

323-1555

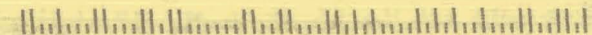
OLSEN LIVESTOCK CONSULTING
228 S COLE F
BOISE ID 837

NIXIE

2009 1 05 09/14/04

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD
RETURN TO SENDER

888701245352 5891





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

RECEIVED
DEC 28 1999
Department of Water Resources
Southern Region

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

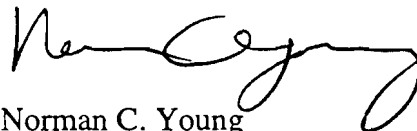
It is my understanding that the Water District Records also at one time listed Robert Keirstad as the owner of 40 miners inches. Because Mr. Keirstad has not filed a claim in the SRBA, the county records cast doubt on his continued ownership of any of the right, and he has not called for water for many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

A37-00353	BICK, J KARL	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
	BICK, JUDITH G	C				4 STOCK
A37-00353A	SPLIT RIGHT,	C	06/12/1886	/Z	BIG WOOD RIVER	1 IRR
					SPL IT RI GHT	
A37-00353B	STRICKER, EDWARD W	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
	STRICKER, JEANNINE	C				4 STOCK
A37-00353C	SPLIT RIGHT,	C	06/12/1886	/Z	BIG WOOD RIVER	1 IRR
					SPL IT RI GHT	
A37-00353D	GARDNER, ROBERT	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
	GARDNER, KATHRYN	C				
A37-00353E	OPPENHEIMER JR, HARRY	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
A37-00353F	ZIKER TRUSTEE, RICHARD	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
	ZIKER TRUSTEE, PAULA	C				
A37-00353G	DRIEVER, DOUGLAS	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
A37-00353H	KANTENWEIN, REID	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
~~A37-00353J~~	OLSEN LIVESTOCK CONSUL	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
A37-00353K	PRICE, SHERRY	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
	PRICE, BRUCE	C				
A37-00353L	GOICOECHEA, TOM	C	06/12/1886	D/	BIG WOOD RIVER	1 IRR
	GOICOECHEA, ANNETTE	C				

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454

FACSIMILE

ANGELA D. SCHAEER

208-384-5844

September 1, 1998

RECEIVED
SEP 02 1998
Department of Water Resources
Southern Region

Alan Merritt, P.E.
Southern Region Manager
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Re: Olsen Livestock Consulting
Amended Notice of Claim to a Water Right
Water Right No. 37-00353J

Dear Mr. Merritt:

Enclosed please find an Amended Notice of Claim to a Water Right Acquired Under State Law, which we are filing on behalf of Olsen Livestock Consulting. I ask that you file this Amended Notice of Claim at your earliest convenience.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

ELAM & BURKE
A Professional Association

Send in Ms. Schaer's
absence to avoid delay.

Angela D. Schaer

ADS:kc G:\Thm\WPDATA\7055\00030-ltr.wpd
Enclosure

cc: Tom Olsen (w/o enclosure)



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

September 3, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

SCOTT CAMPBELL
ELAM & BURKE
PO BOX 1539
BOISE ID 83701

RE: FILING OF AMENDED SRBA CLAIM NO. A37-00353J

Dear Mr. Campbell,

Enclosed is a copy of the SRBA claim A37-00353J as it is now recorded in our record database. Please review the information and confirm that it reflects the water right as claimed. If all is correct no further action is required at this time.

Feel free to call us if you have questions or need additional assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Clelland', with a long horizontal flourish extending to the right.

STEVE CLELLAND
Sr. Water Resource Agent

ENC:

cc: Olsen Livestock Consulting (w/o enclosure)

RECEIPT
For Monies Paid
to the
Idaho Department of Water Resources

Receipt No: W021812

Date: 12/16/1998
Time: 13:11:04

Received
From: OLSEN, TOM

Type of Payment	Program A cct	Amount
SRBA CLAIM A37-00353J	41503 337 1155	60.00
SRBA LATE FEE A37-00353J	41503 337 1155	50.00
CHECK 2588		
Total		\$ 110.00

Region: WESTERN

Signature: Schulte

TO: Allen Merritt

DATE: May 22, 1997

FROM: Jim Stanton

SUBJECT: Water Call From Thomas Olsen, 37-00353 Part J

I have reviewed the 1987 NAPP photo for the Dean Ranch Subdivision where the Olsen property is located (Y 25 SW). The photo was confusing at first, but finally made sense. Lots 4, 5 & 6 are owned by the same person, and appear as a single tract within the subdivision. The other lots then match the plat. The 20 acres just south of the subdivision is irrigated, as is Lot 1 at the south end of the subdivision. Lot 2 is clearly not irrigated on the NAPP photo, being gray instead of red or pink like the surrounding land. There does not appear to be a home on Lot 2, either. The only mark on Lot 2 is an irrigation ditch running southeasterly thru the center of the tract.

The 1974 Advance Print of the Y24 & Y25 orthophotoquad maps shows Lots 1, 2, & 3 of the subdivision to be dry land without visible plant cover. Although the land NE of the ditch is lighter in color than the land SW of the ditch, neither area looks like farm ground. Many nearby areas are irrigated with different crops and different systems, giving a good basis for comparison.

On 5-23-97, I visited the Olsen property accompanied by Watermaster Lee Peterson. We looked at both ends of the property. The old ditch that ran thru the center of the lot has been filled in, and has no visible connection to the District Canal. According to Lee, Jim Eakin (who runs the District Canal) filled in the ditch many years ago. The land is very flat and very gravelly, and has been historically very difficult to irrigate properly according to Mr. Eakin. The District Canal runs along the west side of the lot, as does a small ditch that takes water from the Canal to land south of the Olsen ground. The Olsen ground shows signs of irrigation, and no diversion works were found (except for the lawn around the home, and trees that were being installed along the ditch, which presumably are watered from the domestic well). Photos were taken.

I looked at ASCS master photos and slides. No development was seen on the 1987 photo. The 1990 and 1992 slides showed no development, only dry land. The 1996 slide showed the home but no irrigation.

There appears to be clear evidence that the Olsen property has not been irrigated for many years. Therefore, the claimed right may have been lost under Sec. 42-222(2) of the Idaho Code; as there are no ending actions before IDWR, this will ultimately be determined in the SRBA, however. If this right is again put to use on the Olsen property, the SRBA should consider advancing the priority date to the date the new usage begins.

A37-00353J

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

JUL 24 1997
Department of Water Resources

IN THE MATTER OF A CALL FOR)
DELIVERY OF WATER RIGHT NO.)
37-0353 TO OLSEN LIVESTOCK)
CONSULTANTS, INC.)
_____)

PRELIMINARY ORDER

Scott Campbell, an attorney representing Olsen Livestock Consultants, Inc., requested delivery of 0.40 cfs (20 miners inches) of water from the Big Wood River under water right No. 37-0353. 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. 37-0353 was decreed to James Johnson in the case of S. C. Frost, et al vs. 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. 37-0353 is June 12, 1886.

2. The decreed place of use for right No. 37-0353 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. 37-0353 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 2, 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. Olsen Livestock Consultants, Inc. claims ownership of Lot 2, 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. M.D. and Katherine Dean deeded Lot 1 (approximately 8 acres) and Lot 2 (approximately 10 acres) with appurtenances to Charles A. and Debra Anne Curtis on November 1, 1974. Appurtenant water rights were not specifically described.

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 (date land was deeded to M. D. Dean) to November 1, 1974 (the date of the initial sale of Lot 1 and 2).

5. Water District 37 records list 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. Robert Kierstad (40 miners inches) based upon an October 28, 1977 letter from M. D. Dean confirming sale of water to Mr. Kierstad.

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

d. Gus Chek (10 miners inches) 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.

e. 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.

- f. Robert Gardner (180 miners inches) based upon a June 25, 1982 letter from M. D. Dean confirming sale of the water to Mr. Gardner.
- g. 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.
- h. 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 all 6.4 cfs (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 20 miners inches
(This claim was originally filed by John Peterson.)
- 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 10 miners inches
(This is one half of claim A37-0353C filed by Gus Chek.)
- g. A37-0353H Reid Kantenwein 10 miners inches
(This is one half of claim A37-0353C filed by Gus Chek.)
- h. A37-0353J Tom Olsen 13.5 miners inches
- i. A37-11688 Paul R. & Robert E. Fosnot 20 miners inches
(This claim is based upon water right No. 37-0353.)

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.

7. 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. 37-0353 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 the Olsen Livestock Consultant, Inc. 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.

ORDER

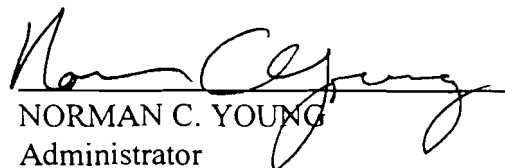
IT IS, THEREFORE, HEREBY ORDERED:

1. The watermaster of Water District 37 is instructed to deliver 0.20 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.

Signed at Boise, Idaho, this 22ND day of July, 1997.



NORMAN C. YOUNG
Administrator
Water Management Division

CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of July, 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

A37-00353F

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

JUL 24 1997
DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF A CALL FOR)
DELIVERY OF WATER RIGHT NO.) **PRELIMINARY ORDER**
37-0353 TO OLSEN LIVESTOCK)
CONSULTANTS, INC.)
_____)

Scott Campbell, an attorney representing Olsen Livestock Consultants, Inc., requested delivery of 0.40 cfs (20 miners inches) of water from the Big Wood River under water right No. 37-0353. 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. 37-0353 was decreed to James Johnson in the case of S. C. Frost, et al vs. 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. 37-0353 is June 12, 1886.

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a. M.D. and Katherine Dean deeded Lot 1 (approximately 8 acres) and Lot 2 (approximately 10 acres) with appurtenances to Charles A. and Debra Anne Curtis on November 1, 1974. Appurtenant water rights were not specifically described.

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 (date land was deeded to M. D. Dean) to November 1, 1974 (the date of the initial sale of Lot 1 and 2).

5. Water District 37 records list 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. Robert Kierstad (40 miners inches) based upon an October 28, 1977 letter from M. D. Dean confirming sale of water to Mr. Kierstad.

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

d. Gus Chek (10 miners inches) 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.

e. 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.

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

g. 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.

h. 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 all 6.4 cfs (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.

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.

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. 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. 37-0353 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 the Olsen Livestock Consultant, Inc. 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.

ORDER

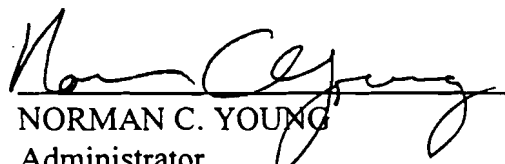
IT IS, THEREFORE, HEREBY ORDERED:

1. The watermaster of Water District 37 is instructed to deliver 0.20 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.

Signed at Boise, Idaho, this 22ND day of July, 1997.


NORMAN C. YOUNG
Administrator
Water Management Division

CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of July, 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
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Edward and Jeannine Sticker
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Douglas Driever
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837 Laurel Avenue
Pomona, California 91767


DEBORAH DREW-ELLIS
Legal Secretary