

DEPARTMENT OF
WATER RESOURCES

2. The State of Idaho has participated in the SRBA in several different capacities after the 1994 amendments to Chapter 14, Title 42, Idaho Code. The State of Idaho has filed objections to federal reserved water rights. Such actions include objections to the federal reserved water right claims and participated in trials and settlements of those claims. A second area has been to file objections or respond to objections to water rights at the request of a specific state agency. A few examples suffice: (1) water right no. 63-26877 for Camp Ee-Da-How for the Idaho Department of Health & Welfare, (2) water right no. 63-04679 for Indian Creek Reservoir for the Idaho Department of Fish and Game, (3) water right nos. 63-00132, 63-00133, & 63-00134 for Eagle Island State Park for the Idaho Department of Parks and Recreation, (4) water right no. 21-11972 for the Juvenile Corrections Center at St. Anthony for the Idaho Department of Juvenile Corrections, (5) water right no. 21-108A for the Idaho Department of Lands. The largest number of these cases has involved trespass claims on state land by the Idaho Department of Lands. When the State of Idaho files objections on behalf of client state agencies, it is generally opposing the recommendation of the IDWR. A third area has been to file responses to objections to water rights that involve a private party challenge to a recommendation of the Director. Generally, the participation in support of a recommendation is on behalf of the State of Idaho, rather than a specific agency. Such participation is for the purpose of protecting all water rights held by the State of Idaho. A few examples suffice: (1) water right no. 31-11845 involving a claim to excessive water in the Mud Lake area and issues of management of the Eastern Snake Plain Aquifer and (2) water right nos. 63-02529, 63-03323, 63-03324, and 63-10435, the subject of the present proceeding.

3. For the matters described in paragraph 2, the IDWR does not appear as a party on any of the papers filed with the SRBA. The IDWR does not participate as a party in those proceedings—that is the IDWR does not make the litigation decisions—such as whether to file an

objection or a response or to settle a matter. However, the IDWR has attempted to facilitate settlement in some of the matters described in paragraph 2, as it does in many proceedings in the SRBA. For example, the IDWR has provided assistance to facilitate settlement of the Basin 27 objections filed by the United States, Bureau of Indian Affairs, and by the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation. The State of Idaho is a respondent in these Basin 27 subcases.

4. Attached to this deposition as Attachment I are true and correct copies of the Title page, pages 50 through 51, and pages 65 through 68 of the Deposition David R. Tuthill, Jr., taken on February 3, 2009.

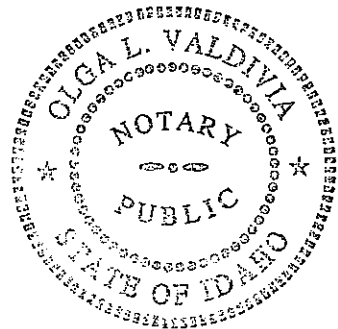
5. Attached to this deposition as Attachment II are true and correct copies of the Title page, pages 105 through 108, pages 117 through pages 136 and Deposition Exhibits 36, 37, 41, and 42 of the Deposition of Terry M. Scanlan, P.E., P.G. taken on February 10, 2009.

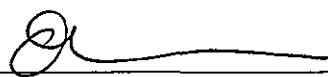
6. Further your affiant sayeth naught.



DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of Idaho, this 25th day of March 2009.





NOTARY PUBLIC FOR IDAHO
Residing at Borise, ID
My Commission expires: 2/5/2012

CERTIFICATE OF SERVICE

I certify that on the 26th day of March 2009, I caused to be served the original and/or copy of this IDAHO EXHIBIT 11: AFFIDAVIT OF DAVID J. BARBER DATED MARCH 25, 2009 on each of the following persons by the indicated method.

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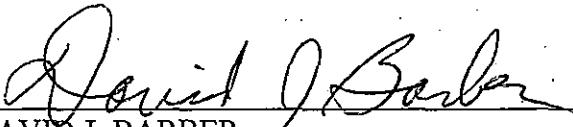
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Office of the Attorney General
State of Idaho
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Not Applicable



DAVID J. BARBER
Deputy Attorney General

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 NOS.

) 63-02529 63-03163

) 63-03274 63-03323

) 63-03324 63-09109

) 63-10435

)

DEPOSITION OF DAVID R. TUTHILL, JR.

Moffatt, Thomas, Barrett, Rock & Fields, Chartered
101 South Capitol Boulevard
Tenth Floor
Boise, Idaho

Tuesday, February 3, 2009
Beginning at 9:30 o'clock a.m.

(ELECTRONIC COPY)

1 situation, offhand.

2 Q. We have kind of been talking about the 60- to
3 70-percent efficiency range as an overall goal for water
4 users to meet.

5 Is it safe to assume that the
6 4.5-acre-foot-per-acre standard has been imposed on
7 water users whose systems do not meet that standard? Do
8 we even know enough to answer the question?

9 A. In my experience, that standard has been so
10 liberal that to not meet that standard would be wasteful
11 of water.

12 So I am not aware of any limitation that has
13 been imposed to require a water user to meet the
14 4.5-acre-feet-per-acre limitation.

15 Q. I know we have gone into it to a certain
16 extent. You just referenced again that you think it is
17 a very forgiving standard. We have already gotten into
18 this a little bit. I apologize if we are, to a certain
19 extent, rehashing.

20 Can you kind of, in one place, summarize for me
21 the redundancies that are built into the standard that
22 make it so forgiving?

23 A. In the Eastern Snake Plane Aquifer, we have a
24 great deal of experience, having measured many systems.
25 There, the standard is 3.5 or 4 acre-feet per acre,

1 depending on where a person is at. Generally, the
2 amount of water that is diverted per acre is about 2
3 acre-feet per acre.

4 As we look at other pumped systems from the
5 Snake River, we don't find any systems that pump as many
6 as 3 acre-feet per acre. They are all less than 3
7 acre-feet per acre.

8 So while surface diversions can greatly exceed
9 4.5 acre-feet per acre, due to system inefficiencies,
10 any time a water payer is paying for pumping costs, we
11 do not find diversions, in my experience, that exceed 3
12 acre-feet per acre.

13 So efficiency is encouraged by pumping costs,
14 and not just power but equipment. So that is what leads
15 me to describe 4.5 acre-feet per acre as being plenty of
16 water, in my experience.

17 I am not sure I directly addressed your
18 question, though.

19 Q. Well, that is okay. I can get back to that.
20 There were a couple of things you just mentioned in your
21 answer that I would like to follow up on.

22 Something that you and Scott discussed the
23 first time around and that you have referenced a couple
24 of times here is the difference between groundwater and
25 surface water systems.

1 A. If you could, just restate, please.

2 Q. Thank you for pointing that out. As the
3 representative of the State of Idaho, do you adopt your
4 previous testimony that you made as the representative
5 of the Department of Water Resources?

6 A. Yes.

7 Q. As the State of Idaho representative, do you
8 feel that there is anything that needs to be revised or
9 clarified or that you would disagree with, with respect
10 to your previous testimony?

11 A. No.

12 Q. Admittedly, it is a little bit strange to even
13 have to ask the question.

14 So as the State of Idaho, the party who filed
15 the response, can you summarize just what the State of
16 Idaho's position is that it is trying to -- or what its
17 interest in these particular subcases is?

18 A. Well, embodied in these subcases is a policy
19 determination. That policy relates to the efficient use
20 of water in Idaho from groundwater. So for the State of
21 Idaho to participate in this consolidated matter is
22 important.

23 Q. Just to put a little bit of a finer point on
24 it, a lot of times, in the SRBA, when the State of Idaho
25 is involved -- when I see those words, "State of Idaho,"

1 on some filing in the SRBA, it is usually associated
2 with a particular agency, like Fish and Game or the
3 Water Resource Board who has an instream flow right.

4 Is the State of Idaho representing any
5 particular agency with an actual water right impacted?

6 A. No.

7 Q. To kind of build on that and, then, your
8 previous response, is the State of Idaho's primary
9 interest to protect and promote the policy of annual
10 diversion volumes developed by the Department of Water
11 Resources?

12 A. Yes. Also, it does relate to the efficient use
13 of water concepts of the Idaho Water Resource Board and
14 other elements of the State of Idaho.

15 Q. This is kind of going back. Before, I kind of
16 got into what the Department of Water Resources'
17 internal process is for when an objection has been
18 filed.

19 You talked about, well, it depends upon the
20 nature of the issue, whether it is something that gets
21 kicked up to you or not.

22 What was the decision-making process like that
23 led up to filing responses in these particular subcases?

24 Responses? Yes. I am sorry. I was getting
25 confused with objections for a second, but they are

1 technically responses here.

2 A. Yes. I don't recall being personally involved
3 with that. We have a large number of cases, as you
4 know, in the SRBA. We are blessed with a wonderful
5 staff of Deputies Attorney General that work in our
6 offices on behalf of the Department.

7 In addition, the State of Idaho is represented
8 by Deputies Attorney General at the Capitol. The
9 determination by the State of Idaho to file a
10 response -- I wasn't involved with that in this
11 consolidated case.

12 Q. Is it fair to assume, given what you were
13 saying earlier about this being a high-level policy
14 decision, that the ultimate decision to file responses
15 was with you?

16 A. Well, I don't recall being involved in that
17 decision-making. I can see where I would have been
18 tasked to provide testimony on these cases because it is
19 a policy matter. But the decision to file responses? I
20 don't recall being involved with that.

21 Q. I mean, is it safe to assume that it was not
22 the actual claims investigator at the Department that
23 kind of said, "Hey, we need to file responses in these
24 subcases"?

25 A. No. The State of Idaho, as a party, has a

1 separate review. How the State of Idaho decided to file
2 responses -- I don't know how that determination was
3 made.

4 It would not have been a determination by one
5 of our staff, nor would it have been my determination.
6 It would have been a State of Idaho determination.

7 Q. So when you say "State of Idaho," are you
8 talking about the Attorney Generals at the Capitol?

9 A. Yes.

10 MR. LAWRENCE: Okay. That did not take as long
11 as I thought. I think I estimated a half hour, and it
12 was not that long. That is all I have. Thank you.

13 THE WITNESS: Thank you.

14 MR. BAXTER: I don't have any questions.

15 MR. BARBER: I don't either. Thank you.

16 (Whereupon, the foregoing proceedings concluded
17 at 11:30 o'clock a.m.)

18 (Signature requested.)

19 * * *

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

) Subcase Nos.

) 63-02529, 63-03163,

Case No. 39576

) 63-03274, 63-03323,

) 63-3324, 63-09109 &

) 63-10435

COPY

DEPOSITION OF TERRY M. SCANLAN, P.E., P.G.

February 10, 2009

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1 It discusses on page 66 of the Allen and Brockway
2 report about how they developed additional crop
3 coefficients for use in Idaho.

4 Q. Now, that document you are referring
5 to, is not a document of record in this
6 deposition, but it's a 1983 Allen and Brockway
7 report. Is that a correct reference?

8 A. That's correct.

9 Q. Okay. Good. Now, I want you to assume
10 a hypothetical. That instead of being in private
11 practice, you are working for the Department of
12 Water Resources. And you just finished this work
13 that is referenced in Deposition Exhibits 18
14 through 25, and you are to prepare a
15 recommendation to the director of the Idaho
16 Department of Water Resources about updating the
17 4.5 acre-feet per year that's allowed per acre in
18 the Treasure Valley.

19 And my question to you is: What would
20 you recommend to the director, instead of the 4.5
21 acre-feet per year value that exists right now?

22 A. You know, I don't know. I've never
23 thought that one through. I guess I would
24 recommend to the director, or consider any
25 recommendation, that crops in the Treasure Valley

1 can beneficially use more than four-and-a-half
2 acre-feet per year even with reasonable
3 efficiencies, and would want to see some sort of
4 limit that would be based on actual beneficial
5 use, I suppose. But it's a hypothetical, and
6 it's a difficult question to answer.

7 Q. Well, obviously, that's a question that
8 the court is going to have to answer. Let's go
9 to Deposition Exhibit 18. And you have, I
10 believe, a column that's entitled, ET Idaho
11 required volume, and 60 percent efficiency for
12 various crops using either the Caldwell or Nampa
13 weather stations. It's the next to the
14 right -- not the last column on the right, but
15 the one before that.

16 A. Yes.

17 Q. Okay. After you've looked at those
18 amounts there, do you have any
19 recommendation -- any more specific
20 recommendation you can make?

21 A. Not necessarily. If you look at this
22 column, you could certainly justify a diversion
23 rate of six acre-feet for several different crops
24 with a 60 percent efficiency. And the question
25 would come up is: You know, what are you trying

1 to accomplish by limiting volume? I guess I
2 would have to have more input, if somebody asked
3 me that question, is what their intent of that
4 volume limit is. Is it --

5 Q. Okay. And you are simply saying, if I
6 understand your question, is you don't have an
7 understanding of the policy implications behind
8 the 4.5 acre-feet per year. And as a
9 consequence, you don't have a way of making a
10 further recommendation, other than what you've
11 already stated? Is that a fair statement of your
12 conclusion?

13 A. Yeah, I think that more or less
14 captures it. Yeah.

15 Q. Okay. And 6 is as close as you can
16 get, just eyeballing the chart here?

17 A. Well, if I was a poplar tree farmer, I
18 would say seven-and-a-half, but I'm not. So you
19 could certainly show that a grass hay crop being
20 flood irrigated or gravity irrigated with a
21 reasonable efficiency can use six acre-feet per
22 year.

23 Q. Okay. I would like to turn to a
24 different subject. And I believe you stated
25 earlier that you had some classes on soils. Is

1 that a fair summary of yours?

2 A. Yes.

3 Q. And that you have, in fact, used soil
4 surveys in the past?

5 A. Yes.

6 Q. Have you ever used the web soil survey
7 of the NRCS?

8 A. A little bit.

9 Q. Okay.

10 A. But mostly, I tend to rely on the old
11 paper copies.

12 Q. Okay. Have you done any analysis of
13 the soil survey that exists on the internet for
14 the places of use, for the water rights that are
15 in question here?

16 A. No.

17 MR. BARBER: Okay. Let's have this
18 marked as the next exhibit.

19 (Exhibits 26 and 27 marked.)

20 Q. (BY MR. BARBER) Okay. Let me direct
21 your attention to Deposition Exhibit 27. That's
22 the map from the adjudication back file, also,
23 called the adjudication claim file for Water
24 Right 63-3163. And you will note that there is a
25 green line that, I believe, is designated in the

1 "Typical profile" to cemented material with 34 to
2 38 inches?

3 A. Yes.

4 Q. So if we go back to Deposition
5 Exhibit 26, would you agree with me, that for the
6 different soil symbols there that are shown in
7 the legend, all of them had a duripan, with the
8 exception of the first one, the BaF; is that
9 correct?

10 A. Yes.

11 Q. Okay. So the existence of the duripan
12 in the place of use for Water Right No. 63-3163,
13 shows some limitations with respect to
14 application of water, irrigation water to that
15 site; is that correct?

16 A. It could.

17 MR. BARBER: Okay. Let's mark this as
18 the next deposition exhibit.

19 (Exhibit 34 marked.)

20 MR. BARBER: And let's mark this as 35.

21 (Exhibit 35 marked.)

22 Q. (BY MR. BARBER) Now, I show you what
23 has been marked as Deposition Exhibit 34. And
24 I'll represent to you that this is a map from the
25 Idaho Department of Water Resources file for

1 Water Right 63-3274. And again, is a map
2 prepared by Sandy Egbert, and has the place of
3 use denominated in a green polygon. And I
4 believe it also shows a point of diversion in the
5 southeast to the southwest quarter of Section 31.

6 Do you agree with me that it shows the
7 POD there, sir?

8 A. Yes.

9 Q. And can you identify the green line
10 that shows the place of use for Water Right
11 63-3274?

12 A. Yes.

13 Q. Now, let's go over to the Deposition
14 Exhibit 35. And again, this is the web soil
15 survey map, as close as I could get to the same
16 area.

17 Can you take a look, and see if the
18 blue outlined area on Deposition 35 closely or
19 somewhat reasonably approximates the place of use
20 shown on Deposition Exhibit 34?

21 A. I would agree with that.

22 Q. Now, if you go to the last three pages
23 of Deposition Exhibit 35, we have the different
24 map symbols shown there; correct, the different
25 soil units? The last page, sir.

1 A. Oh, yes.

2 Q. And MnC, I believe, is one we've
3 already done; isn't it? Isn't that Deposition
4 Exhibit 30?

5 A. Yes.

6 Q. And ScB, that's Deposition Exhibit 32?

7 A. Yes.

8 Q. It doesn't appear like I succeeded in
9 getting the description for the map symbol NkB, a
10 Minidoka silt loam. Can you look it up in the
11 soil survey you have there in front of you, and
12 determine whether there is a duripan existing in
13 that soil description?

14 A. (Witness complying.)

15 Q. No, I apologize to you, Mr. Scanlan.
16 MkB is Deposition Exhibit 29. If you'll look at
17 that one?

18 A. (Witness complying.) Okay. The
19 question, again?

20 Q. MkB, does it have the duripan at 20 to
21 40 inches in the soil description in Exhibit 29?

22 A. Yes.

23 Q. So if we go over to the map legend
24 shown in Deposition Exhibit 35; is my conclusion
25 correct, that all four of those map symbols

1 contain in them, a duripan description? With the
2 exception of BaF; it doesn't. I misstated that.

3 A. Okay.

4 Q. Let me start over again.

5 A. Okay.

6 Q. Do you agree with me, that the MkB,
7 MnC, and ScB map unit symbols, that each of those
8 contain a duripan description?

9 A. Yes.

10 MR. BARBER: Okay. Mark these as the
11 next exhibits in line.

12 (Exhibits 36 and 37 marked.)

13 Q. (BY MR. BARBER) Mr. Scanlan, I'll
14 represent that I got this off the IDWR website.
15 I don't have an explanation for you why it isn't
16 set out in the same manner, Deposition Exhibit 36
17 as the other ones.

18 But in any event, that is the source of
19 it. And it purports to delineate the place of
20 use of Water Right Nos. 63-3323 and 63-3324 on
21 that site. I will note for you, that there
22 appears to be a typographical error in the
23 designation of the water right numbers at the top
24 left-hand corner of the page.

25 So can you take a look at that

1 Deposition Exhibit 36, and compare it with the
2 outline that is shown on Deposition 37, and
3 confirm that at least it's a rough approximation
4 of the two areas, the first page of each?

5 A. I would agree with that.

6 Q. Okay. Now, the first page of
7 Deposition Exhibit 37, again, has a bunch of soil
8 map unit symbols. And I don't believe most of
9 them we have encountered before. So I need to
10 get those out for you.

11 MR. BARBER: Let's mark this as the
12 next one in line.

13 (Exhibit 38 marked.)

14 Q. (BY MR. BARBER) Now, you've just been
15 handed the description from the soil survey for
16 the SdC Scism silt loam. And I would ask you to
17 determine whether, in fact, there is a reference
18 to duripan in that particular description?

19 A. Yes.

20 Q. And it's a little different than the
21 past ones. Can you read that?

22 A. It says, "Depth to restrictive feature
23 20 to 40 inches to duripan, 40 to 60 inches to
24 lithic bedrock."

25 Q. What's "lithic bedrock" mean?

1 A. Well, in this case it's basalt, which
2 is volcanic rock.

3 Q. Okay. And if we go down to the
4 "Typical profile," would you agree with me that
5 the 21 to 30 inches cemented silt loam, that that
6 would be a reference to the duripan that they are
7 talking about?

8 A. Yes.

9 Q. And with this amount of restrictive
10 features, are there any limitations with respect
11 to irrigation?

12 A. Yes, it would limit how you would apply
13 your irrigation.

14 Q. Would it limit the amount of water you
15 could put down?

16 A. In -- yes, in a single irrigation
17 application.

18 Q. I want you to assume something. Let's
19 assume, that I'm not a very good operator. I'm
20 irrigating this property. And I irrigate too
21 much, or too frequently. What's the consequence
22 of that poor irrigation practice?

23 A. Well, you could waterlog your soil.
24 Depending on what your management objectives are,
25 sometimes you want to over-irrigate to leach

1 salts. But other times you want to provide just
2 enough water to fill the soil profile so the crop
3 can use it, and take advantage of that soil until
4 the next irrigation application occurs.

5 So if you have a very, either a small
6 water holding capacity, or a very thin soil, then
7 you have to apply your irrigations more
8 frequently, and at lower volumes. Then whereas,
9 if you had a very deep soil, that had a high
10 water holding capacity, you could apply larger
11 amounts on a less frequent basis.

12 Q. Now, we have some other properties that
13 are of interest. If you are looking at
14 irrigation, under "Properties and qualities";
15 don't we? We have "calcium carbonate maximum
16 content 48 percent."

17 Does that have some implication for
18 irrigation, sir?

19 A. Yeah, it would probably suggest that
20 this duripan really is a more of a caliche,
21 cemented calcium carbonate cemented layer.

22 Q. And what does that indicate with
23 respect to irrigation of that?

24 A. Again, it kind of -- to me, it would
25 indicate that this -- you've got this hard,

1 limiting layer that may not transmit as a low
2 permeability. It might also indicate, that
3 within that layer, that the porosity may be low.

4 Q. We have another property there that is
5 of interest. It says, "Available water capacity:
6 Low (about 4.2 inches)." What would that mean,
7 sir?

8 A. That's the water that's available for
9 the plant roots to pull out of the soil. So it
10 means that if the soil was essentially drained,
11 that you could put in 4.2 inches, vertical inches
12 of water into that soil, that it could hold, the
13 plant roots could then withdraw that water.

14 Q. So does that indicate there is another
15 limitation with respect to irrigation of that
16 water?

17 A. It would indicate that the -- yeah,
18 that it doesn't have a real high water holding
19 content. So again, would indicate that the
20 management technique would probably be frequent
21 irrigations in smaller amounts. You wouldn't
22 want to go with a 14-day rotation, for instance,
23 on a soil or a crop here. You would probably
24 want to irrigate it every once a week, or
25 something like that.

1 Q. Okay. Can you look in the Canyon
2 County Soil Survey, under the Scism silt loam, 48
3 percent slopes, and see what the numbering of
4 that is?

5 A. Can you repeat that again?

6 Q. I think I have found it. I thought
7 there is a soil with the same name, sir, in Ada
8 County Soil Survey. And I was looking for the
9 one that applied to Canyon County. I have now
10 found it. So I apologize to you --

11 A. Okay.

12 Q. -- for sending you on a wild soil chase
13 here.

14 Okay. Let's go back to Deposition
15 Exhibit 32, and that's got a symbol of "ScD."

16 A. (Witness complying.)

17 Q. And again, that has the reference to
18 the duripan at 20 to 40 inches; right?

19 A. Correct.

20 MR. BARBER: Okay. Let's mark this.
21 (Exhibit 39 marked.)

22 Q. (BY MR. BARBER) Okay. And I just
23 handed you what has been marked as Deposition
24 Exhibit 39. It has a map symbol. It's a soil
25 description, it has a map symbol of ScC, scism

1 silt loam three to seven percent slope. And I
2 believe it shows up on the survey for the map
3 description for Deposition Exhibit 37.

4 And looking at that Deposition
5 Exhibit 39, can you confirm that there is a
6 duripan there for that as well?

7 A. Yes.

8 Q. And it's described, like most of the
9 other ones that we've seen today, 20 to 40 inches
10 to duripan; is that correct?

11 A. 21 to 30 inches specifically.

12 Q. Okay. So that's the "Typical profile"
13 of what you are reading?

14 A. Oh, yes. Excuse me. 20 to 40 inches
15 duripan. You are correct, yeah.

16 Q. Okay. Now, there is something else
17 here. In the ScC Deposition Exhibit 39, again,
18 there is this calcium carbonate maximum content
19 40 percent. Your comments with respect to the
20 calcium carbonate earlier would apply equally
21 here?

22 A. Yes.

23 Q. And again, there is this available
24 water capacity low about 4.2 inches. Your
25 comments about that would apply as well?

1 A. Yes.

2 Q. There is something new here, "Sodium
3 absorption ratio maximum 13.0." What does that
4 mean, sir?

5 A. Well, sodium absorption ratio is a
6 ratio of, I believe, sodium, magnesium, and
7 calcium in the soil. You typically, to maintain
8 permeability, you want to have a low sodium
9 absorption ratio influence in your soil, and in
10 those irrigation waters that you apply. Because
11 if you get sodium build-up, it tends to form
12 lower permeability clay structures in the soil.

13 Q. Okay. Now, with respect to soils and
14 description of problems with irrigation, have you
15 heard, or have you used, or know what the
16 reference, "slick spots" refers to, sir?

17 A. Yeah, that's typically a sodium
18 accumulation.

19 Q. So would you expect to find slick spots
20 for a soil that has this description?

21 A. It certainly is possible. Yeah, that
22 sodium -- I don't have my chart in front of me,
23 although I could get it. But I think a sodium
24 absorption ratio over 10 is considered a sodium
25 hazard

1 Q. Okay. Does that have implications,
2 sir, with respect to irrigation?

3 A. It can, yes.

4 Q. Okay. Now, and when I say
5 implications, it means -- does it mean it has an
6 adverse consequence, as a consequence of the
7 existence of that property?

8 A. Yeah, it can be adverse. You may need
9 to amend the soil with sulfur or gypsum to help
10 remove the sodium through the irrigation process,
11 things like that. So, yeah, it's not a desirable
12 property in a soil.

13 Q. Gypsum, what's the chemical content of
14 gypsum?

15 A. I think it's calcium sulfate.

16 Q. Okay. And --

17 A. I think.

18 MR. BARBER: Okay. Let's have this
19 marked next in line.

20 (Exhibit 40 marked.)

21 Q. (BY MR. BARBER) Okay. You've been
22 handed Deposition Exhibit 40. And its map symbol
23 ScD Scism silt loam 7 to 12 percent slopes. And
24 can you confirm that, again, there is an issue,
25 under "Properties" of 20 to 40 inches of duripan?

1 A. Yes.
 2 Q. And under "Properties and qualities,"
 3 we also have the comment about calcium carbonate,
 4 again; is that correct?
 5 A. Yes.
 6 Q. We also have the sodium absorption
 7 ratio maximum 13.0; is that correct?
 8 A. Yes.
 9 Q. And we also have the available water
 10 capacity low, again, at about 4.2 inches?
 11 A. Yes.
 12 Q. And then, as you pointed out earlier,
 13 the typical profile shows the cemented silt loam
 14 is 21 to 30 inches here?
 15 A. Yes.
 16 (Exhibit 41 marked.)
 17 Q. (BY MR. BARBER) You've just been
 18 handed what's been marked as Deposition Exhibit
 19 41. Have you had a chance to look at that?
 20 A. Yes.
 21 Q. And under "Properties and qualities,"
 22 it says, "Depth to restrictive feature," we find
 23 something new here. Can you read that?
 24 A. "8 to 20 inches to lithic bedrock."
 25 Q. If you have a soil that's only eight

1 roots of the crop would be about 2.8 inches.
 2 MR. BARBER: Okay. Let's go to the
 3 next one.
 4 (Exhibit 42 marked.)
 5 Q. (BY MR. BARBER) And with respect to
 6 42, sir, what's the depth to restrictive
 7 features? Can you read that?
 8 A. Yes, it says, 8 to 20 inches to lithic
 9 bedrock.
 10 Q. And what's the significance, again, of
 11 that?
 12 A. It just means it's a shallow soil, that
 13 roots can't penetrate beyond that restrictive
 14 layer, which may be anywhere between 8 and 20
 15 inches.
 16 Q. Okay. And again, we have this calcium
 17 carbonate maximum content 15 percent. What is
 18 the significance of that?
 19 A. Well, again, I believe that suggests
 20 that you don't have a calcium carbonate filled up
 21 in any soil horizon, like what we were seeing in
 22 some of those other soils with the duripan.
 23 Q. And we have available water capacity,
 24 and it's -- can you read that, what it says
 25 there?

1 inches deep, does that have any issues with
 2 respect to irrigation, sir?
 3 A. Yeah, that would be considered a very
 4 shallow soil, again, low water holding
 5 capabilities. So it would have to -- you would
 6 have to provide frequent irrigations to keep the
 7 crop from wilting, and to maximize the yield.
 8 Q. Okay. And we have something different
 9 here under "Properties," as well. "Calcium
 10 carbonate, maximum content, 15 percent." What's
 11 the significance of that?
 12 A. Well, I think that probably refers to,
 13 that you don't have this duripan feature that you
 14 had in the other soils, where you've got the
 15 calcium carbonate accumulation causing a cemented
 16 layer.
 17 Q. Okay.
 18 A. It just simply goes from -- there are
 19 loamy soils over bedrock.
 20 Q. And then there is a reference under
 21 "Available Water Capacity." Can you read that
 22 and explain that to me?
 23 A. It says, very low, about 2.8 inches.
 24 So that would indicate that the amount of water
 25 that that soil can hold for the benefit of the

1 A. Very low, about 3.0 inches.
 2 Q. Now, let's go back to Deposition
 3 Exhibit 37, and sort of have a summary there.
 4 And it looks like we've already covered the map
 5 unit symbol BaF in another discussion.
 6 MR. BARBER: I don't know whether I
 7 have -- no, I do. Let's go ahead and have a
 8 complete record here.
 9 (Exhibit 43 marked.)
 10 Q. (BY MR. BARBER) And direct your
 11 attention to Deposition Exhibit 43. Do we find
 12 any depth to restrictive feature in this one?
 13 A. No. It's more than 80 inches before
 14 you hit a restrictive feature.
 15 Q. Okay. And the interpretive groups down
 16 below. It says, "Land capability classification
 17 irrigated 6e." Can you explain what a "6e"
 18 classification means?
 19 A. Well, I'm going to read from the soil
 20 survey, actually, on page 58, where it talks
 21 about the different class soils. It says, "Class
 22 6 soils have severe limitations that make them
 23 generally unsuited to cultivation and limit their
 24 use, largely to pasture or range, woodland, or
 25 wildlife habitat."

1 I believe the "E" signifies erosion
2 hazard. And then if I look further into the soil
3 survey, they have 6e 1 through 4, ranging from
4 both irrigated and nonirrigated varieties.

5 Q. Okay. So let's go back, and sort of
6 summarize what we have for this place of use.
7 I'm looking at the third page of Deposition
8 Exhibit 37. And we look at the BaF map unit
9 symbol. We would essentially classify that land
10 as nonirrigable because of the slope. Is that a
11 fair assessment?

12 A. It has severe limitations for
13 irrigation, because of that slope, yes.

14 Q. Okay. And then we've gone through in
15 some detail, in the various scism silt loams.
16 And those have all have in one manner or another,
17 some type of limitation because of the duripan or
18 bedrock that exists under those?

19 A. Yeah, the limitations on those would
20 limit the available water capacity, and require a
21 careful management of irrigations to maximize
22 crop yields.

23 Q. And if we come down to the last two,
24 the Trevino ones, those have even more
25 significant limitations; do they not?

1 A. Right, they had the relatively shallow
2 bedrock, which further limited the available
3 water capacity.

4 Q. And if we look at the Trevino silt
5 loam, the TrD symbol, it's the largest number of
6 acres in the area of interest; is it not?

7 A. Yes.

8 Q. And the second largest is the scism
9 silt loam, deep over basalt, three to seven
10 percent?

11 A. Yes.

12 MR. BARBER: And I've got to find the
13 document here. Here it is. Let's mark this as
14 the next deposition exhibit.

15 (Exhibit 44 marked.)

16 MR. BARBER: And mark this.

17 (Exhibit 45 marked.)

18 Q. (BY MR. BARBER) Now again,
19 Mr. Scanlan, I'm going to represent to you that
20 the Deposition Exhibit 44 is out of the
21 adjudication claim file for Water Right
22 No. 63-10435, and that it was prepared by S.
23 Egbert, in September 2006. And it shows outlined
24 in a yellow line, the place of use for Water
25 Right 63-10435. Do you see that, sir?

1 A. Yes.

2 Q. And then we go to Deposition Exhibit
3 45. And there is outlined in a blue line, and
4 there are several blue lines, unfortunately, on
5 deposition Exhibit 45. But there is one blue
6 line that has approximately the same shape as
7 shown for the place of use on Deposition Exhibit
8 44. And so it attempts to show the same place of
9 use.

10 And, in fact, if you go by the Can-Ada
11 Road, there is a little cutout of the designation
12 of the place of use, for what appears to be the
13 house. Do you see that, sir?

14 A. Yes.

15 Q. Okay. Now, there is a designation of
16 the map symbols just by a unit number. If you go
17 back to the third page, you can see there are
18 three symbols shown, totaling up 62.1 acres. And
19 again, I believe that the place of use, we could
20 go back. I believe if you go back to the water
21 right license for 63-10435, the total acreage is
22 shown of 60 acres. And do you agree with that,
23 sir?

24 A. Yes. On Exhibit No. 7?

25 Q. Yes.

1 A. The license shows 68 acres irrigated.

2 Q. Yes. And if you go to the total
3 acreage shown on Deposition Exhibit 45, the total
4 acreage is shown as simply 62.1. And I want to
5 make sure that I haven't misrepresented it to
6 you, Mr. Scanlan.

7 I had some problem getting the web soil
8 survey to work for me, and that was as close as I
9 could get. So it's been my best attempt at it,
10 and it's certainly acknowledging, it's not
11 perfect, certainly.

12 But it does give you the soils in that
13 general area. And I would like to go over those
14 with you now. I have those right here.

15 (Exhibit 46 marked.)

16 Q. (BY MR. BARBER) And this is a soil
17 unit 61. The name is Garbutt, G-a-r-b-u-t-t,
18 silt loam. Do you find in the depth to
19 restrictive feature, any problem there in the
20 properties?

21 A. No, it says, more than 80 inches.

22 Q. Yeah. And looking at the properties
23 and qualities, how would you describe this land
24 with respect to irrigation?

25 A. It looks like a -- this soil

Water Rights 63-03323 and 63-00324

Place of Use in Sections 26 and 27, Township 1 North, Range 2 West, Ada County, Idaho

● Point of Diversion

— Place of Use

— Section Line



Exh. No. 36
Date 2-10-09
Name Scanlan
M & M Court Reporting

Map Scale: 1:10,600 if printed on A size (8.5" x 11") sheet.



Natural Resources
Conservation Service

Web Soil Survey 2.1
National Cooperative Soil Survey

2/9/2009
Page 1 of 3

Exh. No. 37
Date 2-10-09
Name Scarlo
M & M Court Reporting

MAP LEGEND

Area of Interest (AOI)

 Area of Interest (AOI)

Soils

 Soil Map Units

Special Point Features

-  Blowout
-  Borrow Pit
-  Clay Spot
-  Closed Depression
-  Gravel Pit
-  Gravelly Spot
-  Landfill
-  Lava Flow
-  Marsh or swamp
-  Mine or Quarry
-  Miscellaneous Water
-  Perennial Water
-  Rock Outcrop
-  Saline Spot
-  Sandy Spot
-  Severely Eroded Spot
-  Sinkhole
-  Slide or Slip
-  Sodic Spot
-  Spoil Area
-  Stony Spot

 Very Stony Spot

 Wet Spot

 Other

Special Line Features

-  Gully
-  Short Steep Slope
-  Other

Political Features

-  Cities
-  PLSS Township and Range
-  PLSS Section

Water Features

-  Oceans
-  Streams and Canals

Transportation

-  Rails
-  Interstate Highways
-  US Routes
-  Major Roads
-  Local Roads

MAP INFORMATION

Map Scale: 1:10,600 if printed on A size (8.5" × 11") sheet.

The soil surveys that comprise your AOI were mapped at 1:20,000.

Please rely on the bar scale on each map sheet for accurate map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL: <http://websoilsurvey.nrcs.usda.gov>
Coordinate System: UTM Zone 11N NAD83

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Canyon Area, Idaho
Survey Area Data: Version 8, Jun 25, 2008

Date(s) aerial images were photographed: 6/21/2004

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Canyon Area, Idaho (ID665)			
Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
BaE	Bahem silt loam, 12 to 30 percent slopes	5.7	1.9%
BaF	Bahem silt loam, 30 to 50 percent slopes	15.4	5.2%
ScB	Scism silt loam, 1 to 3 percent slopes	0.0	0.0%
ScC	Scism silt loam, 3 to 7 percent slopes	7.9	2.7%
ScD	Scism silt loam, 7 to 12 percent slopes	9.8	3.3%
SdC	Scism silt loam, deep over basalt, 3 to 7 percent slopes	117.0	39.7%
TkE	Trevino-Rock outcrop complex, 0 to 20 percent slopes	17.4	5.9%
TrD	Trevino silt loam, 3 to 12 percent slopes	121.2	41.2%
Totals for Area of Interest		294.4	100.0%

Map Unit Description: Trevino-Rock outcrop complex, 0 to 20 percent slopes—
Canyon Area, Idaho

Exh. No.	41
Date	7-10-09
Name	Scanlon
M & M Court Reporting	

Canyon Area, Idaho

TkE—Trevino-Rock outcrop complex, 0 to 20 percent slopes

Map Unit Setting

Elevation: 2,000 to 5,000 feet
Mean annual precipitation: 8 to 11 inches
Mean annual air temperature: 45 to 52 degrees F
Frost-free period: 110 to 160 days

Map Unit Composition

Trevino and similar soils: 70 percent
Rock outcrop: 20 percent

Description of Trevino

Setting

Landform: Lava plains
Down-slope shape: Linear
Across-slope shape: Linear
Parent material: Mixed alluvium and/or loess over bedrock derived from basalt

Properties and qualities

Slope: 0 to 20 percent
Depth to restrictive feature: 8 to 20 inches to lithic bedrock
Drainage class: Well drained
Capacity of the most limiting layer to transmit water
(Ksat): Moderately high to high (0.57 to 2.00 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate, maximum content: 15 percent
Maximum salinity: Nonsaline (0.0 to 2.0 mmhos/cm)
Available water capacity: Very low (about 2.8 inches)

Interpretive groups

Land capability classification (irrigated): 4e
Land capability (nonirrigated): 6e

Typical profile

0 to 5 inches: Stony loam
5 to 8 inches: Silt loam
8 to 18 inches: Loam
18 to 28 inches: Unweathered bedrock

Description of Rock Outcrop

Properties and qualities

Depth to restrictive feature: 0 inches to lithic bedrock

Interpretive groups

Land capability (nonirrigated): 8



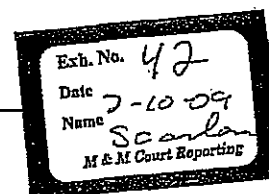
Map Unit Description: Trevino-Rock outcrop complex, 0 to 20 percent slopes--
Canyon Area, Idaho

Typical profile
0 to 60 inches: Unweathered bedrock

Data Source Information

Soil Survey Area: Canyon Area, Idaho
Survey Area Data: Version 8, Jun 25, 2008





Canyon Area, Idaho

TrD—Trevino silt loam, 3 to 12 percent slopes

Map Unit Setting

Elevation: 2,000 to 5,000 feet
Mean annual precipitation: 8 to 11 inches
Mean annual air temperature: 45 to 52 degrees F
Frost-free period: 110 to 160 days

Map Unit Composition

Trevino and similar soils: 90 percent

Description of Trevino

Setting

Landform: Lava plains
Down-slope shape: Linear
Across-slope shape: Linear
Parent material: Mixed alluvium and/or loess over bedrock derived from basalt

Properties and qualities

Slope: 3 to 12 percent
Depth to restrictive feature: 8 to 20 inches to lithic bedrock
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 2.00 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate, maximum content: 15 percent
Maximum salinity: Nonsaline (0.0 to 2.0 mmhos/cm)
Available water capacity: Very low (about 3.0 inches)

Interpretive groups

Land capability classification (irrigated): 4e
Land capability (nonirrigated): 6e

Typical profile

0 to 5 inches: Silt loam
5 to 8 inches: Silt loam
8 to 18 inches: Loam
18 to 28 inches: Unweathered bedrock

Data Source Information

Soil Survey Area: Canyon Area, Idaho
Survey Area Data: Version 8, Jun 25, 2008

State of Idaho
Department of Water Administration

WATER RIGHT LICENSE

RECEIVED
MAR 27 2009
DEPARTMENT OF
WATER RESOURCES

License of Water Right No. 33281/36-2708 Priority Sept. 28, 1966 Amount 200 cfs

THIS IS TO CERTIFY, that Clear Springs Trout Company
of Buhl, Idaho, has complied with the terms and conditions of Permit
No. 33281/36-2708 issued pursuant to Application for Permit dated September 28, 1966,
and has submitted proof to the Department of Water Administration on September 25, 1972,
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 228.8 cfs of water from Clear Lake stream,
tributary to the Snake River, and that the permit holder has applied to a beneficial use
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
<u>fish</u> from <u>Jan. 1</u> to <u>Dec. 31</u> at <u>200</u> cfs and <u>144,540</u> acre feet			
<u>Propagation</u> from _____ to _____ at _____ cfs and _____			
_____ from _____ to _____ at _____ cfs and _____			

(both dates inclusive)

Subject, however, to the condition that no more than 200 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
144,540 acre feet per year, said waters to be diverted within the _____

NW 1/4 Sec. 2, Twp. 9 S., Rge. 14 E. B. M. in the County of Gooding

Description and location of place of use:

Twp.	Range	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	
9 S	14 E	2													X				

Total number of acres irrigated _____

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

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

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 21st day of February, 19 73.

Director

EXHIBIT

12

The foregoing is a true and certified copy of the document on file at the department of Water Resources.
Signed this 25th day of March 20 09

33 2708

DEPARTMENT OF
WATER RESOURCES

License of Water Right No. 36-7210 Priority November 17, 1971 Amount 45 cfs

Total number of acres irrigated

Director

13

State of Idaho
Department of Water Resources

RECEIVED

MAR 7 2009

DEPARTMENT OF
WATER RESOURCES

WATER RIGHT LICENSE

License of Water Right No. 36-7427 Priority December 28, 1973 Amount 52.23 cfs

THIS IS TO CERTIFY, that BLUE LAKES TROUT FARM

of Twin Falls, Idaho, has complied with the terms and conditions of Permit No. 36-7427 Issued pursuant to Application for Permit dated December 28, 1973, and has submitted proof to the Department of Water Resources on January 30, 1976, that he has applied water to a beneficial use; an examination by the Department indicates that the works have a capacity for the diversion of 190.4 cfs of water from Alpheus Creek, tributary to Snake River, and that the permit holder has applied to a beneficial use and established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Fish Propagation	from Jan. 1 to Dec. 31	at 52.23 cfs and	N/A
	from to	at cfs and	
	from to	at cfs and	

(both dates inclusive)

Subject, however, to the condition that no more than 52.23 cfs of water be diverted at any one time, and that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed N/A acre feet per year, said waters to be diverted within the Gov't Lot 14, Sec. 28, Twp. 9S, Rge. 17E, B.M. in the County of Jerome.

Description and location of place of use:

Twp.	Range	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	
9S	17E	28									Lot 13								
		29			Lot 14				Lot 19										

Total number of acres irrigated _____

Measuring devices of a type approved by this Department shall be maintained at the point of diversion and the point of effluent discharge.

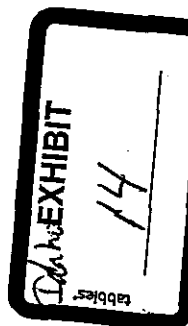
NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

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

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 9 day of

March, 19 78.

Stephen Allred
Director



The foregoing is a true and certified copy of the document on file at the department of Water Resources.
Signed this 24 day of March, 20 09
[Signature]

State of Idaho
Department of Water Resources

RECEIVED

MAR 27 2009

DEPARTMENT OF
WATER RESOURCES

WATER RIGHT LICENSE

License of Water Right No. 36-7720 Priority June 8, 1977 Amount 37.1 cfs

THIS IS TO CERTIFY, that Blue Lakes Trout Farm, Inc.
of Twin Falls, Idaho, has complied with the terms and conditions of Permit
No. 36-7720 issued pursuant to Application for Permit dated June 8, 1977,
and has submitted proof to the Department of Water Resources on March 13, 1978,
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 37.1 cfs of water from wastewater
tributary to Snake River, and that the permit holder has applied to a beneficial use and
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Fish	from <u>January 1</u> to <u>December 31</u>	<u>37.1 cfs</u> and <u>n/a</u>	
Propagation	from _____ to _____	_____ cfs and _____	
	from _____ to _____	_____ cfs and _____	
(both dates inclusive)			

Subject, however, to the condition that no more than 37.1 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
n/a acre feet per year, said waters to be diverted within the Government Lot 19 (NE 1/4 SE 1/4),
Section 29, Twp. 9S, Rge. 17E in the County of Jerome

Description and location of place of use:

Twp.	Range	Sec.	NEW				NW1/4				SW1/4				SE1/4				Totals
			NEW	NW1/4	SW1/4	SE1/4	NEW	NW1/4	SW1/4	SE1/4	NEW	NW1/4	SW1/4	SE1/4	NEW	NW1/4	SW1/4	SE1/4	
9S	17E	29																	

Total number of acres irrigated _____

Facility volume = 1.5 acre feet.
Water used under this license if discharged into a natural channel shall meet
Idaho Water Quality Standards.

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho
Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use
hereby described, and is subject to all prior water rights, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 2nd day of
May, 19 83.

Acting for the Director

Norman C. Young



The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.
Signed this 25th day of March, 20 09

State of Idaho
Department of Water Resources

RECEIVED

MAR 27 2009

DEPARTMENT OF
WATER RESOURCES

WATER RIGHT LICENSE

WATER RIGHT NO. 36-07731

Priority: July 8, 1977

Maximum Diversion Rate: 15.00 CFS
Maximum Diversion Volume: 10745.2 AF

This is to certify, that CLEAR LAKES TROUT CO INC

1301 VISTA AVE

BOISE ID 837050000

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated July 8, 1977; and has submitted Proof of Beneficial Use on June 29, 1984. An examination indicates that the works have a diversion capacity of 15.020 cfs of water from:

SPRINGS

tributary to BILLINGSLEY CREEK

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
FISH PROPAGATION	01/01 to 12/31	15.00 CFS	10745.2 AF

LOCATION OF POINT(S) OF DIVERSION:

NENENE , Sec. 13, Township 07S, Range 13E
NWNENE , Sec. 13, Township 07S, Range 13E
SENENE , Sec. 13, Township 07S, Range 13E
GOODING County

PLACE OF USE: FISH PROPAGATION

TWN RGE SEC

07S 13E 13

NENE

NWNE

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. Use of water under this water right will be regulated by the watermaster of State Water District No. 36A.
6. Return flow if discharged to a surface water system shall meet Idaho Water Quality Standards.

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 23rd day of March 2009

OCT 23 1992

Idaho EXHIBIT

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Department of Water Resources

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200 APR 10 AM 10:17 DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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

) ORDER OF PARTIAL DECREE

Case No. 39576

) For Water Right 36-02708
)
)
)

The Notice of Challenge filed in the above subcase having been heard and ruled upon, IT IS
THEREFORE ORDERED that water right 36-02708 is hereby decreed as set forth in the attached
Partial Decree Pursuant to I.R.C.P. 54(b).

IT IS SO ORDERED.

DATED APR 10 2000

B Wood

BARRY WOOD
Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication

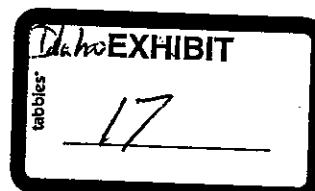
The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 25th day of March, 2009

[Signature]

ORDER OF PARTIAL DECREE

Page 1



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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)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-02708

200 APR 10 AM 10:19

CLERK
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS: CLEAR SPRINGS FOODS INC
THE PROSPECT CO
PO BOX 712
BUHL ID 83316

SOURCE: SPRINGS TRIBUTARY: CLEAR LAKES

SOURCE IS ALSO KNOWN AS CLEAR SPRINGS.

QUANTITY: 200.00 CFS
144540.0 AFY

PRIORITY DATE: 09/28/1966

POINT OF DIVERSION: T09S R14E S02 SESWNE Within GOODING County
LOT 5 (SWSENE)
NENWSE

MULTIPLE POINTS OF DIVERSION LOCATED IN T09S, R14E, S02,
LOT 5 (SWSENE), SESWNE, NENWSE.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	FISH PROPAGATION	01-01 12-31	200.00 CFS 144540.0 AFY

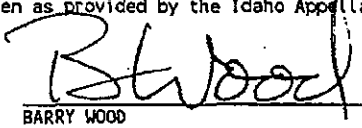
PLACE OF USE: FISH PROPAGATION Within GOODING County
T09S R14E S02 NWSE

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.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


BARRY WOOD
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

SRBA PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 36-02708

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 25th day of March, 2009

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DEPARTMENT OF
WATER RESOURCES

200 APR 10 PM 3:18

DIST. CLERK
TWIN FALLS CO., IDAHO
FILED

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

ORDER OF PARTIAL DECREE

For Water Right 36-07210

The Notice of Challenge filed in the above subcase having been heard and ruled upon, IT IS
THEREFORE ORDERED that water right 36-07210 is hereby decreed as set forth in the attached
Partial Decree Pursuant to L.R.C.P. 54(b).

IT IS SO ORDERED.

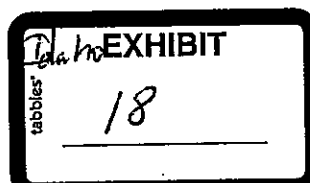
DATED APR 10 2000

B Wood

BARRY WOOD

Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication

ORDER OF PARTIAL DECREE



The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 25th day of March, 2009

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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

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-07210

2000 APR 10 AM 10:20
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS: BLUE LAKES TROUT FARM INC
PO BOX 1237
TWIN FALLS ID 83301

SOURCE: ALPHEUS CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 45.00 CFS
32521.5 AFY

PRIORITY DATE: 11/17/1971

POINT OF DIVERSION: T09S R17E S28 Lot 14 (NESWSW) Within JEROME County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
FISH PROPAGATION		01-01 12-31	45.00 CFS 32521.5 AFY

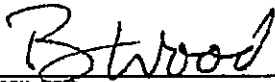
PLACE OF USE: FISH PROPAGATION Within JEROME County
T09S R17E S29 Lot 14 (SWNE) Lot 19 (NESE) Lot 18 (NWSE)

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.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


BARRY WOOD
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

SRBA PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 36-07210

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 21st day of March, 2009

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DEPARTMENT OF
WATER RESOURCES

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TWIN FALLS CO., IDAHO
FILED

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

)

ORDER OF PARTIAL DECREE

)

Case No. 39576

)

For Water Right 36-07427

)

The Notice of Challenge filed in the above subcase having been heard and ruled upon, IT IS
THEREFORE ORDERED that water right 36-07427 is hereby decreed as set forth in the attached
Partial Decree Pursuant to I.R.C.P. 54(b).

IT IS SO ORDERED.

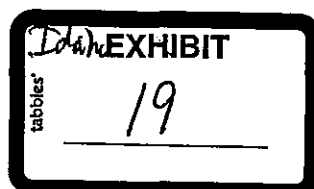
DATED APR 10 2009

Barry Wood

BARRY WOOD

Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication

ORDER OF PARTIAL DECREE



The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 25th day of March, 2009

[Signature]

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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)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-07427

2000 APR 10 AM 10:20

ORIGINAL
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS: BLUE LAKES TROUT FARM INC
PO BOX 1237
TWIN FALLS ID 83301

SOURCE: ALPHEUS CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 52.23 CFS
37746.6 AFY

PRIORITY DATE: 12/28/1973

POINT OF DIVERSION: T09S R17E S28 LOT 14 (NESWSW) Within JEROME County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
FISH PROPAGATION 01-01 12-31 52.23 CFS
37746.6 AFY

PLACE OF USE: FISH PROPAGATION Within JEROME County
T09S R17E S29 Lot 19 (SESW)

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

A MEASURING DEVICE OF A TYPE APPROVED BY IDWR SHALL BE
MAINTAINED AS A PART OF THE DIVERTING WORKS.
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.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

B Wood
BARRY WOOD
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

SRBA PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 36-07427

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 25th day of March, 2009

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FILED
TWIN FALLS CO., IDAHO

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

ORDER OF PARTIAL DECREE

For Water Right 36-07220

The Notice of Challenge filed in the above subcase having been heard and ruled upon, IT IS
THEREFORE ORDERED that water right 36-07220 is hereby decreed as set forth in the attached
Partial Decree Pursuant to I.R.C.P. 54(b).

IT IS SO ORDERED.

DATED APR 10 2000

B Wood

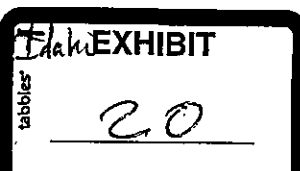
BARRY WOOD

Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 25th day of March, 2009

ORDER OF PARTIAL DECREE



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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)
)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 36-07720

200 APR 10 AM 10:20

DISTRICT T-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS: BLUE LAKES TROUT FARM INC
PO BOX 1237
TWIN FALLS ID 83301

SOURCE: WASTE WATER TRIBUTARY: SNAKE RIVER

QUANTITY: 37.1 CFS
26812.2 AFY

PRIORITY DATE: 06/08/1977

POINT OF DIVERSION: T09S R17E S29 LOT 19 (SWNESE) Within JEROME County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE FISH PROPAGATION	PERIOD OF USE 01-01 12-31	QUANTITY 37.1 CFS 26812.2 AFY
-------------------------------	------------------------------------	------------------------------	-------------------------------------

PLACE OF USE: FISH PROPAGATION Within JEROME County
T09S R17E S29 Lot 19 (NESE)

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.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Barry Wood

BARRY WOOD
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

SRBA PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 36-07720

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 25th day of March, 2009

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DEPARTMENT OF
WATER RESOURCES

2009 APR 10 AM 10:19

SRBA
TWIN FALLS CO., IDAHO
FILED

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

ORDER OF PARTIAL DECREE

Case No. 39576

For Water Right 36-07731

The Notice of Challenge filed in the above subcase having been heard and ruled upon, IT IS
THEREFORE ORDERED that water right 36-07731 is hereby decreed as set forth in the attached
Partial Decree Pursuant to I.R.C.P. 54(b).

IT IS SO ORDERED.

DATED APR 10 2000

B Wood

BARRY WOOD

Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication

ORDER OF PARTIAL DECREE



The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 25th day of March, 2009

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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

DEPARTMENT OF
WATER RESOURCES

In Re SRBA)
Case No. 39576)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-07731

2000 APR 10 AM 10:20

DEPT. OF WATER RESOURCES
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS: CLEAR LAKES TROUT CO INC
1301 VISTA AVE
BOISE ID 83705

SOURCE: SPRINGS

TRIBUTARY: BILLINGSLEY CREEK

QUANTITY: 15.00 CFS
10745.2 AFY

PRIORITY DATE: 07/08/1977

POINT OF DIVERSION: T07S R13E S13

NENENE
NWNENE
SENE

Within GOODING County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
FISH PROPAGATION

PERIOD OF USE
01-01 12-31

QUANTITY
15.00 CFS
10745.2 AFY

PLACE OF USE:

FISH PROPAGATION
T07S R13E S13

Within GOODING County
NENE NWNE

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

A MEASURING DEVICE OF A TYPE APPROVED BY IDWR SHALL BE
MAINTAINED AS A PART OF THE DIVERTING WORKS.

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.

THIS WATER RIGHT DOES NOT AUTHORIZE ANY ENLARGEMENT IN THE
PHYSICAL DIMENSIONS OF THE RACEWAYS.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


BARRY WOOD
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

SRBA PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 36-07731

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 25th day of March, 2009

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Department of Water Resources

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MAR 27 2009

DEPARTMENT OF
WATER RESOURCES

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **ORDER OF PARTIAL DECREE** with attached **PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)** were mailed on April 10, 2000, with sufficient first-class postage to the following:

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

Chief, Natural Resources Div
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

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

Dana Hofstetter
Beeman & Hofstetter
PO Box 1427
Boise, ID 83701-1427

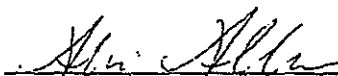
D. Craig Lewis
University of Idaho
College of Law
6th and Rayburn Street
Moscow, ID 83844-2321

Daniel Steenson
Ringert & Clark, Chtd
PO Box 2773
Boise, ID 83702-2773

Norman Semanko
Rosholt Robertson & Tucker
PO Box 1906
Twin Falls, ID 83303

Patrick Brown
109 S Adams
Jerome, ID 83338

John Hepworth
Hepworth Lezamiz & Hohnhorst
PO Box 389
Twin Falls, ID 83303


Deputy Clerk of the Court

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 25th day of March, 2009



CERTIFICATE OF MAILING