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AUG 31 2009

DEPARTMENT OF
WATER RESOURCES

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

) Subcase 2-103

) (Insert water right number)

Case 39576

) STANDARD FORM 4

) MOTION TO FILE:

) ☐ LATE NOTICE OF CLAIM

) ☒ AMENDED NOTICE OF CLAIM

INSTRUCTIONS

This form is used to file a late Notice of Claim or an amendment to a Notice of Claim in a reporting area where the Director's Report has been filed. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even-number pages upside down.

The water right number for your late or amended claim must be indicated above in the blank space following "Subcase." You must use a **separate form for each** late or amended Notice of Claim.

This form has been adopted by the court in ***SRBA Administrative Order 1, Rules of Procedure*** (amended Sept. 30, 1996), Section 4, which may be consulted for further information.

By filing a *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim*, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

☒ I have read **SRBA Administrative Order 1, Rules of Procedure** (amended Sept. 30, 1996).

My name is _____

My address is _____

My phone number is: Work _____ Home _____

I am an attorney representing Black Mesa Farms, LLC

My name is Michael C. Creamer

My address is 601 W. Bannock St., Boise, ID 83702

My phone number is 208-388-1247

MOTION TO FILE A LATE NOTICE OF CLAIM

A Motion to File a Late Notice of Claim will require a hearing before the Presiding Judge.

☐ I did not file a Notice of claim to the use of water in the SRBA because:

☐ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of Claim for domestic or stock watering use.

☐ I am providing legal and factual documentation for my claimed use of water. You must describe these documents and attach a readable copy. (You do not need to fill this out if you are reinstating a Notice of Claim for domestic or stock watering use, but you **must** attach a copy of your Notice of Claim.)

I have attached:

- ☐ A fully completed Notice of Claim (available from IDWR).
- ☐ A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I.C. § 42-1414. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ _____.
- ☐ A claim filing fee and a late claim fee for those claims other than a domestic or stock watering use for which a notice of claim was not filed. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ _____.

Follow these instructions regarding the hearing on this motion.

1. Contact the Clerk of the SRBA Court (208-736-3011) to request a hearing date and time.
2. Fill in the following information:

This motion will be heard on _____
(Insert Date and Time)
at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A Motion to File an Amended Notice of Claim may require a hearing before the Presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires.

- ☒ I must amend my Notice of Claim to the use of water in the SRBA because:
- Evidence in IDWR's files shows that this right should have
been claimed with a priority date of Feb. 25, 1963.

- ☒ I am providing legal and factual documentation to support my amended Notice of Claim. You must describe these documents and attach a readable copy.

This right was claimed for lands that the Beneficial Use
Field Examiner found were developed and irrigated under
water right permit 2-2209. A copy of the Field Examiners
report obtained from IDWR records is attached as Exhibit A.
Because this right was developed under 2-2209, its priority
I have attached: date should be the same as 2-2209's

- ☒ An amended Notice of Claim (available from IDWR).

- ☐ Payment of the following additional fees required by IDWR:

VERIFICATION (Must be completed)

State of Idaho

County of Ada

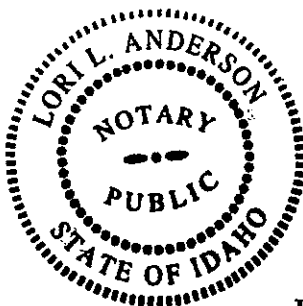
Michael C. Creamer, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

Signature of person filing motion

Michael C. Creamer
Attorney signing in representative capacity

Subscribed and sworn to before me on August 28, 2009.
(Insert Date)



Lori L. Anderson
Notary Public for Idaho
Residing at: Boise ID
My Commission expires: Aug 23, 2013

INSTRUCTIONS FOR MAILING

You must mail this form, including all attachments, to the Clerk of the SRBA Court. **FAX filings will not be accepted by the SRBA Clerk of the Court.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on August 28, ²⁰⁰⁹~~199--~~, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

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

2. Copies to:

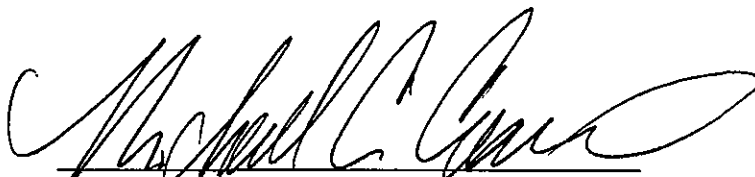
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

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

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or a Special Master, you must serve a copy on all parties to that subcase.

(Insert Names/address of parties)



Signature of person or attorney mailing the form

**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 2-103

Date Received: _____

Receipt No: _____

Received By: _____

AMENDED

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

Please type or print clearly

1. Name of Claimant (s) BLACK MESA FARMS LLC Phone (208) 366-7433

Mailing Address PO BOX 82 GLENN'S FERRY ID Zip 83623
Street or Box City State

2. Date of Priority (Only one (1) per claim) February 25, 1963
Month Day Year (YYYY)

3. Source of water supply (Check one) Ground Water () or Other (✓) (a) SNAKE RIVER
which is tributary to (b) COLUMBIA RIVER

4. a. Location of Point of Diversion is: Township 6S, Range 11E, Section 9,
NW, 1/4 of SW, 1/4 Govt. Lot 6, BM., County of ELMORE

Parcel (PIN) no. _____

Additional points of diversion if any: _____

If available, GPS Coordinates _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____, Range _____, Section _____, _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

ending point is: Township _____, Range _____, Section _____, _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., 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. RIVER PUMPING STATION, PENSTOCK, RELIFT STATION, RELIFT PENSTOCK, MAIN TRUNKLINE AND LATERAL MAIN LINES, WITH SOME BOOSTER PUMPS.

6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For IRRIGATION purposes from 3/15 to 11/15 amount 8.54 or

For purposes from to amount or

For purposes from to amount or

For purposes from to amount or

7. Total quantity claimed (a) 8.54 (cfs) and/or (b) (acre feet)

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

9. 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.

			SEE ATTACHED LIST																Totals
Twn	Rng	Sec	NE												SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Parcel (PIN) no(s).

Total number of acres irrigated 428 acres within 3948 acre

10. In which county (ies) are lands listed above as place of use located? ELMORE permissible place of use

11. Do you own the property listed above as place of use? Yes (✓) No ()
If your answer is No, describe in Remarks below the authority you have to claim this water right.

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

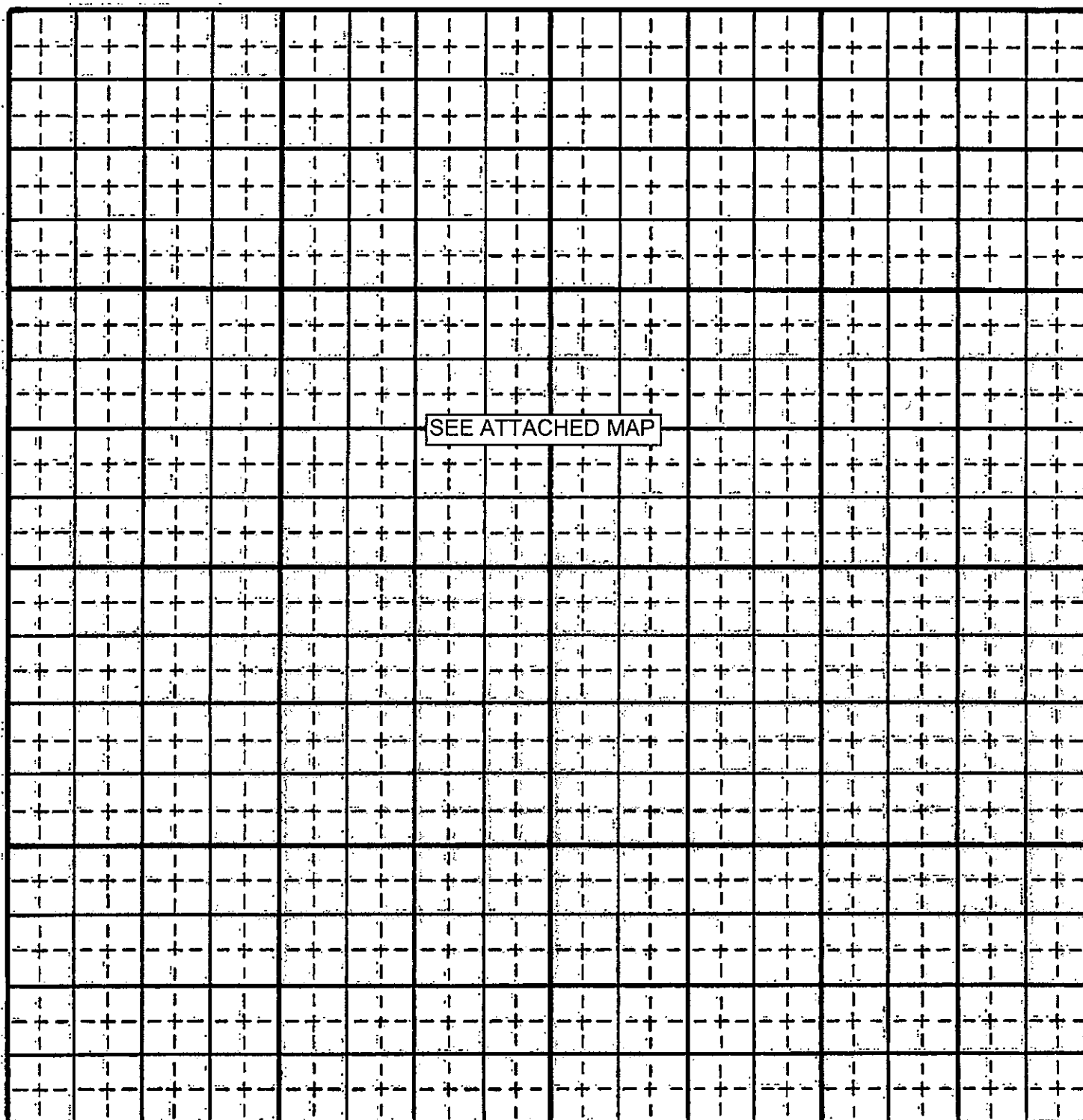
2-2209B or None ()

13. Remarks: This Amended Claim corrects the priority date to be February 25, 1963. This priority date is correct as evidenced by the Beneficial Use Field Examiner's report for licensed water right no. 2-2209. The Field Examiner found that Section 14 lands were irrigated under 2-2209. However, Section 14 lands inexplicably were omitted from the license for 2-2209. This right (2-103) is for the irrigation of Section 14 lands and should have the same priority date as 2-2209 (i.e. February 25, 1963). This right also should include a remark stating that this right (2-103) and right number 2-2209B are the only rights historically beneficially used to irrigate land in Sec. 12, T6S, R10E.

Last Name BLACK MESA FARMS LLC Identification No. 2-103

Map of Project: Attach aerial photograph or topographic map showing clearly the point of diversion, place of use, section number, township, and range number, unless unavailable. Otherwise sketch the elements above on the grid below.

Scale: 2 Inches equals 1 mile



14. Basis of Claim (Check One) Beneficial Use (☒) Posted Notice (☐) License (☐) Permit (☐) Decree (☐)

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices 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: 1 (Map), 1 (Legal Description)

For Individuals: I/We do solemnly swear or affirm under penalty of perjury 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 under penalty of perjury that I am

PARTNER _____ of BLACK MESA FARMS LLC _____,

Title

Organization

that I have signed the foregoing document in the space below as

PARTNER _____ of BLACK MESA FARMS LLC _____,

Title

Organization

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

Signature of Authorized Agent Don J. Bryant _____ Date 8/28/09

Title and Organization PARTNER, BLACK MESA FARMS LLC

16. Notice of Appearance:

Notice is hereby given that I, Michael C. Creamer, will be acting as attorney at law of 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 Michael C. Creamer _____ Date 8/29/09

Address GIVENS PURSLEY LLP

601 W. Bannock St., Boise, ID 83702

Water Right No. 2-103
Place of Use Legal Description

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres									
06S	10E	1		NESW	35		SWSW	39		SESW	40												
				NWSE	30		SWSE	40		SESE	30												
		2		SESE	39																		
				11	NENE								40	SWNE	40	SENE	39						
				NESW	40		NWSW	40		SWSW	40		SESW	40									
				NESE	39		NWSE	40		SWSE	40		SESE	40									
				12	NENE		40	NWNE		40	SWNE		40	SENE	40								
				NENW	40		NWNW	39		SWNW	39		SENW	40									
				NESW	40		NWSW	39		SWSW	38		SESW	21									
				NESE	40		NWSE	40		SWSE	39		SESE	39									
				13	NENE		39	NWNE		39	SWNE		40	SENE	40								
				NENW	39		NWNW	39		SWNW	40		SENW	40									
				NESW	40		NWSW	40		SWSE	40		SESE	40									
				NESE	40		NWSE	40			40		SENE	40									
				14	NENE		40	NWNE		40	SWNE		40	SENE	40								
				NENW	40		NWNW	40		SWNW	40		SENW	40									
				NESW	39																		
				NESE	39									NWSE	30								
		11E	6	7	NENE	40		NWNE	39		SWNE	40		SENE	40								
					NESE	40		NWSE	40														
	SWSW				10	1		NWNE	25		2	SWNE		40	SENE	40							
	NENW				30			NWNW	37			SWNW		37		SENW	40						
	NESW				40			3	NWSW			38		4		SWSW	37	SESW	39				
	NESE				40			NWSE	40			SWSE		39		SESE	40						
	17				NWNW			40	SWNW			40											
	NWSW				40																		
	18				NENE			38	NWNE			39								SWNE	40	SENE	39
	NENW				39			1	NWNW			37								2	SWNW	38	SENW
								NESW	40			3		NWSW		38	4	SWSW	38	SESW	40		
								NESE	40			NWSE		40		SWSE	40						
								19	1			NWNW		39		2	SWNW	39					
	3	NWSW	39																				

This right is limited to the irrigation of 428 acres within the place of use described above in a single irrigation season.

IDWR - created with ESRI ArcIMS

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

02-2209

REPORT OF EXAMINER

Permit No. 30990

This proof is for Completion of Works & Beneficial Use In Water District No.

1. Name of applicant: Cottonwood Canal Company

2. Source of water supply: Snake River

3. Location of point of diversion: Is in the Lot 6 of Section 9

T. 6 S R. 11 E. B.M. County of Elmore

4. Describe works as they exist, giving dimensions and capacities of same:

Summary: 9-600 HP ELEC VERT TURBINE PUMPS - FROM THE SNAKE RIVER - THROUGH A 44" PENSTOCK APPROX 1/4 MILE & ABOUT 150' - THROUGH 9-100 HP ELECTRIC CENTRIFUGAL BOOSTER PUMPS - 41" PENSTOCK - 3/4 MILE TO THE #1 SUB MAIN LINE BOOSTERS - LAST - THROUGH 6 OTHER SUB LINE DIVERSIONS. AT VARIOUS INTERVALS - SPRINKLER SYSTEM. (NOTE DETAILS)

5. Water is used for: Irrigation

6. State whether or not water has been turned into works of diversion: Yes

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other than irrigation):

SE 1/4 SE 1/4, W 1/4 SE 1/4, E 1/4 SW 1/4, SW 1/4 SW 1/4 Sec. 1., SE 1/4 SE 1/4 Sec. 2., E 1/4, E 1/4 NW 1/4, SW 1/4 Sec. 11., All of Sec. 12., E 1/4, NW 1/4, N 1/4 SW 1/4, Sec. 13., NE 1/4, N 1/4 SE 1/4, N 1/4 NW 1/4, SE 1/4 NW 1/4, NE 1/4 SW 1/4 Sec. 14., NE 1/4, N 1/4 SE 1/4, Sec. 24., Twp. 6 S., Rge. 10 E., Lot 7 (SW 1/4 SW 1/4), Sec. 6., All of Sec. 7., N 1/4, SW 1/4, W 1/4 SE 1/4, NE 1/4 SE 1/4 Sec. 18., Lots 2 (SW 1/4 NW 1/4), 3 (NW 1/4 SW 1/4) E 1/4 SW 1/4, SE 1/4, Sec. 19., W 1/4 NW 1/4, NW 1/4 SW 1/4, Sec. 17., W 1/4 SW 1/4, Sec. 20., Twp. 6 S., Rge. 11 EBM Making a total of 4480 acres. 5120

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach?

Remarks: MR. BOB McCUMB, MRS. PHYLLIS BUTTERFIELD,

& THE ANDERSONS WERE CONTACTED.

DESIGN CAPACITY - 40,500 gpm - 90.21 cfs

This examination was made on the day of 19

EXHIBIT

A

Subcase 2-103

(Signed)

Sy D. clay

Examiner.

10

65 115

SCALE: 2 Inches Equal 1 Mile. Draw Plan in Ink.

hott obbitt

