

RECEIVED

OCT 16 2009

DEPARTMENT OF
WATER RESOURCES

DANIEL V. STEENSON (ISB #4332)
JON C. GOULD (ISB #6709)
RINGERT LAW CHARTERED
455 S. Third Street, P.O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Claimants

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. 72-16778, 72-16779,
72-16780, 72-16781, 72-16783, 72-16784,
72-16785, 72-16786, 72-16787, 72-16788,
and 72-16789
)
) AFFIDAVIT OF JON C. GOULD
_____)

STATE OF IDAHO)
) ss
COUNTY OF ADA)

Jon C. Gould, being first duly sworn upon his oath, deposes and says that:

1. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.
2. Attached hereto as Exhibit "A" are true and correct copies of water right report for water right no. 72-7505A and the partial decrees for water right nos. 72-10220A, 72-10221A, 72-10222A, and 72-10237A.
3. Attached hereto as Exhibit "B" is a true and correct copy of Reporter's Transcript from the January 20, 2009 SRBA District Court Monthly Status Hearing, pages 14-25.

COPY

Further your affiant sayeth naught.

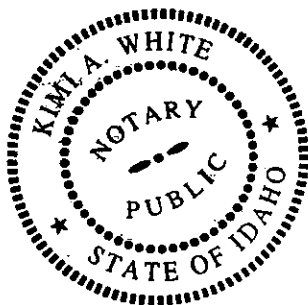
DATED this 15 day of October, 2009.

Jon C. Gould
Jon C Gould

STATE OF IDAHO)
)ss.
County of Ada)

On this 15 day of October, 2009, before me, the undersigned, a notary public in and for said state, personally appeared Jon C. Gould, known to me to be the individual that executed the foregoing affidavit, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Kim A. White
Notary Public for *Idaho*
Residing at *Base, Idaho*
My Commission Expires: *04/01/10*

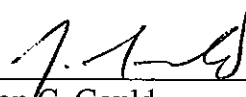
CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing document was mailed, postage prepaid, to the following on this 15 day of October, 2009:

Laird Lucas
Attorney at Law
P.O. Box 1342
Boise, Idaho 83701

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

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



Jon C. Gould

Exhibit A

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

10/15/2009

WATER RIGHT NO. 72-7505A

Owner Type	Name and Address
Current Owner	VALLEY SUN LLC C/O GORDON YOUNGER 1000 SW 43RD ST RENTON, WA 98055 (425)291-3422
Original Owner	J-P RANCH INC C/O JUDD CRAMER HC 67 BOX 2095 CHALLIS, ID 83226 (208)838-2291

Priority Date: 08/18/1992

Basis: License

Status: Active

Source	Tributary
EAST FORK SALMON RIVER	SALMON RIVER

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	4/15	10/15	0.08 CFS	14 AFA
Total Diversion			0.08 CFS	

Location of Point(s) of Diversion:

SALMON RIVER	SWNW	Sec. 26	Township 11N	Range 18E	CUSTER County
SALMON RIVER	SESW	Sec. 26	Township 11N	Range 18E	CUSTER County

IRRIGATION Use:

Acre Limit: 4

Place(s) of use:

Place of Use Legal Description: IRRIGATION CUSTER County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
11N	18E	26		SWNW	21									
				NESW	40		NWSW	28		SWSW	31		SESW	28.8
		27		SENE	24									
				NESE	27		SESE	5						
		35		SWNE	12									
				NENW	35		NWNW	14		SWNW	0.3		SENE	28

Total Acres: 294.1

Conditions of Approval:

1.	T17	Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
2.	T07	The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
3.		The total instantaneous diversion of water from all points of diversion under Transfer 5305 shall not exceed 940 cfs, nor a total combined annual volume of 1064.0 af. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre when water is applied through a sprinkler system. After specific notification by the department, the right holder shall measure the diversion or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department. Right 72-07505A is limited to the irrigation of 4.0 acres in the place of use described above in a single irrigation season. Right 72-10220A is limited to the irrigation of 265.6 acres in the place of use described above in a single irrigation season. Right 72-10221A is limited to the irrigation of 265.1 acres in the place of use described above in a single irrigation season. Right 72-10222A is limited to the irrigation of 11.6 acres in the place of use described above in a single irrigation season. Right 72-10223A is limited to the irrigation of 105.0 acres in the place of use described above in a single irrigation season. Rights 72-10220A, 72-10221A, 72-10222A and 72-10237A when combined shall not exceed a total diversion rate of 9.06 cfs, a total annual maximum diversion volume of 1015.3 af at the field headgate, and the irrigation of 290.1 acres. Right 72-07505B is limited to the irrigation of 4.0 acres in the place of use described above in a single irrigation season. Right 72-10220B is limited to the irrigation of 5.4 acres in the place of use described above in a single irrigation season. Right 72-10221B is limited to the irrigation of 5.9 acres in the place of use described above in a single irrigation season. Right 72-10222B is limited to the irrigation of 0.4 acres in the place of use described above in a single irrigation season. Right 72-10237B is limited to the irrigation of 2.0 acres in the place of use described above in a single irrigation season. Rights 72-10220B, 72-10221B, 72-10222B and 72-10237B when combined shall not exceed a total diversion rate of 0.18 cfs, a total annual maximum diversion volume of 20.7 af at the field headgate, and the irrigation of 5.9 acres. The period of use for the irrigation under Right 72-07505A and 72-07505B may be extended to a beginning date of 04-01 and an ending date of 10-31 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 04-15 and after 10-15 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date of this approval.
4.	R59	This right when combined with all other rights shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
5.	029	The right holder shall comply with all fish screening requirements of the Idaho Department of Fish and Game.
6.	T08	Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Dates:

Licensed Date: 02/28/1998

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: 170

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit:

Combined Volume Limit: 1064

Combined Rate Limit: 9.4

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

SRBA PARTIAL DECREE 72-10220A

Issued on 01-22-2001.

This is not an official copy.

Contact IDWR or the Court for a Certified Copy.

Choose Landscape Orientation when printing.

NAME AND ADDRESS: VALLEY SUN LLC
PO BOX 844
SUN VALLEY, ID 83353

SOURCE: SALMON RIVER, EAST FORK TRIBUTARY: SALMON RIVER

QUANTITY: 5.88 CFS
929.60 APY

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 9.06 CFS AND TO A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 10 15.3 AF. COMBINED RIGHT NOS. 72 -10220A,
72 -10221A, 72-10222A AND 72-10237A.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 9.14 CFS AND TO A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 10 29.3 AF. COMBINED RIGHT NOS. 72 -07505A,
72 -10220A, 72-10221A, 72-10222A AND 72-10237A.

PRIORITY DATE: 05/10/1880

POINT OF DIVERSION: T11N R18E S26 SWSWNW Within Custer County
SESESW

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY

Irrigation	04-01 TO 10-31	5.88 CFS
		929.60 APY

PLACE OF USE: Irrigation Within Custer County

T11N R18E S26	SWNW 21.0	NESW 40.0
	NWSW 28.0	SWSW 31.0
	SESW 28.8	
S27	SENE 24.0	NESE 27.0
	SESE 5.0	
S35	SWNE 12.0	NENW 35.0
	NWNW 14.0	SWNW 0.3
	SENW 28.0	

294.1 Acres Total

USE OF WATER WITHIN T11N R18E S27 SESE IS LIMITED TO THE
N1/2 NE1/4 AND THE SENE OF THAT PLACE OF USE.

USE OF WATER WITHIN T11N R18E S35 SWNW IS LIMITED TO THE
NENE OF THAT PLACE OF USE.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 265.6 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

USE OF THE RIGHTS LISTED BELOW ARE LIMITED TO THE IRRIGATION
OF A COMBINED TOTAL OF 290.1 ACRES IN A SINGLE IRRIGATION
SEASON. COMBINED RIGHT NOS. 72-10220A, 72-10221A, 72 -10222A AND
72 -10237A.

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. I.C. SECTION 42 -1412(6).

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SRBA PARTIAL DECREE 72-10221A

Issued on 01-22-2001.

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Choose Landscape Orientation when printing.

NAME AND ADDRESS: VALLEY SUN LLC
PO BOX 844
SUN VALLEY, ID 83353

SOURCE: SALMON RIVER, EAST FORK TRIBUTARY: SALMON RIVER

QUANTITY: 0.79 CFS
333.80 AFY

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 9.06 CFS AND TO A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 10 15.3 AF. COMBINED RIGHT NOS. 72 -10220A,
72 -10221A, 72-10222A AND 72-10237A.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 9.14 CFS AND TO A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 10 29.3 AF. COMBINED RIGHT NOS. 72 -07505A,
72 -10220A, 72-10221A, 72-10222A, AND 72-10237A.

PRIORITY DATE: 05/01/1936

POINT OF DIVERSION: T11N R18E S26 SWSWNW Within Custer County
SESESW

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	04-01 TO 10-31	0.79 CFS
		333.80 AFY

PLACE OF USE: Irrigation Within Custer County

T11N R18E S26	SWNW 21.0	NESW 40.0
	NWSW 28.0	SWSW 31.0
	SESW 28.8	
S27	SENE 24.0	NESE 27.0
	SESE 5.0	
S35	SWNE 12.0	NENW 35.0
	NWNW 14.0	SWNW 0.3
	SENW 28.0	

294.1 Acres Total

USE OF WATER WITHIN T11N R18E S27 SESE IS LIMITED TO THE
N1/2 NE1/4 AND THE SENE OF THAT PLACE OF USE.

USE OF WATER WITHIN T11N R18E S35 SWNW IS LIMITED TO THE
NENE OF THAT PLACE OF USE.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 265.1 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

USE OF THE RIGHTS LISTED BELOW ARE LIMITED TO THE IRRIGATION
OF A COMBINED TOTAL OF 290.1 ACRES IN A SINGLE IRRIGATION
SEASON. COMBINED RIGHT NOS. 72-10220A, 72-10221A, 72 -10222A AND
72 -10237A.

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. I.C. SECTION 42 -1412(6).

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SRBA PARTIAL DECREE 72-10222A

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NAME AND ADDRESS: VALLEY SUN LLC
PO BOX 844
SUN VALLEY, ID 83353

SOURCE: SALMON RIVER, EAST FORK TRIBUTARY: SALMON RIVER

QUANTITY: 0.29 CFS
40.60 AFY

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 9.06 CFS AND TO A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 10 15.3 AF. COMBINED RIGHT NOS. 72 -10220A,
72 -10221A, 72-10222A AND 72-10237A.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 9.14 CFS AND TO A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 10 29.3 AF. COMBINED RIGHT NOS. 72 -07505A,
72 -10220A, 72-10221A, 72-10222A AND 72-10237A.

PRIORITY DATE: 05/01/1885

POINT OF DIVERSION: T11N R18E S26 SWSNW Within Custer County
SESESW

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	04-01 TO 10-31	0.29 CFS
		40.60 AFY

PLACE OF USE: Irrigation Within Custer County

T11N R18E S26	SWNW 21.0	NESW 40.0
	NWSW 28.0	SWSW 31.0
	SESW 28.8	
S27	SENE 24.0	NESE 27.0
	SESE 5.0	
S35	SWNE 12.0	NENW 35.0
	NWNW 14.0	SWNW 0.3
	SENW 28.0	

294.1 Acres Total

USE OF WATER WITHIN T11N R19E S27 SESE IS LIMITED TO THE
N1/2 NE1/4 AND THE SENE OF THAT PLACE OF USE.

USE OF WATER WITHIN T11N R18E S35 SWNW IS LIMITED TO THE
NENE OF THAT PLACE OF USE.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 11.6 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

USE OF THE RIGHTS LISTED BELOW ARE LIMITED TO THE IRRIGATION
OF A COMBINED TOTAL OF 290.1 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHTS NOS.: 72-10220A, 72-10221A, 72 -10222A,
72 -10237A.

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
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SRBA PARTIAL DECREE 72-10237A

Issued on 01-22-2001.

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NAME AND ADDRESS: VALLEY SUN LLC
PO BOX 844
SUN VALLEY, ID 83353

SOURCE: SALMON RIVER, EAST FORK TRIBUTARY: SALMON RIVER

QUANTITY: 2.10 CFS
367.50 AFY

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 9.06 CFS AND TO A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 10 15.3 AF. COMBINED RIGHT NOS. 72 -10220A,
72 -10221A, 72-10222A AND 72-10237A.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 9.14 CFS AND TO A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 10 29.3 AF. COMBINED RIGHT NOS. 72 -07505A,
72 -10220A, 72-10221A, 72-10222A AND 72-10237A.

PRIORITY DATE: 06/28/1983

POINT OF DIVERSION: T11N R18E S26 SWSWNW Within Custer County
SESESW

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY

Irrigation	04-01 TO 10-31	2.10 CFS
		367.50 AFY

PLACE OF USE: Irrigation Within Custer County

T11N R18E S26	SWNW 21.0	NESW 40.0
	NWSW 28.0	SWSW 31.0
	SESW 28.8	
S27	SENE 24.0	NESE 27.0
	SESE 5.0	
S35	SWNE 12.0	NENW 35.0
	NWNW 14.0	SWNW 0.3
	SENW 28.0	

294.1 Acres Total

USE OF WATER WITHIN T11N R18E S27 SESE IS LIMITED TO THE
N1/2 NE1/4 AND THE SENE OF THAT PLACE OF USE.

USE OF WATER WITHIN T11N R18E S35 SWNW IS LIMITED TO THE
NENE OF THAT PLACE OF USE.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 105.0 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

USE OF THE RIGHTS LISTED BELOW ARE LIMITED TO THE IRRIGATION
OF A COMBINED TOTAL OF 290.1 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS. 72 -10220A, 72-10221A, 72-10222A AND
72 -10237A.

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

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
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Exhibit B

1 IN THE DISTRICT COURT OF THE
2 FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO
3 IN AND FOR THE COUNTY OF TWIN FALLS

4 * * * * *

5 IN RE SRBA)
6)
7 Case No. 39576)
8)
9)
10)

REPORTER'S TRANSCRIPT

11 MONTHLY STATUS HEARING
12 HON. JOHN M. MELANSON
13 District Judge, Presiding

14 DATE: January 20, 2009

15 TIME: 1:30 p.m.

16 PLACE: COURTROOM OF THE DISTRICT COURT
17 SNAKE RIVER BASIN ADJUDICATION
18 BUILDING - 253 3RD AVE. NORTH
19 TWIN FALLS, IDAHO

20
21
22
23 Reported by:
24 Maureen Newton, C.S.R. No. 321
25 P.O. Box 368
 Rupert, ID 83350
 (208) 436-9041

1 basis for not filing was that the claim was based, 2 assertedly anyway, upon a license, and apparently the 3 claimant wasn't aware that a claim would need to be filed 4 in the adjudication. I have to admit that I don't recall 5 why the case was continued. It wasn't a situation where 6 the claimant did not appear, he was with us by telephone. 7 But, Mr. Roche, are you with us this afternoon? 8 MR. ROCHE: Yes, I am, Your Honor. The reason it 9 was continued was because I didn't know what I was talking 10 about. And I have Laurie Graves with me, who had me 11 straightened out. So I was just confused and I think we're 12 up to speed now. 13 THE COURT: Let me take a moment to review the 14 motion to file late notice of claim. You're claiming one 15 cfs and that's based upon a license; is that correct? 16 MS. GRAVES: Yes, Your Honor, that's correct. 17 THE COURT: Who's this speaking? 18 MS. GRAVES: I'm sorry, this is Laurie Graves 19 with SPF Water Engineering. 20 THE COURT: I appreciate your willingness to 21 help, but one of the things that I have to be concerned 22 about is that we don't have non attorneys representing 23 people in the SRBA. And I try to be as lenient as I can. 24 Certainly non attorneys can help pro se litigants prepare 25 to appear with us, but as far as representing someone at 14	1 That was heard before Special Master Booth a week ago today 2 and that motion was granted. 3 But the amendment to beneficial use right 4 63-30175 does not cover all of the acres within the place 5 of use. There are additional acres to the south of the 6 parcel covered by 63-30175, and those acres are in fact 7 covered by license number 2462; therefore that water right 8 claim had not previously been filed in the SRBA. Mr. Roche 9 is now filing a late claim because we have discovered that 10 that is the water right that covers those acres and 11 therefore he needs to file a claim to get those acres 12 covered. 13 THE COURT: Thank you very much. 14 Do you want to add anything to that, Mr. Roche? 15 MR. ROCHE: No, it seems to be a lot better when 16 I stay out of it. 17 THE COURT: Okay. Well, that certainly is an 18 acceptable explanation for what's going on here, and I 19 appreciate your patience, Mr. Roche, in dealing with this 20 and getting this taken care of. So the court will grant 21 the motion to file late notice of claim, it appears that 22 fees have been paid and good cause has been shown. This 23 matter will appear on the next Director's Report for Late 24 Filed Claims. Thanks, Mr. Roche. 25 MR. ROCHE: Thank you, Your Honor. 16
1 the hearings, it's just something I don't think I should 2 allow, and frankly do not. So I need to, I guess, conduct 3 this discussion with the claimant, unless you're an 4 attorney maybe? I don't know. 5 MR. GRAVES: No, I'm not. 6 THE COURT: Okay. All right. 7 MR. SPENCER: Your Honor, this is Nick Spencer 8 with IDWR, and I am familiar with this situation, too, and 9 so if there's anything that Mr. Roche can't answer, I 10 believe I will be able to. 11 THE COURT: Why don't you just go ahead, Mr. 12 Spencer, because it seems to me that at the last hearing we 13 talked about possibly you assisting Mr. Roche with this a 14 little bit. And it looks like there's a one cfs claim 15 that's based on a license. Is that in fact the case or do 16 you know? 17 MR. SPENCER: That is correct, Your Honor. This 18 arose as part of a settlement process of an objection to 19 beneficial use right number 63-30175, and there Mr. Roche's 20 objection contended the Department's recommendation failed 21 to cover his entire place of use. And as a result of 22 negotiations on that objection it has been determined that 23 there are indeed additional acres that are being irrigated. 24 And the result of that discovery is that Mr. Roche has 25 filed a motion to amend his beneficial use claim 30175. 15	1 THE COURT: The next matters we have are all, 2 mostly anyway, related at least in place -- generally the 3 place of use and the circumstances of the late claims for 4 the most part, and these are water right claims in Basin 72 5 in which Mr. Steenson is representing the claimants. These 6 are -- well, probably for the record I should go through 7 them. There aren't an awful large number of them: 8 72-16778, 16779, 16780, 16781, and those are the claims of 9 Eddie Baker and Eddie Baker, Jr.; also we have water right 10 number 72-16784, the claim of Gary and Jackie Ingram; and 11 also water right claims 72-16782 and 72-16783, the claims 12 of DeWayne and Melody Baker; and claim number 72-16789, the 13 claim of Lilac Three, LLC and Lilac Six, LLC; and water 14 right claims 72-16786 and 72-16787, the claims of Richard 15 Douglas and Cheryl Baker; water right claim number 16 72-16785, a claim of Archie Sherwood; and, finally, water 17 right number 72-16788, a claim of Three G Company. 18 Mr. Steenson is with us in the courtroom today. 19 I've read the motions to file late notices of claim. I 20 note that with a couple of exceptions they report an 21 asserted conveyance loss on conversions of the East Fork of 22 the Salmon River. They are, well, I think in excess of 175 23 cfs. I'm not sure I included all of them when I added them 24 up. And then a couple of them, namely 72-16778 and 25 72-16781, are not advanced loss claims, but merely claims 17

1 that were discovered after -- I think maybe I should say 2 recently discovered and allow Mr. Steenson to take it from 3 there. 4 Mr. Steenson, do you wish to say anything in 5 support of the late notices of claims in these matters? 6 MR. STEENSON: Yes, thank you, Your Honor. 7 As you note, a large majority of these 12 claims 8 have the same explanation for the claims in the late 9 filing: That is to account for conveyance losses that were 10 not accounted for in the original decrees and were not 11 realized to be necessary until subsequent to the issuance 12 of the decrees. Measurements occurred in conjunction with 13 the installation of fish screens. And a notice from of 14 Department of Water Resources that beginning this year -- 15 perhaps it won't be this year, perhaps it will be next 16 year -- there will begin to be administration along East 17 Fork. 18 With regard to the claim of Eddie Baker, Jr., and 19 his father, 16778, the explanation for that late claim is a 20 little bit different in that this is land that the 21 claimants use under permit from the Bureau of Land 22 Management and which as a condition of the re-issuance of a 23 permit the BLM has required them to pursue a water right, 24 and they are complying with that condition by filing this 25 late claim for their historic use of that field and 18	1 basis for that assertion and also the basis for what on its 2 face appears to be large quantities that are being claimed. 3 THE COURT: All right. Mr. Spencer, do you know 4 how it came about that this was missed? Was this a 5 reporting error or was something else involved here? 6 Or Mr. Steenson may be in a better position to 7 answer that. 8 MR. STEENSON: Perhaps in this case, Mr. Spencer, 9 I'll take a shot at it. The analysis that was done at the 10 time was the standard Hubble analysis which produced 11 recommendations based on prior decrees, basically 12 confirming prior decrees, which since these diversions were 13 not measured simply didn't account for the extraordinary 14 conveyance loss in these ditches which are, as described in 15 the affidavits in support of the motions, largely river 16 rock and gravel. And in reviewing the Department's files 17 it doesn't appear that investigation really beyond the 18 Hubble analysis was done to really discover the extent of 19 the diversions. 20 And, again as I mentioned, the diversions weren't 21 measured prior to the time fish screens were put in, and 22 then, as I mentioned, along came the notice that there 23 would be regulation on the river and people tuned in, if 24 you will. 25 THE COURT: Mr. Spencer -- this is probably 20
1 irrigation of that field. 2 Claim number 72-16781 is a channel off of the 3 East Fork. And there are a couple of claims as well, Your 4 Honor, from tributaries to the East Fork. So all of this 5 water comes out at the same place in the end. 6 Bear with me a moment, Your Honor. 7 The claim for number 16781, to what the claimants 8 call East Fork back channel, is also for conveyance loss 9 and is therefore non consumptive. 10 I think that pretty well explains the reasons for 11 these late filed claims and what they are for, Your Honor. 12 THE COURT: Thank you, sir. 13 Does the Department wish to be heard in this 14 matter? 15 MR. SPENCER: Your Honor, this is Nick Spencer 16 for IDWR. I'd only add one point. The concept of non 17 consumptive here is based upon the fact that the soils in 18 the East Fork drainage, indeed in large portions of the 19 entire upper Salmon River drainage, are phenomenally 20 porous, and so there is a lot of water that is always lost 21 out of the bottom of the ditch. That essentially is the 22 basis of the assertion that these are non consumptive, in 23 that any water that is diverted into the ditch that does 24 not make it to the field then makes it back into the river 25 in a relatively short of amount of time. So that's the 19	1 beyond the scope of this hearing for certain. What's the 2 certainty that the water actually goes back into the East 3 Fork of the Salmon River instead of becoming disassociated 4 with the river and as part of the aquifer in general? In 5 other words, deeper, I guess if that's the way to put it. 6 MR. SPENCER: Your Honor, I don't have a clear 7 handle on the science behind that. It is simply a matter 8 that as long as I've been here in the Department and during 9 the years when I worked on Basin 72, it was simply common 10 knowledge that in the East Fork drainage that the 11 conveyance losses are high because of the nature of the 12 soil. And the nature of the valley itself is quite narrow 13 and quite confined, and what you're describing here is 14 ditches that are essentially dug through gravel close to 15 the actual channels of the river and taken out onto pasture 16 land that borders the river. 17 And to me, having gone to high school up there, 18 it simply makes common sense, something that I've always 19 understood. I've never heard the theory contradicted, but 20 I do not have before me any scientific surveys that I can 21 point to that establish that as a geologic fact. 22 THE COURT: Okay, thank you. 23 Mr. Steenson, anything further? 24 MR. STEENSON: Not really, other than to mention 25 for your further reference that attached to the notices and 21

1 the affidavits are aerial photographs and ground level 2 photographs -- particularly the aerial photographs -- 3 showing the geology of the area. For example, Attachment A 4 to the late notice of claim for number 16778 you can see 5 photographically what Mr. Spencer is describing. 6 THE COURT: And my sense of this is that these 7 diversions that your clients have asserted here have been 8 made through the years. That they just have discovered 9 that they don't have a right water right for those 10 diversions at this point; is that correct? 11 MR. STEENSON: Correct, Your Honor. These 12 diversions date back to the time of the original 13 appropriations in the late 1800s. The claim priorities are 14 later in time because there was a prior decree, and the 15 priority dates relate to the earliest recollections of the 16 witnesses that we have access to at this time. But as the 17 witnesses say from their own experience and from their 18 received knowledge -- The Bennett family, for example, they 19 go back to great-great grandparents in this valley and that 20 these ditches have always been in place at the locations 21 and the points of diversion or the locations that they have 22 always been and they've always been diverting the amount of 23 water that they are now to irrigate their fields. 24 THE COURT: Sure. All right. 25 Here are a couple of observations. The question 22	1 consumptive. The water that's diverted that is being 2 claimed here returns, so that by the time Mr. Lucas' client 3 at the downstream system is diverting water their 4 experience as a consequence of these claims will not change 5 as compared to what it has been for the last 6 one-hundred-and-perhaps-twenty years. 7 THE COURT: Okay, sir. Thank you. Here's what 8 I'm going to do, and frankly, I think this is probably the 9 most practical way to deal with this question of prejudice 10 to other claimants -- and the only reason I'm doing this, 11 really, is that this is a completed basin and that there 12 are probably claimants out there who believed that their 13 rights were decreed and that there wouldn't be anymore 14 claims. And that is why we have the rule that requires 15 that the court deal with the question of prejudice to other 16 parties when granting a motion to file late notice of 17 claim. 18 The practical way to deal with that is to allow 19 the Special Master to make the determination and make a 20 recommendation. And that, of course, is best done by 21 holding hearings, and perhaps if the Special Master 22 believes it appropriate, receiving evidence on the 23 question. So what I'll do is simply refer these motions to 24 the Special Master for a determination of prejudice and 25 availability of water and we'll take it from there. As I 24
1 about how we deal with the prior decrees is something that 2 probably doesn't need to be answered today, that's for 3 certain. The question of possible prejudice to other 4 claimants is one that the court has to deal with in 5 determining whether to grant the motion or not. 6 Before I go on, though, I should have inquired: 7 Is there anyone appearing to object to the motion to file 8 late notice of claim in these cases? 9 MR. LUCAS: Your Honor, this is Laird Lucas in 10 Boise, Idaho. I was contacted by Valley Sun, LLC, which is 11 the water right owner on the bottom of the East Fork, and 12 they have a series of water rights dating from 1890. I was 13 not able to file a written opposition to the motions, but I 14 have been asked to let you know that Valley Sun is opposed 15 to these motions and certainly intends to participate in 16 opposing them as we go forward. 17 I do think the court is identifying possible good 18 cause for denying the motions, including prejudice to my 19 client, but since I haven't filed a written opposition, I'm 20 not sure you'll let me argue that. 21 THE COURT: All right, sir. Thank you. 22 Mr. Steenson, do you wish to be heard any further 23 then, sir? 24 MR. STEENSON: I don't think so, Your Honor, 25 other than to reiterate that these claims are not 23	1 said, the question of prior decrees is one that we can deal 2 with in the course of the adjudication if need be. So the 3 matter will be referred to the Special Master. 4 Mr. Lucas, your client's name is a Valley Sun, 5 LLC; is that correct? 6 MR. LUCAS: Yes, sir. 7 THE COURT: S-u-n, I guess; is that correct? 8 MR. LUCAS: Yes, Valley Sun, s-u-n. 9 THE COURT: Okay, thanks. 10 MR. LUCAS: And, Judge, I guess I'll enter a 11 notice of appearance so that the court and counsel have 12 that on the record. 13 THE COURT: All right, sir. Will you be 14 following this up then with a written notice of appearance? 15 MR. LUCAS: Yes, sir. 16 THE COURT: All right. 17 The next matter we have on the calendar then is a 18 matter that was reset from the December hearings. It's the 19 water right claims of Nancy Conway, claim numbers 75-2065 20 and 75-2105. Do we have Nancy Conway or her representative 21 with us today? 22 MR. SLAVIN: Your Honor, this is Milton Slavin 23 from Salmon. I'm representing Ms. Conway. 24 THE COURT: Good afternoon again. 25 Well, in this case Ms. Conway in 72-2105 has 25