

Randall C. Budge, ISB No. 1949
Thomas J. Budge, ISB No. 7465
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED
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Pocatello, Idaho 83204-1391
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RECEIVED

OCT 27 2009

DEPARTMENT OF
WATER RESOURCES

*Attorneys for Cedron Irrigation, LLC, Cedron Cemetery District,
Teton Rainbow Ranches, Inc., Trees, Inc., and Wally Rothgeb, Jr*

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. 22-13211

Case 39576

AFFIDAVIT OF THOMAS J. BUDGE

STATE OF IDAHO)
 : SS
County of Bannock)

THOMAS J. BUDGE, being first duly sworn, deposes and states as follows:

1. I am the attorney representing Cedron Irrigation, LLC, Cedron Cemetery District, Teton Rainbow Ranches, Inc., Trees, Inc., and Wally Rothgeb, Jr. (collectively, the "Movants"), all of whom have moved the court to set aside the Partial Decree and allow the filing of a Late Objection in the above-identified case. I am over the age of 18 and state the following based upon my own personal knowledge.

2. Attached hereto as **Exhibit A** is a true and accurate copy of a Claim to a Water Right filed with the Idaho Department of Water Resources by LeRoy Miller on June 30, 1983.

3. Attached hereto as **Exhibit B** is a true and accurate copy of a Claim to a Water Right filed with the Idaho Department of Water Resources by LeRoy Miller on May 20, 1983.

4. Attached hereto as **Exhibit C** is a topographic map admitted into evidence by the IDWR in the recent trial of Subcase Nos. 22-13503 and 22-13212.

5. Attached hereto as **Exhibit D** is a true and correct copy of the IDWR's water right pedigree for water right 22-405.

6. Attached hereto as **Exhibit E** is a true and correct copy of the Director's Report for water right 22-13503.

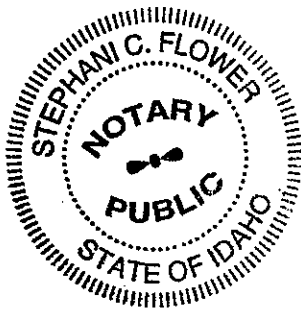
FURTHER YOUR AFFIANT SAITH NAUGHT.

DATED this 23rd day of October, 2009.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By Thomas J. Budge
THOMAS J. BUDGE

SUBSCRIBED AND SWORN TO before me this 23rd day of October, 2009.



Stephani C. Flower
NOTARY PUBLIC FOR IDAHO,
Residing at Pocatello.
My Commission Expires 3/24/14

CERTIFICATE OF MAILING

I certify that on this 23rd day of October, 2009, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copy to Claimant:

Don LeRoy Miller
1835 Teton View Drive
Rexburg, Idaho 83440

3. Copies to:

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

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


THOMAS J. BUDGE
Attorney for the Movants

EXHIBIT A

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CLAIM TO A WATER RIGHT



Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that ~ LeRoy and /or Ruth E. Miller

(Name of Claimant)

Rt/1 Box 594, Victor, Idaho

83455

Telephone No. 354-2528

(Mailing Address)

(Zip Code)

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

- (1) Date of priority: (When was the water first applied to a beneficial use) June 1, 1904

A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

- (2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)
Paradise Springs tributary to Teton River

- (3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

(cfs. sf)		(Domestic, Irrigation, Stock, Etc.)	(Both dates inclusive)	
			(Mo., Day)	(Mo., Day)
Quantity	<u>0.16 cfs</u>	<u>Irrigation</u>	<u>5-1</u>	<u>10-1</u>
Quantity	Use	Period of Use From	To	
Quantity	Use	Period of Use From	To	
Quantity	Use	Period of Use From	To	
Quantity	Use	Period of Use From	To	
Quantity	Use	Period of Use From	To	

- (4) 0.16 cfs TOTAL QUANTITY USED.
(cfs. mf)

- (5) A) Point of diversion: (Location of point where water is diverted from its source)
NE ¼ NW ¼, Sec. 30 Twp. 04N Rge. 45E B.M., County of Teton
 Additional points of diversion: _____

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the chance. Diverted from dam by ditch to area of use.

- (6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

[illegible]

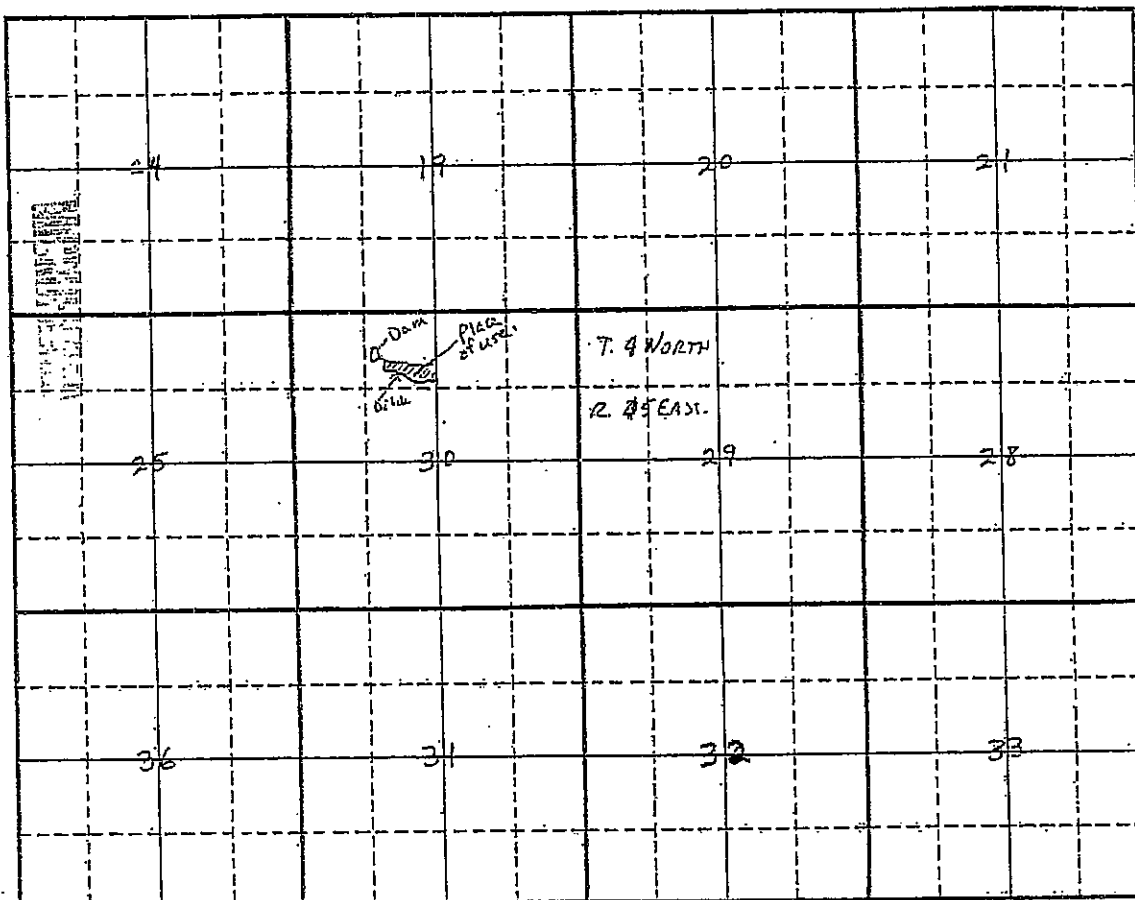
No. of acres 8

- B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

NOTE: Include here the type and number of stock watered:

- (7) If you are claiming water as a member of an organization, list name of organization:

(8) Remarks It is believed that this water right is on record as a grant of water
from Paradise Springs to J. J. Miller as provided in the Rexburg Decree.



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho

County of Madison

ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

L. Roy Miller - Ruth E. Miller
(Claimant)

Sworn to before me this 30 day of June, 1983

Wayne H. Roberts
Notary Public
Residing at Rexburg

My commission expires Dec. 25, 1985

FOR DEPARTMENT USE ONLY

Received by CW

Date 6-30-83

Exception filed by:

Forwarded to

Date

Prelim. check by SM

Date 7-7-83

claimant by:

\$30.00 fee received by CW

Date 6-30-83

Published in Rexon Valley News

Date 7-25-83

Dates 9/22 - 9/29/82

EXHIBIT B

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CLAIM TO A WATER RIGHT



Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that LeRoy and /or Ruth E. Miller
(Name of Claimant)
Rt. 1 Box 594, Victor, Idaho 83455 Telephone No. 354-2528
(Mailing Address) (Zip Code)

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use) July 21, 1969

A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

(2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

Paradise Springs tributary to Teton River

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Quantity	(cfs, af)	Use	(Domestic, Irrigation, Stock, Etc.)	(Both dates inclusive)	
				(Mo., Day)	(Mo., Day)
Quantity <u>0.80 cfs</u>		Use <u>Irrigation</u>		Period of Use From <u>6-1</u>	To <u>10-1</u>
Quantity _____		Use _____		Period of Use From _____	To _____
Quantity _____		Use _____		Period of Use From _____	To _____
Quantity _____		Use _____		Period of Use From _____	To _____
Quantity _____		Use _____		Period of Use From _____	To _____

(4) 0.80 cfs TOTAL QUANTITY USED.
(cfs, af)

(5) A) Point of diversion: (Location of point where water is diverted from its source)

NE 1/4 NW 1/4, Sec. 30 Twp. 04N Rge. 45E B.M., County of Teton

Additional points of diversion: _____

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. Diverted from dam by ditch to collecting sump and thence by pump to hand lines

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE1/4				NW1/4				SW1/4				SE1/4				TOTAL
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
4N	45E	30					8	6		40									54

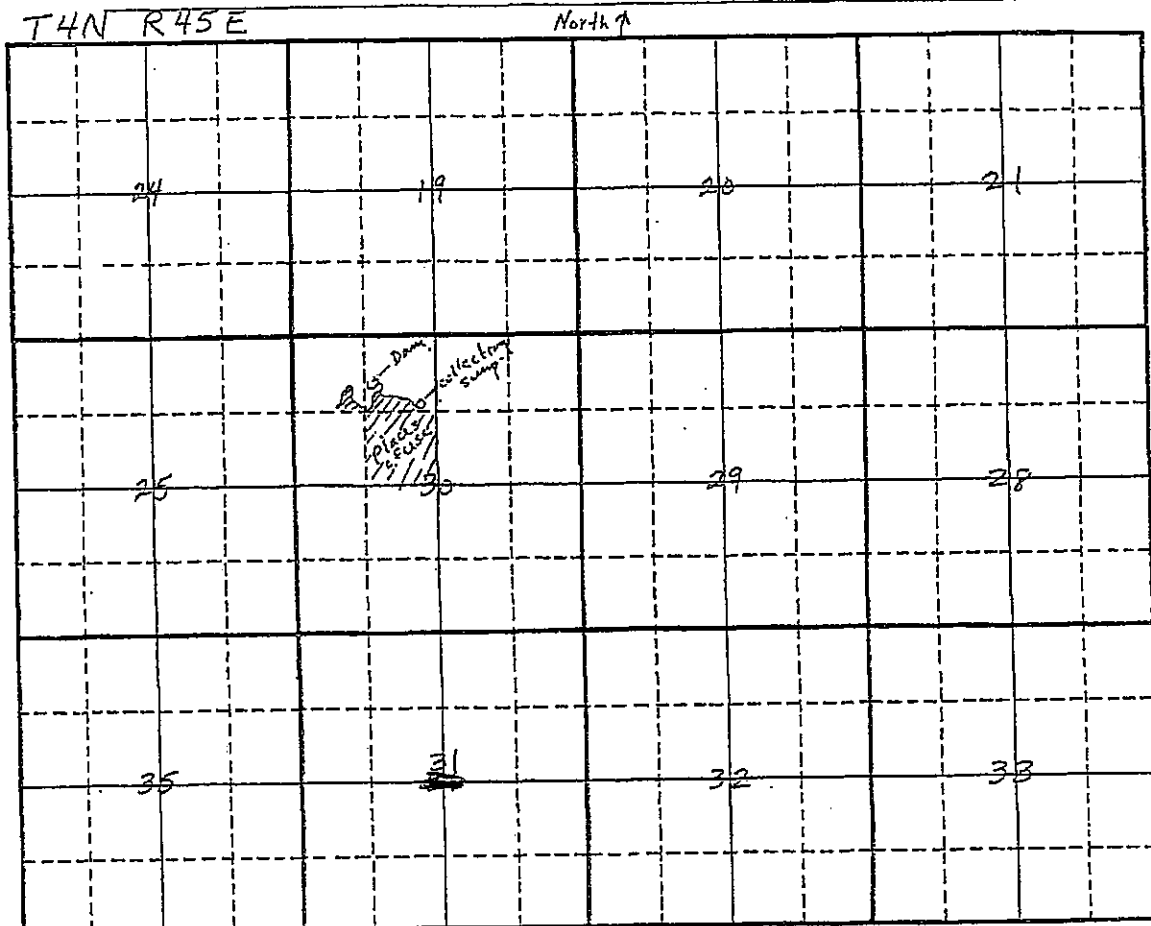
No. of acres 54

B) If water is used for other than irrigation, fully describe that use, being as specific as possible: _____

NOTE: Include here the type and number of stock watered: _____

(7) If you are claiming water as a member of an organization, list name of organization: _____

(B) Remarks It is believed that this water right is on record as a grant of water from Paradise Springs to J. J. Miller as provided in the Rexburg Decree.



Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of Bannock) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Sworn to before me this 20th day of May, 1983.

J. J. Miller
(Claimant)
William Whay
Notary Public
Residing at Idaho Falls, ID

My commission expires 6-15-85

FOR DEPARTMENT USE ONLY

Received by <u>HWJ</u>	Date <u>5/20/83</u>	Exception filed by:	Forwarded to	Date
Prelim. check by <u>RCW</u>	Date <u>5-26-83</u>		claimant by:	
\$30.00 fee received by <u>BP</u>	Date <u>5/20/83</u> #26266			
Published in <u>Rexburg Valley News</u>	<u>Deanne H. Kelley</u>	<u>CW</u>		<u>7-18-83</u>
Dates <u>6/9 - 6/11/83</u>				

EXHIBIT C

22-13212 Reid

USGS Topographic Map
Portion of Bates Quadrangle
Prepared by M. Holliday

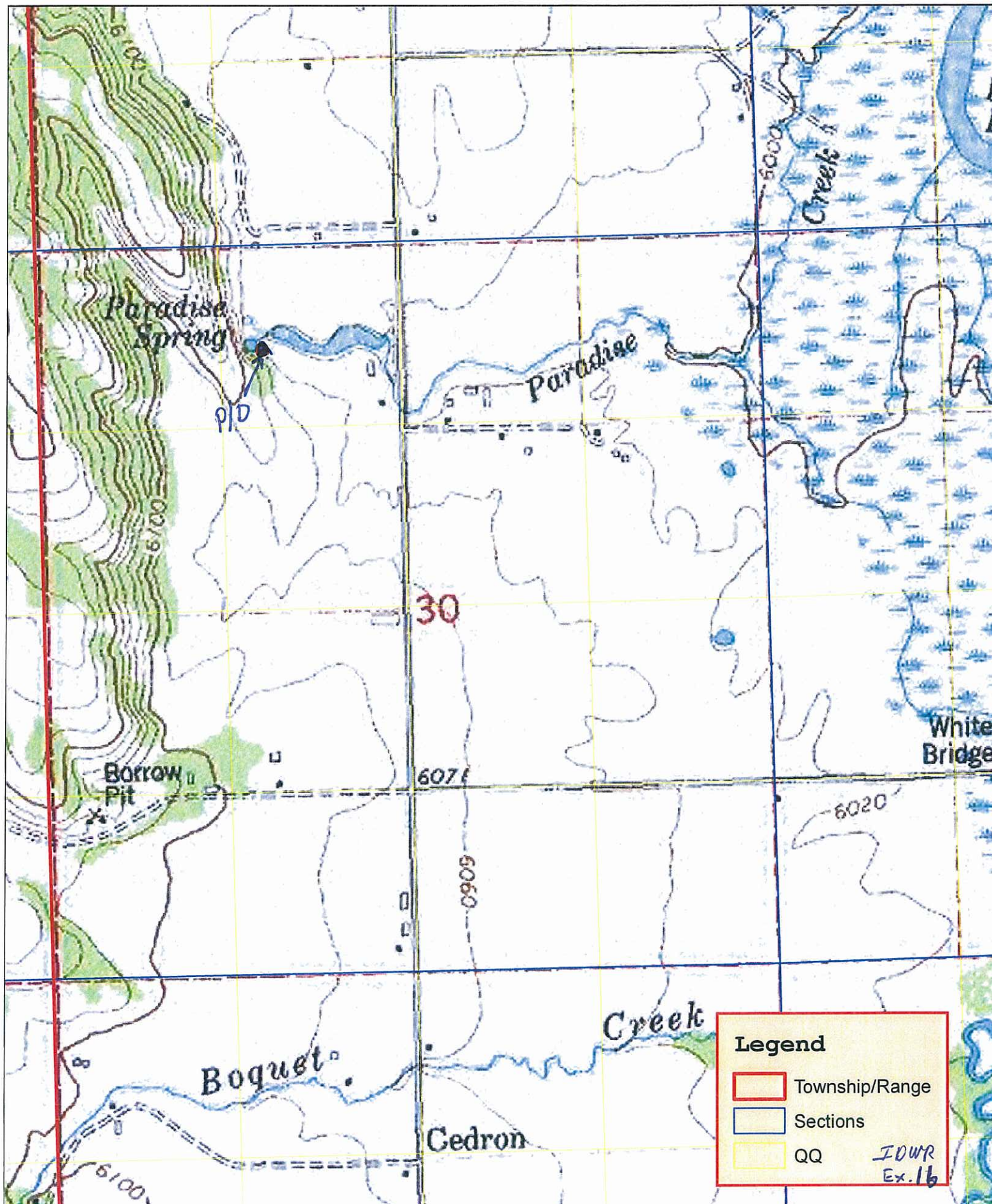


EXHIBIT D

Pedigree Search (History of Water Right Number splits)

Adjudication Pedigree for 22-405

- Water Right Number / Status /Reason for split
- 22-405 /Parent /Combined
 - 22-12714 /See Remarks /Ownership Change
 - 22-12714A /Parent /Ownership Change
 - 22-13585 /Parent /Ownership Change
 - 22-13853 /Active /Ownership Change
 - 22-13854 /Active /Ownership Change
 - 22-13586 /Active /Ownership Change
 - 22-12714B /Active /Ownership Change
 - 22-13211 /Active /Transfer
 - 22-13212 /Active /Transfer
 - 22-13512 /Active /Renumbering

Water Right Pedigree for 22-405

- Water Right Number / Status /Reason for split
- 22-405 /Parent /Combined
 - 22-12714 /See Remarks /Ownership Change
 - 22-12714A /Parent /Ownership Change
 - 22-13585 /Parent /Ownership Change
 - 22-13853 /Active /Ownership Change
 - 22-13854 /Active /Ownership Change
 - 22-13586 /Active /Ownership Change
 - 22-12714B /Active /Ownership Change
 - 22-13211 /Active /Transfer
 - 22-13212 /Active /Transfer
 - 22-13512 /Active /Renumbering


 A rectangular stamp with a thick black border. The word "EXHIBIT" is printed in bold, uppercase letters in the center. On the left side, there is a small, vertical stamp that reads "TAMM".

EXHIBIT

EXHIBIT E

12/20/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 22-13503

NAME AND ADDRESS: MICHAEL L REID
550 S 450 W
VICTOR ID 83455

SOURCE: PARADISE SPRINGS

TRIBUTARY: TETON RIVER

QUANTITY: 0.200 CFS

PRIORITY DATE: 06/01/1904

POINT OF
DIVERSION: T04N R45E S30 SWNENW Within TETON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

04/15 10/31

0.200 CFS

PLACE OF USE: IRRIGATION in TETON County

T04N R45E S30 SENW 35.60

35.6 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 35.6 acres in a single irrigation season. Combined Right Nos.: 22-11639, 22-13212, 22-13503.

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

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

This right is a split from former right 22-405.