

RECEIVED
APR 26 2010
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: 22-335
	)	
	)	STANDARD FORM 4
Case 39576	)	
	)	MOTION TO FILE LATE
	)	X LATE NOTICE OF CLAIM
	)	☐ AMENDED NOTICE OF CLAIM
_____	)	

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

My name is:
Darby Canyon Estates LLC
C/O James R. Jenkins

My address is: PO Box 522 Driggs, Id. 83422

My phone number is: 208-360-8422

I am an attorney representing: Zohner's Hills Estates

My name is:

My address is:

My phone number is:

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.

X I did not file a Notice of Claim to the use of the water in the SRBA because:

Jim Jenkins/ Darby Canyon Estates LLC purchased a parcel of property from Beth Zohner in 2007. Her late husband, Mark, had filed on water right 22-269 for the property at the commencement of the SRBA. We now realize that the right that should have been filed on is 22-335. This motion is a motion to file a late claim on 22-335, which was a decreed right in the Rexburg Decree.

☐ 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.

X I am providing legal and factual documentation for my claimed use of water. You must described 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:

An unsigned copy of an affidavit of A.Y. Greene from 1964, who described this water right as it had been used since its inception. A copy of USFS documents which evidence the use of this water right.

X 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 \$_____.

X 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 \$100.00.

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: July 20, 2010 at 1:30 p.m.

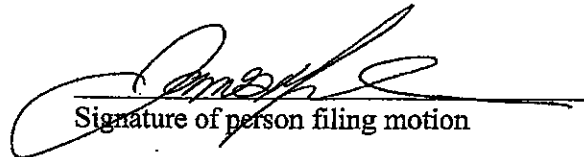
at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

VERIFICATION

STATE OF IDAHO,)
 ss
County of Madison.)

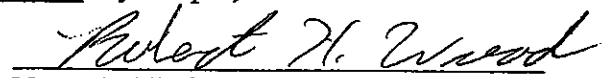
James R. Jenkins, being first duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 4204101A(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.

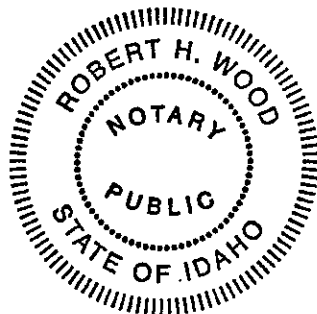

Signature of person filing motion

Attorney signing in representative capacity.

Subscribed and sworn to before me on this 8th day of April, 2010.



Notary Public for Idaho
Residing at: Rexburg
My Commission Expires: 8-20-2015



CERTIFICATE OF MAILING

I certify that on April 23, 2009, 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
P. O. Box 2707
Twin Falls, ID 83303-2707

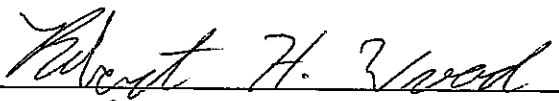
2. Copies to:

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

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

United States Department of Justice
Environment and Natural Resources 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 Special Master, you must serve a copy on all parties in that subcase.



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 22-335
Date Received: 4/7/2010
Receipt No:
Received By: MWH

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

Darby Canyon Estates, LLC c/o James R Jenkins
Phone: (208) 360-8422
PO BOX 522
DRIGGS ID USA 83422

2. Date of Priority: 06/01/1898

3. Source: NELSON SPRING Trib. to: DARBY CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
04N	46E	17	SW NE 2	TETON	

5. Description of diverting works:

HEAD BOX IN WYOMING TO PIPELINE THAT ENTERS IDAHO AT THE POINT DESCRIBED UNDER
POD. PIPELINE TO 3 QTR MI WHEEL LINES.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/15	10/31	2.4	

7. Total Quantity Appropriated is:
2.4 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
04N	46E	17	SW NE 2	IRRIGATION	22
			SW NW	IRRIGATION	10
			SE NW	IRRIGATION	28

NE	SW	IRRIGATION	17
NW	SW	IRRIGATION	39
		Section Acres	116
		Total Acres	116

11. Place of use in counties: TETON

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: Decreed

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am James R. Jenkins of
Title
Zohner Hills Estates LLC that I have signed the foregoing
Organization
document in the space below as Managing Member of
Title
Zohner Hills Estates LLC and that the statements contained in the
Organization
foregoing document are true and correct.

Signature of Authorized Agent

Managing Member
Title and Organization

4-7-10
Date

State of Idaho)
County of Madison) SS.

Subscribed and sworn (or affirmed) before me this

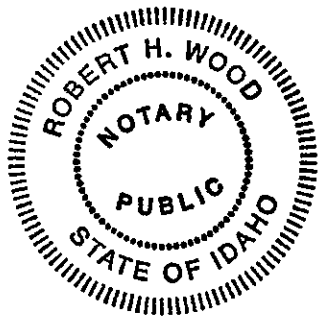
of 4-7 2010
April 7

Robert H. Wood

Notary Public

Residing at Rexburg

My commission Expires 8-20-2015





Idaho Department of Water Resources

Adjudication Claim
22-335
(IRRIGATION)

Legend

⊙ Point of Diversion

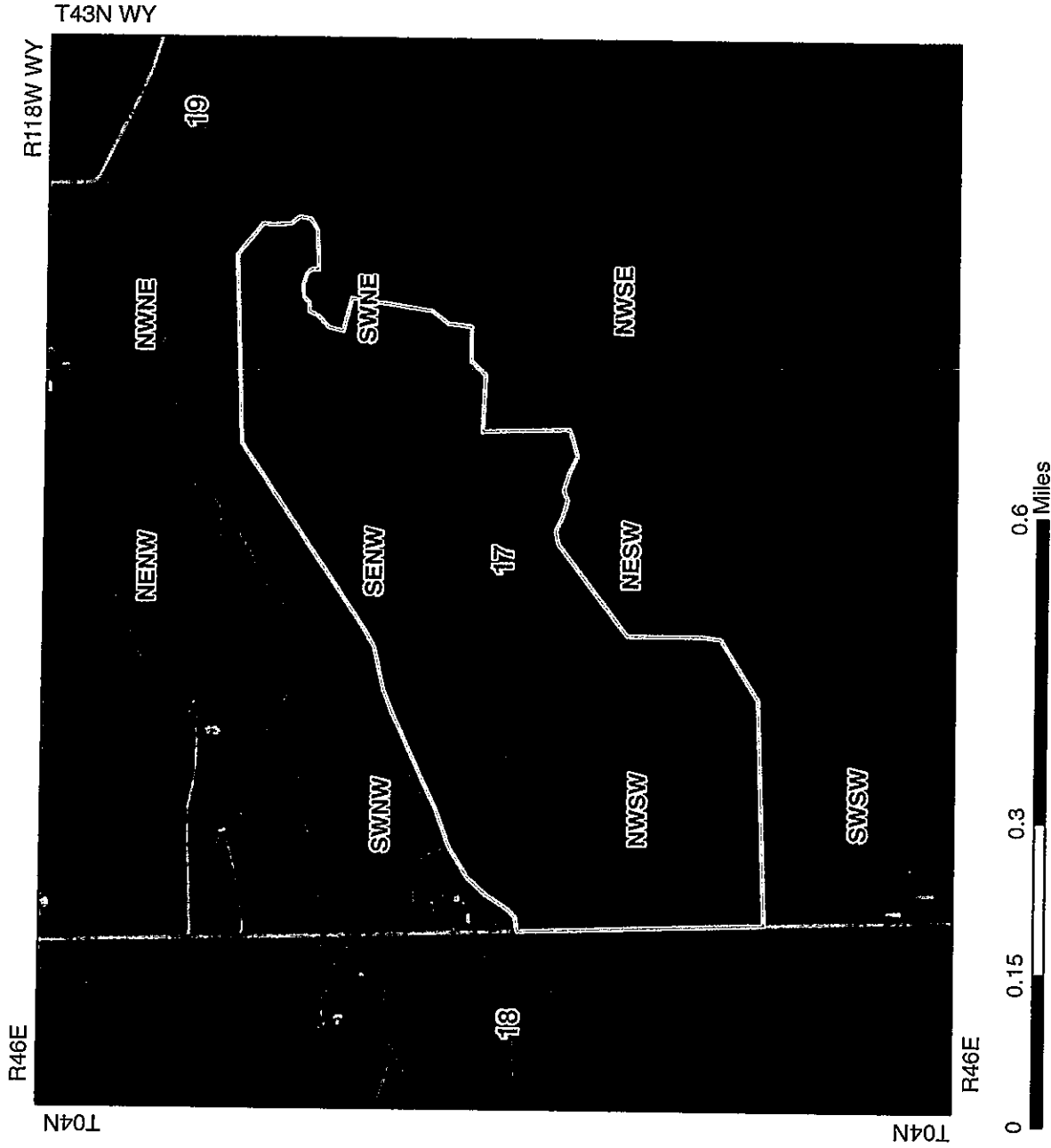
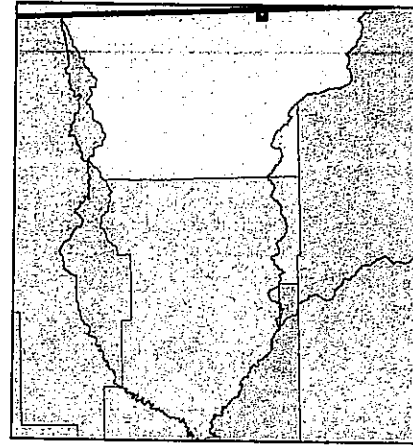
Place of Use

State Outline

Townships

PLS Sections

Quarter Quarters



Teton County
IDWR Basin 22

Prepared by Michael Holliday
On April 07, 2010
2004 Aerial Photography

TETON ABSTRACT CO. INC.

DWIGHT LOOSLI, Notary

COMPLETE ABSTRACTS OF TITLE
To All Lands and Town Lots
In Teton County Idaho
Conveyancing Our Specialty



REAL ESTATE; BONDED BROKER
Loans On Farm and City Property
Bonds of All Kinds
Insurance: Life, Fire and Auto

DRIGGS, IDAHO

March 9, 1964

STATE OF IDAHO)
)) S. D.
County of Teton)

A. Y. Greene, being first duly sworn, deposes and says:

That he knows of his own knowledge and none else, that

John L. Hoozier, filed June 1, 1898 on 120 inches of water from spring located in Section 19, 43 North, 118 West of 6th Principal Meridian, in State of Wyoming. That such decree was recognized by the 1910 Decree of the Rexburg Irrigation Company, et al, VS Teton Irrigation Canal Company, et al, defendants,

That water from said spring was taken by open ditch around the mountain side and used for irrigation purposes on land located in the state of Idaho, and described as:

South Half of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$) and the North Half of the Southwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 17, Township 4 North, Range 46 East of the Boise Meridian.

That water from said spring has been used continuously upon said described property for at least 50 years.

Dated at Driggs, Teton County, State of Idaho, this 9th day of March, A. D. 1964.

A. Y. Greene

Subscribed and sworn to before me this 9th day of March, 1964.



Dwight W. Loosli, Notary Public
for Idaho, Residing at Driggs,
Teton County, Idaho.
My commission expires: 6-20-64

1996 P

OMB No. 0596-4
(Expires 6/30)

USDA-Forest Service SPECIAL-USE APPLICATION AND REPORT (Ref.: FSM 2712, 36 CFR 251.54)	FOREST SERVICE USE ONLY			
	Date Received (mo/day/yr) ____/____/____	Region Number ____	State Code ____	County Code ____
INSTRUCTIONS Applicant should request a meeting with the Forest Service representative responsible for processing the application, prior to completing this form. This meeting will allow a discussion of the form's requirements and identify those items to be omitted.	Congressional Dist. Number ____	Forest Code (Admin. Unit No.) ____	Unit ID Symbol (NFFID No.) ____	
	Ranger Dist. No. (Resp. Dist.) ____	User Number ____	Kind of Use Code ____	

PART I—APPLICATION (Applicant Completes)

1. Applicant Name and Address (include Zip Code) Mark J. Zahner 2920 Geneva Drive Idaho Falls, Idaho 83406	2. Authorized Agent Name, Title, and Address (include Zip Code) if different from Item 1.	3. Area Code and Telephone Number
		a. Applicant's (205) 523-6817 b. Authorized Agent's

4. As applicant are you? (Mark one box with "X") a. ☒ Individual b. ☐ Corporation* c. ☐ Partnership/Association* d. ☐ State Government/State Agency e. ☐ Local Government f. ☐ Federal Agency * If marked "X", complete PART II.	5. Specify what application is for: (Mark one box with "X") a. ☐ New authorization* b. ☐ Renew existing authorization c. ☐ Amend existing authorization* d. ☒ Other* * If marked "X", provide details under Item 7.
--	---

6. If you are an individual or partnership, are you also a citizen(s) of the United States? ☒ Yes ☐ No
--

7. Describe in detail the land use, including: (a) type of use, activity, or facility; (b) related structures and facilities; (c) physical specifications (length, width, acres, etc.); (d) term of years needed; (e) time of year of use or operation; (f) duration and timing of construction; (g) temporary work areas needed for construction; and (h) anticipated need for future expansion. (If extra space is needed, use Page 3, REMARKS).
--

Strip of Land 10 ft. Wide by ~~300 ft.~~ 3/8 Mile Long, in Lot 2 Sec. 1 T. 43 N., Range 118 W., 6th Prin. Meridian, Unsurveyed. Right-of-Way for water transmission to carry water across National Forest Land to permit to private farm land. Also headgate structure and 8 in diameter pipeline

8. Attach map covering area and show location of proposed use and/or furnish legal description of the land.

9. Give statement of your technical and financial capability to construct, operate, and terminate the use for which authorization is requested including the protection and restoration of Federal lands. (If extra space is needed, use page 3, REMARKS). Water enters concrete headgate approximately 150yd below Spring. Headgate and intake structure built according to Soil Cong. S. specifications with overflow apron to prevent erosion of headgate. Overflow water is in a rocky stream bed below structure. Regular inspections and maintenance is done.
--

1992

United States Department of Agriculture
Forest Service

TERM SPECIAL USE PERMIT

Act of March 4, 1915, as amended July 28, 1956,
or Act of March 30, 1948
(Ref. FSM 2710)

a. Record no.(1-2)	b. Region(3-4)	c. Forest(5-6)
70	04	15
--	--	--
d. District(7-8)	e. User number(9-12)	f. Kind of use (13-15)
05	5288	914
--	----	---
g. State(16-17)	h. County(18-20)	k. Card no.(21)
56	039	1
--	---	-

Permission is hereby granted to Mark J. Zohner
of 2920 Geneva Drive, Idaho Falls, ID 83406, hereinafter called
the permittee, to use subject to the conditions set out below, the following
described lands or improvements for the period of 10 years from the date
thereof:

A strip of land not more than 15 feet in width and .6 of a mile long,
containing approximately 8 acres, extending from Nelson Spring
running west to the forest boundary. Section 19 and 20, Township 43 N.,
Range 118 W.

This permit covers 8 acres and is issued for the purpose of:

operating and maintaining a pipeline for transportation of water across
National Forest land to irrigate private land.

1. Construction or occupancy and use under this permit shall begin within N/A
months, and construction, if any, shall be completed within N/A months, from
the date of the permit. This use shall be actually exercised at least N/A
days each year, unless otherwise authorized in writing.

2. In consideration for this, the permittee shall pay to the Forest Service,
U.S. Department of Agriculture, the sum of Forty-five Dollars (\$45.00)
for the period from January 01, 1993, to December 31, 1993, and thereafter
annually on January 1, (see Clause 32) Dollars
(\$): Provided, however, That the charges for this use shall be
readjusted as of, and effective on, the beginning of each 5-year period from the
due date of the first annual payment in order to place the charges on a basis
commensurate with the value of use authorized by this permit.

3. This permit is accepted subject to the conditions set forth herein, and to
conditions 4 to 32 attached hereto and made a part of this permit.

	name of permittee	*signature of authorized officer	date
PERMITTEE	Mark J. Zohner	Mark J. Zohner	11-28-92
	name and signature	TITLE	date
ISSUING OFFICER	Brad Ertan	District Ranger	11/30/92

2700-5 (9/72)

Mark J. Zohner
2920 Geneva Drive
Idaho Falls, ID 83406

4. Development plan; lay-out plans; construction, reconstruction, or alteration of improvements; or revision of lay-out or construction plans for this area must be approved in advance and in writing by the Forest Supervisor. Trees or shrubbery on the permitted area may be removed or destroyed only after the forest officer in charge has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed will be paid for by the permittee as follows: Merchantable timber at appraised value; young-growth timber below merchantable size at current damage appraisal value; provided that the Forest Service reserves the right to dispose of the merchantable timber to others than the permittee at no stumpage cost to the permittee. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the forest officer in charge.

5. The permittee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the forest officer in charge.

6. This permit is subject to all valid claims.

7. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit.

8. The permittee shall take all reasonable precaution to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during the closed season established by law or regulation without a written permit from the forest officer in charge or his authorized agent.

9. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and shall pay the United States for any damage resulting from negligence or from the violation of the terms of this permit or of any law or regulation applicable to the National Forests by the permittee, or by any agents or employees of the permittee acting within the scope of their agency or employment.

10. The permittee shall fully repair all damage, other than ordinary wear and tear, to national forest roads and trails caused by the permittee in the exercise of the privilege granted by this permit.

11. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

12. Except as provided in Clause 16 below, upon abandonment, termination, revocation, or cancellation of this permit, the permittee shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the permittee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and the restoration of the site.

13. This permit is not transferable. If the permittee through voluntary sale or transfer, or through enforcement of contract, foreclosure, tax sale, or other valid legal proceeding shall cease to be the owner of the physical improvements other than those owned by the United States situated on the land described in this permit and is unable to furnish adequate proof of ability to redeem or otherwise reestablish title

to said improvements, this permit shall be subject to cancellation. But if the person to whom title to said improvements shall have been transferred in either manner above provided is qualified as a permittee, and is willing that his future occupancy of the premises shall be subject to such new conditions and stipulations as existing or prospective circumstances may warrant, his continued occupancy of the premises will be authorized by a permit to him, which may be for the unexpired term of this permit or for such new period as the circumstances justify.

14. The permittee may sublease the use of land and improvements covered under this permit and the operation of concessions and facilities authorized; Provided the express written permission of the Forest Supervisor has been secured. The permittee shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

15. This permit may be revoked upon breach of any of the conditions herein.

16. If during the term of this permit or any extension thereof, the Secretary of Agriculture or any official of the Forest Service acting by or under his authority shall determine that the public interest requires termination of this permit, this permit shall terminate upon thirty days' written notice to the permittee of such determination, and the United States shall have the right thereupon to purchase the permittee's improvements, to remove them, or to require the permittee to remove them, at the option of the United States, and the United States shall be obligated to pay an equitable consideration for the improvements or for removal of the improvements and damages to the improvements resulting from their removal. The amount of the consideration shall be fixed by mutual agreement between the United States and the permittee and shall be accepted by the permittee in full satisfaction of all claims against the United States under this clause; Provided, That if mutual agreement is not reached, the Forest Service shall determine the amount and if the permittee is dissatisfied with the amount thus determined to be due him he may appeal the determination in accordance with the Appeal Regulation (36 C.F.R 211.20 - 211.37) and the amount as determined on appeal shall be final and conclusive on the parties hereto; Provided further, That upon the payment to the permittee of 75% of the amount fixed by the Forest Service, the right of the United States to remove or require the removal of the improvements shall not be stayed pending final decision on appeal.

17. The permittee agrees that the amount which the United States shall be required to pay for improvements in accordance with Clause 16 shall in no event exceed \$1,000.00, and that this instrument may be introduced in any judicial proceedings for the acquisition of such improvements by the United States as the stipulation of the permittee and the United States with regard to the maximum amount which the United States shall be required to pay for the taking thereof.

18. In case of change of address the permittee shall immediately notify the Forest Supervisor.

19. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provisions thereof, the following clauses will control.

20(A-6) Pursuant to the Federal Claims Collection Act of 1966, as amended, 31 USC 3101, et seq., and regulations at 7 CFR Part 3, Subpart B, an interest charge shall be assessed on any payment not made by the payment due date. Interest shall be assessed using the most current rate prescribed by the United States Department of the Treasury's Fiscal Manual (TFM-6-8025.20). Interest shall accrue from the date the fee payment was due. In addition, certain processing and handling administrative costs may be assessed in the event the account becomes delinquent and added to the amounts due.

A penalty of 6 percent per year shall be assessed on any payment overdue in excess of 90 days from the payment due date.

Payments will be credited on the date received by the designated collection officer or deposit location. If the payment due date(s) falls on a nonworkday, the interest and penalty charges shall not apply until the close of business of the next workday.

21(B-8) The holder shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of National Forest lands under this permit.

22(B-24) Avalanches, rising waters, high winds, falling limbs or trees, and other hazards are natural phenomena in the Forest that present risks which the holder assumes. The holder has responsibility of inspecting the site, lot, right-of-way, and immediate adjoining area for dangerous trees, hanging limbs, and other evidence of hazardous conditions and, after securing permission from the Forest Service, of removing such hazards.

23(B-26) Holder shall take all measures necessary to protect the health and safety of all persons affected by its activities performed in connection with the construction, operation, maintenance, or termination of the right-of-way, and shall promptly abate as completely as possible any physical or mechanical procedure, activity, event, or condition, existing or occurring at any time: that causes or threatens to cause: (a) a hazard to the safety of workers or to public health or safety, or (b) serious and irreparable harm or damage to the environment (including but not limited to areas of vegetation or timber, fish or other wildlife populations, or their habitats, or any other natural resource). Holder shall immediately notify the authorized officer of all serious accidents which occur in connection with such activities.

24(E-2) Unless sooner terminated or revoked by the authorized officer, in accordance with the provisions of the authorization, this authorization shall expire and become void on 12-31-2002, but a new special-use authorization to occupy and use the same National Forest System land may be granted provided the holder will comply with the then-existing laws and regulations governing the occupancy and use of National Forest lands and shall have notified the authorized officer not less than six months prior to said date that such new authorization is desired.

25(X-3) Nothing in this permit shall be construed to imply permission to build or maintain any structure not specifically named on the face of this permit, or approved by the authorized officer in the form of a new permit or permit amendment.

26(X-18) This permit supersedes a special-use permit designated: 7/18/72

27(X-19) The holder agrees to permit the free and unrestricted access to and upon the premises at all times for all lawful and proper purposes not inconsistent with the intent of the permit or with the reasonable exercise and enjoyment by the holder of the privileges thereof.

28(X-33) This permit is granted with the express understanding that should future location of United States Government-owned improvements or road rights-of-way require the relocation of the holder's improvements, such relocation will be done by, and at the expense of, the holder within a reasonable time as specified by the authorized officer.

29(X-49) This permit is not exclusive; that is, the Forest Service reserves the right to use or permit others to use any part of the permitted area for any purpose, provided such use does not interfere with the rights and privileges hereby authorized.

30(X-74) This permit confers no right to the use of water by the holder.

31(X96) Appeal of any provisions of this authorization or any requirements thereof shall be subject to the appeal regulations at 36 CFR 251, Subpart C (54 FR 3362, January 23, 1989), or revisions thereto.

32(R4-A7) The holder shall pay annually in advance a sum determined by the Forest Service to be the fair market value of the use granted by this authorization. The initial payment is set at \$45.00. subsequent payments shall be determined by the use of an annual fee schedule. The Forest Service may adjust the amount of payment annually by an appropriate factor to reflect more nearly the fair market value of the use, but at certain intervals the Forest Service shall review the fee and adjust the fee as necessary to assure that it is commensurate with the value of the rights and privileges authorized as determined by appraisal or other sound business management principles.

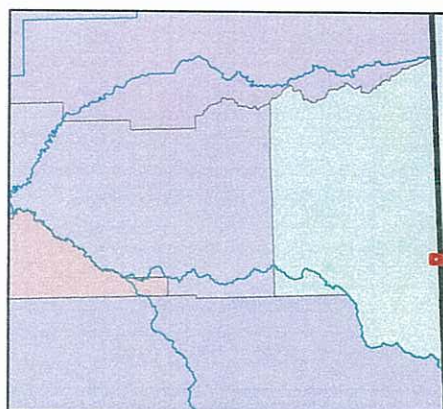


Idaho Department of Water Resources

Adjudication Claim
22-335
(IRRIGATION)

Legend

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



Teton County
IDWR Basin 22

Prepared by Michael Holliday
On April 07, 2010
2004 Aerial Photography

