

37-4393 Charlie Honsinger (AH) Nick Spencer (IDWR)  
hearing Sept 17, 2008

~~Sept 23, 08~~ <sup>Sept 23, 08</sup> Received affidavits of Robert Coates & Pete Cennarusa  
regarding Ev. Priority  
1916 for Iron Mine Creek. per Coates.

12-8-08 Mailed a tentative Recon Pou & POD shapes for  
this right & 37-4392 to Chardie for comment.

**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     | ) | A. | Subcase <u>37-4393</u>   |
|                | ) |    | (Insert water right no.) |
| Case No. 39576 | ) |    |                          |
|                | ) |    |                          |
|                | ) |    |                          |
|                | ) |    |                          |
|                | ) |    |                          |

**STANDARD FORM 1  
OBJECTION**

Please fill in the following information:

**B. NAME AND ADDRESS OF PERSON OBJECTING**

Name: Lava Lake Land & Livestock, LLC

Address: PO Box 2249  
Hailey ID 83333

Daytime Phone: Attorney's Phone (208) 342-4591

Name & Address of Attorney, if any:  
Charles L. Honsinger  
Ringert Clark Chartered  
P.O. Box 2773  
Boise, ID 83701

**C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTORS'S REPORT**

Name: Lava Lake Land & Livestock, LLC

Address: PO Box 2249  
Hailey ID 83333

COPY

**D.** I object to the following elements as recommended in the Director's Report. (Please check the Appropriate box(es)).

1. ☐ **Name and Address**  
Should be: \_\_\_\_\_
2. ☐ **Source**  
Should be: \_\_\_\_\_
3. ☒ **Quantity**  
Should be: .80 cfs
4. ☒ **Priority Date**  
Should be: November 6, 1913
5. ☒ **Point(s) of Diversion**  
Should be: T3N R23E S32 NESE
6. ☐ **Instream Flow Description**  
Should be: \_\_\_\_\_
7. ☐ **Purpose(s) of Use**  
Should be: \_\_\_\_\_
8. ☒ **Period of Year**  
Should be: 4/1 through 11/1
9. ☒ **Place of Use**  
Should be: 2 acres in T3N R23E S5 NENW; 7 acres in T3N R23E S32 NESW; 20 acres in T3N R23E S32 SESW; 10 acres in T3N R23E S32 NWSE; 1 acre in T3N R23E S32 SWSE; 40 Acres total
10. ☐ **I object because:**
  - ☐ This water right should not exist.
  - ☐ This water right was not recommended, but should be recommended with the elements described above.

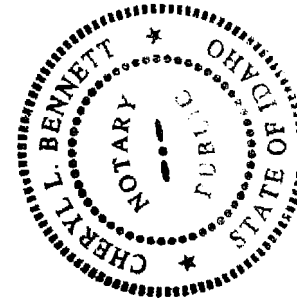
**E. REASONS SUPPORTING OBJECTION (S):** This water right has been beneficially used as stated above.

RECEIVED  
JUL 19 2005  
Department of Water Resources  
Southern Region

JAMES R. BENNETTS  
 Attorney at Law  
 PO Box 36  
 Challis, Idaho 83226  
 Phone: 208-879-4488  
 Fax: 208-879-4248

RECEIVED  
 JUL 19 2005  
 Department of Water Resources  
 Southern Region

AFFIDAVIT OF PETE CENARRUSA  
 Water Use  
 Water Right 37-4393



STATE OF IDAHO                    )  
                                           ss:  
 County of Blaine                 )

First being sworn and deposed, the undersigned states as follows:

1. I am of the age of majority and I have sound recollection. Also, I can state that I have reviewed the above water claim or right as presently filed.
2. This particular diversion is about 300 feet below the point where Iron Mine Creek crosses the Fish Creek county road, by culvert. Water from this diversion point has been used for as many year that I can remember traveling in Upper Fish Creek with my father and visiting with Mr. Charles Ralls.
3. It is my belief based on all of the above that the priority date claimed is accurate. From my own personal observation and conversation with others this claim was valid in 1913 and to the best of my knowledge and belief, I am certain the claim is accurate. I am also certain the water use has been consistent and uninterrupted over the years.
4. The diversion was used for irrigation and stock water use. I have attached a copy of the notice of claim to a water right received in 1988.

IN WITNESS WHEREOF, the party hereto has hereunto set his hand and seal the day and year first above written.

Dated: 07-06-05

Pete Cenarrusa

On this 6th day of July, 2005, before me, a Notary Public in and for said State, personally appeared PETE CENARRUSA, know to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

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

Cheryl L. Bennett  
Notary Public  
My Commission Expires on September 07, 2005

37-4393 Lava Lake Land and Livestock LLC  
Hearing set for Sept 17, 2008 at 1:30 PM

The recommended quantity was objected to. The recommendation was for one inch per acre based upon the found 33 acres. If additional acres were to be recommended then the rate should reflect the additional acreage.

The recommended priority date was also objected to. The claimant submitted an affidavit that ultimately states that the claimed 1913 priority date is correct based upon assumptions that it is correct. The affiant states that he has personal knowledge of the property being irrigated since he was a child, however he did not state a year or how old he was when the affidavit was submitted.

The objection indicates that they want the 10-acre tract designation deleted from the recommendation. Assuming that the point of diversion is in the NESE of sec 32 then as the entire stream segment is within the SW 10-acre tract the recommendation would reflect the correct location.

The claimant wants the recommendation to reflect the claimed place of use. There is no alternative quarter/quarters recognized, rather, a shuffling of the acres recommended by 40-acre tracts. The recommendation is also for 7 fewer acres than claimed. The recommendation was made based upon the 1987 aerial photo and appears to fairly well recognize the irrigated place of use.

The standard irrigation season for this area is the recommended season of use.

## IDAHO DEPARTMENT OF WATER RESOURCES

## Adjudication Recommendation Report 37-4393 V1

WATER RIGHT NUMBER: 37-4393 V1

| <u>Owner Type</u> | <u>Name and Address</u>                                                             |
|-------------------|-------------------------------------------------------------------------------------|
| Current Owner     | LAVA LAKE LAND & LIVESTOCK LLC<br>PO BOX 2249<br>HAILEY, ID 83333<br>(208) 788-1710 |
| Original Owner    | BISKAY LAND & LIVESTOCK CO<br>2400 CHERRY LN<br>BOISE, ID 83705<br>(208)344-2443    |

Priority Date: 12/31/1926

Basis: Beneficial Use

Status: Active

| <u>Source</u>   | <u>Tributary</u> |
|-----------------|------------------|
| IRON MINE CREEK | FISH CREEK       |

| <u>Beneficial Use</u> | <u>From</u> <u>To</u>   | <u>Diversion Rate</u> | <u>Annual Volume</u> |
|-----------------------|-------------------------|-----------------------|----------------------|
| IRRIGATION            | 04/15 to 10/31          | 0.660 CFS             |                      |
|                       | <u>Total Diversion:</u> | 0.660 CFS             |                      |

Location of Point(s) of Diversion

|                 |                 |                                 |
|-----------------|-----------------|---------------------------------|
| IRON MINE CREEK | SW1/4NE1/4SE1/4 | Sec. 32, Twp 03N, Rge 23E, B.M. |
| BLAINE County   |                 |                                 |

Place of Use

IRRIGATION

| Twp | Rge | Sec | NE |    |    |    | NW |    |    |    | SW  |    |    |      | SE   |    |    |    | Totals |
|-----|-----|-----|----|----|----|----|----|----|----|----|-----|----|----|------|------|----|----|----|--------|
|     |     |     | NE | NW | SW | SE | NE | NW | SW | SE | NE  | NW | SW | SE   | NE   | NW | SW | SE |        |
| 02N | 23E | 5   |    |    |    |    | .8 |    |    |    |     |    |    |      |      |    |    |    | .8     |
|     |     |     |    |    |    |    | 2  |    |    |    |     |    |    |      |      |    |    |    | 2      |
| 03N | 23E | 32  |    |    |    |    |    |    |    |    | 1.6 |    |    | 17.0 | 13.0 | .6 |    |    | 32.2   |
|     |     |     |    |    |    |    |    |    |    |    | 7   |    | 20 | 10   | 1    |    |    | 38 |        |

Total Acres: 33

Conditions of Approval:

1. C18 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.

Remarks:

2008 AUG 14 AM 08:57  
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 ) NOTICE SETTING SUBCASE(S)  
Case No. 39576 ) FOR INITIAL HEARING *inv ex priority issues*  
\_\_\_\_\_ ) SUBCASE NOS: 37-04392 37-04393  
37-22097 37-22100  
*in-stream stock BLM issues*

The Initial Hearing for this subcase will be held before  
Special Master BRIGETTE BILYEU

WEDNESDAY, SEPTEMBER 17, 2008 at 01:30 PM  
BLAINE COUNTY COURTHOUSE  
201 - 2ND AVE S  
HAILEY, ID

ATTENDANCE IS MANDATORY. All parties are required to  
attend and must have full settlement authority.

At the Initial Hearing you will have an opportunity  
to meet with a representative of the Idaho Department of  
Water Resources (IDWR) and/or the objector in an attempt  
to reconcile any difference between the claim and the  
Director's Report. Bring any and all information you  
believe is relevant to your claim and/or objection. If  
the claim cannot be reconciled at the Initial Hearing,  
the court will set the subcase(s) for trial within 45  
days of the Initial Hearing. IF YOU INTEND TO AMEND YOUR  
CLAIM, YOU MUST DO SO AT OR BEFORE THE INITIAL HEARING.

Settlement documents must be filed with the court by  
SEPTEMBER 15, 2008 or hearing will not be vacated.

Dated: AUGUST 14, 2008

/S/ JANET CONNELL  
Deputy Clerk  
Snake River Basin Adjudication

DIRECTOR OF IDWR  
PO BOX 83720  
BOISE, ID 83720-0098

1

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the NOTICE SETTING  
SUBCASE(S) FOR INITIAL HEARING was mailed on AUGUST 14, 2008,  
with sufficient first-class postage to the following:

LAVA LAKE LAND & LIVESTOCK LLC

Represented by:  
CHARLES L. HONSINGER  
455 S THIRD ST  
PO BOX 2773  
BOISE, ID 83701-2773  
Phone: 208-342-4591

UNITED STATES OF AMERICA

Represented by:  
US DEPARTMENT OF JUSTICE  
ENVIRONMENT & NATL' RESOURCES  
550 WEST FORT STREET, MSC 033  
BOISE, ID 83724

LAVA LAKE LAND & LIVESTOCK LLC

PO BOX 2249  
HAILEY, ID 83333  
Phone: 208-788-1710

DIRECTOR OF IDWR

PO BOX 83720  
BOISE, ID 83720-0098

37-22097

LAVA LAKE LAND &amp; LIVESTOCK LLC

Source: COTTONWOOD CREEK Tributary: SINKS

-02 CES

The quantity of water under this right shall not exceed 13,000

07-01-1885

| Diversion Point: | T02N R23E S25 |               |
|------------------|---------------|---------------|
|                  | NNWNE         | {InstrEblaine |
|                  | NNENE         | {InstrEblaine |
|                  | SWNEE         | {InstrEblaine |
|                  | SWNEE         | {InstrEblaine |
|                  | NNWSE         | {InstrEblaine |
|                  | NNWSE         | {InstrEblaine |
|                  | NNWSW         | {InstrEblaine |
|                  | NNESW         | {InstrEblaine |
|                  | NNWSE         | {InstrEblaine |
|                  | NNWSE         | {InstrEblaine |
|                  | NESESE        | {InstrEblaine |
|                  | SWNNW         | {InstrEblaine |
|                  | SWNNW         | {InstrEblaine |
|                  | SWSENE        | {InstrEblaine |
|                  | SWSENE        | {InstrEblaine |
|                  | SWNNW         | {InstrEblaine |
|                  | SWSENE        | {InstrEblaine |
|                  | S31           | {InstrEblaine |

| Purpose and<br>Period of Use: | Purpose of Use | Period of Use  | Quantity |
|-------------------------------|----------------|----------------|----------|
|                               | Stockwater     | 01-01 TO 12-31 | .02 CFS  |

| Place of Use: | Stockwater    | Within Blaine County                   |
|---------------|---------------|----------------------------------------|
|               | T02N R23E S25 | NESE<br>NWSE<br>SESE<br>SWSW           |
|               | R24E S19      | SWSW                                   |
|               | S20           | SWSW<br>NWSE<br>SESE<br>NNW            |
|               | S29           | NNW                                    |
|               | S30           | NNW<br>(NNW)<br>(SWW)                  |
|               | LOT 1         | NNW                                    |
|               | LOT 2         | SWW                                    |
|               | .             | NESE<br>(SWSW)<br>NWSE<br>SESE<br>SWSW |
|               | S31           | SWSE<br>NNW<br>SESE<br>SWSW            |

they provisions necessary for Definition / Administration of this Water Right.

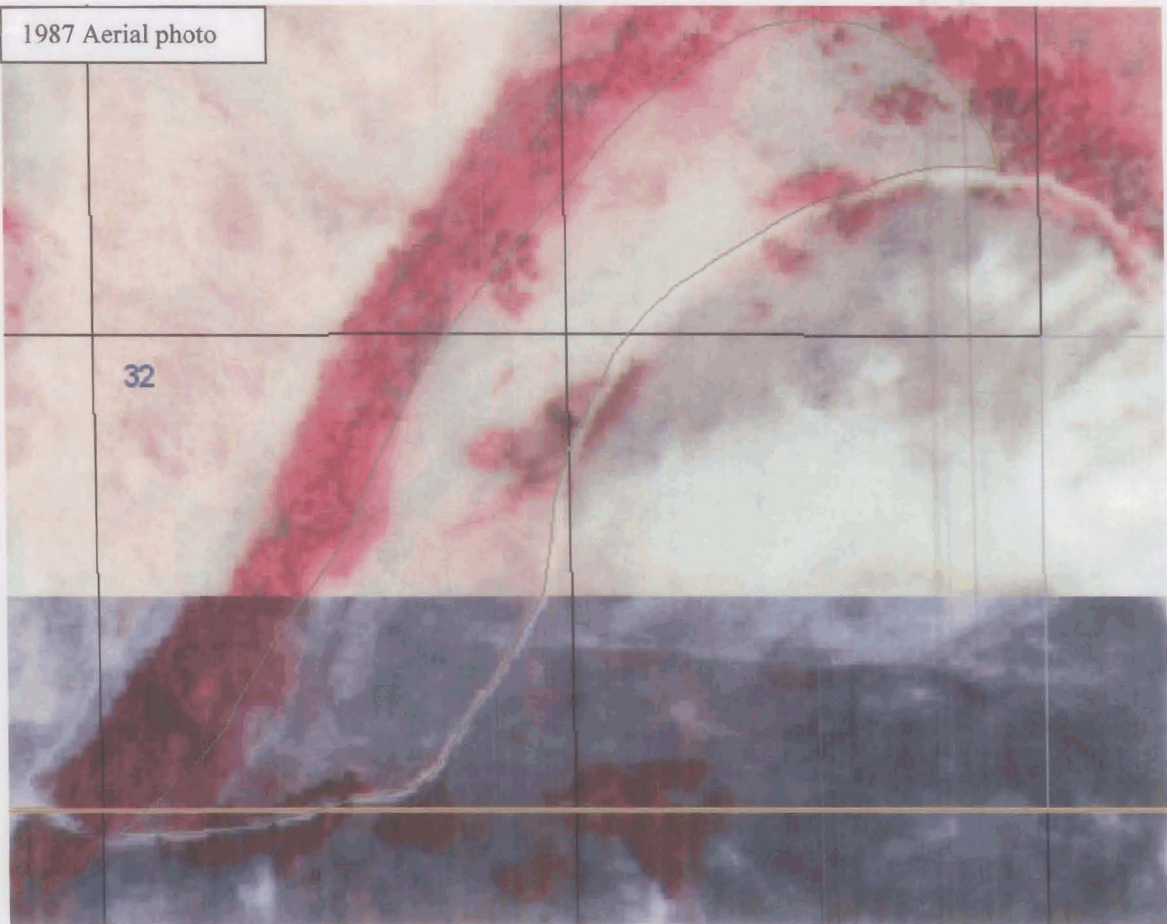
C O

Subcase No.: 37-4392, -4393, -22097, -22100 (LAVA LAKE LAND & LIVESTOCK)

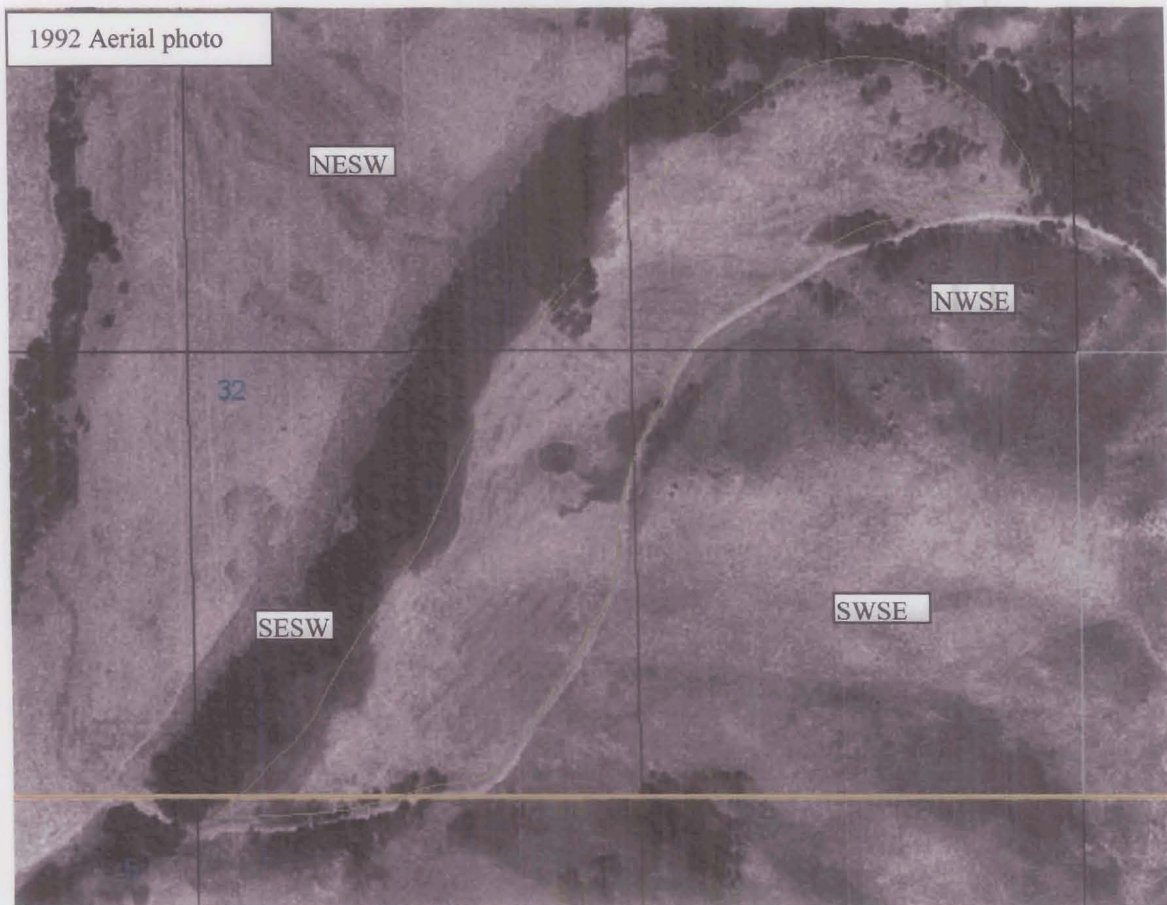
| DATE | TIME | ACTION | INITIAL |
|------|------|--------|---------|
|------|------|--------|---------|

| DATE    | TIME | ACTION                                                                                                                                       | INITIAL |
|---------|------|----------------------------------------------------------------------------------------------------------------------------------------------|---------|
| 9-17-08 | 1:30 | INITIAL HEARING (SM BILYEU, CHARLIE HOUSINGER, KELLY CHRISTENSEN, & NBS) + STEVE SPENCER, DAVID NEGRE, FRED PRICE). CLAIMANT: MIKE RICHARDS) |         |
|         |      | 4392 - PRIORITY DATE IS ONLY ISSUE LEFT. CLAIMANT WILL GET NEW AFF.                                                                          |         |
|         |      | 4393 - PRIORITY DATE IS ONLY ISSUE LEFT. CLAIMANT WILL GET NEW AFF                                                                           |         |
|         |      | 22097 - NEED TO DO SF-5 TO REMOVE FEDERAL OVERLAP IN IN-STREAM STOCKWATER IT.                                                                |         |
|         |      | 22100 - SAME SITUATION AS 22097                                                                                                              |         |
|         |      | SM sets TSC FOR 3-11-09 @ 11:00 A.M.                                                                                                         |         |

1987 Aerial photo



1992 Aerial photo



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 **37-4393**  
Date Received: 12/2/88  
Receipt No:  
Received By:

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

LAVA LAKE LAND & LIVESTOCK LLC  
3527 WASHINGTON ST  
SAN FRANCISCO CA 94118

Phone: (415)922-5378

2. Date of Priority: 11/06/1913

3. Source: IRON MINE CREEK Trib. to: FISH CREEK

4. Point of Diversion:

| Township | Range | Section | 1/4 of 1/4 of 1/4 Lot | County |
|----------|-------|---------|-----------------------|--------|
| 03N      | 23E   | 32      | NE SE                 | BLAINE |

5. Description of diverting works:

DITCH, PUMP, PIPELINE

6. Water is used for the following purposes:

| Purpose    | From | To    | C.F.S. | (or) A.F.A |
|------------|------|-------|--------|------------|
| IRRIGATION | 4/01 | 11/01 | 0.8    |            |

7. Total Quantity Appropriated is:  
0.8 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 |
|----------|-------|---------|------------|-----|---------------|-------|
| 02N      | 23E   | 5       | NE         | NW  | IRRIGATION    | 2     |
|          |       |         |            |     | Section Acres | 2     |
| 03N      | 23E   | 32      | NE         | SW  | IRRIGATION    | 7     |
|          |       |         | SE         | SW  | IRRIGATION    | 20    |
|          |       |         | NW         | SE  | IRRIGATION    | 10    |
|          |       |         | SW         | SE  | IRRIGATION    | 1     |
|          |       |         |            |     | Section Acres | 38    |
|          |       |         |            |     | Total Acres   | 40    |

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:

14. Remarks:

12/19/00 tf; ownership changed Biskay Land & Livestock to Lava Lake Land & Livestock  
per 1409(6) and warranty deed received 7/21/00.

15. Basis of Claim: Statutory Claim

STATE OF IDAHO  
IDAHO DEPARTMENT OF WATER RESOURCES  
**NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP**

**RECEIVED**  
JUL 21 2000  
Department of Water Resources  
Southern Region

Please print or type. Attach pages with additional information. Instructions are on the back of this page.

Incomplete forms will be returned.

37-00745, 37-00746, 37-02123, 37-04392, 37-04393, 37-04394,  
A37-00745, A37-00746, A37-02123, A37-04392, A37-04393,

1. Water Right Number(s) A37-04394, together with all rights appurtenant to lands  
described on attached deed.

Adjudication Claim Number(s) \_\_\_\_\_

2. The following **REQUIRED** information must be submitted with this form.

A. A copy of the most recent DEED, TITLE POLICY, CONTRACT OF SALE, or other legal document indicating your ownership of the property and water rights or claims in question, WITH ATTACHED LEGAL DESCRIPTION.

AND

B. PLAT OF PROPERTY or SURVEY MAP for parcel of ten acres or less. (These are usually on file with the county.)

OR

C. For water rights or adjudication claims involving ten or more irrigated acres, a USDA Farm Service Agency (formerly ASCS) AERIAL PHOTO with irrigated acres outlined and point(s) of diversion clearly marked.

3. Name and Address of Former Owner/Claimant(s) Biskay Land & Livestock Co. Inc.

2400 Cherry Lane, Boise, ID 83705

4. New Owner/Claimant(s) Lava Lake Land & Livestock, L.L.C.

Name connector (Check one): ☐ AND, ☐ OR, ☐ AND/OR

New Mailing Address 3527 Washington Street

City, State and ZIP Code San Francisco, CA 94118

New Telephone Number (415) 922 - 5378

5. Date you acquired the property May 31, 2000

6. If you have acquired only a portion of the former owner's property, IDWR may need to split the water right(s) or adjudication claim(s). If this applies, describe in detail your portion of each water right or adjudication claim in the spaces below. If necessary, attach additional pages.

Number of acres actually irrigated \_\_\_\_\_ Number and type of stock \_\_\_\_\_

Diversion rate in CFS \_\_\_\_\_ Number of homes \_\_\_\_\_ Other uses \_\_\_\_\_  
cubic feet per second

If a water right or adjudication claim is being split and you are not sure how to identify your portion of the original right or claim, please contact the nearest IDWR office for assistance.

Lava Lake Land & Livestock, L.L.C., by:

7. Signature of New Owner/Claimant(s) X/ Dennis Biskay, Trustee Date 6-2-2000

X/ Kathleen Biskay, Trustee Date 6-2-2000

Trustees of the Bean-Tedrow Family Trust U/D/T Dated March 15, 1996,  
(as Managers of other organizations must submit list of directors/officers demonstrating authority to sign form.)

8. For Snake River Basin Adjudication Claims: If you are represented by an attorney and you want IDWR to correspond directly with your attorney for all matters related to your claims, please attach a Notice of Appearance completed by your attorney.



# ARTICLES OF ORGANIZATION LIMITED LIABILITY COMPANY

(Instructions on back of application)

**FILED**

99 JUN 10 AM 9:04

1. The name of the limited liability company is: LAVA LAKE LAND & LIVESTOCK, L.L.C.

STATE OF IDAHO

2. The address of the initial registered office is: 1231 Main Street  
(not a PO Box)

Challis, Idaho 83226

and the name of the initial registered agent at that address is: James R. Bennetts

Signature of registered agent:

*James R. Bennetts*

3. Is management of the limited liability company vested in a manager or managers?

☒ Yes ☐ No (check appropriate box)

4. If management is vested in one or more manager(s), list the name(s) and address(es) of at least one initial manager. If management is vested in the members, list the name(s) and address(es) of at least one initial member.

Name:

Address:

Erian S. Bean and Kathleen T.

3527 Washington Street

Bean, Trustees of the Bean-

San Francisco CA 94118

Tedrow Family Trust U/D/T

dated March 15, 1996

5. Signature of at least one person listed in #4 above:

*Erian S. Bean*  
*Kathleen T. Bean*

IDAHO SECRETARY OF STATE  
Secretary of State use only

06/10/1999 09:00

CR: 1949 CT: 116610 SN: BR4375

100.00 - 100.00 ORGAN LLC 02

W 8959

## CORPORATE WARRANTY DEED

**1. Conveyance of Real Property.** For value received, **BISKAY LAND & LIVESTOCK CO.**, an Idaho corporation, by and through its President Pete T. Cenarrusa, with its principal office at 2400 Cherry Lane, Boise, Idaho ("Grantor") hereby **GRANTS, BARGAINS, SELLS, AND CONVEYS** to **LAVA LAKE LAND & LIVESTOCK, L.L.C.**, an Idaho limited liability company, with its principal office at 3527 Washington Street, San Francisco, California 94118 ("Grantee") the real property located in Blaine County, State of Idaho and further described on Exhibit A attached ("Real Property"), **TO HAVE AND TO HOLD** the Real Property and the appurtenances to the Real Property unto the Grantee and the Grantee's heirs and assigns forever.

**2. Representations and Covenants of the Grantor.** The Grantor represents to and covenants with the Grantee as follows:

- A. The Grantor is the owner in fee simple of the Real Property.
- B. The Real Property is free from all encumbrances, subject to and except for (i) the encumbrances described on Exhibit B attached, (ii) encumbrances made, suffered, or done by the Grantee, and (iii) general taxes and assessments (including irrigation and utility assessments, if any) for the current year which are not yet due and payable.
- C. The Grantor will warrant and defend the quiet enjoyment of the Real Property from all lawful claims, to the extent of the warranties contained in this Deed.
- D. The Grantor will give such assurances and perform such acts as may be necessary to perfect or confirm the title conveyed by this Deed.

**3. Certification of Authorization.** The officer who signs this Deed certifies that the Deed and the transfer represented by the Deed were duly authorized by the Board of Directors in accordance with the Bylaws and Articles of the Grantor and the laws applicable to the Grantor.

GRANTOR

Dated: May 31, 2000

BISKAY LAND & LIVESTOCK CO.

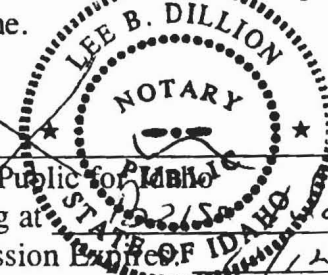
ATTEST:

  
Freda Cenarrusa, Secretary

By:   
Pete T. Cenarrusa, President

STATE OF IDAHO )  
County of Adair ) ss

On this 31<sup>st</sup> day of May, 2000, before me, a notary public in and for the State of Idaho, personally appeared Pete T. Cenarrusa and Freda Cenarrusa, known or identified to me to be the President and Secretary of Biskay Land & Livestock Co., the corporation that executed the instrument or the persons who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

  
Notary Public for Idaho  
Residing at 1225 S. 2nd St.  
Commission Expires 12/03

## SCHEDULE A

Order Number: 00009476

### LEGAL DESCRIPTION

TOWNSHIP 2 NORTH, RANGE 22 EAST, BOISE MERIDIAN, BLAINE COUNTY, IDAHO

SECTION 24: S1/2N1/2, N1/2S1/2, SW1/4SW1/4, SE1/4SE1/4

SECTION 25: NE1/4NE1/4

TOWNSHIP 2 NORTH, RANGE 23 EAST, BOISE MERIDIAN, BLAINE COUNTY, IDAHO

SECTION 3: SE1/4, SE1/4SW1/4

SECTION 4: NW1/4NW1/4, S1/2NW1/4, SW1/4, W1/2SE1/4

SECTION 5: NE1/4NE1/4, W1/2E1/2, E1/2W1/2, W1/2SW1/4, NW1/4NW1/4

SECTION 6: E1/2SE1/4, NW1/4NE1/4, E1/2NE1/4, SW1/4NE1/4

EXCEPTING THEREFROM THE FOLLOWING TWO PARCELS:

PARCEL I:

TOWNSHIP 2 NORTH, RANGE 23 EAST, BOISE MERIDIAN, BLAINE COUNTY, IDAHO

SECTIONS 5 & 6: A parcel of land lying within said sections, more particularly described as follows:

BEGINNING at the Northwest corner of said Section 5, thence S. 29°32'35" E., 739.27 feet to the REAL POINT OF BEGINNING, said point also lies S. 74°6'52" W., 2,363.72 feet from the North quarter corner of Section 5; thence S. 21°44'44" E., 595.45 feet; thence S. 81°51'10" W., 591.09 feet; thence S. 57°35'00" W., 322.18 feet; thence N. 3°42'29" W., 494.31 feet; thence N. 69°9'28" E., 156.51 feet; thence N. 58°46'7" E., 247.78 feet; thence N. 68°39'8" E., 264.18 feet; thence N. 60°46'38" E., 73.67 feet to the REAL POINT OF BEGINNING.

PARCEL II:

SECTION 6: A parcel of land lying within said section, more particularly described as follows:

BEGINNING at a point on the North and South centerline of Section 6, Township 2 North, Range 23 E.B.M., S. 0°05' W., 1996.6 feet from the North 1/4 Corner of said Section. Running thence N. 31°21' E., 379.9 feet; thence N. 70°40' E., 431.9 feet; thence N. 39°16' E., 248.3 feet; thence N. 32°46' E., 38.9 feet more or less to the intersection of the North line of the SE1/4NE1/4 of Section 6; thence S. 89°57' W., 791.9 feet along said line to the centerline of said Section; thence S. 0°05' W., 682.6 feet along said centerline to the POINT OF BEGINNING. (Shown as Tax Lot 1135 on the Blaine County Assessor's tax rolls.)

Continued on next page

EXHIBIT 'A'

(End of excepted property)

TOWNSHIP 2 NORTH RANGE 23 EAST, BOISE MERIDIAN, BLAINE COUNTY, IDAHO

SECTIONS 5 & 6: A parcel of land lying within said sections, more particularly described as follows:

BEGINNING at the Northwest corner of said Section 5, thence S.  $29^{\circ}32'35''$  E., 739.27 feet to the REAL POINT OF BEGINNING, said point also lies S.  $74^{\circ}6'52''$  W., 2,363.72 feet from the North quarter corner of Section 5; thence S.  $21^{\circ}44'44''$  E., 595.45 feet; thence S.  $81^{\circ}51'10''$  W., 591.09 feet; thence S.  $57^{\circ}35'00''$  W., 322.18 feet; thence N.  $3^{\circ}42'29''$  W., 494.31 feet; thence N.  $69^{\circ}9'28''$  E., 156.51 feet; thence N.  $58^{\circ}46'7''$  E., 247.78 feet; thence N.  $68^{\circ}39'8''$  E., 264.18 feet; thence N.  $60^{\circ}46'38''$  E., 73.67 feet to the REAL POINT OF BEGINNING.

SECTION 9: N1/2NW1/4, W1/2NE1/4, NE1/4SE1/4

SECTION 10: NW1/4NE1/4, N1/2NW1/4, SE1/4NW1/4, SW1/4

SECTION 15: N1/2NW1/4

SECTION 17: W1/2W1/2

SECTION 18: S1/2SE1/4

SECTION 19: E1/2, NE1/4NW1/4, E1/2SW1/4, Lot 3, Lot 4

SECTION 20: NW1/4NW1/4, SW1/4, W1/2SE1/4

SECTION 28: N1/2SW1/4, SE1/4SW1/4

SECTION 29: N1/2NW1/4

SECTION 30: N1/2NE1/4, NE1/4NW1/4, Lot 1

SECTION 33: NE1/4NW1/4

TOWNSHIP 3 NORTH, RANGE 23 EAST, BOISE MERIDIAN, BLAINE COUNTY, IDAHO

SECTION 27: SW1/4NW1/4, SW1/4

SECTION 28: S1/2N1/2, S1/2

SECTION 29: SW1/4, S1/2NW1/4, W1/2SE1/4, SW1/4NE1/4, SE1/4NE1/4, E1/2SE1/4

SECTION 30: SE1/4, SE1/4NE1/4

SECTION 31: ALL

Continued on next page

Continuation of Schedule A - Legal Description

Order Number: 00009476

SECTION 32: W1/2, W1/2SE1/4, NE1/4SE1/4, SE1/4NE1/4, NW1/4NE1/4, SE1/4SE1/4, NE1/4NE1/4

SECTION 33: SW1/4NW1/4, SW1/4SW1/4, NE1/4, E1/2NW1/4, NW1/4NW1/4

SECTION 34: NW1/4

TOWNSHIP 3 NORTH, RANGE 22 EAST, BOISE MERIDIAN, BUTTE COUNTY, IDAHO

SECTION 24: NW1/4SE1/4

TOWNSHIP 3 NORTH, RANGE 23 EAST, BOISE MERIDIAN, BUTTE COUNTY, IDAHO

SECTION 19: Lot 2, SE1/4NW1/4

TOWNSHIP 3 NORTH, RANGE 22 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO

SECTION 23: NW1/4SE1/4

13. Exceptions and reservations in that certain Patent Deed from the UNITED STATES to ROY EUGENE BRYAN, recorded April 20, 1922 as Instrument No. 50232 in Book 99 of Patents, page 423, records of Blaine County, Idaho which states: "Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same pursuant to the provisions and limitations of the Act of December 29, 1916 (39 Stat., 862)."
14. Exceptions and reservations in that certain Patent Deed from the UNITED STATES to LEVAUR P. COATES, recorded December 20, 1983 as Instrument No. 78147 in Book 129 of Patents, page 395, records of Blaine County, Idaho which states: "Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same pursuant to the provisions and limitations of the Act of December 29, 1916 (39 Stat., 862)."
15. Exceptions and reservations in that certain Patent Deed from the UNITED STATES to FRANK B. VENABLE, recorded November 17, 1949 as Instrument No. 96442 in Book 129 of Patents, page 605, records of Blaine County, Idaho which states: "Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, together with the right to centerline of power transmission lines in new subdivisions", recorded March 5, 1996, as Instrument No. 387653, records of Blaine County, Idaho.

EXHIBIT B

035924

## CORPORATE WARRANTY DEED

JUN 05 2000

12:00  
BUTTE COUNTY RECORDER  
Dayla Womack

**1. Conveyance of Real Property.** For value received, **BISKAY LAND & LIVESTOCK CO.**, an Idaho corporation, by and through its President Pete T. Cenarrusa, with its principal office at 2400 Cherry Lane, Boise, Idaho ("Grantor") hereby **GRANTS, BARGAINS, SELLS, AND CONVEYS** to **LAVA LAKE LAND & LIVESTOCK, L.L.C.**, an Idaho limited liability company, with its principal office at 3527 Washington Street, San Francisco, California 94118 ("Grantee") the real property located in Butte County, State of Idaho and further described on Exhibit A attached ("Real Property"), **TO HAVE AND TO HOLD** the Real Property and the appurtenances to the Real Property unto the Grantee and the Grantee's heirs and assigns forever.

**2. Representations and Covenants of the Grantor.** The Grantor represents to and covenants with the Grantee as follows:

- A. The Grantor is the owner in fee simple of the Real Property.
- B. The Real Property is free from all encumbrances, subject to and except for (i) the encumbrances described on Exhibit B attached, (ii) encumbrances made, suffered, or done by the Grantee, and (iii) general taxes and assessments (including irrigation and utility assessments, if any) for the current year which are not yet due and payable.
- C. The Grantor will warrant and defend the quiet enjoyment of the Real Property from all lawful claims, to the extent of the warranties contained in this Deed.
- D. The Grantor will give such assurances and perform such acts as may be necessary to perfect or confirm the title conveyed by this Deed.

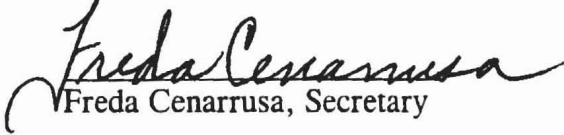
**3. Certification of Authorization.** The officer who signs this Deed certifies that the Deed and the transfer represented by the Deed were duly authorized by the Board of Directors in accordance with the Bylaws and Articles of the Grantor and the laws applicable to the Grantor.

GRANTOR

Dated: May 31, 2000

BISKAY LAND & LIVESTOCK CO.

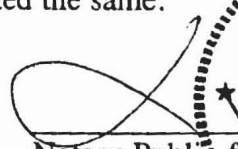
ATTEST:

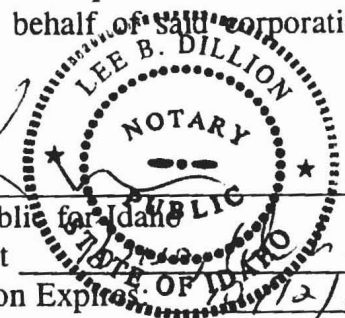
  
Freda Cenarrusa, Secretary

By:   
Pete T. Cenarrusa, President

STATE OF IDAHO )  
County of Adair ) ss

On this 31<sup>st</sup> day of May, 2000, before me, a notary public in and for the State of Idaho, personally appeared Pete T. Cenarrusa and Freda Cenarrusa, known or identified to me to be the President and Secretary of Biskay Land & Livestock Co., the corporation that executed the instrument or the persons who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
Commission Expires 12/13

LEE B. DILLION  
NOTARY  
PUBLIC  
STATE OF IDAHO

TOWNSHIP 3 NORTH, RANGE 22 EAST, BOISE MERIDIAN, BUTTE COUNTY, IDAHO

SECTION 24: NW1/4SE1/4

TOWNSHIP 3 NORTH, RANGE 23 EAST, BOISE MERIDIAN, BUTTE COUNTY, IDAHO

SECTION 19: Lot 2, SE1/4NW1/4

EXHIBIT A

## CORPORATE WARRANTY DEED

**1. Conveyance of Real Property.** For value received, **BISKAY LAND & LIVESTOCK CO.**, an Idaho corporation, by and through its President Pete T. Cenarrusa, with its principal office at 2400 Cherry Lane, Boise, Idaho ("Grantor") hereby **GRANTS, BARGAINS, SELLS, AND CONVEYS** to **LAVA LAKE LAND & LIVESTOCK, L.L.C.**, an Idaho limited liability company, with its principal office at 3527 Washington Street, San Francisco, California 94118 ("Grantee") the real property located in Custer County, State of Idaho and further described on Exhibit A attached ("Real Property"), **TO HAVE AND TO HOLD** the Real Property and the appurtenances to the Real Property unto the Grantee and the Grantee's heirs and assigns forever.

**2. Representations and Covenants of the Grantor.** The Grantor represents to and covenants with the Grantee as follows:

- A. The Grantor is the owner in fee simple of the Real Property.
- B. The Real Property is free from all encumbrances, subject to and except for (i) the encumbrances described on Exhibit B attached, (ii) encumbrances made, suffered, or done by the Grantee, and (iii) general taxes and assessments (including irrigation and utility assessments, if any) for the current year which are not yet due and payable.
- C. The Grantor will warrant and defend the quiet enjoyment of the Real Property from all lawful claims, to the extent of the warranties contained in this Deed.
- D. The Grantor will give such assurances and perform such acts as may be necessary to perfect or confirm the title conveyed by this Deed.

**3. Certification of Authorization.** The officer who signs this Deed certifies that the Deed and the transfer represented by the Deed were duly authorized by the Board of Directors in accordance with the Bylaws and Articles of the Grantor and the laws applicable to the Grantor.

# 221094  
Custer County Rec. of  
Blaine County Title  
Time 12:02 PM Date 6/5 2000  
Ethel M. Peck, Clerk  
Janet Mangis 12<sup>00</sup>  
Deputy

GRANTOR

Dated: May 31, 2000

BISKAY LAND & LIVESTOCK CO.

ATTEST:

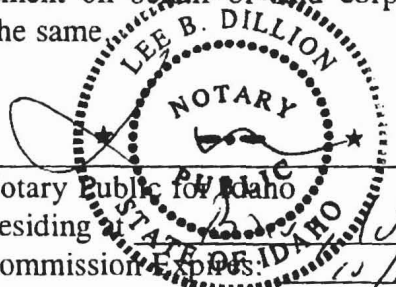
  
Freda Cenarrusa, Secretary

By:   
Pete T. Cenarrusa, President

STATE OF IDAHO )

County of Ad ) ss

On this 31<sup>st</sup> day of May, 2000, before me, a notary public in and for the State of Idaho, personally appeared Pete T. Cenarrusa and Freda Cenarrusa, known or identified to me to be the President and Secretary of Biskay Land & Livestock Co., the corporation that executed the instrument or the persons who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

  
Notary Public for Idaho  
Residing at 221 E. 1st St.  
Commission Expires 12/12/03

TOWNSHIP 3 NORTH, RANGE 22 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO

SECTION 23: NW1/4SE1/4

EXHIBIT A

**EXHIBIT B  
ENCUMBRANCES**

None

## BLAINE COUNTY TITLE

July 20, 2000

IDAHO DEPARTMENT OF WATER RESOURCES  
1341 Fillmore Street, Suite 200  
Twin Falls, Idaho 83301-3380

RECEIVED  
JUL 21 2000  
Department of Water Resources  
Southern Region

Re: Order #00009476

Buyer: Lava Lake Land and Livestock  
Seller: Biskay Land and Livestock

To Whom It May Concern:

Please find enclosed an ORIGINAL executed State of Idaho Department of Water Resources, Notice of Change of Water Right Ownership document.

You will also find attached a copy of the Articles of Organization for Lava Lake Land and Livestock as well as copies of all Warranty Deeds associated with the purchase and sale of this property. Three (3) deeds total were recorded in Custer, Butte and Blaine Counties.

An aerial photo will be provided under separate cover.

Should you have any questions or need assistance transferring these rights, please feel free to contact me.

Sincerely,

BLAINE COUNTY TITLE ASSOCIATES



Kathy Seal  
Escrow Officer

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: A37-04393  
Date Received: 12/02/1988  
Receipt No: 6003731  
Received By: JP

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: BISKAY LAND & LIVESTOCK CO. 208-344-2443  
Address: 2400 CHERRY LANE  
BOISE, ID 83705

2. Date of Priority: NOV 06, 1913

3. Source: IRON MINE CREEK Trib. to: FISH CREEK

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 | Lot | County |
|----------|-------|---------|--------|--------|-----|-----|--------|
| 03N      | 23E   | 32      | NE     | SE     |     |     | BLAINE |

5. Description of diverting works:  
DITCH, PUMP, PIPELINE

6. Water is used for the following purposes:

| Purpose    | From  | To    | C.F.S. | (or) | A.F.A. |
|------------|-------|-------|--------|------|--------|
| IRRIGATION | 04/01 | 11/01 | 0.800  |      |        |

7. Total Quantity Appropriated is:  
0.800 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 100.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

| Township | Range | Section | 1/4 of | 1/4 | Lot | Use           | Acres |
|----------|-------|---------|--------|-----|-----|---------------|-------|
| 02N      | 23E   | 5       | NE     | NW  |     | IRR           | 2.0   |
|          |       |         |        |     |     | Section Acres | 2.0   |
| 03N      | 23E   | 32      | NE     | SW  |     | IRR           | 7.0   |

A37-04393

Page 1

Date: 12/02/88

MICROFILMED  
FEB 24 1993

10. Place of Use: Continued

| Township | Range | Section | 1/4 of | 1/4 | Lot | Use           | Acres |
|----------|-------|---------|--------|-----|-----|---------------|-------|
| 03N      | 23E   | 32      | SE     | SW  |     | IRR           | 20.0  |
|          |       |         | NW     | SE  |     | IRR           | 10.0  |
|          |       |         | SW     | SE  |     | IRR           | 1.0   |
|          |       |         |        |     |     |               |       |
|          |       |         |        |     |     | Section Acres | 38.0  |
|          |       |         |        |     |     | Total Acres   | 40.0  |

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: STATUTORY CLAIM

(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.

RECEIVED  
FEB 24 1993

MICROFILMED  
FEB 24 1993

SEC 32



16013-177-214E



3N

2N

01/26/2009

IDAHO DEPARTMENT OF WATER RESOURCES  
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-4393

NAME AND ADDRESS: LAVA LAKE LAND & LIVESTOCK LLC  
PO BOX 2249  
HAILEY ID 83333

*1/2 Recon*  
*KKK*  
*1-26-09*

SOURCE: IRON MINE CREEK

TRIBUTARY: FISH CREEK

QUANTITY: 0.720 CFS

PRIORITY DATE: 11/06/1913

POINT OF DIVERSION:

T03N R23E S32 SWNESE Within BLAINE County

PURPOSE AND  
PERIOD OF USE:

| <u>PURPOSE OF USE</u> | <u>PERIOD OF USE</u> | <u>QUANTITY</u> |
|-----------------------|----------------------|-----------------|
| IRRIGATION            | 04/15 10/31          | 0.720 CFS       |

PLACE OF USE: IRRIGATION in BLAINE County

|               |      |       |               |      |       |
|---------------|------|-------|---------------|------|-------|
| T03N R23E S32 | NESW | 2.30  | T03N R23E S32 | SESW | 19.00 |
| T03N R23E S32 | NWSE | 14.00 | T03N R23E S32 | SWSE | 0.50  |

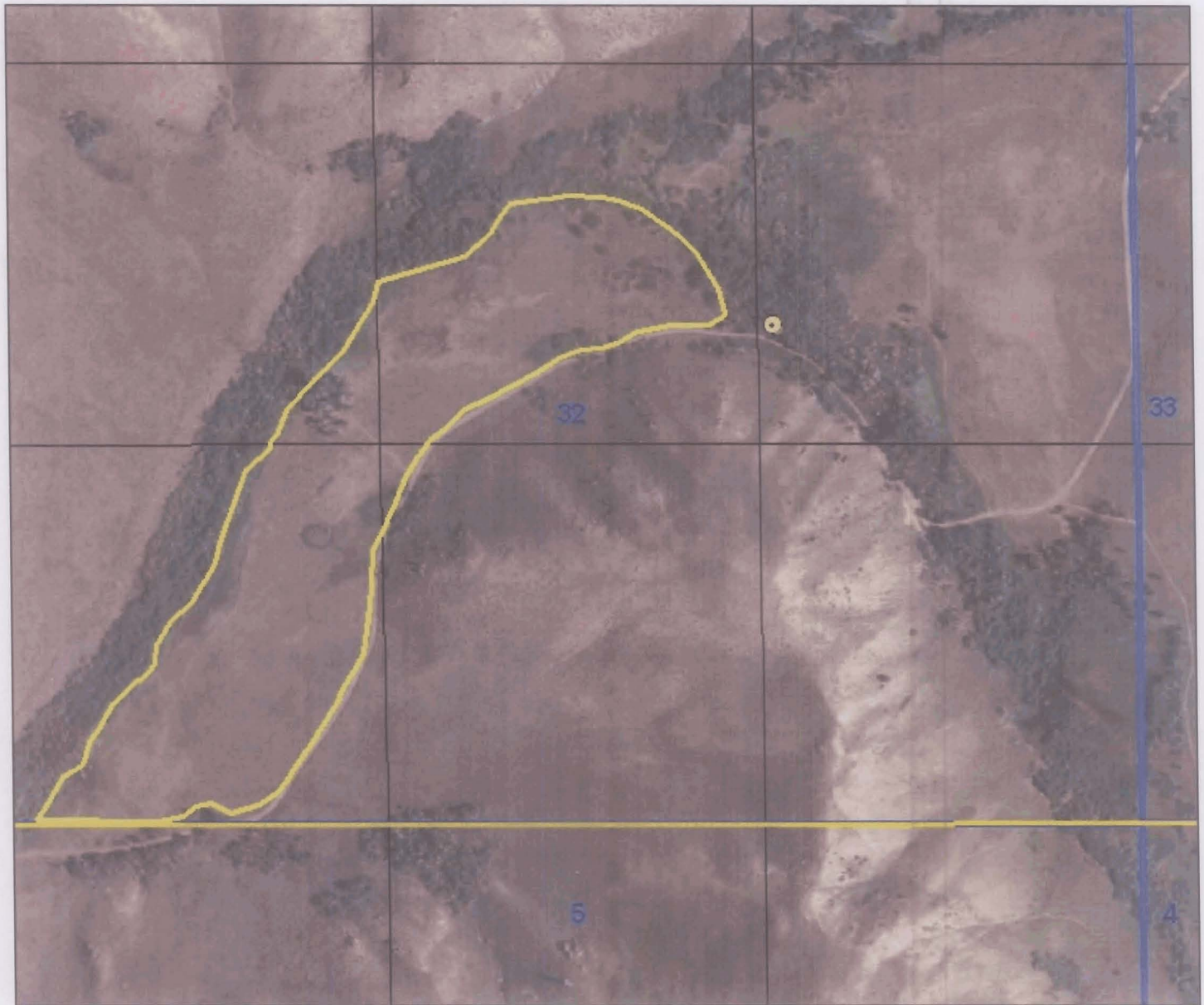
35.8 ACRES TOTAL

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 - Beneficial Use

## RECOMMENDED PLACE OF USE FOR 37-4393



PLACE OF USE  
TWP 03N, RNG 23E, SEC 32  
Data Entry on January 26, 2009

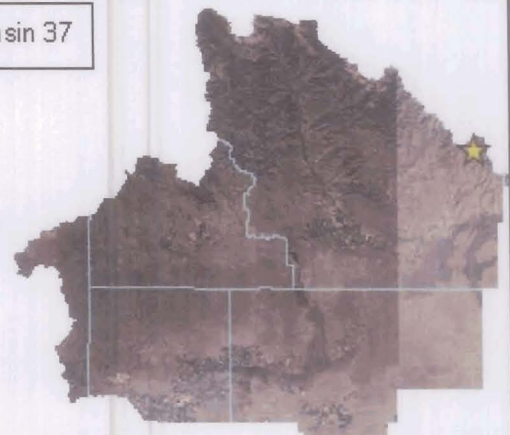
★ LOCATION IN BASIN

- Recommended point of diversion
- Recommended place of use
- Township lines
- Section lines
- Quarter/quarter lines

GIS PLACE OF USE PRESENTATION  
2004 AERIAL PHOTOGRAPHY  
BY KELLY K CHRISTENSEN



Basin 37



|                |   |                          |
|----------------|---|--------------------------|
| In Re SRBA     | ) | Subcase No.: 37-4393     |
|                | ) |                          |
| Case No. 39576 | ) |                          |
|                | ) | STANDARD FORM 5          |
|                | ) |                          |
|                | ) | STIPULATED ELEMENTS OF A |
|                | ) | WATER RIGHT              |

STANDARD FORM 5

**IDWR CONCURRENCE:**

Kelly K. Christensen  
Kelly K. Christensen                      Date  
Sr. Water Resource Agent

**IDWR CONCURRENCE:**

\_\_\_\_\_  
Nicholas B. Spencer                      Date  
Deputy Attorney General  
Attorney for IDWR

01/26/2009

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

RIGHT NUMBER: 37-4393

NAME AND ADDRESS: LAVA LAKE LAND & LIVESTOCK LLC  
PO BOX 2249  
HAILEY ID 83333

SOURCE: IRON MINE CREEK

TRIBUTARY: FISH CREEK

QUANTITY: ~~0.66~~ 0.720 CFS

PRIORITY DATE: ~~12/31/1926~~ 11/06/1913

POINT OF  
DIVERSION:

T03N R23E S32 SWNESE Within BLAINE County

KKC

PURPOSE AND  
PERIOD OF USE:

| <u>PURPOSE OF USE</u> | <u>PERIOD OF USE</u> | <u>QUANTITY</u>                  |
|-----------------------|----------------------|----------------------------------|
| IRRIGATION            | 04/15 10/31          | <del>0.66</del> <u>0.720</u> CFS |

PLACE OF USE: IRRIGATION in BLAINE County

|                            |                 |                              |               |                                   |
|----------------------------|-----------------|------------------------------|---------------|-----------------------------------|
| <del>T02N R23E S5</del>    | <del>NENW</del> | <del>0.80</del>              |               |                                   |
| T03N R23E S32              | NESW            | <del>1.60</del> <u>2.30</u>  | T03N R23E S32 | SESW <del>17.0</del> <u>19.00</u> |
| T03N R23E S32              | NWSE            | <del>13.0</del> <u>14.00</u> | T03N R23E S32 | SWSE <del>0.60</del> <u>0.50</u>  |
| <u>33-35.8 ACRES TOTAL</u> |                 |                              |               |                                   |

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 - Beneficial Use

## CERTIFICATE OF SERVICE

I certify that on \_\_\_\_\_, 2009, I caused to be served true and correct copies of this Standard Form 5, to the following persons, in the manner indicated 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

☐ Overnight Mail  
☐ Regular Mail  
☐ Hand-Delivered  
☐ Facsimile

2. Copies to:

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

☐ Overnight Mail  
☐ Regular Mail  
☐ Hand-Delivered  
☐ Facsimile

Charles L. Honsinger  
Ringert Law Chartered  
P.O. Box 2773  
Boise, ID 83701-2773

☐ Overnight Mail  
☐ Regular Mail  
☐ Hand-Delivered  
☐ Facsimile

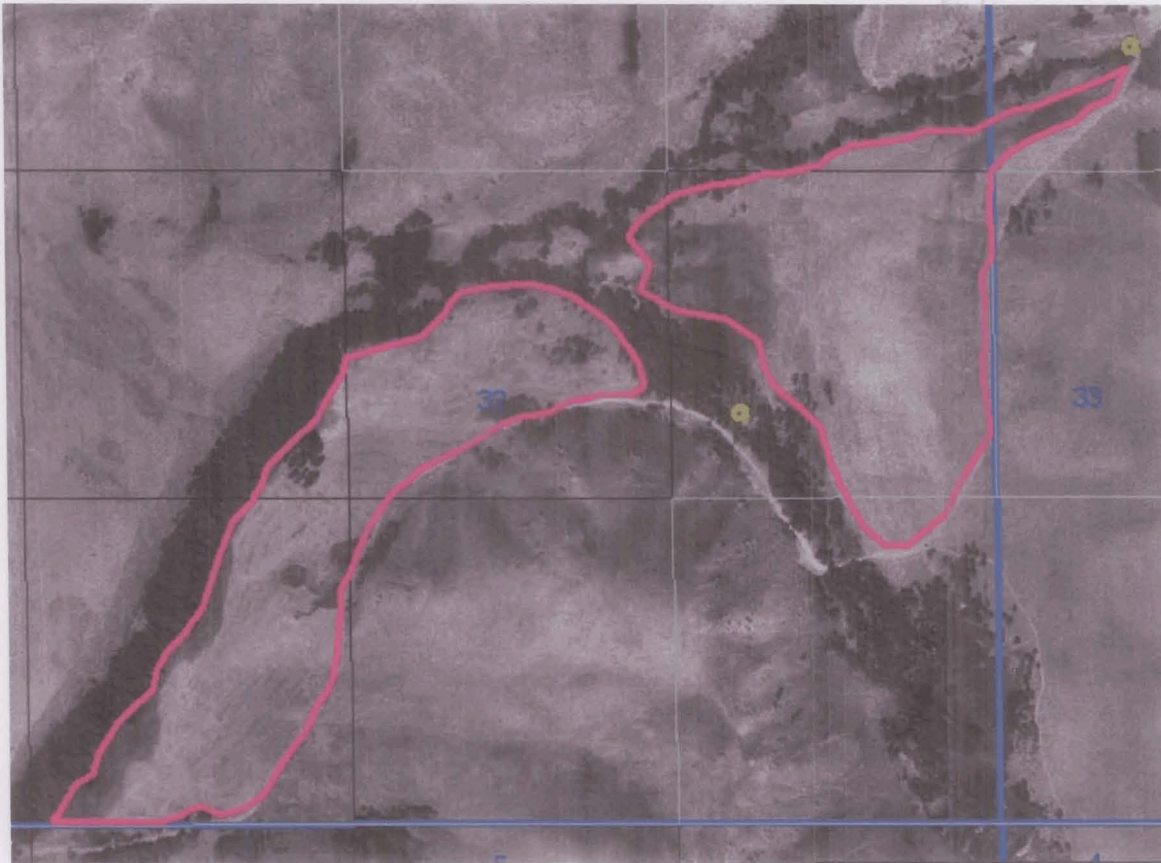
U.S. Department of Justice  
Environment & Nat'l Resources Div.  
550 W. Fort St., MSC 033  
Boise, ID 83724

☐ Overnight Mail  
☐ Regular Mail  
☐ Hand-Delivered  
☐ Facsimile

\_\_\_\_\_  
Signature of person or attorney mailing the form

TENTATIVE SETTLEMENT POU FOR 37-4392 AND 37-4393

created 12-9-2008



1992 AERIAL PHOTO

SEP 23 2008

DEPARTMENT OF  
WATER RESOURCES

Laura E. Burri  
Adam S. Christenson  
Jeffrey R. Christenson  
David P. Claiborne  
S. Bryce Farris  
Jon C. Gould  
David Hammerquist  
Charles L. Honsinger \*\*  
James P. Kaufman  
Jennifer Reid Mahoney  
James G. Reid \*  
Daniel V. Steenson

September 19, 2008

Nick Spencer  
Deputy Attorney General  
Idaho Department of Water Resources  
P.O. box 83720  
Boise, ID 83720-0098

Re: SRBA Subcase nos. 37-4392 and 37-4393

Dear Nick:

As discussed at the Initial Hearing in the above-referenced subcases, I recently met with Pete Cenarrusa and Bob Coates to work with them and create new affidavits that are more specific with respect to the priority dates claimed for Lava Lake Land and Livestock, LLC water right nos. 37-4392 and 37-4393. The enclosed affidavits are the result of that meeting. Please forward copies of these affidavits to Kelly Christensen.

It appears that the Affidavits substantiate the priority dates claimed for these water rights. Therefore, I believe that with this change to the water rights, along with the place of use changes we discussed at the Initial Hearing, Lava Lake Land and Livestock, LLC will be prepared to execute Standard Forms Five to settle the subcases. I look forward to receiving the same from you shortly.

Please contact me with any questions or concerns.

Sincerely,

*Charles L. Honsinger*  
Charles L. Honsinger

enclosures

cc: Mike Stevens (w/enclosures)

*Q rig in*  
*37-4392*  
*KKC*  
**COPY**

Attorneys for Claimant Lava Lake Land and Livestock, LLC

AFFIDAVIT OF ROBERT ABBOTT  
COATES

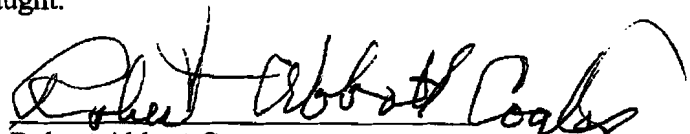
have previously made for this purpose.

3. I was born and grew up on the land which water right nos. 37-4392 and 4393 are located. My mother explained to me as part of the family history that she went to school in Bellevue, Idaho in 1910, and that she and her parents moved to the Fish Creek property on which water right 37-4392 is located in 1911 to homestead this property shortly after she finished grade school. My father explained to me that he homesteaded the Iron Mine Creek Property on which water right no. 37-4393 was used beginning in 1916. He told me he was granted a patent to the Iron Creek property the year I was born in 1921.

4. Because I grew up in that area, I am aware that the first thing that anybody would have done at that time when they moved on to a property was to irrigate immediately, so that they could raise hay for their livestock during the winter time and avoid starvation. It is my understanding from my long history with these water rights and the need to immediately irrigate property on which you lived at that time, that my grandfather irrigated the Fish Creek property as soon as he moved there in 1911, and that my father used beaver dams on Iron Mine Creek to irrigate his property from the time that he moved there in 1916.

5. I have reviewed Pete Cenarrusa's affidavit of today's date and find it to comport with my memory and understanding of the use and history of these water rights.

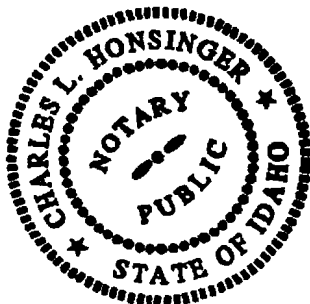
Further your affiant sayeth naught.

  
Robert Abbott Coates

STATE OF IDAHO                    )  
                                              )ss.  
County of Ada                    )

On this 19<sup>th</sup> day of September, 2008, before me, the undersigned, a notary public in and for said state, personally appeared ROBERT ABBOTT COATES, 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.



Charles L. Honsinger  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission Expires: 7/30/2010

Attorneys for Claimant Lava Lake Land and Livestock, LLC

## In Re SRBA

SUBCASE NUMBERS 37-4392, 37-4393

AFFIDAVIT OF PETE T. CENARRUSA

COUNTY OF ADA

1. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.

AFFIDAVIT OF PETE T. CENARRUSA - Page 1

previously submitted for the same purpose.

3. I lived with my family in Picabo, Idaho from 1922 through 1924, and moved to Bellevue in 1924. My father became friendly with Charlie Ralls at that time. Mr. Ralls owned property on Fish Creek at that time. So, as a child, I used to visit the Ralls property from 1924 onwards, and recall the irrigation of the Fish Creek property at that time.

4. Ira Eldridge was a local sheep owner in the Fish Creek area. I knew him from about 1924 onwards approximately 1936. I used to sit and speak with him about local history for many hours as we became friends. He told me that he was herding sheep in the Fish Creek area starting in 1905. He was known locally as "Boss" Eldridge. He explained to me that water was used on the Fish Creek property that these water rights are claimed on for irrigation at the time that he was first running sheep on the property in 1905.

5. My uncle, Pete Cenarrusa, purchased the Fish Creek property on which these water rights were used in 1945. My father, Joe Cenarrusa, purchased the Iron Mine Creek property in approximately 1946 from Robert Abbott Coates' father. My father conveyed the property to me in approximately 1956. Finally, I conveyed the property to Lava Lake Land and Livestock, LLC in approximately 2001. I spent almost 76 years (since 1924) visiting and irrigating the property, and as such am very familiar with the irrigation practices and irrigation history on the property.

5. I have reviewed Robert Abbot Coates made on the same day as this affidavit and find that it comports with my understanding and memory about the irrigation history on the properties on which these water rights are claimed.

Further your affiant sayeth naught.

Pete T. Cenarrusa

Pete T. Cenarrusa

STATE OF IDAHO                    )  
                                          )ss.  
County of Ada                    )

On this 19<sup>th</sup> day of September, 2008, before me, the undersigned, a notary public in and for said state, personally appeared PETE T. CENARRUSA, 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.



Charles L. Honsinger  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission Expires: 7/20/2010

## Adjudication Claim Notes

**Claim(s): 37-4393**

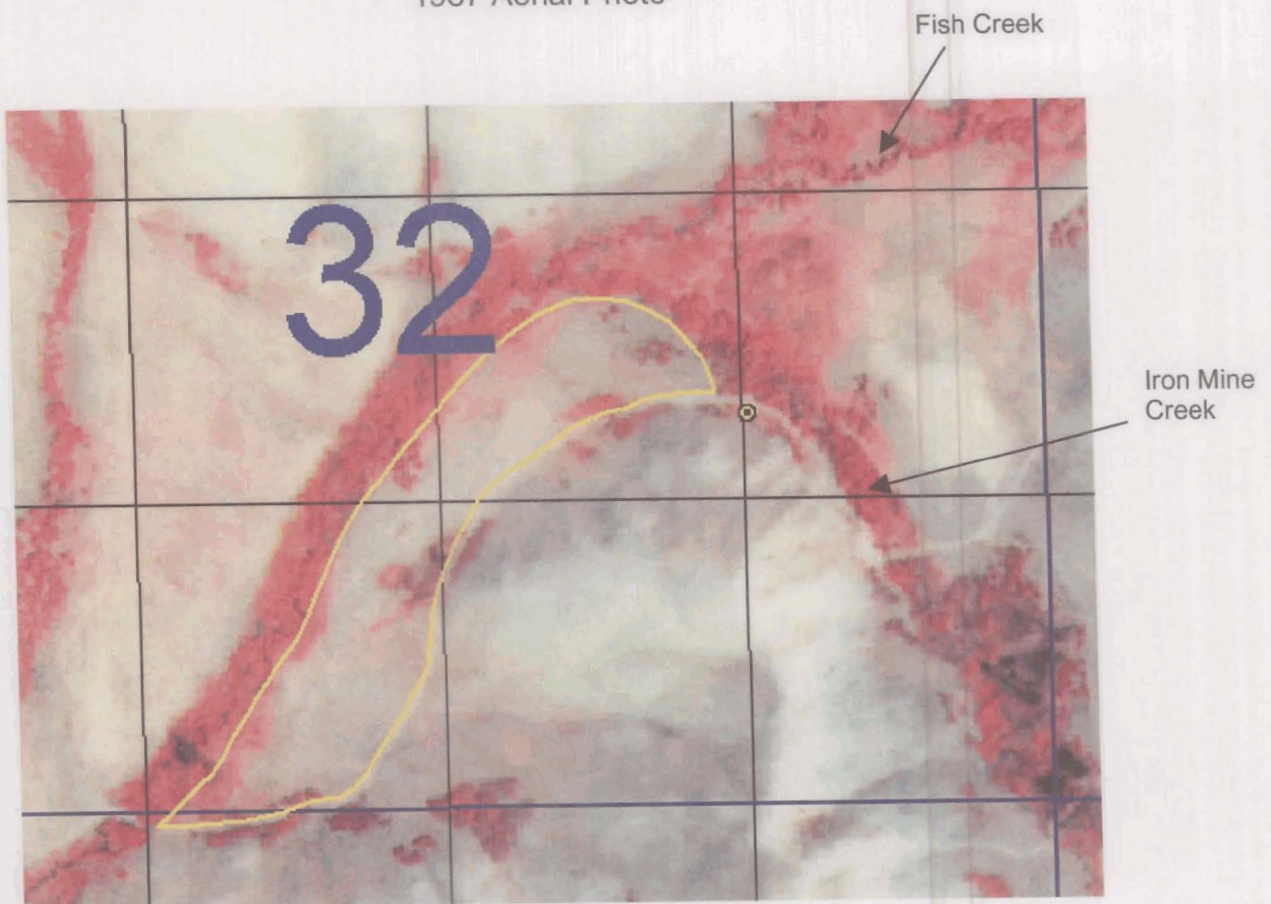
### Background Data

- Statutory Claim
- Source claimed as Iron mine Creek tributary to Fish Creek
- Claimed for 0.8 cfs on 40 acres with priority date of 11/6/1913

### Place Of Use Data

Yellow line is the draft Place of Use created by IDWR based on historical data and records.  
Yellow dot is draft Point of Diversion created by IDWR based on historical data and records.  
Green line is decreed/licensed POU (this may only represent the Quarter-Quarter sections of the decree/license)

### 1987 Aerial Photo



Note: the GPS'd POD incorrectly aligns south of the road on the 1987 photo, but it is correctly located north of the road on the 2004 photo.



Photograph of POD taken by Lee Peterson during field exam.

Location: 2521119 1371711

Plate: A0016274

Photo #: 1060665

### Notes

#### T3N R23E Section 32; T2N R23E Section 5

- Found 33 acres for irrigation.
- The GPS'd POD incorrectly aligns south of the road on the 1987 photo, but it is correctly located north of the road on the 2004 photo.
- The major decree on Fish Creek and its tributaries was Petterson vs. Potter Dec 16, 1916. The latest priority date in this decree is June 1, 1910. Lee Abbot, Charles Ralls, and McClure, owners mentioned in the evidence of priority affidavits are not included in this decree.
- Evidence of Priority: Pete Cenarussa submitted an affidavit stating he remembers this land being irrigated since he can remember traveling to the Charles Ralls homestead with this father. In his affidavit for 37-4394 Pete Cenarussa stated he remembers traveling as a young boy with his father to the Charles Ralls homestead in the summer of 1926, so I'm assuming that was the time he was referring to. Recommend 12/31/1926.
- 11/06 unable to conduct field exam to measure diversion rate because of too much snow.
- 1987 aerial photo does not indicate irrigation of POU. Based on evidence of priority submitted and a ditch distribution system observed on during 2005 field exam, I decided to recommend claim at 0.02 cfs/acre for the 33 acre identified during 2005 field exam.
- Data used for review: 1987, 1992, & 2004 aerial photos, Blaine Co Tax Records, Idaho Ownership (idown.shp), & USGS 1:24,000 Topo

*Fish Creek  
Priority Dates*

| <u>Basin</u> | <u>Sequence Suffix</u> | <u>Basis</u> | <u>Priority Date</u> | <u>Rate(cfs)</u> | <u>Volume(af)</u> | <u>Source</u>     |
|--------------|------------------------|--------------|----------------------|------------------|-------------------|-------------------|
| 37           | 733                    | Decreed      | 1883-03-30           | 0.23             |                   | FISH CREEK        |
| 37           | 735                    | Decreed      | 1883-03-30           | 0.23             |                   | FISH CREEK        |
| 37           | 737 A                  | Decreed      | 1883-03-30           | 0.7              |                   | FISH CREEK        |
| 37           | 737 B                  | Decreed      | 1883-03-30           | 0.7              |                   | FISH CREEK        |
| 37           | 738                    | Decreed      | 1883-03-30           | 2                |                   | FISH CREEK        |
| 37           | 749 A                  | Decreed      | 1883-03-30           | 2.4              |                   | FISH CREEK        |
| 37           | 749 B                  | Decreed      | 1883-03-30           | 0.8              |                   | FISH CREEK        |
| 37           | 752                    | Decreed      | 1883-03-30           | 0.23             |                   | FISH CREEK        |
| 37           | 756                    | Decreed      | 1883-03-30           | 0.23             |                   | FISH CREEK        |
| 37           | 769                    | Decreed      | 1883-03-30           | 3.2              |                   | FISH CREEK        |
| 37           | 770 A                  | Decreed      | 1883-03-30           | 1.3              |                   | FISH CREEK        |
| 37           | 770 B                  | Decreed      | 1883-03-30           | 1.2              |                   | FISH CREEK        |
| 37           | 772                    | Decreed      | 1883-03-30           | 3.2              |                   | FISH CREEK        |
| 37           | 780 A                  | Decreed      | 1883-03-30           | 1.6              |                   | FISH CREEK        |
| 37           | 780 B                  | Decreed      | 1883-03-30           | 0.8              |                   | FISH CREEK        |
| 37           | 781                    | Decreed      | 1883-03-30           | 3.2              |                   | FISH CREEK        |
| 37           | 758                    | Decreed      | 1884-06-01           | 2                |                   | FISH CREEK EAST F |
| 37           | 759                    | Decreed      | 1884-06-01           | 0.5              |                   | FISH CREEK EAST F |
| 37           | 1214                   | Decreed      | 1884-06-01           | 0.5              |                   | FISH CREEK        |
| 37           | 12192                  | Decreed      | 1885-05-01           | 0.02             |                   | FISH CREEK SPRING |
| 37           | 760                    | Decreed      | 1885-06-01           | 0.8              |                   | FISH CREEK        |
| 37           | 761                    | Decreed      | 1885-06-01           | 1                |                   | FISH CREEK EAST F |
| 37           | 1215                   | Decreed      | 1885-06-01           | 1.6              |                   | FISH CREEK        |
| 37           | 763                    | Decreed      | 1887-06-01           | 0.8              |                   | FISH CREEK        |
| 37           | 764                    | Decreed      | 1890-06-01           | 0.6              |                   | FISH CREEK EAST F |
| 37           | 771                    | Decreed      | 1898-06-01           | 0.1              |                   | FISH CREEK        |
| 37           | 777                    | Decreed      | 1899-06-30           | 3.1              |                   | FISH CREEK        |
| 37           | 1194                   | Decreed      |                      | 15               |                   | FISH CREEK        |
| 37           | 1195                   | Decreed      |                      | 2                |                   | FISH CREEK EAST F |
| 37           | 1196                   | Decreed      |                      | 3                |                   | FISH CREEK        |
| 37           | 762                    | Decreed      | 6/1/1902             | 0.4              |                   | FISH CREEK EAST F |
| 37           | 768                    | Decreed      | 4/30/1903            | 2.6              |                   | FISH CREEK        |
| 37           | 742                    | Decreed      | 5/15/1903            | 1.6              |                   | FISH CREEK        |
| 37           | 767                    | Decreed      | 4/30/1904            | 1                |                   | FISH CREEK        |
| 37           | 755                    | Decreed      | 5/15/1904            | 0.4              |                   | FISH CREEK        |
| 37           | 782                    | Decreed      | 5/18/1904            | 1.2              |                   | FISH CREEK        |
| 37           | 786                    | Decreed      | 8/23/1904            | 1.4              |                   | FISH CREEK        |
| 37           | 2009                   | License      | 8/30/1904            | 2.2              |                   | FISH CREEK WEST F |
| 37           | 766                    | Decreed      | 4/10/1905            | 0.8              |                   | FISH CREEK WEST F |
| 37           | 779                    | Decreed      | 4/21/1905            | 1.06             |                   | FISH CREEK WEST F |
| 37           | 783                    | Decreed      | 5/15/1905            | 1.6              |                   | FISH CREEK        |
| 37           | 739                    | Decreed      | 8/18/1905            | 2                |                   | FISH CREEK        |
| 37           | 740                    | Decreed      | 8/18/1905            | 2.4              |                   | FISH CREEK        |
| 37           | 748                    | Decreed      | 8/18/1905            | 1.6              |                   | FISH CREEK        |
| 37           | 753                    | Decreed      | 8/18/1905            | 1.8              |                   | FISH CREEK        |
| 37           | 773                    | Decreed      | 8/18/1905            | 3.2              |                   | FISH CREEK        |
| 37           | 774                    | Decreed      | 8/18/1905            | 2.6              |                   | FISH CREEK        |
| 37           | 775                    | Decreed      | 8/18/1905            | 5                |                   | FISH CREEK        |
| 37           | 776                    | Decreed      | 8/18/1905            | 5.8              |                   | FISH CREEK        |
| 37           | 744                    | Decreed      | 9/15/1905            | 2.6              |                   | FISH CREEK        |
| 37           | 741                    | Decreed      | 5/15/1906            | 2                |                   | FISH CREEK        |

|    |       |             |            |      |                       |
|----|-------|-------------|------------|------|-----------------------|
| 37 | 750   | Decreed     | 6/15/1906  | 0.8  | FISH CREEK            |
| 37 | 751   | Decreed     | 5/1/1907   | 0.5  | FISH CREEK            |
| 37 | 778   | Decreed     | 6/15/1907  | 2.2  | FISH CREEK            |
| 37 | 1178  | Decreed     | 7/25/1907  | 0.8  | FISH CREEK            |
| 37 | 2113  | License     | 5/8/1908   | 0.8  | FISH CREEK            |
| 37 | 754   | Decreed     | 5/15/1908  | 1    | FISH CREEK            |
| 37 | 765   | Decreed     | 5/15/1908  | 0.2  | FISH CREEK            |
| 37 | 747   | Decreed     | 6/1/1908   | 2.6  | FISH CREEK            |
| 37 | 743   | Decreed     | 1/16/1909  | 3.2  | FISH CREEK            |
| 37 | 757   | Decreed     | 1/16/1909  | 4    | FISH CREEK            |
| 37 | 1179  | Decreed     | 1/16/1909  | 4    | FISH CREEK            |
| 37 | 745   | Decreed     | 5/5/1909   | 0.4  | FISH CREEK            |
| 37 | 734   | Decreed     | 4/15/1910  | 1    | FISH CREEK            |
| 37 | 736   | Decreed     | 5/23/1910  | 2    | FISH CREEK            |
| 37 | 1180  | Decreed     | 5/23/1910  | 1    | FISH CREEK            |
| 37 | 1181  | Decreed     | 6/10/1910  | 1.1  | FISH CREEK            |
| 37 | 2195  | License     | 11/13/1910 | 1.7  | FISH CREEK            |
| 37 | 746   | Decreed     | 5/30/1911  | 0.5  | FISH CREEK            |
| 37 | 4392  | Statutory C | 6/1/1913   | 0.8  | FISH CREEK MIDDLE     |
| 37 | 2272  | License     | 8/14/1913  | 1.2  | FISH CREEK WEST F     |
| 37 | 2371  | License     | 2/14/1918  | 0.1  | FISH CREEK            |
| 37 | 1162  | Decreed     | 11/2/1922  |      | 14411 FISH CREEK      |
| 37 | 2768  | License     | 7/3/1924   |      | 450 LITTLE FISH CREEK |
| 37 | 2421  | License     | 7/5/1924   | 1    | LITTLE FISH CREEK     |
| 37 | 2772  | License     | 5/14/1930  |      | 400 LITTLE FISH CREEK |
| 37 | 1163  | Decreed     | 5/1/1933   | 1.56 | FISH CREEK            |
| 37 | 15939 | Decreed     | 6/28/1934  | 0.02 | LITTLE FISH CREEK     |
| 37 | 15952 | Decreed     | 6/28/1934  | 0.02 | LITTLE FISH CREEK     |
| 37 | 15953 | Decreed     | 6/28/1934  | 0.02 | LITTLE FISH CREEK     |
| 37 | 15954 | Decreed     | 6/28/1934  | 0.02 | LITTLE FISH CREEK     |
| 37 | 15955 | Decreed     | 6/28/1934  | 0.02 | LITTLE FISH CREEK     |
| 37 | 15956 | Decreed     | 6/28/1934  | 0.02 | LITTLE FISH CREEK     |
| 37 | 16088 | Decreed     | 6/28/1934  | 0.02 | FISH CREEK WEST F     |
| 37 | 16091 | Decreed     | 6/28/1934  | 0.02 | FISH CREEK WEST F     |
| 37 | 16128 | Decreed     | 6/28/1934  | 0.02 | FISH CREEK WEST F     |
| 37 | 16240 | Decreed     | 6/28/1934  | 0.02 | FISH CREEK            |
| 37 | 16252 | Decreed     | 6/28/1934  | 0.02 | FISH CREEK            |
| 37 | 16914 | Decreed     | 6/28/1934  | 0.02 | FISH CREEK            |
| 37 | 16915 | Decreed     | 6/28/1934  | 0.02 | FISH CREEK            |
| 37 | 17173 | Decreed     | 6/28/1934  | 0.02 | FISH CREEK EAST F     |
| 37 | 17174 | Decreed     | 6/28/1934  | 0.02 | FISH CREEK            |
| 37 | 17179 | Decreed     | 6/28/1934  | 0.02 | FISH CREEK            |
| 37 | 17181 | Decreed     | 6/28/1934  | 0.02 | FISH CREEK            |
| 37 | 10810 | Decreed     | 6/1/1948   | 0.03 | FISH CREEK            |

File No.  
A37-02045=4392=4393=4394=2123=745=746

Lava Lake Land & Livestock LLC  
35 27 Washington St.

Branch office  
Hailey Idaho

8/4/05

San Francisco, Ca

I met with Mike and Cheryl and briefly reviewed the files for Lava Lake and She approved meeting me this morning with their field foreman and ranch foreman to go out to the field to observe the field and POD's for each water right.

W.R.2045= this right was as I seen it could have been for a possible 80 acres give or take in the past , and as their foreman said their plans might be for more but unknown at this date but there is a lot of possible irrigated land here in this ranch if under sprinkler irrigation system. One POD is Cottonwood Cr the other is west of cottonwood , see photo

W.R.4392= the POD's are Fish cr. and Iron mine cr. The land close to # 1 diversion is planned for irrigation sprinkler with a portable pump of approximately 15 to 20 acres . The foreman said the area marked in yellow is a good estimate of their land now flood irrigated with POD 1 . See photo for # 2 which is flood irrigated but may be sprinkled later. This area is listed as 40 acres but is and will be more. Letter or priority will be coming.

W.R.4393= This POD is on Iron Mine Cr as per photo and as the foreman said this yellow area is approx. OK for the area of this right, but the POD is in the wrong place . The creeks marked Fish Cr. And Iron mine is OK , and the yellow area is flood irrigated, this area is probably about 33 acres.

W.R.4394= See photo red and brown # POD is flood irrigation but is planned for sprinkler , see ditch and proposed pipe. Looking at this land I would estimate it as more than 20 acres as soon as they get it under sprinkler.

W.R.2123= POD's 4-5 the yellow area is short , see photo of flood irrigation and proposed sprinkler irrigation. Area now is flood under # 5 and \$ is underground pipe for sprinkler, I believe this will be a lot more than 50 acres.

W.R. 745-746= All this land is proposed for sprinkler irrigation asap , it has in the past been flooded and what ever possible, this spring the old systems were washed out . I think there are many more than 44 acres as shown. There is new plans for POD'S to replace the ones washed out. There are many acres on west side planned for sprinkler irrigation.

See photo

| Description    | GPS Name & No. | Position No. | USR No. | Plate No. | Photo No. |
|----------------|----------------|--------------|---------|-----------|-----------|
| Lava Lake Land | Lava 1         | 2521679      | 1372152 | A0016273  | 1060664   |
| " " "          | " 2            | 2521119      | 1371711 | 274       | 665       |
| " " "          | " 3            | 2520259      | 1371981 | 275       | 666       |
| " " "          | " 4            | 2519776      | 1371792 | 276       | 667       |
| " " "          | " 5            | 2520073      | 1372211 | 277       | 668       |
| " " "          | " 6            | 2517710      | 1365528 | 278       | 669       |
| " " "          | " 7            | 2529279      | 1363845 | None      | 670       |
| " " "          | " 8            | 2529475      | 1363339 | "         | 671       |

Lee R. Peterson

## Background Data

- Statutory Claim
- Source claimed as Iron mine Creek tributary to Fish Creek
- Claimed for 0.8 cfs on 40 acres

## Place Of Use Data

Yellow line is the draft Place of Use created by IDWR based on historical data and records.

Yellow dot is draft Point of Diversion created by IDWR based on historical data and records.

Green line is decreed/licensed POU (this may only represent the Quarter-Quarter sections of the decree/license)

## 1987 Aerial Photo



Field Exam by  
Lee Peterson



State of Idaho

## DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

April 15, 2005

X  
X  
X  
X

Re: Evidence of Priority

**RESPONSE DEADLINE**  
**JUNE 17, 2005**

Dear Claimant:

The Notice of Claim identified with the number shown above your name on the mailing label has been filed in the Snake River Basin Adjudication (SRBA). The Notice indicates your water usage is based on "Beneficial Use" or a "Statutory Claim." Water rights of this type are established by the historical use of water, dating back to when water was first used for the purpose claimed. The date of first use, known as the priority date, has not been confirmed by a License, Decree or Permit. The Department will, in the coming year, conduct reviews and/or field exams for the claims in your area. Since the priority date of a beneficial use water right cannot be confirmed by field examination, **proof must be provided by the claimant** supporting the priority date claimed.

If you no longer own the property to which the claim is appurtenant please forward this correspondence to the present owner, or return it to the Department. If you have received this correspondence from the previous owner of the property it is required that you file a Change of Ownership form with the Department in order to receive future mailings and to continue to be a party in the adjudication.

Enclosed you will find a computer printout of your Notice of Claim and the pamphlet entitled "Evidence of Priority." The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement.

**PLEASE NOTE:** The Department will not recommend the court decree the notice **as claimed** if no evidence of a priority date is submitted – it may be disallowed. It will be to your advantage to provide clear and convincing evidence. If you choose to submit statements from individuals as evidence, the statement does **not** need to be in the form of a notarized affidavit as described in the brochure, but must relate first hand knowledge of the water right in question and include dates, quantities of water and extent of water use.

Submit the required evidence supporting the priority date by the date shown above, referencing all documents with the corresponding Notice of Claim number (i.e. 37-\_\_\_\_). If you have questions not covered by this letter or the enclosed pamphlet, please contact this office.

Sincerely,

Douglas Jones, P.E.  
Water Rights Supervisor

Enclosures



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE  
GOVERNOR

January 10, 2001

KARL J. DREHER  
DIRECTOR

LAVA LAKE LAND & LIVESTOCK LLC  
3527 WASHINGTON ST  
SAN FRANCISCO CA 94118

RE: SRBA Claim(s)      A37-00745, A37-00746, A37-02123,  
                                 A37-04392, A37-04393, A37-04394

Dear Claimants:

Pursuant to the change in ownership request that has been submitted to the Department, we have changed the record of current ownership to you. Please find the enclosed copies of the computer record of the claim(s) noting the change in claimant. Review these records and if there is an error, or you have any questions, please contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Trish Fawcett".

Trish Fawcett  
Technical Records Specialist

enc.