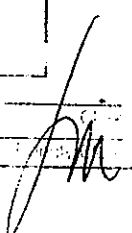


DEPT. COURT-SRBA
Tenth Judicial District
County of Twin Falls - State of Idaho

DEC 20 2010

by _____



**SUPPLEMENTAL DIRECTOR'S REPORT
REGARDING SUBCASE NOS. 37-296B,
37-296C, 37-19740, 37-21412, 37-22540 & 37-22541**

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Gary Spackman, Interim Director
Carter Fritschle, Manager, Adjudication Section

December 17, 2010

I. INTRODUCTION

In accordance with Idaho Code § 42-1412(4), Administrative Order 1, the Director of the Idaho Department of Water Resources (“Department”) submits this amended Supplemental Director’s Report (“Report”) regarding subcase numbers 37-296B, 37-296C, 37-19740, 37-21412, 37-22540, and 37-22541.¹ On September 30, 2010, the Department filed an Amended Director’s Report with the Court containing the most recent recommendations for 37-296B, 37-296C, 37-19740, and 37-21412.² The recommendations for 37-22540 and 37-22541 are recommended disallowed in the Fall 2010 Late Claims Director’s Report, filed with the Court on November 26, 2010. This Report was prepared under the supervision of Gary Spackman, Interim Director, and Carter Fritschle, Manager, Adjudication Section. Kelly K. Christensen, Senior Water Resource Agent, has knowledge of the information contained in the Report.

II. SUMMARY OF THE ISSUE

At issue are the Department’s recommendations for subcase numbers 37-296B, 37-296C, 37-19740, 37-21412, 37-22540, and 37-22541. The City of Hailey (“City”) and Indian Creek Ranch Owner’s Association, Inc. (“Homeowners”) are the only users on Indian Creek. Indian Creek was decreed a separate source in *S.C. Frost et al. v. Alturas Water Company, et al.* (Fourth Jud. Dist., Lincoln County, December 13, 1909) (hereinafter *Frost*). The Department’s recommendations reflect its understanding of the decreed rights and historical extent of beneficial use.

¹ Filed contemporaneously with this Report is a supplemental director’s report in subcase 37-296A et al., concerning the use of water by the City of Hailey from Indian Creek (referred to herein as the “City of Hailey 706 Report”).

² A copy of the Amended Director’s Report is attached hereto as Attachment A.

For 37-296B, objections to the original recommendation and the Amended Director's Report were filed by claimant, Homeowners; responses were filed by Big Wood Canal Company ("BWCC"), Concerned Water Users ("CWU"), and Dana Hofstetter and Victor Hofstetter ("Hofstetter"). Objections to the Amended Director's Report were filed by City and Homeowners; a response was filed by Hofstetter.

For 37-296C (split of 37-296B), objections were filed by City, Hofstetter, and Homeowners; a response was filed by Hofstetter.

For 37-19740, objections to the original recommendation were filed by BWCC, CWU, and Homeowners; a response was filed by Homeowners. Objections to the Amended Director's Report were filed by City, Hofstetter, and Homeowners.³

For 37-21412, objections to the original recommendation were filed by Hofstetter and Homeowners; responses were filed by BWCC and CWU. Objections to the Amended Director's Report were filed by City, Hofstetter, and Homeowners; a response was filed by Hofstetter.

The Homeowners' late claims for 37-22540 and 37-22541 were recommended disallowed by the Department in its November 26, 2010 Late Claims Director's Report. The objection deadline is set to expire on January 24, 2011; responses are due no later than April 25, 2011.

III. DISCUSSION

1. 37-296B

Water right no. 37-296 was originally decreed by the court in *Caldwell and Alturas Water Company v. Tucker et al.* (Fourth Jud. Dist., Blaine County, Dec. 24, 1900) (hereinafter *Tucker*). There, Nancy M. Tucker was decreed "all of the waters of Indian Creek" during the

³ The Homeowners filed a *Motion to Amend Objection* to object to the place of use element. The Motion, which seeks to increase the place of use, is scheduled to be heard on January 12, 2011. A response to the *Motion* was filed by Hofstetter.

irrigation season. *Tucker* at 1.⁴ The right was later reconfirmed in the *Frost* decree. There, Hailey Water & Power Company was decreed “[a]ll of” “Indian Creek” as the “successor of Nancy M. Tucker.” *Frost* at 12.⁵

On October 10, 1988, the Homeowners, as successors-in-interest, filed a claim in the SRBA for 4.01 cfs for irrigation of 200 acres under 37-296B. As stated in the original claim, Reid Newby, former watermaster for water district 37, measured a maximum flow of 6.33 cfs from Indian Creek.⁶ The claimed amount, 4.01 cfs, reflects the City of Hailey’s right to the first 2.62 cfs (37-296A), with the remainder to the Homeowners ($6.33 - 2.62 = 4.01$). *Id* (line 7, “Total quantity claimed” and line 14, “Remarks”).⁷

In 1994, a complaint for illegal diversion of water from Indian Creek was received by the Department. On October 19, 1994, Steve Clelland, senior water resource agent, met with Jim Scott to document the complaint and compile data for the Homeowners’ SRBA recommendation. Mr. Scott was a contractor farming portions of the Homeowners’ property.

During his examination, Mr. Clelland found that portions of the delivery system had not been used for some period of time. Some portions of the delivery ditches had eroded to the point that it was difficult to follow the ditch route. In his November 25, 1994 review notes, Mr. Clelland found 29 acres within the historical place of use were being irrigated, and an additional six acres were being irrigated outside the historical place of use.⁸

⁴ The *Tucker* decree is included as Attachment F to the City of Hailey 706 Report. The use of water during the non-irrigation season by Alturas Water Company under 37-1216 is discussed in the City of Hailey 706 Report.

⁵ An excerpted copy of the *Frost* decree is included as Attachment J to the City of Hailey 706 Report.

⁶ A copy of the original claim is attached hereto as Attachment B. See Attachment B at 2, line 14, “Remarks.”

⁷ The City of Hailey 706 Report contains a complete discussion of the City’s right to the first 2.62 cfs, or 131 miner’s inches, during the irrigation season. See also Attachment R to City of Hailey 706 Report at 2-3, ¶ 2.

⁸ A copy of the field notes are attached hereto as Attachment C at 3.

Because of law of the case in the SRBA on tolling of forfeiture upon the filing of an adjudication claim, Mr. Clelland reviewed evidence of irrigation as of 1984. Based upon review of a 1984 aerial photograph and his personal examination of the system, Mr. Clelland found 89.8 acres were irrigated in 1984.⁹

During his review, Mr. Clelland identified acres outside the historically irrigated place of use and points of diversion that post-dated commencement of the SRBA. In order to cover those acres and points of diversion with a water right, the Homeowners filed a transfer with the Department (“T-4713”). On January 18, 1996, the Department approved T-4713 for irrigation of 35 acres with 2.72 cfs.¹⁰ The transfer did not address the acres that were irrigated as of 1984.

In the SRBA, the Department recommended 37-296B as transferred: 2.72 cfs for irrigation of 35 acres with a priority of April 1, 1880. The Amended Director’s Report reflects these elements. Attachment A. However, in order to account for the City’s right to divert the first 2.62 cfs during the irrigation season under 37-296A, the Department included subordination language in its amended recommendation for 37-296B: “Pursuant to a call in times of scarcity, rights 37-296B and 37-296C are junior to Water Right No. 37-296A.” *Id.*

2. 37-296C¹¹

On January 10, 2005, the Homeowners filed a claim for irrigation of 76.2 acres with 1.29 cfs. Prior to filing the claim, Brockway Engineering, on behalf of the Homeowners, met with the

⁹ A copy of the 1984 aerial photograph with notations is attached hereto as Attachment D.

¹⁰ A copy of T-4713 is attached hereto as Attachment E.

¹¹ The original number assigned by the Department to the claim was 37-21412. The irrigation claim was recommended by the Department in the SRBA for 67.9 acres with 1.29 cfs. During the process of preparing the Amended Director’s Report, and to more directly link the irrigation claim with 37-296B, the Department renumbered the claim from 37-21412 to 37-296C. The Department will address 37-21412 below (aesthetic, recreation, and wildlife purpose of use). To avoid confusion, the Department will not refer to the original claim number in this section of the Report.

Department to discuss claiming acres that were not part of T-4713, but were irrigated as of 1984. Because the claim for 37-296C did not exceed the diversion rate or number of acres under the original claim for 37-296B, the Department treated the claim as a split and examined forfeiture based upon the October 10, 1988 filing date for 37-296B.

In its original SRBA recommendation, the Department recommended the irrigation of 67.9 acres with 1.29 cfs. The bases for the irrigated area were discussions with Brockway Engineering and review of 1984 aerial photography. The recommended diversion rate, 1.29 cfs, which is less than an inch to the acre, was dictated by the claim for 37-296B. The original claim for 37-296B sought 4.01 cfs. Because T-4713 approved a 2.72 cfs rate of diversion, the recommended diversion rate for 37-296C could not exceed 1.29 cfs ($2.72 + 1.29 = 4.01$).

After issuance of the original Director's Report, the Department was contacted by the Homeowners' current consultant, Ernie Carlson, with Idaho Water Engineering, LLC, to review the number of irrigated acres. Based upon these discussions, the Department agreed to add 5.2 additional acres to the place of use, for a total of 73.1 acres. The Amended Director's Report reflects these elements. Attachment A. In order to account for the City's right to divert the first 2.62 cfs during the irrigation season under 37-296A, the Department included the same subordination language in its amended recommendation for 37-296C as it did for 37-296B. *Id.*

3. 37-19740

This beneficial use claim was originally filed on March 3, 2010, and has been amended two times. For purposes of convenience, the Department will discuss the differences between its recommendation and the most recent amendment. Under 37-19740, the Homeowners claimed and the Department recommended as follows:

	Amended Claim	Recommendation
Priority	June 1, 1931	June 1, 1931
Irrigation Storage	50 acre-feet	19.6 acre-feet
Irrigation from Storage	700 acre-feet; 186.7 acres	274 acre-feet; 105 acres
Storage for Recreation & Wildlife	50 acre-feet	--
Storage for Stockwater	50 acre-feet	18 acre-feet

Regarding the difference between the claimed and recommended storage for irrigation volumes: 19.6 acre-feet was recommended because it is the calculated volume for a reservoir with a surface area of 3.5 acres and depth of 14 feet.

Regarding the difference between the claimed and recommended irrigation from storage volumes: 274 acre-feet was recommended based upon information supplied by the Homeowners that the 19.6 acre-foot reservoir was refilled 14 times during the irrigation season ($19.6 \times 14 = 274$). Under 37-296B and 37-296C, the Department recommended a 108.1 acre place of use ($35 + 73.1$). For 37-19740, the Department recommended 105 acres. The reduction accounts for 3.1 acres that are located above the reservoir and cannot be irrigated by storage water.

The Department did not recommend recreation and wildlife as purposes of use because those purposes were recommended under a separate claim, 37-21412.

Regarding the difference between the claimed and recommended stockwater volumes: 18 acre-feet was recommended because that is the Department's standard volume for year-round use by 1,000 head of cattle and 2,000 head of sheep.¹²

The Amended Director's Report reflects the recommended elements. Attachment A.

4. 37-21412

Under the most recent amendment, the Homeowners filed this claim to authorize aesthetic, recreation, and wildlife purposes of use from the storage reservoir. The claim is an enlargement of the original purposes of use under 37-19740. As discussed above, the volume of the reservoir is 19.6 acre-feet. Therefore, the Department recommended the claimed purposes of use at 19.6 acre-feet.

In preparing this Report, the Department discovered an error in its recommendation for 37-21412. The basis of the recommendation should read "beneficial use," not "decreed." Additionally, the priority date should reflect when 37-19740 was enlarged, August 22, 1972, not April 1, 1880 (recommended priority for 37-296B & C). A revised recommendation is attached hereto as Attachment F and should replace the recommendation contained in the Amended Director's Report.

5. 37-22540 & 37-22541 (Disallowed)

The Homeowners filed these late claims for irrigation of acres at the southern end of the subdivision with water from the Big Wood River. The claims were based upon splits of 37-297 from the *Frost* decree. In *Frost*, 37-297 authorized diversion of water for purposes of irrigation from the Hiawatha Canal. Judge Wildman granted the motions for late claim on September 21,

¹² $1,000 * 12 \text{ gal/hd} = 12,000 \text{ gal/day cattle}$. $2,000 * 2 \text{ gal/hd} = 4,000 \text{ gal/day sheep}$. $12,000 \text{ gal/day} + 4,000 \text{ gal/day} = 16,000 \text{ gal/day}$. $16,000 \text{ gal/day} * 365 \text{ days} / 325,850 = 18 \text{ af}$.

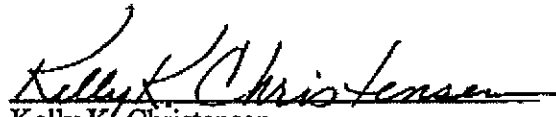
2010. The Department recommended these claim disallowed in its Fall 2010 Late Claims Director's Report, filed with the Court on November 26, 2010. The period for filing objections will expire on January 24, 2011; response must be filed no later than April 25, 2011.

In its investigation, the Department requested delivery records from the watermaster for water district 37. The watermaster informed the Department he had no record of delivery for the claimed place of use or for delivery of water to the Homeowners under 37-297. Because there were no delivery records, the Department recommended these claims disallowed.

IV. CONCLUSION

The Department's recommendation for subcase numbers 37-296B, 37-296C, 37-19740, 37-21412, 37-22540 (disallowed), and 37-22541 (disallowed) are based on the information presented and reasonable conclusions drawn therein. The Department therefore respectfully requests that the Court recommend the rights as described in this Report.

Submitted this 17th day of December, 2010.


Kelly K. Christensen
Senior Water Resource Agent

CERTIFICATE OF SERVICE

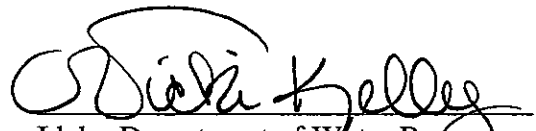
I HEREBY CERTIFY that I served a true and correct copy of the following described document on the persons listed below by United States mail with the correct postage affixed thereto on this 17TH day of December, 2010.

Document Served:

Supplemental Director's Report Regarding Subcase No. 37-296B et al.

Persons Served:

Randall C. Budge Racine Olson 201 E. Center St. P.O. Box 1391 Pocatello, ID 83204-1391	Patrick D. Brown Hutchinson Brown 104 Lincoln St. P.O. Box 207 Twin Falls, ID 83303-0207
Albert P. Barker Barker Rosholt 1010 W. Jefferson, Ste. 102 P.O. Box 2139 Boise, ID 83701-2139	Craig D. Hobdey 125 5 th Ave. W. P.O. Box 176 Gooding, ID 83330
Dana L. Hofstetter 608 W. Franklin St. Boise, ID 83702	


Idaho Department of Water Resources

Attachment A

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

SEP 30 2010

AMENDED DIRECTOR'S REPORT

By

Clerk

Deputy Clerk

Subcase Nos. 37-296B, 37-296C, 37-19740 and 37-21412

In Re SRBA

Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Gary Spackman, Interim Director
Carter Fritschle, Manager, Adjudication Section

September 30, 2010

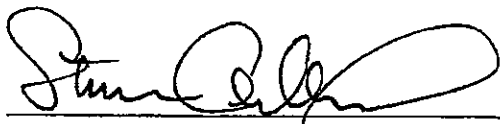
DESCRIPTIVE SUMMARY

This is an Amended Director's Report submitted by the Director of the Idaho Department of Water Resources.

DISCUSSION

Pursuant to the Special Master's *Order Resetting Dates and Deadlines* dated July 27, 2010, the Director submits the attached Amended Director's Report for subcases 37-296B, 37-19740 and 37-21412. The Director notes that water right 37-296B was the subject of a transfer approved in 1996. In order to clarify the effect of that transfer and assist the parties in narrowing the scope of possible trial issues, the whole of water right 37-296B is now split and recommended as water rights 37-296B and 37-296C. Water right 37-296B now reflects the portion of the water right that was changed by the 1996 transfer. The portion of right 37-296B which remained unchanged by the transfer is now recommended as water right 37-296C.

Respectfully submitted this 30 day of September, 2010.


for CARTER FRITSCHLE
Manager, Adjudication Section

09/29/2010

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

RIGHT NUMBER: 37-296B

NAME AND ADDRESS: INDIAN CREEK RANCH OWNERS ASSN INC
PO BOX 3411
HAILEY ID 83333-3411

SOURCE: INDIAN CREEK TRIBUTARY: BIG WOOD RIVER

QUANTITY: 2.720 CFS
122.50 AFY

The total instantaneous diversion of water from all points of diversion of rights under Transfer No. 4713 shall not exceed 2.72 cfs, nor total combined annual diversion volume of 122.5 af.

This right when combined with all other rights shall provide no more than 3.5 afa per acre for irrigation of the lands above.

PRIORITY DATE: 04/01/1880

Pursuant to a call in times of scarcity, rights 37-296B and 37-296C are junior to Water Right No. 37-296A.

POINT OF
DIVERSION:

T03N R18E S22 SWSE Within BLAINE County
T03N R18E S22 SWSE Within BLAINE County
T03N R18E S23 NWSW Within BLAINE County
T03N R18E S23 NWSW Within BLAINE County
T03N R18E S27 NENW Within BLAINE County
T03N R18E S28 NESE Within BLAINE County
T03N R18E S28 NESE Within BLAINE County
T03N R18E S33 NWNE 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	2.720 CFS 122.50 AFY

PLACE OF USE: IRRIGATION in BLAINE County

T03N R18E S22	SWSE	1.50	T03N R18E S23 Lot 2 SWNW	1.00
T03N R18E S27	NENW	6.40	T03N R18E S27	NWNW 0.60
T03N R18E S27	SWNW	5.10	T03N R18E S27	SESW 2.00
T03N R18E S28	NESE	8.50	T03N R18E S28	NWSE 1.20
T03N R18E S28	SWSE	0.80	T03N R18E S28	SESE 7.40
T03N R18E S33	NWNE	0.50		

35 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 - Decreed

Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

A portion of the authorized rate of diversion under Right No. 37-00296B is for conveyance purposes in the delivery of this right.

After specific notification by the department, the right holder shall annually report the amount of water diverted to the department.

Approval of this transfer in no way grants any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.

Use of water under this water right will be regulated by the watermaster of State Water District No. 37.

09/29/2010

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

RIGHT NUMBER: 37-296C

NAME AND ADDRESS: INDIAN CREEK RANCH OWNERS ASSN INC
PO BOX 3411
HAILEY ID 83333-3411

SOURCE: INDIAN CREEK TRIBUTARY: BIG WOOD RIVER

QUANTITY: 1.290 CFS

PRIORITY DATE: 04/01/1880

Pursuant to a call in times of scarcity, rights 37-296B and 37-296C are junior to Water Right No. 37-296A.

POINT OF
DIVERSION:

T03N R18E S27 NENW Within BLAINE County
T03N R18E S27 SENW Within BLAINE County
T03N R18E S28 NESE Within BLAINE County
T03N R18E S28 SWSE Within BLAINE County
T03N R18E S33 NWNE Within BLAINE County
T03N R18E S33 NWNE Within BLAINE County
T03N R18E S33 SENW 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	1.290 CFS
PLACE OF USE:	<u>IRRIGATION in BLAINE County</u>		
	T03N R18E S27 NENW 2.40	T03N R18E S27 SWNW	6.20
	T03N R18E S28 SENE 3.10	T03N R18E S28 NESE	8.50
	T03N R18E S28 NWSE 0.90	T03N R18E S28 SWSE	9.40
	T03N R18E S28 SESE 1.60	T03N R18E S33 NENE	0.10
	T03N R18E S33 NWNE 9.50	T03N R18E S33 SWNE	19.00
	T03N R18E S33 SENW 3.30	T03N R18E S33 NESW	7.00
	T03N R18E S33 NWSE 2.10		

73.1 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 - Decreed

09/29/2010

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

RIGHT NUMBER: 37-19740

NAME AND ADDRESS: INDIAN CREEK RANCH OWNERS ASSN INC
PO BOX 3411
HAILEY ID 83333-3411

SOURCE: INDIAN CREEK TRIBUTARY: BIG WOOD RIVER

QUANTITY: 274.00 AFY

The capacity of the storage reservoir is 19.6 AF.

PRIORITY DATE: 06/01/1931

POINT OF
DIVERSION:

T03N R18E S22 SWSE Injection Within BLAINE County
T03N R18E S22 SWSE Within BLAINE County
T03N R18E S27 NENW Rediversion Within BLAINE County
T03N R18E S27 SENW Rediversion Within BLAINE County
T03N R18E S28 NESE Rediversion Within BLAINE County
T03N R18E S28 NESE Rediversion Within BLAINE County
T03N R18E S28 SWSE Rediversion Within BLAINE County
T03N R18E S33 NWNE Rediversion Within BLAINE County
T03N R18E S33 NWNE Rediversion Within BLAINE County
T03N R18E S33 SENW Rediversion Within BLAINE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION FROM STORAGE	04/15 10/31	274.00 AFY
IRRIGATION STORAGE	01/01 12/31	19.60 AFY
STOCKWATER STORAGE	01/01 12/31	18.00 AFY
STOCKWATER FROM STORAGE	01/01 12/31	18.00 AFY

PLACE OF USE: IRRIGATION STORAGE in BLAINE County

T03N R18E S22	SESW	T03N R18E S22	SWSE
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IRRIGATION FROM STORAGE in BLAINE County

T03N R18E S27	NENW	8.80	T03N R18E S27	NWNW	0.60
T03N R18E S27	SWNW	11.00	T03N R18E S27	SESW	2.00
T03N R18E S28	SENE	3.10	T03N R18E S28	NESE	17.00
T03N R18E S28	NWSE	2.10	T03N R18E S28	SWSE	10.00
T03N R18E S28	SESE	9.00	T03N R18E S33	NENE	0.10
T03N R18E S33	NWNE	9.90	T03N R18E S33	SWNE	19.00
T03N R18E S33	SESW	3.30	T03N R18E S33	NESW	7.00
T03N R18E S33	NWSE	2.10			

STOCKWATER FROM STORAGE same as IRRIGATION STORAGE

105 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

Right No. 37-21412 is an enlargement of this right pursuant to Section 42-1426, Idaho Code.

09/29/2010

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

RIGHT NUMBER: 37-21412

NAME AND ADDRESS: INDIAN CREEK RANCH OWNERS ASSN INC
PO BOX 3411
HAILEY ID 83333-3411

SOURCE: INDIAN CREEK TRIBUTARY: BIG WOOD RIVER

QUANTITY: 19.60 AFY

The capacity of the storage reservoir is 19.6 AF.

PRIORITY DATE: 04/01/1880

This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.

POINT OF
DIVERSION:

T03N R18E S22 SWSE Within BLAINE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
AESTHETIC STORAGE	01/01 12/31	19.60 AFY
WILDLIFE STORAGE	01/01 12/31	19.60 AFY
RECREATION STORAGE	01/01 12/31	19.60 AFY

PLACE OF USE: WILDLIFE STORAGE in BLAINE County

T03N R18E S22 SESW T03N R18E S22 SWSE

RECREATION STORAGE in BLAINE County

T03N R18E S22 SESW T03N R18E S22 SWSE

AESTHETIC STORAGE in BLAINE County

T03N R18E S22 SESW T03N R18E S22 SWSE

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.

This right is based upon an enlargement of Right No. 37-19740 pursuant to Section 42-1426, Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

CERTIFICATE OF SERVICE

I certify that on Sept. 30, 2010, I caused to be served a true and correct copy of this Amended Director's Report, 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:

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

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

United States Department of Justice
Environment & Natural Resources Div.
550 W. Fort Street MSC 033
Boise, ID 83724

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

Blaine County Courthouse
201 2ND Ave. S Ste 110
Hailey, ID 83333

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

Dana L. Hoffstetter
Hoffstetter Law Office LLC
608 West Franklin St.
Boise, ID 83702

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

Craig D. Hobdey
Hobdey & Hobdey
P.O. Box 176
Gooding, ID 83330

☐ Overnight Mail
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Albert P. Barker
Barker Rosholt & Simpson LLP
P.O. Box 2139
Boise, ID 83701-2139

☐ Overnight Mail
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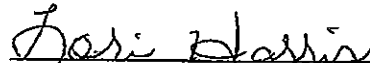
Randall C. Budge
Candice M. McHugh
Thomas J. Budge
Racine Olson
P.O. Box 1391
Pocatello, ID 83204-1391

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

3. Courtesy copy to:

Patrick D. Brown
Hutchinson & Brown LLP
P.O. Box 207
Twin Falls, ID 83303-0207

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



Signature of person delivering form

Attachment B

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 437-00296 B
Date Received _____
Receipt Number 5003841 *see*

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED
OCT 26 1988
Department of Water Resources
Southern Region Office

Please type or print clearly

1. Name of Claimant (s) INDIAN CREEK RANCH OWNERS, INC. Phone (208) 726-8905
Mailing Address P.O. BOX 1538, HATLEY ID Zip 83333

2. Date of Priority (Only one (1) per claim) 04-01-1880

3. Source of water supply (a) INDIAN CREEK
which is tributary to (b) BTG WOOD RIVER

4. a. Location of existing point of diversion is: Township 3N Range 18E Section 23,
1/4 of NW 1/4 of SW 1/4, Govt. Lot, B.M., County of BLAINE

Additional points of diversion if any: NE1/4 NW1/4, Sec. 27, T. 3N, R. 18 E.; (See #14)

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

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

Govt. Lot _____ B.M., County of _____

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

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well.

DAM AND EARTHEN DITCHES

COPY

MICROFILMED

MAR 01 1993

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For IRRIGATION purposes from 04-01 to 11-01 amount 4.01* or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 4.01 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is 500 acre feet per annum.

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

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
3N	18E	22													5				5
		23							2	3		15							20
		27					8	7	25										40
		28				10									30	3	5	10	58
		33			10					10	10			10					40
2N	18E	4		10	22		5												37

Total number of acres irrigated 200

11. In which county (ies) are lands listed above as place of use located? BLAINE

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

13. Describe any other water rights used at the same place and for the same purposes as described above.
_____ or None (X)

14. Remarks: #4: SW1/4 NW1/4, Sec. 27, T. 3N, R. 18E; SW1/4SE1/4, Sec. 28, T. 3N, R. 18E;
SE1/4 NW1/4, Sec. 33, T. 3N, R. 18E.; NE1/4 SW 1/4, Sec. 33, T. 3N, R. 18E.
#6: WATERMASTER, REID NEWBY, HAS MEASURED MAXIMUM FLOW OF 6.33 cfs FROM INDIAN
CREEK. CITY OF HATLEY HAS RIGHT OF 2.62 cfs.
#12: POWER OF ATTORNEY.

MICROFILMED

Last Name INDIAN CREEK Ident No. A37-00296 #B

Copies: White Black Yellow Ant

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License _____ Permit _____
Decree XXX
If applicable provide IDWR Water Right Number 37-00296
Court _____ Case Number _____ Decree Date 12-13-1909
Plaintiff vs Defendant S.C. FROST, ET AL. V. ALTURAS WATER CO., ET AL.

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 Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true
and correct.

Signature of Claimant (s) _____ Date _____

_____ Date _____

For Organizations: I do solemnly swear or affirm that I am the Attorney in fact
of INDIAN CREEK RANCH OWNERS, INC. , that I have signed the foregoing
document in the space below as Attorney in fact of INDIAN CREEK RANCH OWNERS, INC
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization Atty-in-fact Date 10/26/88

State of Idaho/or _____)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 26th day of October 19 88

SEAL

Notary Public Maria West

Residing at Twin Falls

My Commission Expires 4-21-93

Please Print Name

17. Notice of Appearance:
Notice is hereby given that I, GARY SLETT will be acting as attorney at law on behalf
of the claimant signing above and that all notices required by law to be mailed by the director to the claimant signing above
should be mailed to me at the address listed below.

Signature _____

Address Box 1906 Twin Falls

Date 10/26/88

COPY

MICROFILMED

MAR 01 1993

Last Name INDIAN CREEK Ident. Number A37-00296B

Copies White-State, Yellow-Claimant

Attachment C

INDIAN CREEK SUBDIVISION FIELD NOTES REVIEW

BASED ON 10-19-94 EXAM

BY: STEVE CLELLAND
DATE: NOVEMBER 22, 1994

The purpose of this summary is to describe the irrigation uses I have verified for reporting on Snake River Basin Adjudication claims for Indian Creek Ranch Owners, Inc.

The irrigation and farming of the common areas of this Indian Creek Subd. have been performed by Jim Scott for the last five years; the period of 1990-1994. It is a common farming practice in this drainage to harvest crops of hay from fields that are never irrigated; sub-groundwater provides water for the crop.

Areas not described within these field descriptions are considered not irrigated since most of the land has been designated as subdivision building lots or roadways and no longer has a delivery to the property or an irrigation system.

ABOVE THE DAM & POND

No irrigation was found or diversion found to support any irrigation above the pond site. However, the City of Hailey does pump from their spring source to irrigate above the spring collection area. The meadows found below the City's diversion are naturally supported by sub-water and spring flows. Jim Scott said at one time the gulch in the SWSW of Section 23 was sprinkler irrigated; he estimated 1985. No claim for acres, no proof found and nothing remains of the system or diversion, however the lands can be swathed and harvested for hay without irrigation. In fact, cutting of the fields is desired to reduce the potential for fire hazards, according to Mr. Scott.

Two lots were identified as having small pumps in Indian Creek for lawn use around homes; Lots #172 and #173.

BELOW THE DAM

Field #1. There was, historically, a point of diversion (POD) below the dam that diverted waters to the west and southward direction and irrigated lands to the west of Indian Creek. When the new road system was constructed the old diversion structure was removed and no diversion structure exists to divert the stream to the previous land shown on the Review Map as Field #1. A second POD is used currently and was used by Jim Scott in 1993 to irrigate portions of Field #1. This POD is located at NENENW, SEC. 27 (T3N, R18E) and is used to gravity, flood irrigate 14.0 acres (Planimeter measured 13.8 and rounded up to even 14.0 acres). In 1994 the delivery ditch to this irrigated parcel was removed in part due to the construction work on the common sewer system. Since the ditch flows over the sewer system the continued use of this ditch is

questioned and may need future review. The north end of Field #1 is too high to use the current ditch. The south end of this field was served from a diversion about $\frac{1}{4}$ mile downstream. This diversion has not been used for over 5 years. The field has been sub-watered and is able to raise a cutting of hay without direct irrigation. <See photo sets B & C>

Field #2 has not been irrigated for over 5 years and has no delivery system but has raised a hay crop for cutting.

Field #3 cannot be irrigated and has not been for over 5 years. The diversion structures can be found on the creek but all the ditches were destroyed when the roadway was constructed. This east ditch system was needed to irrigate the higher ground down the valley and included the Field #6 which can no longer be irrigated. Remains of the old ditch system can be found east of the current road and are not useable for water deliveries. North of Field #3 a new irrigation use was started in 1994 by Brad Roos. He began to pump from the stream and irrigate about 4.0 acres by big gun sprinkler. <See photo set D>

Field #4 is the most irrigated parcel and has been irrigated for each of the past five years by Jim Scott. Diversion system and ditches were found and appear to be useable. POD is at NWNESE, SEC. 28 and 14.0 acres are found irrigated by a gravity flood system. <See photo set E>

Field #5 has not been irrigated in over 5 years and has no system of delivery from the creek. I did not confirm the existence of the POD in the creek but the delivery ditch system no longer exists to the field. A culvert under the road marks the crossing of the old ditches but can also account for the wastewater running off from Field #4. This field has been cut for volunteer hay crops. The City of Hailey has constructed a million gallon storage tank within this field and the top area of the tank is irrigated by the City from city water. <See photo set E>

Field #6 was part of the east ditch as described above with Field #3.

Field #7 has not been irrigated in the past 5 years by Jim Scott but was irrigated in 1988 & 1989 by Ray Salmon, according to Mr. Scott. The field shows as irrigated in the NAPP photos X74SE and X74NE dated 9-15-88. The diversion structure has been removed from the creek and the ditch has been filled in, is not in use and abandoned. The owner of Lot #47 has a small pump for lawn use in the stream. <See photo set F>

Field #8 and below have no diversion works or delivery systems to control the water anywhere downstream from the abandoned diversion described above in #7. Acres claimed in section 4, T2N, R18E, have no delivery system or irrigation uses from the Indian Creek system.

The flow of Indian Creek spills into the Hiawatha canal and returns to the Big Wood River system to which it is tributary.

SUMMARY OF ACRES FOUND TO BE VALID IRRIGATION USES

FIELD #1 14.0 ACRES
FIELD #4 14.0 ACRES
====
28.0 ACRES

SUBD. LOTS USING WATER:
LOT 172 0.5 ACRE
LOT 173 0.5
LOT 59+ 4.0
LOT 47 0.5
====
5.5 ACRES

SPRINKLER USE AT POND PARK:
1.0 ACRE

=====

TOTAL POSSIBLE ACRES = 34.5 ACRES

+ .5

35.0

Note:

Lot 164 adds
0.5 AC to the total
shown. See 4/26/95

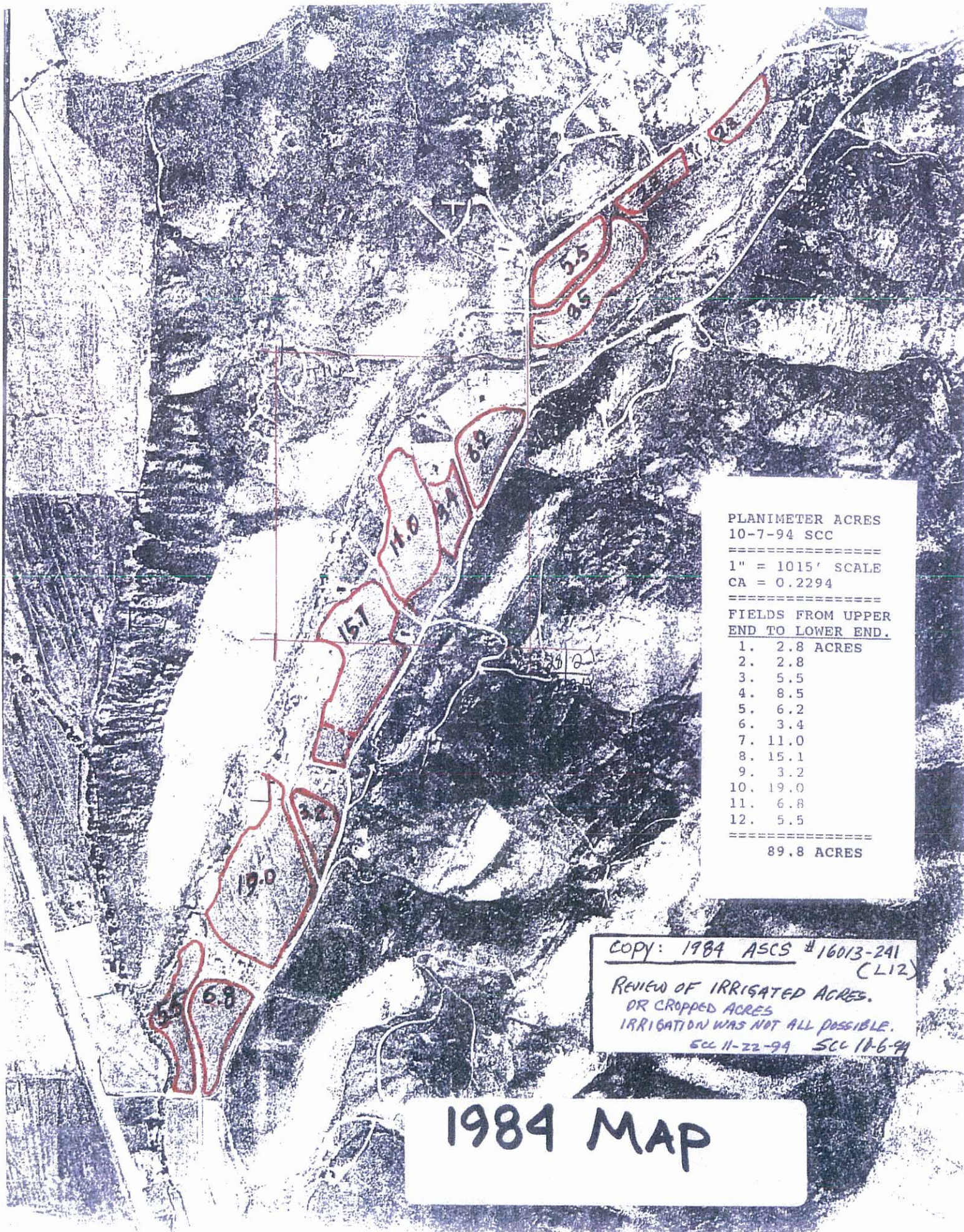
NOTES:

1. Individual lot uses within the Subdivision are not yet confirmed as allowed uses within this water right.

FILE: (CVR:ICROA-REVIEW-SUMM.WP)

REVISED:

Attachment D



PLANIMETER ACRES
10-7-94 SCC

=====

1" = 1015' SCALE
CA = 0.2294

=====

FIELDS FROM UPPER
END TO LOWER END.

- | | |
|-----|-----------|
| 1. | 2.8 ACRES |
| 2. | 2.8 |
| 3. | 5.5 |
| 4. | 8.5 |
| 5. | 6.2 |
| 6. | 3.4 |
| 7. | 11.0 |
| 8. | 15.1 |
| 9. | 3.2 |
| 10. | 19.0 |
| 11. | 6.8 |
| 12. | 5.5 |

=====

89.8 ACRES

COPY: 1984 ASCS #16013-241
(L12)

REVIEW OF IRRIGATED ACRES.
OR CROPPED ACRES
IRRIGATION WAS NOT ALL POSSIBLE.
SCC 11-22-94 SCC 11-6-94

1984 MAP

Attachment E

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT

TRANSFER NO. 4713
WATER RIGHT NO. 37-00296B

S-ADJ
RECEIVED

JAN 1 1984

Department of Water Resources
Southern Region

This is to certify that: **INDIAN CREEK RANCH OWNERS ASSN INC**
C/O BRUCE LIUM
PO BOX 3411
HAILEY ID 83333

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/15 to 10/15	* 2.72 CFS	* 122.5 AF

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
INDIAN CREEK	BIG WOOD RIVER

Priority: 04/01/1880

LOCATION OF POINT(S) OF DIVERSION:

SWSE , Sec. 22, Township 03N, Range 18E
NWSW , Sec. 23, Township 03N, Range 18E
NENW , Sec. 27, Township 03N, Range 18E
NESE , Sec. 28, Township 03N, Range 18E
NWNE , Sec. 33, Township 03N, Range 18E
BLAINE County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
03N	18E	22	SWSE 1.5			1.5
		23	SWNW 1			1
		27	NENW 5	SWNW 6	SENW 3	14
		28	NESE 8	NWSE 2	SWSE 1	18
			SESE 7			0.5
		33	NWNE 0.5			35

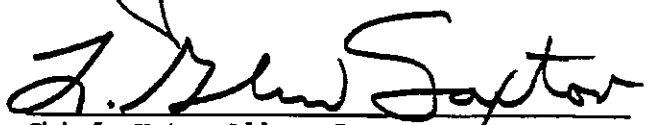
Total number of acres irrigated: 35

TRANSFER NO. 4713
WATER RIGHT NO. 37-00296B

CONDITIONS OF APPROVAL AND REMARKS

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 37.
2. This right when combined with all other rights shall provide no more than 3.5 afa per acre for the lands above.
3. After specific notification by the department, the right holder shall annually report the amount of water diverted to the department.
4. Approval of this transfer in no way grants any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.
5. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
6. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.
7. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
8. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
- *9. The total instantaneous diversion of water from all points of diversion under Transfer No. 4713 shall not exceed 2.72 cfs, nor total combined annual diversion volume of 122.5 af.
- *10. A portion of the authorized rate of diversion under Right No. 37-00296B is for conveyance purposes in the delivery of this right.
11. Two points of diversion are located within SWSE, S22; NWSW, S23; and NESE, S28, T03N, R18E.

Dated this 18th day of January, 1996.


Chief, Water Alloc. Bureau

Attachment F

12/14/2010

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

RIGHT NUMBER: 37-21412

NAME AND ADDRESS: INDIAN CREEK RANCH OWNERS ASSN INC
PO BOX 3411
HAILEY ID 83333-3411

SOURCE: INDIAN CREEK TRIBUTARY: BIG WOOD RIVER

QUANTITY: 19.60 AFY

The capacity of the storage reservoir is 19.6 AF.

PRIORITY DATE: 08/22/1972

This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.

POINT OF
DIVERSION:

T03N R18E S22 SWSE Within BLAINE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
AESTHETIC STORAGE	01/01 12/31	19.60 AFY
WILDLIFE STORAGE	01/01 12/31	19.60 AFY
RECREATION STORAGE	01/01 12/31	19.60 AFY

PLACE OF USE: WILDLIFE STORAGE in BLAINE County

T03N R18E S22 SESW T03N R18E S22 SWSE

RECREATION STORAGE in BLAINE County

T03N R18E S22 SESW T03N R18E S22 SWSE

AESTHETIC STORAGE in BLAINE County

T03N R18E S22 SESW T03N R18E S22 SWSE

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.

This right is based upon an enlargement of Right No. 37-19740 pursuant to Section 42-1426, Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use