

10/17/2006

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

RIGHT NUMBER: 63-4281

NAME AND ADDRESS: LYONS IDAHO INVESTMENT LLC
3850 E BASELINE RD
STE 112
MESA AZ 85206

SOURCE: PECKHAM DRAIN

TRIBUTARY: PANCHERI DRAIN

QUANTITY: 1.000 CFS
238.50 AFY

PRIORITY DATE: 04/01/1963

POINT OF DIVERSION:
T01S R02W S24 NESW Within CANYON County

PURPOSE AND
PERIOD OF USE:

	<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
	IRRIGATION	03/01 11/15	1.000 CFS 238.50 AFY
PLACE OF USE:	<u>IRRIGATION Within CANYON County</u>		
	T01S R02W S24	NESW 17.00	T01S R02W S24 NWSW 36.00
	53 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

Right decreed in Evans vs. Pancheri 08/10/1978, decree 63 U.

Right includes accomplished change in source pursuant to Section 42-1425, Idaho Code.

Use of this right is combined with water from Boise-Kuna Irrigation District.



Idaho Department of Water Resources

SRBA Recommendation:

63-4281

(Irrigation)

Legend

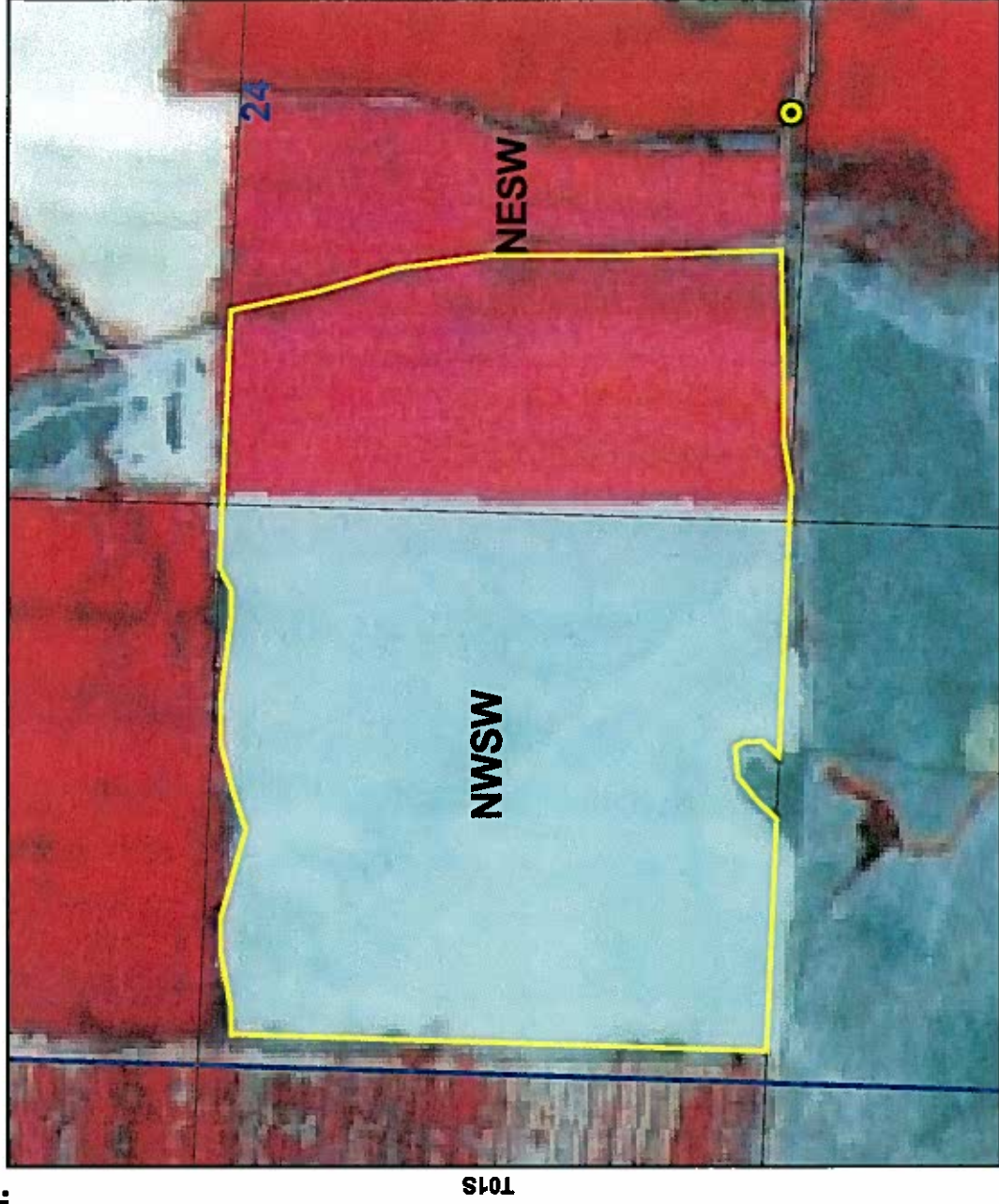
- Point of Diversion
- Place of Use
- Townships
- PLS Sections
- Quarter Quarters



Canyon County
IDWR Basin 63



R021W



T01S

0.4 Miles

0.2

0

Prepared by M. Ciscell
On Tuesday, October 17, 2006
1987/88 Aerial Photography

09/27/2006

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

RIGHT NUMBER: 63-4281

NAME AND ADDRESS: LYONS IDAHO INVESTMENT LLC
3850 E BASELINE RD
STE 112
MESA AZ 85206

SOURCE: WASTE WATER

TRIBUTARY: SNAKE RIVER

QUANTITY: 1.000 CFS

PRIORITY DATE: 04/01/1963

POINT OF DIVERSION:

T01S R02W S24 NESW Within CANYON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/01 11/15	1.000 CFS

PLACE OF USE: IRRIGATION Within CANYON County

T01S R02W S24	NESW	13.00	T01S R02W S24	NWSW	40.00
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53 ACRES TOTAL

This right is limited to the irrigation of 53 acres within the place of use described above in a single irrigation season.

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



Idaho Department of Water Resources

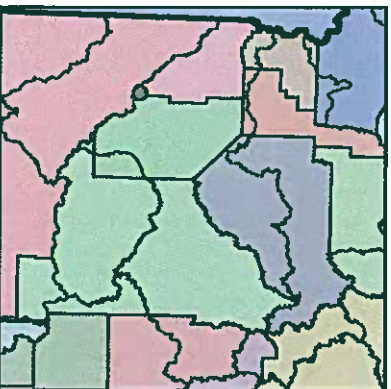
SRBA Recommendation:

63-4281

(Irrigation)

Legend

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



Canyon County
IDWR Basin 63



T01S



Prepared by M. Ciscell
On Wednesday, September 27, 2006
1987/88 Aerial Photography

02/18/2009

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

RIGHT NUMBER: 63-4281

NAME AND ADDRESS: LYONS IDAHO INVESTMENT LLC
4320 E BROWN RD STE 110
MESA AZ 85205-4083

SOURCE: PECKHAM DRAIN

TRIBUTARY: PANCHERI DRAIN

QUANTITY: 1.000 CFS
238.50 AFY

PRIORITY DATE: 04/01/1963

POINT OF
DIVERSION:

T01S R02W S24 NESW Within CANYON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/01 11/15

1.000 CFS
238.50 AFY

PLACE OF USE: IRRIGATION in CANYON County

T01S R02W S24

NESW

17.00

T01S R02W S24

NWSW

36.00

53 ACRES TOTAL

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

An easement or right of way agreement providing for access to the drain by its owner and those responsible for maintaining it - and/or for access to the drain by the appropriator to divert water pursuant to this right - must be executed among the appropriator, the owner of the drain, and if appropriate, those responsible for maintaining the drain. Failure to execute such an agreement will constitute grounds for legal action to prevent water from being diverted under this 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.

The source of this water right is waste water. The wasting of water may be discontinued at any time.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

Use of this right is combined with water from Boise-Kuna Irrigation District.

Right includes accomplished change in source pursuant to Section 42-1425, Idaho Code.

Right decreed in Evans vs. Pancheri 08/10/1978, decree 63 U.

RECEIVED

RECEIVED

JAN 30 1998

JAN 26 1997

WATER RESOURCES
WESTERN REGION

Department of Water Resources

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A63-04281

Date Received:

Receipt No: 2412161

Received By: Estiano

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: KENDALL FAMILY TRUST 208-495-2233
Address: 6549 WARREN SPUR RD
MELBA ID 83641

2. Date of Priority: APR 1, 1963

3. Source: WASTE WATER Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
01S	02W	24		NE	SW		CANYON

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	10/31	1.000		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
01S	02W	24	NE	SW		IRR	13.0
			NW	SW		IRR	40.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	53.0
					Total Acres	53.0

11. Place of use in counties: CANYON

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

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: BENEFICIAL USE

16. Signature(s)

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

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am TRUSTEE of _____ Title

Kendall Family Trust, that I have signed the foregoing Organization

document in the space below as TRUSTEE of _____ Title

Kendall Family Trust and that the statements contained in the Organization

foregoing document are true and correct.

K. Love
Signature of Authorized Agent

TRUSTEE - Kendall Family Trust
Title and Organization

1-26-98
Date

State of Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 20th day
of January 1998

L. Sherman
Notary Public

Seal

Residing at Boise, ID
My Commission Expires 11-14-1998

(2) INSTRUMENT NO. 9428879

WARRANTY DEED

For Value Received, DONNA L. THOMAS, the Grantor, does hereby grant, bargain, sell and convey unto KENDALL FAMILY TRUST, the Grantee, whose address is Post Office Box 7422, Boise, Idaho 83707, the following premises, to-wit:

Northwest Quarter of the Southwest Quarter of Section 24, Township 1 South, Range 2 West of the Boise Meridian, Canyon County, Idaho; South Half of the Northwest Quarter, Northeast Quarter of the Southwest Quarter; and all that part of the Southwest Quarter of the Northeast Quarter lying North and West of Summit Lateral, all in Section 24, Township 1 South, Range 2 West, Boise Meridian, Canyon County, Idaho.

EXCEPT the Easterly 14 feet of all that portion of the Southeast Quarter of the Northwest Quarter of the afore-said Section 24 lying South of the Summit Lateral,

AND

The Westerly 25 feet of the Northwest Quarter of the Northeast Quarter of Section 24, Township 1 South, Range 2 West, Boise, Meridian, Canyon County, Idaho.

Purported Address:

6547 WARREN SPUR ROAD
MELBA, IDAHO 83641

TO HAVE AND TO HOLD the said premises, with their appurtenances and water rights in as is condition unto the said Grantee, its heirs, and assigns forever. And the said Grantor does hereby covenant to and with said Grantee that she is the owner in fee simple of said premises; that said premises are free from all incumbrances except those existing now on the property and those of record; and, that she will warrant and defend the same from all lawful claims whatsoever.

DATED This 1st day of September, 1994.

Donna L. Thomas
DONNA L. THOMAS

A63-20445
A63-04281

ir desirable to...
reduce loss or damage to the...
under the terms of this policy, whether or not it...
thereby concede liability or waive any provision of this policy...
exercise its rights under this paragraph, it shall do so diligently...
Company shall have brought an action or interposed a defense...
Company may pursue any...
terminate, in...
litigation

Premium Amount: \$ 975.00

SCHEDULE - A

Order No.: ST-94009449

Policy No.: O-9993-384956

Date of Policy: SEPTEMBER 29, 1994 at 4:15 P.M.

Amount of Insurance: \$ 240,000.00

1. Name of Insured:

KENDALL FAMILY TRUST

2. The estate or interest in the land described herein and which is covered by this Policy is:

FEE SIMPLE

3. The estate or interest referred to herein is at the date of policy vested in:

KENDALL FAMILY TRUST

4. The land referred to in this Policy is situate in State of IDAHO, County of CANYON:

Northwest Quarter of the Southwest Quarter of Section 24, Township 1 South, Range 2 West of the Boise Meridian, Canyon County, Idaho; South Half of the Northwest Quarter, Northeast Quarter of the Southwest Quarter; and all that part of the Southwest Quarter of the Northeast Quarter lying North and West of Summit Lateral, all in Section 24, Township 1 South, Range 2 West, Boise Meridian, Canyon County, Idaho.

EXCEPT the Easterly 14 feet of all that portion of the Southeast Quarter of the Northwest Quarter of the afore-said Section 24 lying South of the Summit Lateral.

AND

The Westerly 25 feet of the Northwest Quarter of the Northeast Quarter of Section 24, Township 1 South, Range 2 West, Boise Meridian, Canyon County, Idaho.

END OF SCHEDULE A

AG3-20445
AG3-04281

EXHIBIT "A"

Northwest Quarter of the Southwest Quarter of Section 24, Township 1 South, Range 2 West of the Boise Meridian, Canyon County, Idaho; South Half of the Northwest Quarter, Northeast Quarter of the Southwest Quarter; and all that part of the Southwest Quarter of the Northeast Quarter lying North and West of Summit Lateral, all in Section 24, Township 1 South, Range 2 West, Boise Meridian, Canyon County, Idaho.

EXCEPT the Easterly 14 feet of all that portion of the Southeast Quarter of the Northwest Quarter of the aforesaid Section 24 lying South of the Summit Lateral.

AND

The Westerly 25 feet of the Northwest Quarter of the Northeast Quarter of Section 24, Township 1 South, Range 2 West, Boise Meridian, Canyon County, Idaho.

A63-20445
A63-04281

FIRST AMENDMENT TO AND RESTATEMENT OF
THE KENDALL FAMILY TRUST

THIS AGREEMENT, made this 10th day of June, 1995, between KEITH M. KENDALL and IRIS M. KENDALL, husband and wife, as Trustor, and KEITH M. KENDALL, as Trustee, amends and restates The Kendall Family Trust, under agreement dated June 14, 1990. The amended trust shall still be known as The Kendall Family Trust, under agreement dated June 14, 1990.

ARTICLE I - Transfer to Trust

1.1 The Trustors transfer to the Trustee and its successors, IN TRUST, the assets described in Schedule "A" attached, to hold the same subject to the following trust purposes and conditions.

1.2 The Trustors hereby acknowledge and declare that all assets transferred to the Trustee represent a portion of the joint marital estate of the Trustors, and, unless otherwise specifically so designated at the time of any additional transfer to the Trustee during the joint lives of the Trustors, all assets hereafter held by the Trustee subject to this Agreement, wherever located, shall be conclusively presumed to have been jointly owned by the Trustors as community property under the laws of the State of Idaho at the time of transfer to the Trustee and shall be regarded in the hands of the Trustee, as the context herein requires, as community property.

ARTICLE II - Additional Transfers to Trust

2.1 The Trustors or any other person may transfer or devise to the Trustee additional assets, real or personal, and may name the Trustee as the beneficiary of life insurance policies, and such assets and policies, upon delivery thereof to the Trustee, shall be a part of the trust estate, subject to all the terms of this Agreement.

ARTICLE III - Trust Beneficiaries

3.1 The Trustors are KEITH M. KENDALL and IRIS M. KENDALL, referred to herein as the "Trustor." Upon the death of a Trustor, such Trustor shall be herein referred to as the "deceased Trustor" and the other Trustor the "surviving Trustor".

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A63-20445

ARTICLE XIV - Trustee Powers

14.1 Subject to the provisions of Article XIII above, the Trustee shall have all the powers granted to trustees generally by the laws of the State of Idaho as now in effect and as hereafter amended, and in addition and not by way of limitation, shall have the following rights, powers and immunities and shall exercise the same without intervention of any court in any jurisdiction:

14.1.A. Upon any division or distribution of the trust estate, either income or principal, to partition, allot and distribute the trust estate in undivided interests or in kind at valuations determined by the Trustee, or partly in kind or partly in cash, and to sell such property as Trustee may deem appropriate in making such division or distribution. The judgment of the Trustee concerning the values for the purpose of any such division or distribution of the trust estate and the choice of any asset to be divided or distributed in fulfillment thereof shall be binding and conclusive on all the parties interested therein.

14.1.B. To pay assessments and other sums deemed necessary by the Trustee for the protection of the trust estate; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and in connection therewith, to deposit securities with and transfer title to any protective or other committee or other fiduciary; to give proxy, general and special, with or without the power of substitution; to exercise or sell stock subscription or conversion rights; to accept and retain as an investment any securities or other property, whether or not authorized by law for the investment of trust funds, received through the exercise of any foregoing powers.

14.1.C. To purchase, hold, invest and reinvest the trust estate in such bonds, mortgages, debentures, preferred and common stocks, and other property, real or personal, including, but not limited to, shares and/or units of any common trust fund, now or hereafter administered by the Trustee, or assets of or undivided interest in the assets of other trust estates either public or private, whether administered by the Trustee or not, as it shall deem prudent, whether or not such investments are authorized by law for the investment of trust funds and without observing the principle of diversification of trust investments; to purchase or sell assets on margin for the benefit of the trust estate, and the Trustee is hereby specifically authorized to execute such margin agreements as it shall determine reasonable and appropriate; to loan funds of the trust estate to any beneficiary hereof, vested or contingent, at prevailing rates of interest and upon such security as the Trustee determines adequate and prudent.

14.1.D. To employ counsel, agents, attorney's in-fact, representatives, trustees and/or ancillary administrators, in this and in other jurisdictions, all within the discharge of its duties and to pay them a reasonable compensation out of either income or principal in its discretion, and to rely on the advice of counsel and to suffer no liability resulting from any action taken or withheld pursuant to such advice.

14.1.E. For the convenience of administration or to facilitate transfers of securities, to cause any property at any time held in trust to be registered in the name of the Trustee, or of

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~ A63-20445

a nominee or nominees of the Trustee, without disclosure of the trust, or to hold any securities at any time held in trust in bearer form so that they will pass by delivery, but no such registration or holding by the Trustee shall relieve the Trustee from its responsibility for the safe custody and disposition of the trust estate in accordance with the terms and provision hereof.

14.1.F. Except as otherwise provided herein, in the determination of principal and income, the Trustee is to be guided by the principles established by the Idaho Principal and Income Law; and, insofar as such principles do not apply, the Trustee is hereby authorized and empowered in its discretion to determine for any and all purposes of the trust what shall constitute principal of the trust estate and income therefrom, and its discretion with respect thereto shall be binding and conclusive upon all persons interested therein.

14.1.G. To manage, sell, convey, exchange, encumber, option, assign, divide, subdivide, improve and maintain the trust estate, or any part thereof; to create restrictions, easements and other servitudes, to carry insurance in such amount and against such hazards as the Trustee may deem advisable; to license, lease and create such other rights, privileges and interests as the Trustee may deem advisable with respect to the trust estate, for terms within or extending beyond the duration of the trusts created herein; to disclaim, renounce or otherwise avoid the receipt and/or ownership, either in whole or in part, of any asset, power or interest in or to property, either tangible or intangible and either vested or contingent, which in the sole discretion of the Trustee would produce a demonstrably adverse tax-related consequence to this trust, to the beneficiaries hereof and/or to the transferor/donor of such asset, power or interest; to abandon any real or personal property which the Trustee may determine to be worthless, and any such determination made by the Trustee shall be binding and conclusive upon all parties affected thereby.

14.1.H. To withhold from sale or reinvestment any household furniture or furnishings, personal effects, animals and other property for personal use as the Trustee in its discretion may deem advisable and to distribute to the beneficiary of the trusts herein created, irrespective of age and without the intervention of a guardian, any such property at such times and in such manner as the Trustee may in its absolute discretion deem prudent.

14.1.I. To collect and demand payment of all income, receipts, monies and other property due the trust estate; to realize, by suit or otherwise, upon any trust policy, any promissory note or other chose in action of the trust estate, and in settlement thereof, to compromise, discount, adjust, extend or abandon the same; to commence, defend and prosecute to such determination as the Trustee shall deem proper in such suits, actions or other proceedings, including mortgage or other lien foreclosure suits, as the Trustee shall consider appropriate to protect, preserve or recover the trust estate or any part thereof; to require indemnity to its satisfaction before undertaking any action or refraining from any action which may subject it to loss.

14.1.J. To loan funds to the personal estate of the Trustors at prevailing rates of interest or to purchase from the estates of the Trustors, whether or not the Trustee would otherwise make such investment, and even though the Trustee may also be Personal Representative of a Trustor's personal estate, any of the assets thereof at the value shown by the inventory and appraisal of a Trustor's estate, or at such price as the Trustee deems reasonable, in order to enable the Personal Representative of a Trustor's estate to convert such property into cash.

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14.1.K. To advance the Trustee's own funds for the benefit of the trust estate, or for the payment of any distributive share or interest, any such advance with interest at the current rates to be a first lien upon the trust estate; to borrow money at prevailing rates of interest; to mortgage, pledge and hypothecate assets of the trust estate for such purpose as the Trustee shall deem to be for the interest of the trust estate and upon such terms and conditions as the Trustee may deem proper.

14.1.L. To pay all taxes, charges, commissions and other expenses of the trust estate, including a compensation for its own services, in accordance with the schedule of fees in use by the Trustee at the time such fees become payable, and reimbursement for all outlays and advances made by it and all costs and expenses incurred for the preservation, maintenance and protection of the trust estate.

14.1.M. To do all acts, except as herein otherwise specified, in its judgment needful or desirable in the proper and advantageous management of the trust estate, to the same extent and with the same effect as might legally be done by an individual in absolute ownership and control of said property. In the exercise of the powers granted the Trustee hereunder, it shall have full authority to determine and agree upon all terms and conditions pertaining to transactions of any nature entered into by the Trustee pursuant to the authority granted hereunder. The Trustee shall not be liable for any loss or depreciation in the value of the trust estate occurring by reason of error of judgment in making any sale or investment or reinvestment, or in continuing to hold in trust any property transferred to the Trustee or any investment or reinvestment made unless the Trustee shall have failed to act in good faith or with reasonable care.

14.1.N. If at any time the Trustee shall deem it advisable, it shall be authorized to form a corporation, a limited partnership or other entity for the purpose of carrying on any business which may constitute a part of the trust estate, and with a view thereto, the Trustee may transfer, assign and convey to such corporation, limited partnership or other entity such part or parts of the trust estate as it shall judge expedient in exchange for the stocks, securities or obligations of any such corporation, limited partnership or entity and continue to hold the same for such period as the Trustee may consider to be in the best interest of the trust estate.

14.1.O. If any business or business interest, or the stock of any corporation or any real property being utilized in any of the aforementioned business organizations shall become a part of the trust estate, the Trustee is hereby authorized to continue to operate or retain such business, business interest, stock or property for so long as it shall deem such operation or retention to be to the best interests of the trusts herein provided and the beneficiaries thereof. The Trustee shall not be required to sell or otherwise dispose of any such business, business interest, stock or property, or any part thereof, solely because the retention thereof might prevent adequate diversification of investment or may result in a higher concentration of the value of the trust estate in such business, business interest, stock or property than the Trustee would ordinarily permit. The Trustee may, nevertheless, whenever in its absolute discretion it shall deem such action to be to the best interests of the trust estate and the beneficiaries thereof sell or otherwise dispose of such business, business interest, stock or property, or any part hereof, at such time, at such prices, upon such terms and conditions, to such purchasers and at public or private sale, as it shall deem appropriate. Upon any division or distribution of the trust estate, either income or principal, to partition, allot and distribute the trust estate in undivided interests or in

A63-04281
+ A63-20445



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

January 22, 1998

KEITH KENDALL
6549 WARREN SPUR RD
MELBA ID 83641

Dear Mr. Kendall:

Per our phone conversation on Wednesday, January 21, enclosed is the Notice of Change of Water Right Ownership for your domestic well, which is currently in the name of George and Donna Thomas. Please complete this form and return to our office with a copy of your warranty deed, which includes a legal description of your property, and we will change our records to show you as the current owner.

Also enclosed is Notice of Claim to a Water Right A63-04281, which is for the waste water right that we discussed had not been claimed by George and Donna Thomas. If you are currently using this water right you can claim this right. Please look over the information on this right, including the legal description and the acres claimed. If you choose to claim this water right, please sign the claim, notarize and return to our office with the \$103.00 filing fee that would be required.

If you have any questions regarding the enclosed information, please feel free to contact our office.

Sincerely,

Lori Harris
Technical Records Specialist
Adjudication Section
Western Region

LH:1
Enclosures

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-4281

WATER RIGHT NUMBER: 63-4281

Owner Type Name and Address
 Current Owner DONNA L THOMAS
 6547 WARREN SPUR RD
 MELBA, ID 83641
 (208)495-2239
 Current Owner GEORGE T THOMAS
 6547 WARREN SPUR RD
 MELBA, ID 83641
 (208)495-2239

Priority Date: 04/01/1963
 Basis: Statutory Claim
 Status: Active

Source
 WASTE WATER

Tributary
 SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 10/31	1.000 CFS	

Total Diversion: 1.000 CFS

Location of Point(s) of Diversion

WASTE WATER NE1/4SW1/4 Sec. 24, Twp 01S, Rge 02W, B.M.
 CANYON 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	
01S	02W	24									13.0	40.0							53.0

Total Acres: 53

Conditions of Approval:Remarks:Comments:Dates and Other Information:

Michael,
 Please see Attached
 Court Case Found
 in ~~STAT~~ STATUTORY
 Claim File! You
 Need to Run This
 By Nick & Jan.

DAN.
 Maybe Vastine
 and Pamela ALSO.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-4281

Licensed Date:

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

State or Federal:

Owner Name Connector:

Water District Number:

Generic Max Rate Per Acre:

Generic Max Volume Per Acre:

Decree Defendant:

Decree Plaintiff:

Civil Case Number:

Judicial District:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Carey Act Number:

Mitigation Plan: False

Combined Use Limits:

Water Supply Bank:

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Section 42-225a, Idaho Code

CLAIM TO A WATER RIGHT

Under the provisions of Section 42-225a, Idaho Code, a person may file a claim to a right to use water which has been established by diversion and application to beneficial use. The filing of this claim does not confirm the water right but will serve for information purposes only. It may, however, become the basis for future adjudication of the water right by the Court.

Notice is hereby given that George T. &/or Donna L. Thomas
(name of claimant)
of Rt. 1, Melba, ID 83641, claims a right to the diversion and beneficial use of
(mailing address)
the public water of the State of Idaho

The extent and nature of said claim is as follows:

- (1) Describe source of water: (name of stream, lake, spring, etc., or ground water) Waste Water
_____, tributary to, Snake River
- (2) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Amount <u>1.0</u>	Use <u>irrigation</u>	Period of Use: From <u>April 1</u> To <u>Oct. 31</u>
Amount _____	Use _____	Period of Use: From _____ To _____
Amount _____	Use _____	Period of Use: From _____ To _____
(cfs, gpm or a/f)	(dom., irri., stock, etc.)	(both dates inclusive)

- (3) Total quantity of water claimed: 1.0 cubic feet per second, or _____ acre feet per annum, and/or _____ gallons per minute.
- (4) Priority claimed: (the date water was first applied to beneficial use) April 1, 1963

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

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

NE ¼ SW ¼, Sec. 24 Twp. 1 S Rge. 2 W B. M. County of Canyon

Additional points of diversion:

- B) Describe means of diversion of water: (pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. diversion and storage dam with pump to
sprinkler system

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

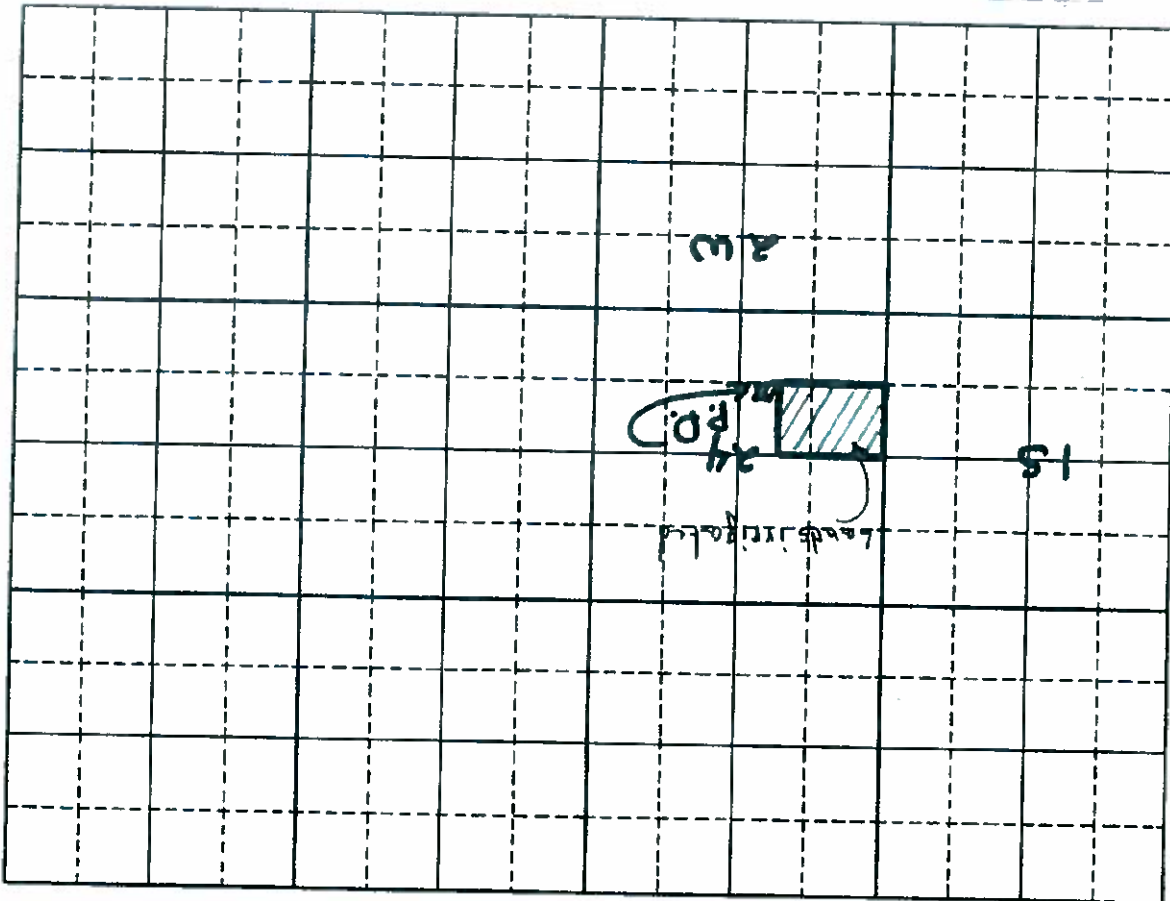
[illegible]

Total No. of acres 53

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

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

(8) Remarks _____



Scale: 2 inches equal 1 mile.

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

State of Idaho)

County of Ada) ss.

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

Sworn to before me this 22 day of October

George T. Thomas
(Claimant)

Notary Public

Residing at

Sary T. Page
Paise

My commission expires

7/29/1975

For Department Use Only

Received by SJP

Prelim. check by SJP

\$10.00 fee received by Cu

Approved for publication by Cu

Published in Idaho News

Dates Oct 31 Nov 7

Date 10/22/74

Date 10/22/74

Date 10-22-74

Date 11-14-74

Date 10-15-75

Date 10-31-75

Exception filed by:

Forwarded to claimant by:

Date

Receipt # B-258

RECEIVED
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Department of Water Resources

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*86 DEC 30 PM 4 41

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
BY *Eme-Entine*

SHIRLEY KROEGER, in her
Official Capacity as Water-
master of WATER DISTRICT 63-A,
PECKHAM AND PANCHERI DRAINS,
and IDAHO DEPARTMENT OF WATER
RESOURCES,

Plaintiffs and
Counterdefendants,

-vs-

GEORGE T. THOMAS and DONNA
THOMAS, husband and wife,
CORPORATION, INC., a corporation
and AMERICAN CYANAMID, INC., a
corporation; and JOHN DOES I
through X,

Defendants and
Counterplaintiffs,

-vs-

BOISE-KUNA IRRIGATION DISTRICT,

Defendant/
Intervenor,

CASE NO. L-36827

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND JUDGMENT

THIS MATTER came on regularly for trial on December 16,
1986. This action was initiated by the filing of a Complaint
for injunctive relief requiring the defendants to: install and
maintain both an adequate water measuring device and lockable
control devices; and provide reasonable access to the
watermaster during the irrigation season to monitor such

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND JUDGMENT - 1

devices. The defendants raised various defenses in their answer and counter-claimed for an adjudication. Boise-Kuna Irrigation District intervened claiming that the water in question was not public water subject to regulation by the State of Idaho and consequently that the formation and operation of Water District 63-A was void.

Kenneth R. Arment, Deputy Attorney General, appeared for the Plaintiffs and Counterdefendants Water District 63-A and the Idaho Department of Water Resources. James E. Risch of the firm RISCH, GOSS, INSINGER, & SALLADAY appeared for the Defendants and Counterplaintiffs George T. Thomas and Donna Thomas. Randall C. Predricks of the firm CLEMONS, COSHO & HUMPHREY appeared for Defendant and Intervenor Boise-Kuna Irrigation District. After full consideration was given to the written stipulation between the Idaho Department of Water Resources and the Boise-Kuna Irrigation District and to all exhibits, testimony, affidavits and other documents filed with this Court, and to all argument presented before this Court, the Court finds as follows:

FINDINGS OF FACT

I.

Water District 63-A, located on the Peckham and Pancheri Drains, was created pursuant to I.C. Sec. 42-604.

II.

Shirley Kroeger was appointed watermaster for Water District 63-A by the Idaho Department of Water Resources.

III.

On August 14, 1978, the District Court of the Third Judicial District, State of Idaho, in and for the County of Canyon entered an Amended Judgment in Evans et al. v. Pancheri, et al., Canyon County Case No. 24876. The case adjudicated the rights to the use of the waters of Peckham and Pancheri Drains among the parties. The Defendants and Counterclaimants Thomases, were party to the Evans v. Pancheri case, Defendant Intervenor Boise-Kuna Irrigation District was not joined in the Evans v. Pancheri case.

IV.

The defendants George T. Thomas and Donna Thomas, husband and wife, have admitted paragraph VI of the plaintiffs' complaint which alleges that the Thomases own the following described parcel of real property:

N1/2 of SW1/4, Section 24, T.15., R.2W., B.M.

V.

The boundaries of Water District 63-A; the Boise-Kuna Irrigation District; and the ownership and boundaries of other land adjacent to the Peckham Drain is as set forth in plaintiffs' exhibit 1, and is incorporated herein by this reference.

VI.

Boise-Kuna Irrigation District and the Department of Water Resources entered into a stipulation prior to trial which resolved, as between the irrigation district and the Department and the watermaster, the issues of jurisdiction over the waste water in Peckham Drain, the validity of Water District 63-A and the adequacy of the irrigation district's waste water distribution regulation. Upon approval of the stipulation by the Court, Boise-Kuna was granted leave to withdraw from the case.

VII.

Defendants George T. Thomas and Donna Thomas have caused lands outside the boundaries of the Boise-Kuna Irrigation District to be irrigated with waste and seepage water from Peckham Drain pursuant to their Water Right Claim No. 63-4281, without first satisfying the senior water right held by the Evanses.

VIII.

Defendants George T. Thomas and Donna Thomas have not installed or maintained adequate measuring devices and control works to measure and regulate the flow of public waste waters occurring in the Peckham Drain as required by order of the Department of Water Resources. The need for such devices shall be investigated during the 1987 Irrigation season up to July 1, 1987, by the watermaster of District 63-A.

IX.

In accordance with the stipulation signed by Boise-Kuna and the Department, the defendants Thomases may reclaim waste and seepage water from the Peckham Drain and apply it to their lands located within the irrigation district, such use is not subject to regulation as public waters of the state unless the water is to be diverted for use outside of the irrigation district.

X.

The defendants Thomases did not produce any evidence or exhibits in regards to their counter-claim for an adjudication of the remaining waters of the Peckham Drain. At trial, counsel for the Thomases stated that the defendants had abandoned the adjudication claim.

XI.

The parties did not pursue or defend the case in a frivolous or unreasonable manner, or without foundation. There were legitimate issues of fact and law regarding this case raised by both plaintiff and all defendants.

CONCLUSIONS OF LAW

I.

Water District 63-A was duly created and established under the provisions of Idaho Code Sec. 42-604.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND JUDGMENT - 5

II.

Shirley Kroeger was duly appointed as watermaster for Water District 63-A.

III.

The plaintiff, Idaho Department of Water Resources is a duly established executive department of the State of Idaho.

IV.

The plaintiff Department has the duty and authority to supervise and control the distribution of public water.

V.

The plaintiff Department has the duty and authority to require all appropriators or users of any public waters to maintain suitable headgates and controlling works at the point where water is diverted.

VI.

The Amended Judgment entered in Evans v. Pancheri, Canyon County Case No. 24876, on August 14, 1978, is binding upon the defendants Thomases but not defendant intervenor Boise-Kuna Irrigation District.

VII.

The public waste waters adjudicated in the Amended Judgment in the Evans v. Pancheri case are subject to the right of the Boise-Kuna Irrigation District to reclaim the waste water for use on irrigation district lands to which Boise-Kuna's state water right are appurtenant.

VIII.

The newly adopted waste water distribution regulation of Boise-Kuna Irrigation District, attached to the stipulation between Boise-Kuna and the Department of Water Resources, provides individual members within the irrigation district the right to reclaim waste waters for use on their own lands within the district.

IX.

The defendants Thomases may reclaim waste and seepage water from the Peckham Drain and apply it to their lands located within the irrigation district. Such use is not subject to regulation as public waters of the state unless the water is diverted for use outside the irrigation district.

X.

The defendants Thomases are not entitled to any relief on counterclaim.

JUDGMENT

NOW THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED, as follows:

I.

The issues between plaintiffs and Boise-Kuna Irrigation District were resolved by a stipulation of the parties.

II.

That the plaintiffs are granted a permanent mandatory injunction prohibiting the defendants George T. Thomas and

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND JUDGMENT - 7

Donna Thomas, their servants, agents and employees from diverting water from the Peckham Drain for use on land located outside the Boise-Kuna Irrigation District, unless and until one cubic foot per second of water is first passed on to the Evans property in accordance with the Amended Judgment entered in the Evans v. Pancheri case, Canyon County Case No. 24876.

III.

That the Court shall defer until after July 1, 1987, the granting to the plaintiffs of any permanent mandatory injunction requiring the defendants George T. Thomas and Donna Thomas to install and maintain an adequate measuring device, and adequate control works for water distribution on Peckham Drain to measure and regulate the waste and seepage water in the drain at the point it flows onto the Thomas property and at the point of its outflow from the Thomas property to the Evans property. Such measuring devices and control works shall be of a type which are satisfactory to the plaintiff Department. The Court retains jurisdiction over this matter to review a watermaster report to be submitted by the Department by July 1, 1987. The purpose of the report is to determine which lands are being irrigated from the waste and seepage waters of the Peckham Drain collected in the pond on the Thomas property. If the water is used to irrigate only those lands located within the Boise-Kuna Irrigation District then such waters are not public waters subject to regulation by the state, but rather are

waste waters reclaimed by the irrigation district for which measuring and control devices are not required.

For the purposes of conducting the watermaster report and monitoring the measuring and control devices, if found necessary to do so after July 1, 1987, the watermaster is granted reasonable access to enter upon the Thomas land. Provided that the reasonable access shall include attempts to contact the Thomas household by phone prior to entry, and that such entry shall be from the south across the Evans property.

IV.

Defendants Thomases are not entitled to any relief on their counterclaim.

DATED: December 30, 1986.

Wayne P. Fuller
Wayne P. Fuller,
District Judge

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b) I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this 30 day of December, 1986.

Wayne P. Fuller
Wayne P. Fuller,
District Judge

I HEREBY CERTIFY that a copy of the foregoing Findings of Fact, Conclusions of Law and Judgment was forwarded to the following persons on the 30th day of December, 1986:

Jim Jones, Attorney General, Statehouse, Boise, ID 83720
Clive J. Strong, Chief, Natural Resources Division,
450 W. State St., Boise, ID 83720
Kenneth R. Arment, Dept. of Water Resources, 450 W. State,
Boise, ID 83720
James E. Risch, 407 W. Jefferson, Boise, ID 83702
Randall C. Fredericks, 1100 First Interstate Bldg.,
700 W. Idaho, Boise, ID 83702
William Ringert, P.O. Box 2773, Boise, ID 83701

CLERK OF THE DISTRICT COURT

Deputy Clerk