

10/14/2006

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

RIGHT NUMBER: 79-14085

NAME AND ADDRESS: SILVER JACKET CORP
32ND FLOOR
515 MADISON AVE
NEW YORK NY 10022

SOURCE: GROUND WATER
UNNAMED STREAM

TRIBUTARY:
TRIBUTARY: KIRKWOOD CREEK

QUANTITY: 0.040 CFS

PRIORITY DATE: 09/01/1915

POINT OF DIVERSION:

T26N R01W S27 SWSE Within IDAHO County
T26N R01W S27 SWSE Within IDAHO County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MINING	01/01 12/31	0.040 CFS

PLACE OF USE: MINING Within IDAHO County

T26N R01W S27	NESW	T26N R01W S27	SWSW
T26N R01W S27	SESW	T26N R01W S27	NWSE
T26N R01W S27	SWSE	T26N R01W S34	NWNE
T26N R01W S34	NENW	T26N R01W S34	NWNW
T26N R01W S34	SENW		

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

Property is also known as Mineral Surveys 2451, 2469 and 2477.

10/14/2006

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

RIGHT NUMBER: 79-14085

NAME AND ADDRESS: SILVER JACKET CORP
32ND FLOOR
515 MADISON AVE
NEW YORK NY 10022

SOURCE: GROUND WATER
UNNAMED STREAM

TRIBUTARY:
TRIBUTARY: KIRKWOOD CREEK

QUANTITY: 0.040 CFS

PRIORITY DATE: 09/01/1915

POINT OF DIVERSION:

T26N R01W S27 SWSE Within IDAHO County

T26N R01W S27 SWSE Within IDAHO County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
MINING

PERIOD OF USE
01/01 12/31

QUANTITY
0.040 CFS

PLACE OF USE: MINING Within IDAHO County

T26N R01W S27 NESW T26N R01W S27 SWSW

T26N R01W S27 SESW T26N R01W S27 NWSE

T26N R01W S27 SWSE T26N R01W S34 NWNE

T26N R01W S34 NENW T26N R01W S34 NWNW

T26N R01W S34 SENW

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

Property is also known as Mineral Surveys 2451, 2469 and 2477.



Steven M
Spencer/R4/USDAFS
09/25/2006 02:22 PM

To Greg Taylor,
cc Carter Fritschle,
bcc
Subject 79-14085

RECEIVED
SEP 27 2006
IDWR/North

79-14085 claimed by Silver Jacket Corp of New York, New York -

Our situation is that there approximately 130 acres of private land, patented Mineral Survey's 2451, 2469 and 2477, the location of the Blue Jacket Mine, are in this area. This is also in the Hell Canyon National Recreation Area.

There are also numerous unpatented mining claims in this area but there are no authorized mining activities on the NFS land and none of the unpatented claims are owned by Silver Jacket Corp.

So, if this claim is situated wholely (the PODs and POU's) on the patented land with the legal descriptions in the SWSW, SESW, NESW, NWSE, and SWSE of Sec 27, and the NWNW, NENW, NWNE and SENW of Sec 34 which is also described as Mineral Surveys 2451, 2469 and 2477 I would not have to object to it to see if this might be the actual extent of the water right claimed. We've often been able to have something to the effect that this water right is on private land also known as Mineral Survey . . . added to the water right to clarify these matters.

A copy of the pertinent portion of the USGS map and active BLM mining claim search information are on the way to you in the US Mail.

Thank you. If you have any questions about this matter, please contact me.

Steve Spencer
Boise Adjudication Team
161 E. Mallard, Suite 110
Boise, ID 83706

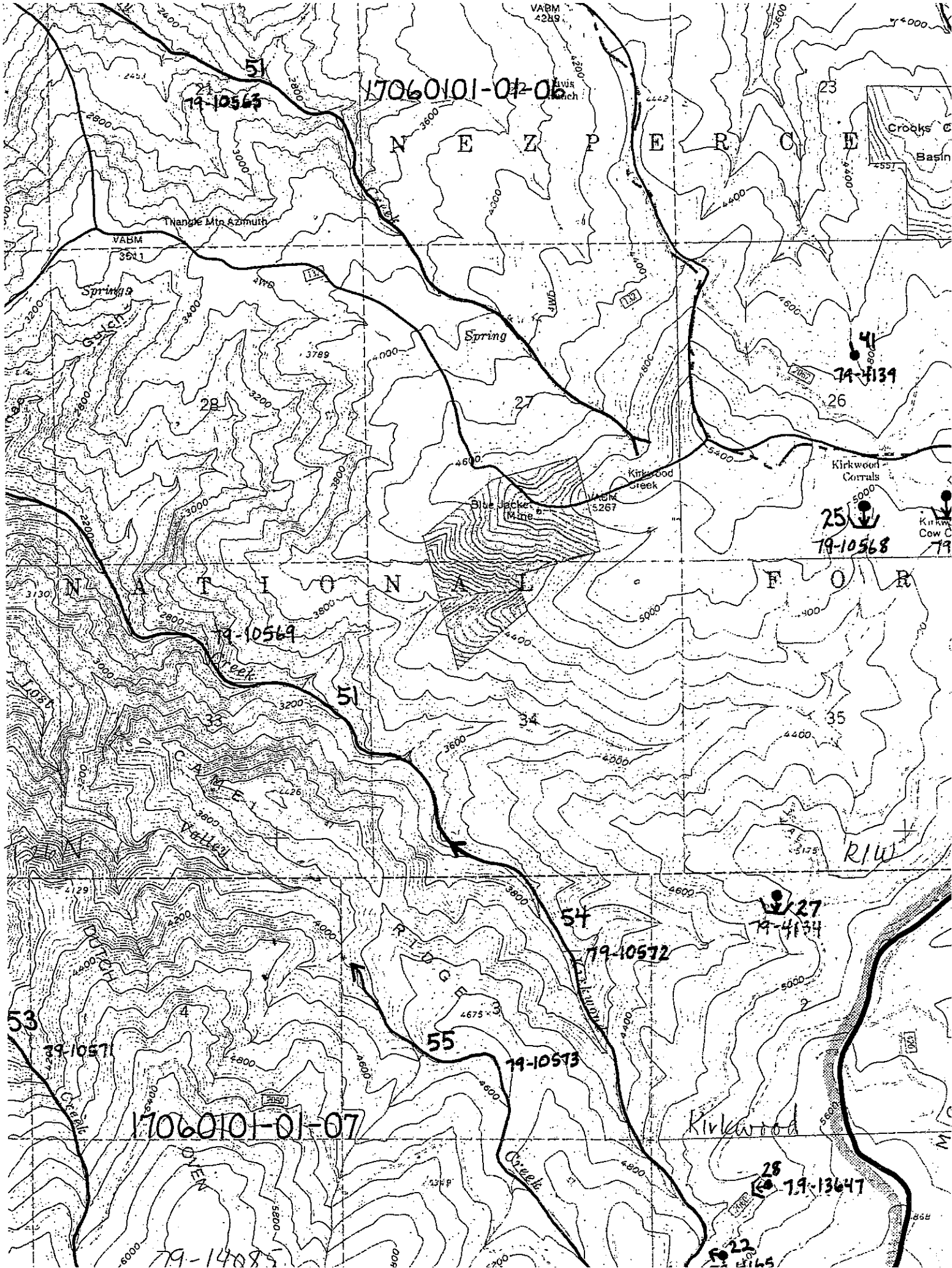
(208) 331-5944
(208) 387-0842 FAX
e-mail: sspencer@fs.fed.us

PURPOSE OF USE	PERIOD OF USE	QUANTITY
MINING	01/01 12/31	0.040 CFS
PLACE OF USE:		
MINING Within IDAHO County		
T26N R01W S27	NESW	T26N R01W S27
T26N R01W S27	NESW	T26N R01W S27
T26N R01W S27	SWSW	T26N R01W S27
T26N R01W S27	SESW	T26N R01W S27
T26N R01W S27	SESW	T26N R01W S27
T26N R01W S27	SESW	T26N R01W S27
T26N R01W S27	SESW	T26N R01W S27
T26N R01W S27	SESW	T26N R01W S27
T26N R01W S27	SESW	T26N R01W S27
T26N R01W S27	SESW	T26N R01W S27
T26N R01W S27	SESW	T26N R01W S27
T26N R01W S27	NWSE	T26N R01W S27
T26N R01W S27	NWSE	T26N R01W S27
T26N R01W S27	SWSE	T26N R01W S27
T26N R01W S27	SWSE	T26N R01W S27
T26N R01W S34	NWNE	T26N R01W S34
T26N R01W S34	NENW	T26N R01W S34
T26N R01W S34	NENW	T26N R01W S34
T26N R01W S34	NENW	T26N R01W S34
T26N R01W S34	NENW	T26N R01W S34
T26N R01W S34	NWNW	T26N R01W S34

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.

Property is also known as Mineral Surveys 2451, 2469 and 2477.

912



17060101-01-06

19-10563

19-4139

19-10568

19-10569

19-10572

19-10573

19-4134

19-13647

17060101-01-07

19-14085

NEZPERCE

Spring

Spring

Kirkwood Corral

Blue Jacket Mine

Kirkwood Cow C

Crooks Basin

Triangle Mtn. Azimuth

River

Kirkwood

PLD

ONE

RUN TIME: 03:49 PM

**DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT**

RUN DATE: 09/21/2006

Input Parameters for MC Geographic Report

System Id = MC

Admin State = ID

Geo State =

Mer Twp Rng = 08 0260N 0010W

Section = 027, 034

Mtrs =

Aliquot Part contains

Case Disp Txt = ACTIVE

Total Rows Returned: 50

**NO WARRANTY IS MADE BY BLM
FOR USE OF THE DATA FOR
PURPOSES NOT INTENDED BY BLM**

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
MINING CLAIM GEOGRAPHIC REPORT
LIST OF MINING CLAIMS BY SECTION

**MER TWP RNG SEC
08 0260N 0010W 027**

<u>Serial Num</u>	<u>Quad</u>	<u>Claim Name/Number</u>	<u>Claimant(s)</u>	<u>Lead File</u>	<u>Case</u> <u>Type</u>	<u>Status</u>	<u>Loc Dt</u>	<u>Last</u> <u>Assessment</u>
IMC23754	SE	SILVER JACKET NO 1	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	05/15/1973	2007
IMC23755	NE SE	SILVER JACKET NO 2	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	05/15/1973	2007
IMC23756	NW SW	SILVER JACKET NO 3	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	05/15/1973	2007
IMC23757	NW	SILVER JACKET NO 4	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	05/15/1973	2007
IMC23758	NW SW	SILVER JACKET NO 5	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	05/15/1973	2007
IMC23759	SW	SILVER JACKET NO 6	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	05/15/1973	2007
IMC23760	SE	SILVER JACKET NO 7	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	05/16/1973	2007
IMC23761	SE	SILVER JACKET NO 8	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	10/02/1974	2007
IMC23762	SE	SILVER JACKET NO 9	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	10/02/1974	2007
IMC23763	NW SW	SILVER JACKET NO 10	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	10/02/1974	2007
IMC23768	SW	BLUE NO. 5	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	10/02/1974	2007
IMC34710	SE	BELVIDENE LODE	CARROLL JOHN L	IMC34708	384101	ACTIVE	05/08/1905	2007
IMC34710	SE	BELVIDENE LODE	SILVER RESOURCES	IMC34708	384101	ACTIVE	05/08/1905	2007
IMC34710	SE	BELVIDENE LODE	WILLDEN RONALD	IMC34708	384101	ACTIVE	05/08/1905	2007
IMC34714	SW	BLUE BIRD NO2	CARROLL JOHN L	IMC34708	384101	ACTIVE	01/10/1909	2007
IMC34714	SW	BLUE BIRD NO2	SILVER RESOURCES	IMC34708	384101	ACTIVE	01/10/1909	2007
IMC34714	SW	BLUE BIRD NO2	WILLDEN RONALD	IMC34708	384101	ACTIVE	01/10/1909	2007
IMC34716	SE	EAST DIXIE LODE	CARROLL JOHN L	IMC34708	384101	ACTIVE	05/08/1906	2007
IMC34716	SE	EAST DIXIE LODE	SILVER RESOURCES	IMC34708	384101	ACTIVE	05/08/1906	2007
IMC34716	SE	EAST DIXIE LODE	WILLDEN RONALD	IMC34708	384101	ACTIVE	05/08/1906	2007

**MER TWP RNG SEC
08 0260N 0010W 034**

<u>Serial Num</u>	<u>Quad</u>	<u>Claim Name/Number</u>	<u>Claimant(s)</u>	<u>Lead File</u>	<u>Case</u> <u>Type</u>	<u>Status</u>	<u>Loc Dt</u>	<u>Last</u> <u>Assessment</u>
IMC23764	NW	BLUE NO. 1	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	10/02/1974	2007
IMC23765	NW SW	BLUE NO. 2	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	10/02/1974	2007
IMC23766	NW	BLUE NO. 3	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	10/02/1974	2007
IMC23767	NW SW	BLUE NO. 4	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	10/02/1974	2007

NO WARRANTY IS MADE BY BLM
FOR USE OF THE DATA FOR
PURPOSES NOT INTENDED BY BLM

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
MINING CLAIM GEOGRAPHIC REPORT
LIST OF MINING CLAIMS BY SECTION

<u>Serial Num</u>	<u>Quad</u>	<u>Claim Name/Number</u>	<u>Claimant(s)</u>	<u>Lead File</u>	<u>Case</u> <u>Type</u>	<u>Status</u>	<u>Loc Dt</u>	<u>Last</u> <u>Assessment</u>
IMC23768	NW	BLUE NO. 5	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	10/02/1974	2007
IMC23769	NW SW	BLUE NO. 6	PERMIAN EXPLORATION	IMC23754	384101	ACTIVE	10/02/1974	2007
IMC34708	NE NW	BALTIMORE NO 2	CARROLL JOHN L	IMC34708	384101	ACTIVE	01/01/1909	2007
IMC34708	NE NW	BALTIMORE NO 2	SILVER RESOURCES	IMC34708	384101	ACTIVE	01/01/1909	2007
IMC34708	NE NW	BALTIMORE NO 2	WILLDEN RONALD	IMC34708	384101	ACTIVE	01/01/1909	2007
IMC34709	NE NW SW	BALTIMORE NO 3	CARROLL JOHN L	IMC34708	384101	ACTIVE	01/01/1909	2007
IMC34709	NE NW SW	BALTIMORE NO 3	SILVER RESOURCES	IMC34708	384101	ACTIVE	01/01/1909	2007
IMC34709	NE NW SW	BALTIMORE NO 3	WILLDEN RONALD	IMC34708	384101	ACTIVE	01/01/1909	2007
IMC34711	NW	BELVIDERE NO 1	CARROLL JOHN L	IMC34708	384101	ACTIVE	05/08/1905	2007
IMC34711	NW	BELVIDERE NO 1	SILVER RESOURCES	IMC34708	384101	ACTIVE	05/08/1905	2007
IMC34711	NW	BELVIDERE NO 1	WILLDEN RONALD	IMC34708	384101	ACTIVE	05/08/1905	2007
IMC34712	SW SE	BELVIDERE NO 5	CARROLL JOHN L	IMC34708	384101	ACTIVE	05/08/1906	2007
IMC34712	SW SE	BELVIDERE NO 5	SILVER RESOURCES	IMC34708	384101	ACTIVE	05/08/1906	2007
IMC34712	SW SE	BELVIDERE NO 5	WILLDEN RONALD	IMC34708	384101	ACTIVE	05/08/1906	2007
IMC34713	NW	BLUE BIRD NO1	CARROLL JOHN L	IMC34708	384101	ACTIVE	01/10/1909	2007
IMC34713	NW	BLUE BIRD NO1	SILVER RESOURCES	IMC34708	384101	ACTIVE	01/10/1909	2007
IMC34713	NW	BLUE BIRD NO1	WILLDEN RONALD	IMC34708	384101	ACTIVE	01/10/1909	2007
IMC34714	NW	BLUE BIRD NO2	CARROLL JOHN L	IMC34708	384101	ACTIVE	01/10/1909	2007
IMC34714	NW	BLUE BIRD NO2	SILVER RESOURCES	IMC34708	384101	ACTIVE	01/10/1909	2007
IMC34714	NW	BLUE BIRD NO2	WILLDEN RONALD	IMC34708	384101	ACTIVE	01/10/1909	2007
IMC34716	NE NW	EAST DIXIE LODE	CARROLL JOHN L	IMC34708	384101	ACTIVE	05/08/1906	2007
IMC34716	NE NW	EAST DIXIE LODE	SILVER RESOURCES	IMC34708	384101	ACTIVE	05/08/1906	2007
IMC34716	NE NW	EAST DIXIE LODE	WILLDEN RONALD	IMC34708	384101	ACTIVE	05/08/1906	2007
IMC34717	NW	SPRING MINE NO1	CARROLL JOHN L	IMC34708	384101	ACTIVE	04/12/1914	2007
IMC34717	NW	SPRING MINE NO1	SILVER RESOURCES	IMC34708	384101	ACTIVE	04/12/1914	2007
IMC34717	NW	SPRING MINE NO1	WILLDEN RONALD	IMC34708	384101	ACTIVE	04/12/1914	2007

12/11/2004

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

RIGHT NUMBER: 79-14085

NAME AND ADDRESS: SILVER JACKET CORP
32ND FLOOR
515 MADISON AVE
NEW YORK NY 10022

SOURCE: GROUND WATER
UNNAMED STREAM

TRIBUTARY:
TRIBUTARY: KIRKWOOD CREEK

QUANTITY: 0.040 CFS

PRIORITY DATE: 09/01/1915

POINT OF DIVERSION:

T26N R01W S27 SWSE Within IDAHO County
T26N R01W S27 SWSE Within IDAHO County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MINING	01/01 12/31	0.040 CFS

PLACE OF USE: MINING Within IDAHO County

T26N R01W S27	NESW	T26N R01W S27	NESW
T26N R01W S27	NESW	T26N R01W S27	SWSW
T26N R01W S27	SWSW	T26N R01W S27	SWSW
T26N R01W S27	SESW	T26N R01W S27	SESW
T26N R01W S27	SESW	T26N R01W S27	SESW
T26N R01W S27	SESW	T26N R01W S27	SESW
T26N R01W S27	SESW	T26N R01W S27	SESW
T26N R01W S27	SESW	T26N R01W S27	SESW
T26N R01W S27	SESW	T26N R01W S27	NWSE
T26N R01W S27	NWSE	T26N R01W S27	SWSE
T26N R01W S27	SWSE	T26N R01W S27	SWSE
T26N R01W S27	SWSE	T26N R01W S27	SWSE
T26N R01W S34	NWNE	T26N R01W S34	NENW
T26N R01W S34	NENW	T26N R01W S34	NENW
T26N R01W S34	NENW	T26N R01W S34	NENW
T26N R01W S34	NENW	T26N R01W S34	NWNW
T26N R01W S34	NWNW	T26N R01W S34	SENW

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: Beneficial Use

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: 79-14085
Date Received: 9/11/2003
Receipt No: W030919
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

SILVER JACKET CORPORATION Phone: (212)688-3353
32ND FLOOR
515 MADISON AVE
NEW YORK NY USA 10022

2. Date of Priority: 09/01/1885

3. Source: SPRING GULCH CREEK Trib. to: KIRKWOOD CREEK
GROUND WATER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
26N	01W	27	SW SE	IDAHO	
26N	01W	27	SW SE	IDAHO	

5. Description of diverting works:

Mine shaft and creek

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
MINING	01/01	12/31	0.04	

7. Total Quantity Appropriated is:
0.04 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
26N	01W	27	SW SW	MINING	

			NE	SW	MINING
			SE	SW	MINING
			NW	SE	MINING
			SW	SE	MINING
26N	01W	34	NW	NE	MINING
			NE	NW	MINING
			NW	NW	MINING
			SW	NW	MINING
			SE	NW	MINING

11. Place of use in counties: IDAHO

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

13. Other Water Rights Used:

14. Remarks:

TWO POINTS OF DIVERSION LOCATED IN T26N, R1W, S27, SWSE.

15. Basis of Claim: Beneficial Use

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:

Ident. Number

Date Received

Receipt Number

39576

A79-14085

9/11/03

W030919

RECEIVED

SEP 11 2003

WATER RESOURCES
WESTERN REGION

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Silver Jacket Corporation Phone (212) 688-3353
Mailing Address 32nd Floor, 515 Madison Avenue Zip 10022
New York, New York
2. Date of Priority (Only one (1) per claim) September 1, 1885
3. Source of water supply (a) Spring Gulch Creek and groundwater
which is tributary to (b) Kirkwood Creek
4. a. Location of existing point of diversion is: Township 26N Range 1W Section 27,
1/4 of SW 1/4 of SE 1/4, Govt. Lot, B.M., County of Idaho
Additional points of diversion if any: 2 points of diversion at this quarter-quarter
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, 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. mine shaft and creek

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Mining purposes from Jan. 1 to Dec. 31 amount 0.04 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 0.04 (cfs) and/or (b) _____ (acre feet)

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

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

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	
26N	1W	27									X		X	X		X	X		
26N	1W	34		X			X	X	X	X									

Total number of acres irrigated _____

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

12. Do you own the property listed above as place of use? Yes X No _____

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)

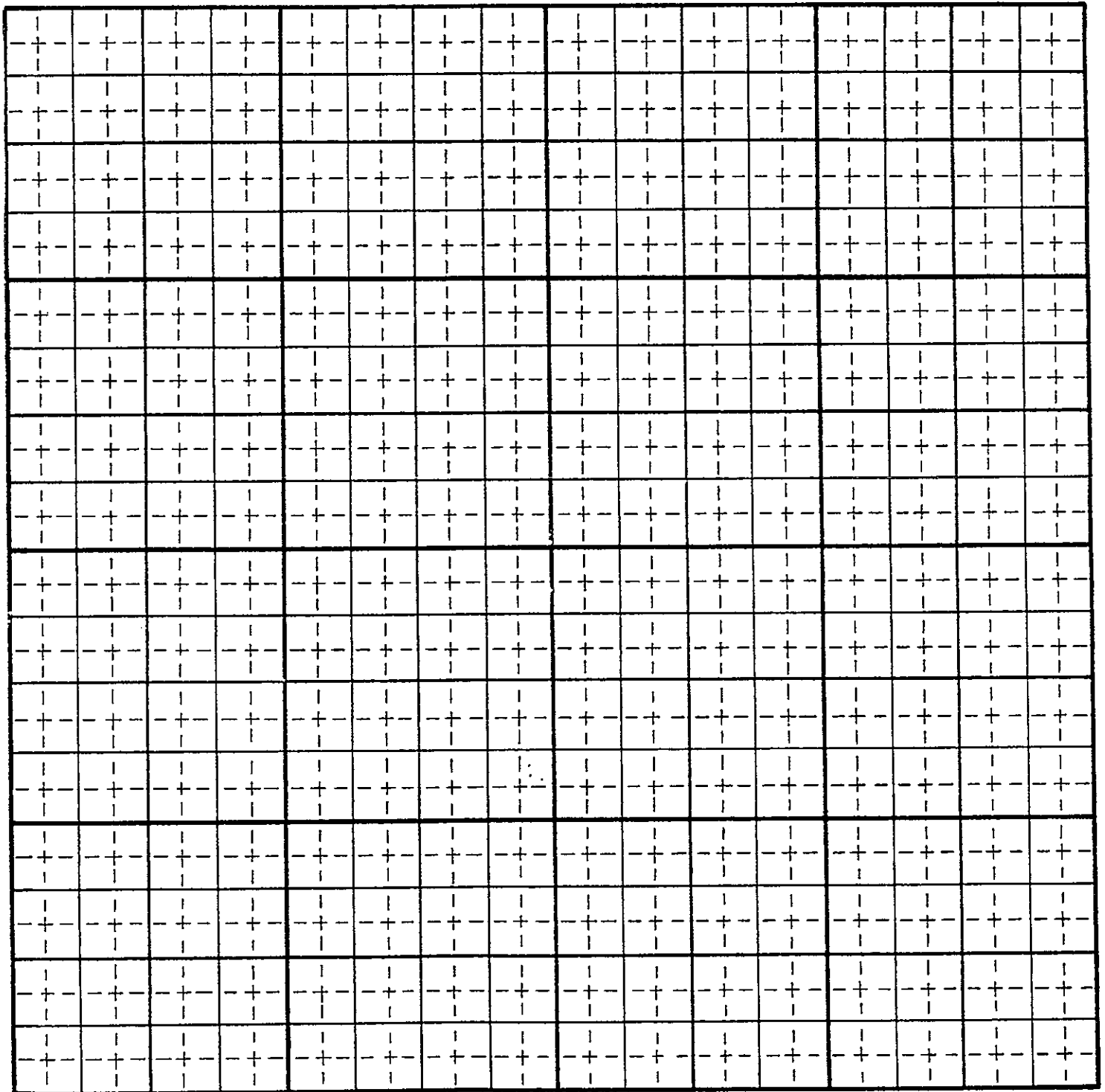
14. Remarks:

Last Name Silver Jacket Corp. Ident No. _____

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 Inches equals 1 mile

See attached map.



Last Name Silver Jacket Corp. Ident No. _____

15. Basis of Claim (check one) Beneficial Use X Posted Notice _____ License _____ Permit _____
Decree _____
If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

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 X
wish to receive and pay a small annual fee for monthly copies of the docket sheet.
Number of attachments one map

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 President
Title
of Silver Jacket Corporation , that I have signed the foregoing
Organization
document in the space below as President of Silver Jacket Corporation
Title Organization
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent John Lee Carroll
John Lee Carroll
Title and Organization President, Silver Jacket Corp. Date 9/4/03

State of Idaho/or New York)
County of New York) SS.

Linda A. Ziering
LINDA A. ZIERING
Notary Public, State of New York
No. 31-4325427
Qualified in New York County
Certificate filed in New York County
Commission Expires April 4, 192003

Subscribed and sworn (or affirmed) before me this 4th day of September, 192003

SEAL

Notary Public Linda A. Ziering
Residing at New York

My Commission Expires April 4, 2004

Please Print Name

17. Notice of Appearance:

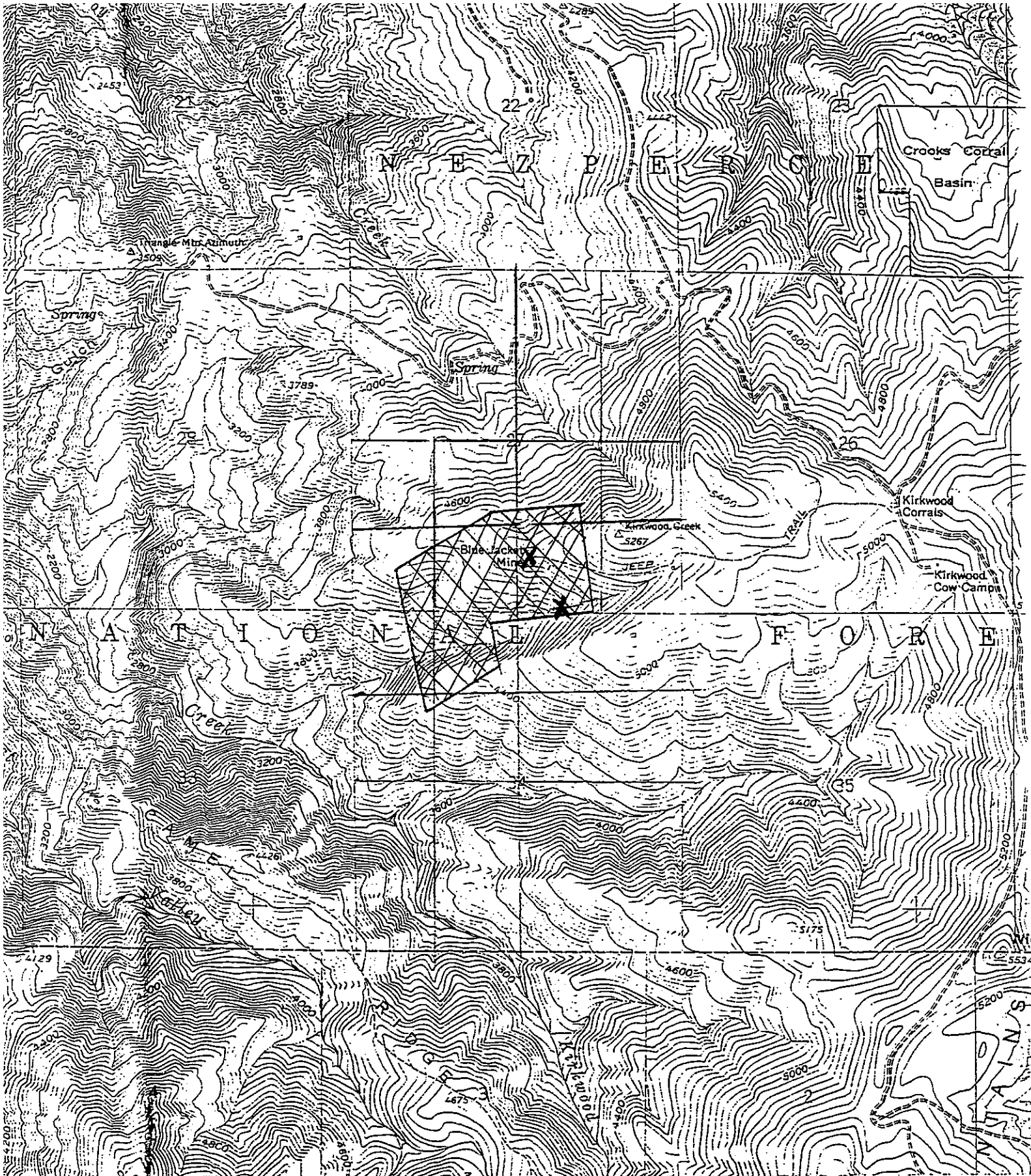
Notice is hereby given that I, Dana L. Hofstetter will be acting as attorney at law on behalf
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above
should be mailed to me at the address listed below.

Signature Dana Hofstetter

Address Hofstetter Law Office LLC, 608 W. Franklin St., Boise, ID 83702

Date September 11, 2003

Last Name Silver Jacket Ident. Number _____



X - Points of Diversion

 - Place of Use

Silver Jacket Corp. SRBA Claim No. _____

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

September 15, 2003

RECEIVED

SEP 16 2003

WATER RESOURCES
WESTERN REGION

Lori Harris
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Silver Jacket Corporation – SRBA Claim

Dear Ms. Harris:

This letter provides additional information regarding the Silver Jacket Corporation's SRBA claim that we discussed last week on the telephone.

As we discussed, the property is owned by the Silver Jacket Corporation and, therefore, is not on federal land. I enclose a copy of the patent deed for the property. Unfortunately, I do not have a more legible copy of the patent deed currently available. Please let me know if you would like me to try to obtain one.

Also, as we discussed, I enclose copies of two Idaho Supreme Court cases finding that water emanating from a mine portal is ground water subject to appropriation: *Branson v. Miracle*, 107 Idaho 221, 225, 687 P.2d 1348, 1352 (1984); *Branson v. Higginson*, 128 Idaho 274, 275-76, 912 P.2d 642, 643-44 (1996).

Please let me know if you have any further questions about these matters.

Sincerely,

HOFSTETTER LAW OFFICE, LLC



Dana L. Hofstetter

Enclosures

ment. See I.C. § 19-2514.¹ The district court acknowledged that Heistand might serve no more than five years on the burglary conviction by receiving a "good time" reduction. I.C. § 20-101A. See also *State v. Miller*, 105 Idaho 898, 673 P.2d 438 (Ct. App. 1983).

[4, 5] A sentence within the statutory maximum will not be disturbed on appeal absent a clear abuse of discretion. A sentence shown to be unreasonable upon the facts of the case represents a clear abuse of discretion, but a term of confinement that appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation and retribution is reasonable. *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982).

Heistand, age twenty-eight at the time of sentencing, admitted that he had seriously abused drugs for fifteen years. The record shows that he had been incarcerated in penal institutions at least three times, for approximately eight and one-half of the previous ten years, and that all of his earlier convictions involved narcotics or theft offenses related to his drug dependency. Further, at sentencing, he admitted the burglary upon which he was found guilty here occurred just two months after he had been finally released from the Idaho State Penitentiary.

The district court, after hearing testimony concerning the disposition of Heistand's case, discussed the various objectives of a criminal sentence. Because the court believed that Heistand's drug dependency would result in future criminal conduct, the

1. Heistand was charged, in addition to the substantive crimes of burglary and grand theft, with being a persistent violator because of prior felony convictions. Following trial, he admitted the persistent violator status. However, the

court determined that protecting society was the most pressing consideration. The court also decided, in light of Heistand's conduct and prior record, that retribution and deterrence would be furthered by a fixed term of confinement. Although Heistand asked for commitment to a drug rehabilitation program, the court considered Heistand's request but concluded the possibility of successful completion by Heistand would be extremely remote.

Heistand received credit for time served in jail prior to imposition of sentence. Assuming that Heistand may receive good time reduction on his fixed sentence, *State v. Miller*, *supra*, and applying our one-third standard to the indeterminate sentence, *State v. Toohill*, *supra*, Heistand could become parole eligible for release from incarceration after serving approximately six and one-half years of the combined fixed and indeterminate sentences.

[6] We believe that the fixed seven-year sentence and the five-year indeterminate sentence reasonably can be viewed as necessary to accomplish the primary objective of protecting society from Heistand's conduct. We conclude that the district court did not abuse its discretion.

The judgments of conviction and sentences are affirmed.



trial court did not sentence Heistand as a persistent violator.

Cite as 107 Idaho 221

687 P.2d 1348

In the Matter of the GENERAL DETERMINATION OF the RIGHTS TO the USE OF SURFACE AND GROUND WATERS OF the PAYETTE RIVER DRAINAGE BASIN.

James D. BRANSON and Martha Branson, Appellants,

v.

Gorman MIRACLE and Barbara Miracle, husband and wife, Respondents, and

The Department of Water Resources, State of Idaho, Respondent.

No. 14813.

Supreme Court of Idaho.

July 9, 1984.

Rehearing Denied Sept. 12, 1984.

Mine owners appealed from determination of the Third Judicial District Court, Gem County, Gilbert C. Norris, J., as to respective water rights of mine owners and neighbors with regard to water flowing from mine portal. The Supreme Court, Bistline, J., held that: (1) trial court did not abuse its discretion in allowing neighbors to present objections to report containing proposed findings of water rights after 60-day statutory period had elapsed; (2) open flow of water emanating from mine portal which would not have existed absent development of mine was "ground water" within meaning of statute providing that ground waters are public waters subject to appropriation; (3) trial court's determination that mine owners' predecessor consented to, or at least, acquiesced in neighbors' diversion of water from mine tunnel was supported by record; (4) district court's determination that neighbors had right of ingress and egress to maintain their right to flow of water would be remanded for determina-

tion as to whether neighbors had any legal or equitable right to enter mining claim, since trial court made no findings of fact as to whether neighbors established requisite elements of prescriptive easement or adverse possession; and (5) determination that landowners had only appropriated only 50 gallons of water per year for mining purposes was supported by record.

Affirmed in part, reversed and remanded in part with directions.

Shepard, J., concurred except as to part V and dissented from part V of majority opinion.

1. Waters and Water Courses ⇨ 152(10)

Although statute provides that claimants shall file objections to report containing proposed findings of water rights within 60 days, such statute requires district courts to hear objections raised within such time period but leaves court with discretion to hear objections thereafter. I.C. § 42-1410.

2. Waters and Water Courses ⇨ 152(12)

Provision of statute requiring claimant who objects to report containing proposed finding of water rights to file objections with court within 60 days which states that district judge shall affirm right as found within report where no objection is filed does not require affirmance where claimant has failed to object within 60 days, but only where claimant has failed to raise any objections. I.C. § 42-1410.

3. Waters and Water Courses ⇨ 152(10)

District court did not abuse its discretion in allowing claimant to present objections to report containing proposed findings of water rights after 60-day statutory period had elapsed, since district court had discretion to hear objections thereafter. I.C. § 42-1410.

4. Waters and Water Courses ⇨ 130

Open flow of water emanating from mine portal which would not have existed

absent development of mine was "ground water" within meaning of statute providing that ground waters are public waters subject to appropriation, since water was from an underground source and was brought to surface through excavation of mine. I.C. §§ 42-101, 42-226, 42-230.

See publication Words and Phrases for other judicial constructions and definitions.

5. Waters and Water Courses ⇨130

Open flow of water emanating from a mine portal which would not have existed absent development of mine was not "private water" within meaning of statute defining nonappropriable private water as waters of any lake not exceeding five acres which is located wholly upon lands of person or corporation, since water in question was running water. I.C. § 42-212.

6. Waters and Water Courses ⇨130

For purposes of statute classifying springs as public water which is not appropriable, a "spring" is a place where water issues naturally from the surface of the earth. I.C. § 42-212.

See publication Words and Phrases for other judicial constructions and definitions.

7. Waters and Water Courses ⇨130

Open flow of water emanating from mine portal which would not have existed absent development of mine was not a "spring" within meaning of statute defining private nonappropriable waters as including springs, where water flow was created as a result of mining operations and did not issue naturally from surface of earth. I.C. § 42-212.

8. Waters and Water Courses ⇨130

Open flow of water emanating from mine portal which would not have existed absent development of mine was not "developed water" for purposes of doctrine granting a person who, by removing obstructions and constructing artificial works, prevents loss of water flowing in

stream and materially augments amount of water available for beneficial use the right to make use of water so conserved, since mine owners were not responsible for augmenting amount of ground water available or preventing loss of ground water available, but only for bringing water to surface.

See publication Words and Phrases for other judicial constructions and definitions.

9. Waters and Water Courses ⇨152(8)

Evidence in record supported district court's determination that neighbors to mine diverted and applied to a beneficial use .02 cfs of water from open flow of water emanating from mine portal for domestic purposes, and thus, that neighbors "appropriated" such water.

See publication Words and Phrases for other judicial constructions and definitions.

10. Waters and Water Courses ⇨127

Valid water right cannot be initiated by trespass onto another's property, even if property consists of ownership of a mining claim on public lands.

11. Mines and Minerals ⇨29(1)

Mining claim perfected under the law is property in the fullest sense of such term; owner is not required to purchase claim or secure patent from United States but, so long as he complies with provisions of mining laws, his possessory right, for all practical purposes of ownership, is good as a right secured by patent.

12. Waters and Water Courses ⇨152(8)

District court's determination that mine owners, or their predecessors in interest, consented to, or at least acquiesced in neighbors' diversion of .02 cfs of water for domestic purposes of mine portal flow was supported by record, since neighbors could not have entered upon mine land and initiated valid appropriation of spring, which did not flow sufficient water to create natural stream that ran beyond mine owners' premises, without mine owners' consent.

Cite as 107 Idaho 221

13. Waters and Water Courses ⇨142

Mere fact that one owns water right does not vest in owner thereof right to enter lands of another for purpose of maintaining flow of water.

14. Mines and Minerals ⇨51(1)

Fact that mining claim was located on public land did not give neighbors, who had water right to open flow of water emanating from mine, the right of trespass to maintain flow of water, since occupier of public lands under mining claim has right of exclusive possession and right to be free of trespass.

15. Appeal and Error ⇨1177(8)

Determination by district court that holders of water right had right of ingress and egress to mine claim from which water flowed to maintain their right to flow of water would be remanded to determine source, if any of right to enter, since district court made no findings as to whether neighbors established requisite elements of prescriptive easement or adverse possession.

16. Eminent Domain ⇨29

If holders of water right failed to establish any legal or equitable right to enter mining claim in order to maintain their flow of water, they have right to proceed by way of eminent domain pursuant to statute. I.C. § 42-1106.

17. Waters and Water Courses ⇨152(8)

Evidence in record, which established that mine owners used a maximum of 50 gallons per year in their panning operations, but which failed to show how much water was used for other mining or milling operations, supported district court's determination that mine owners had only appropriated 50 gallons per year in the past, and thus, were entitled to use only 50 gallons per year for mining purposes in the future.

Claude V. Marcus, Boise, for appellants.

Lloyd J. Walker, Twin Falls, for respondents Miracle.

Jim Jones, Atty. Gen., Lynn E. Thomas, Sol. Gen., Phillip J. Rassier and David Barber (argued), Deputy Attys. Gen., Boise, for respondent Dept. of Water Resources.

BISTLINE, Justice.

This case of first impression addresses several important questions: the status of water developed through mining operations, as either public water subject to appropriation or non-appropriable private water; and the rights of owners of a mining claim to exclusive enjoyment of water situate thereon.

The Bransons, appellants, and the Miracles, respondents, were joined as parties in the 1969 Payette River Basin water rights adjudication. In August and September of 1977, the parties filed notices of claims to water rights as follows:

	Source
Bransons	Water originating from mine tunnel owned by app.
Miracles	Unnamed creek

Priority Date	Use	Amount
1957	Domestic	.04 cfs
	Mining	.5 cfs
1965	Domestic	100 gal/day

The water in question was developed as a result of and emanated from the Bransons' mining tunnel on their "Birthday # 24" mining claim.

The Idaho State Department of Water Resources (Water Resources) filed its Proposed Findings of Water Right on April 26, 1979, which adopted the water rights as claimed by the parties, with the exception of allocating to the Miracles .02 cfs rather than the 100 gallons per day as claimed. No objection by either party was made within the 60-day period provided in I.C.

§ 42-1410¹ which expired on June 25, 1979. However, in November of 1979, the Miracles filed in the district court a motion to permit a late filing of objection to the report and a motion to permit the late filing of an amended notice of claim changing their priority date from 1965 to 1943. On April 1, 1980, the court denied the Miracles' motions and made a final adjudication of the parties' water rights in accordance with the Proposed Findings of Water Resources. On motion for reconsideration, the court vacated its order and allowed the Miracles to file late objections to the Bransons' claim for water for mining purposes. At the same time the court allowed the Bransons to file objections to the Miracles' claim. The court passed the Miracles' motion to permit filing an amended notice of claim.

On May 20, 1982, the district court issued its findings and decree allocating to the Miracles a water right of .02 cfs for domestic purposes with a priority date of 1943. The court allocated the Bransons 50 gallons of water per year for mining purposes with a priority date of July 1, 1957, based on its finding that the mine had not been operating continuously since 1942 except for a three-week period in 1974 and that the Bransons had used 50 gallons per year in their panning operations for assay purposes. The Bransons' claim to .04 cfs of water for domestic purposes was uncontested and this right was decreed with a priority date of June 1, 1957. The court found that the source for all of the claims was a mining tunnel stream known as the Birthday Mine #24, which waters were and at all times are from an underground source and that "all waters coming out of said Birthday #24 mining claim tunnel are groundwaters" R., p. 63. The court found that there was enough water emanating from the mine to fill the two domes-

1. "Any claimant who desires to object to the report shall file his objections with the court within 60 days of the date of mailing of such report by the director Where no objection is filed with regard to any right found to exist by the director of the department of water re-

tic claims but that there was not enough to fill both the domestic claims and the mining claim.

I.

[1-3] The first issue presented on appeal is the effect of I.C. § 42-1410 which provides that:

"Any claimant who desires to object to the report [proposing findings of water rights] shall file his objections with the court within 60 days Where no objection is filed with regard to any right found to exist by the director of the department of water resources as evidenced by his report, the district judge shall affirm the right as therein found."

The Bransons argue that this provision is jurisdictional and precludes the district court from considering any objections to Water Resources' report filed later than 60 days after the date of mailing. They argue that the district court is required in this case to affirm the rights found in that report since the objections were not made within the statutory period. We disagree. Although the statute states that claimants shall file objections within 60 days, we interpret this provision as requiring district courts to hear objections raised within that time period but leaving them with discretion to hear objections thereafter. The second provision requiring affirmance where no objection has been filed does not mandate a contrary result. That provision does not require affirmance where the claimant has failed to object *within 60 days*, but only where the claimant has failed to raise *any* objections. Such was not the case here. We find no error in the district court's exercise of discretion in allowing the Miracles to present objections to the report after the 60-day period had elapsed.²

II.

The next issue presented on appeal is whether an open flow of water emanating

sources as evidenced by his report, the district judge shall affirm the rights as therein found."

2. At oral argument Water Resources stated that district courts commonly allow claimants, often uncounseled and lacking knowledge of water

Cite as 107 Idaho 221

from a mine portal which would not exist absent development of the mine is non-appropriable private water or appropriable public water.

[4] I.C. § 42-101 provides that "All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state" are public waters subject to appropriation. I.C. § 42-226 similarly provides that ground waters are public waters subject to appropriation. I.C. § 42-230 defines ground water as "all water under the surface of the ground whatever may be the geological structure in which it is standing or moving." The water emanating from the mine portal falls clearly within this definition of ground water. The water is from an underground source which has been brought to the surface through the excavation of the mine. The district court found in its decree that "all waters coming out of said Birthday #24 mining claim tunnel are groundwaters," R., p. 63, which we find to be supported by the statutes cited above and by the evidence.

[5-7] The Bransons, however, argue that the water falls within I.C. § 42-212 which defines those waters in the state as private and thus not appropriable without permission from the owner of the land situated thereon. I.C. § 42-212 defines such private waters as "the waters of any lake not exceeding five (5) acres in surface area at highwater mark, pond, pool or spring in this state, which is located or situated wholly or entirely upon the lands of a person or corporation." We are not persuaded by the Bransons' arguments. The evidence offers no support for the water flow being either a lake, pond or pool; the waters here involved are running waters. The Bransons' argument that the mine water is a spring similarly is not persuasive. As the Oregon Supreme Court stated in *Beisell v. Wood*, 182 Or. 66, 185 P.2d 570 (1947), "[a]

law, to raise objections after the 60-day period

'spring' is a place where the water issues naturally from the surface of the earth." See *Holman v. Christensen*, 274 P. 460 (Utah 1929), for the same rule. There was no dispute but that the water flow emanating from the mine was created as a result of the mining operations. See Finding of Fact VIII, R., p. 53. The water flow did not issue naturally from the surface of the earth; thus it was not a spring.

[8] The Bransons alternatively argue that the mine flow should be considered "developed water" and thus not subject to appropriation by the Miracles. In support of their argument is cited *Reno v. Richards*, 32 Idaho 1, 178 P. 81 (1918) and cases following which stand for the proposition that:

"A person who, by removing obstructions from a stream and constructing artificial works, prevents the loss of water flowing therein through seepage and evaporation, and materially augments the amount of water available from the stream for a beneficial use, has the right to make use of the amount of water so conserved by his efforts in excess of the natural flow of the stream."

Such cases are inapplicable. We do not have here a case in which the flow of a stream is augmented by the removal of growth from the beds and banks of the stream or augmentation as a result of improved irrigation or diversion techniques as in the cited cases. In the present case ground water has been brought to the surface artificially. The Bransons are not responsible for augmenting the amount of ground water available or preventing the loss of ground water available but only for bringing that water to the surface.

We hold that the water flow emanating from the mine portal is public ground water subject to appropriation.

III.

[9] The Bransons next contend that the Miracles failed to provide the requisite ele-
has elapsed.

ments of appropriation of water—i.e., diversion and beneficial use of a specific quantity of water. In *Silkey v. Tiegs*, 51 Idaho 344, 353, 5 P.2d 1049, 1053 (1931), this Court held that subterranean waters may be appropriated "either by the statutory permit method ... or by actual diversion and application to a beneficial use." The district court found that:

"There has been utilized domestic water by the Miracles ... in the amount claimed by the Miracles ... from said Birthday # 24 mining claim tunnel since May 1, 1943 through date of this trial."

Conclusion of Law, II, R., p. 58.

The record supports the district court's determination that the Miracles diverted and applied to a beneficial use the .02 cfs of water for domestic purposes.

IV.

[10-12] The Bransons argue that even if the water flowing from the mine portal is considered public water subject to appropriation, the Miracles could not acquire a right to the water through trespass onto their mining claim. It is established that a valid water right cannot be initiated by trespass onto another's property. *Lemmon v. Hardy*, 95 Idaho 778, 519 P.2d 1168 (1974); *Jones v. McIntire*, 60 Idaho 338, 91 P.2d 373 (1939); *Bachman v. Reynolds Irrigation District*, 56 Idaho 507, 55 P.2d 1314 (1936); *Short v. Praisewater*, 35 Idaho 691, 208 P. 844 (1922); *Rabido v. Furey*, 33 Idaho 56, 190 P. 73 (1920). This is true even if that property consists of ownership of a mining claim on the public lands. As the United States Supreme Court stated in *Wilbur v. United States*, 280 U.S. 306, 307, 50 S.Ct. 103, 104, 74 L.Ed. 445 (1929):

"The rule is established by innumerable decisions of this Court, and of state and lower federal courts, that, when the location of a mining claim is perfected under the law, it has the effect of a grant by the United States of the right of present and exclusive possession. The claim is property in the fullest sense of

that term; The owner is not required to purchase the claim or secure patent from the United States; but, so long as he complies with the provisions of the mining laws, his possessory right, for all practical purposes of ownership, is as good as though secured by patent." [Citations omitted.]

The United States Supreme Court in *Clipper Mining v. Eli Mining & Land Co.*, 194 U.S. 220, 24 S.Ct. 632, 634, 48 L.Ed. 944 (1904), further held that this "exclusive right of possession forbids any trespass. No one, without his consent, or, at least, his acquiescence, can rightfully enter upon the premises or disturb its surface That exclusive right of possession is as much the property of the locator as the vein or lode by him discovered and located." See *McBrown v. Morris*, 54 Cal. 64, 74 (Cal.1881). It is apparent from the record and the district court's findings that the water right here at issue was not initiated by trespass. In another context, the district court found that:

"The use of the ¾-inch pipe collecting water from the said mine tunnel stream for the Miracles' domestic purposes was continued until approximately 1972 when the pipe was inadvertently filled by silt and sand. Mr. J.D. Branson, Senior, father of plaintiff J.D. Branson, who for a period of years as a good neighbor had each spring cleaned the screen at the pipe's inflow, had allowed it to become filled with debris from the spring run-off."

Finding of Fact XIII, R., p. 55 (emphasis added).

The record amply supports the district court's determination that Mr. Branson, Sr., consented, or at least, acquiesced in the Miracles' diversion of water from the mine tunnel. The rule of *Short v. Praisewater* is applicable in this action:

"Without respondent's consent, appellant could not have entered upon his premises and initiated a valid appropriation to this spring, which did not flow sufficient wa-

ter to create a natural stream that ran beyond the lines of respondent's premises. But appellant, after having acquired the right to develop this spring, and after having dedicated the waters of such spring to the highest beneficial use known to the law, that is, domestic use, his continued and uninterrupted use of this water for a period of more than five years constitutes a valid appropriation, and gives him a right to the use of the water as against respondent, and constitutes a valid appropriation of the water of this spring as against all other persons."

35 Idaho at 701, 208 P. 844 (citations omitted).

The district court's determination that the Miracles, with the consent of the Bransons, or their predecessors in interest, made a valid appropriation of .02 cfs of water for domestic purposes from the mine portal flow is amply supported by the record. As in *Short v. Praisewater*, this right is good against the Bransons and all other persons.

V.

[13,14] Our holding that the Miracles have a valid water right does not answer the question of whether the district court erred in determining that:

"[S]aid Gorman and Barbara Miracle and their heirs, successors and assigns have the right of ingress and egress onto and from said Birthday # 24 mining claim for the purposes of maintaining their right to their flow of water above described."

Conclusion of Law VII, R., p. 59 (emphasis added).

The mere fact that one owns a water right does not vest in the owner thereof the right to enter the lands of another for the purposes of maintaining the flow of water.

"The fact that a party has a water right gives him no right to enter the lands of

3. The fact that the mining claim is located on public land gives the Miracles no right of trespass as the occupier of public lands under a

others for the purpose of constructing ditches and canals across them, except over the public lands of the United States. He must obtain that easement and right of way by purchase or condemnation."

Swank v. Sweetwater Irrigation & Power Co., 15 Idaho 353, 360, 98 P. 297, 299 (1908).³

Bachman v. Reynolds Irrigation District, 56 Idaho 507, 55 P.2d 1314 (1936), involved a case in which respondents were given permission to enter lands owned by appellants for the purposes of diverting water. That permission was later revoked after the respondents had perfected their water right. After the revocation, the respondents continued to enter appellants' property to divert water. The Court held that the respondents could obtain a right to cross appellants' land under the doctrines of adverse possession or prescriptive easement:

"[R]ight of way for ditches, canals, or other works may be acquired over private lands by grant from the owner thereof. So, also, such right of way may be acquired over the private lands of another by adverse possession, from which a grant, of course, is presumed. Also ditches and canals after their construction, together with their rights of way, may be acquired by prescription The right may have its inception by permission or license, but in order to constitute adverse possession of a right to use a ditch or canal across the land of another, originally given by permission or license, the licensee must have repudiated the license and have brought the knowledge of the repudiation home to the owner of the land, and thereafterward must have held adversely for the statutory period" (2 Kinney on Irrigation and Water Rights, 2d ed., p. 1870, sec. 1045.)

mining claim has the right of exclusive possession and the right to be free of trespass, see Part IV *supra*.

"Under this state of circumstances (use under revocable license or permission) before there can be any adverse holding, it is necessary for the party claiming the easement for a right of way to have repudiated the license or permission, and to have brought the knowledge of such repudiation home to the owner of the land giving such permission; and thereafter he must have continued to have held the right adversely for a time sufficient under the statute for the acquisition to an interest in the land by prescription. The right can not be regarded as adverse, while the licensee acknowledges the right of the land owner and pays compensation for the use of the land." (2 Kinney on Irrigation and Water Rights, 2d ed., p. 1744, sec. 985.)" *Bachman*, 56 Idaho at 518-19, 55 P.2d 1314.

[15, 16] The district court in determining that the Miracles had the right of ingress and egress to maintain their right to the flow of water made no findings regarding the source of that right. It cannot be established from the court's findings of fact whether the Miracles established the requisite elements of prescriptive easement or adverse possession. The determination of whether the Miracles established a right to enter the Bransons' property under either of these grounds or under any other theory is a question of fact. No findings having been made in this regard, and we remand to the trial court for such determination. We note, in remanding, that if the Miracles fail to establish any legal or equitable right to enter the Bransons' mining claim in order to maintain their flow of water, they have the right to proceed by way of eminent domain pursuant to I.C. § 42-1106.⁴

VI.

[17] The final issue presented on appeal by the Bransons is whether the district

4. "Right of eminent domain.—In case of the refusal of the owners or claimants of any lands, through which any ditch, canal or conduit is proposed to be made or constructed, to allow

court erred in restricting their water rights for mining purposes to fifty gallons per year. We are not persuaded by the Bransons' contentions in this regard. The district court found:

"At no time from 1942 continuously through to the time of trial, August 18, 1981, has said Birthday #24 mining claim been worked on a consistent or productive basis, with the exception of the summer of 1946 or 1947 when the said tunnel was extended and except for a three-week period in 1974."

R., p. 53.

The district court found that the Bransons had failed to present evidence showing how much water was used for mining or milling operations with the exception of their panning operations for assay purposes in which they used a maximum of 50 gallons per year. The court also found that .5 cfs was in excess of the flow from the tunnel. The district court's detailed findings that the Bransons had only appropriated 50 gallons of water per year for mining purposes are amply supported by the record and will not be set aside by this Court on appeal.

The district court's decree is affirmed in part, reversed in part and remanded with directions for further proceedings consonant to this opinion. Costs to respondents.

DONALDSON, C.J., and HUNTLEY, J., concur.

SHEPARD, J., concurs except as to part V and dissents from part V of the majority opinion.

BAKES, J., sat but did not participate.



passage thereof, the person or persons desiring the right of way may proceed as in the law of eminent domain."

Cite as 107 Idaho 229

687 P.2d 1356

ALL AMERICAN REALTY, INC., an
Idaho Corporation,
Plaintiff-Appellant,

v.

Michael B. SWEET, an individual, and
Harold L. Ryan, an individual, and
Ryan and Sweet, a partnership, Defendants-Third Party Plaintiffs-Respondents.

No. 13135, 13323.

Supreme Court of Idaho.

July 24, 1984.

Rehearing Denied Oct. 10, 1984.

Broker brought action against attorney, who had acted as closing agent pursuant to Farm Home Administration regulations in real estate transaction, to recover its commission. The Fourth Judicial District Court, Ada County, W.E. Smith, J., entered summary judgment in favor of attorney, and broker appealed. The Supreme Court, Huntley, J., held that by failing to pay broker's commission in accordance with earnest money agreement, attorney violated one of FmHA's express instructions and breached his duty as the depository, and thus he was liable to broker for losses it suffered due to his breach.

Reversed and remanded.

Bistline, J., concurred specially and filed opinion.

Shepard, J., dissented and filed opinion, in which Donaldson, C.J., joined.

1. Deposits and Escrows ⇐13

By failing to pay broker's commission in accordance with earnest money agreement, attorney acting as closing agent pursuant to Farm Home Administration regulations in real estate transaction violated one of FmHA's express instructions and

breached his duty as the depository, and thus he was liable to broker for losses it suffered due to his breach. (Per Huntley, J., with one Justice concurring and one Justice concurring specially).

2. Costs ⇐172

Award of \$7,000 in attorney fees to defendant attorney for alleged 140 hours of work in processing discovery and summary judgment in suit brought by broker against attorney, who had acted as closing agent pursuant to Farm Home Administration regulations in real estate transaction, to recover commission appeared to be unjustified. (Per Huntley, J., with one Justice concurring and one Justice concurring specially).

3. Costs ⇐203

In awarding \$7,000 in attorney fees to defendant attorney for processing summary judgment and discovery in suit brought by broker against attorney, who had acted as closing agent pursuant to Farm Home Administration regulations in real estate transaction, to recover commission, trial court made no determination of appropriateness of fees and erred in refusing to grant broker's request that attorney be made to itemize his time spent. (Per Huntley, J., with one Justice concurring and one Justice concurring specially). Rules Civ. Proc., Rule 54(e).

Jon N. Wyman, Michael Brady and Terry R. McDaniel, of Brady, McDaniel & Matthews, Boise, for plaintiff-appellant.

Jeremiah A. Quane and John Potter Howard, of Quane, Smith, Howard & Hull, Boise, for defendants-third party plaintiffs-respondents.

HUNTLEY, Justice.

By this appeal we consider the duty of an attorney, acting as closing agent pursuant to Farm Home Administration (FmHA) regulations in a real estate transaction, to the

III.

CONCLUSION

The Attorney General's short and long titles are insufficient. The signatures collected on the petitions with the defective titles are invalid. The Petitioners' request for attorney fees is denied.

JOHNSON, TROUT, SILAK and SCHROEDER, JJ., concur.



912 P.2d 642

In the Matter of Application for Permits Nos. 65-12283 in the Name of Gorman & or Barbara Miracle; and 65-12286 in the Name of Ralph & /or Joyce Claycomb.

James and Martha BRANSON,
Petitioners-Appellants,

v.

R. Keith HIGGINSON, Director, of the Idaho Department of Water Resources, and Gorman and Barbara Miracle and Ralph and Joyce Claycomb, Respondents.

No. 21732.

Supreme Court of Idaho,
Boise, December 1995 Term.

Feb. 20, 1996.

Rehearing Denied March 4, 1996.

Grant of water use permits was affirmed by the District Court of the Fourth Judicial District, Ada County, Robert M. Rowett, J., and owners of property on which stream of water emanated from mine tunnel appealed. The Supreme Court, Trout, J., held that: (1) claim that water was private water was precluded by doctrine of collateral estoppel, and (2) award of attorney fees was warranted.

Affirmed and attorney fees awarded.

1. Judgment $\Rightarrow$ 715(1)

Under doctrine of collateral estoppel, where owners of land on which stream of water flowed from a mine tunnel had previously litigated claim that water was "private water" and not subject to appropriation, and lost, they were not entitled to raise the identical issue in litigation some ten years later in which other property owners sought to appropriate additional water. I.C. § 42-212.

2. Appeal and Error $\Rightarrow$ 1079

Failure to support assignment of error with argument and authority is deemed waiver of the assignment. Appellate Rule 35(a)(6).

3. Costs $\Rightarrow$ 260(5)

In light of decision in prior case that certain stream was not private water and fact that parties claiming that it was in present case provided little or no argument in support of their position on appeal, award of attorney fees on appeal to opposing party under statute, based on fact that appeal was pursued frivolously and without foundation, was appropriate, but state would not be awarded attorney fees as sanction under rule. I.C. § 12-121; Rules Civ.Proc., Rule 11.

Appeal from the District Court of the Fourth Judicial District of the State of Idaho; Ada County; Robert M. Rowett, District Judge.

Appeal from a grant of applications to appropriate water. Affirmed.

Marcus, Merrick & Montgomery, Claude V. Marcus (argued), Boise, for appellants.

Alan G. Lance, Attorney General; Phillip J. Rassier, Deputy Attorney General (argued), Boise, for respondent Higginson.

John A. Bradley, Burley, for respondents Gorman and Barbara Miracle.

TROUT, Justice.

This is an appeal from a district court decision affirming the grant, by the Idaho Department of Water Resources (IDWR), of water use permits to respondents Gorman Miracle and Ralph and Joyce Claycomb.

I.

BACKGROUND AND PROCEDURAL HISTORY

The petitioners-appellants, James and Martha Branson, own what is known as the Birthday Mine located near Lowman, Idaho. A mining tunnel on the Branson property extends into the mountainside and, from its portal, a small stream of water flows. This stream sinks into the ground and does not flow beyond the Branson property.

Related litigation arose from the 1969 Payette River Basin adjudication. In the 1940's, Miracle's predecessor in interest diverted water flowing from the mine for domestic use on what became the Miracle property. In 1964, the Bransons' predecessor installed a second diversion system to supply water for domestic use to his own residence. In 1977, water rights claims were filed by both the Bransons and Miracle. The dispute over these claims resulted in our decision in *Branson v. Miracle*, 107 Idaho 221, 687 P.2d 1348 (1984) (*Branson I*), in which we held that "the water flow emanating from the mine portal is public ground water subject to appropriation." *Id.* at 225, 687 P.2d at 1352. The case was remanded, and a second appeal resulted in the decision of the Court of Appeals in *Branson v. Miracle*, 111 Idaho 933, 729 P.2d 408 (Ct.App.1986) (*Branson II*). *Branson II* has no impact on the present case.

On November 6, 1979, Miracle and his wife Barbara (now deceased) filed an application to appropriate water flowing from the Birthday Mine portal (this application was for uses separate from the claim at issue in *Branson I* and *Branson II*). They originally sought to appropriate 0.16 cubic feet per second (cfs) for application on two separate tracts of land. However, the application was amended to reduce the requested appropriation to a total of 0.04 cfs (0.02 cfs per tract of land), one half of which was sought to improve the marketability of one of the parcels. The remaining portion of the requested appropriation was sought for domestic purposes in a residence Miracle planned to build on the second tract of land. On November 8, 1979, the Claycombs filed an application similar to Mira-

cle's. They originally sought to appropriate 0.04 cfs for supplemental domestic use in one existing residence, but amended their application to request only 0.02 cfs.

Hearings on the applications were held before an IDWR hearing officer who issued findings of fact, conclusions of law, and a proposed order for adoption by the IDWR. On February 9, 1994, the director of IDWR issued a final order adopting the hearing officer's recommended order. The Miracle application was approved for the diversion of 0.02 cfs. However, the portion requesting a right to appropriate merely to increase the marketability of a tract of land was deemed to be for "speculative purposes" and was denied. The Claycombs' amended application was approved for 0.02 cfs. The final order of the IDWR was affirmed by the district court and the Bransons have appealed.

II.

NATURE OF THE WATER EMANATING FROM THE MINE PORTAL

[1] The Bransons' primary contention on appeal is that the water emanating from the mine tunnel is not subject to appropriation because it does not flow off their land. According to the Bransons, this water is "private water" within the meaning of I.C. § 42-212. Notably, however, in *Branson I*, the Bransons stated the following as an issue to be addressed by this Court:

3. If, as appellants believe, the evidence overwhelmingly proves that the water did not flow from the Branson property on the surface in a natural channel, or at all, is this private water as provided in Section 41-212 [sic] of the Idaho Code; or was this public water which Miracle could appropriate for which he could establish a legal water right.

As requested, the Court answered this issue, expressly holding that the water is not "private water" within the meaning of I.C. § 42-212 because it is not a lake, pond, pool, or spring. *Branson I*, 107 Idaho at 225, 687 P.2d at 1352. Rather, "the water flow ema-

nating from the mine portal is public ground water subject to appropriation." *Id.*

The mere fact that the decision in *Branson I* was not favorable to the Bransons does not entitle them to raise the *identical* issue before this Court some ten years later. We decline the request to revisit this issue. See *Anderson v. City of Pocatello*, 112 Idaho 176, 731 P.2d 171 (1986) (setting forth elements of doctrine of collateral estoppel).

III.

OTHER ISSUES

[2] In their opening brief on appeal, the Bransons have listed at least one and arguably two additional issues, along with a request for attorney fees, in their statement of issues presented. However, they have not provided this Court with any authority or argument relating to these issues. A failure to support an assignment of error with argument and authority is deemed a waiver of the assignment. *E.g., State v. Burris*, 101 Idaho 683, 684 n. 1, 619 P.2d 1136, 1137 n. 1 (1980) (citing I.A.R. 35(a)(6)). Accordingly, we decline to address these other issues.

IV.

ATTORNEY FEES

[3] Miracle requests an award of attorney fees pursuant to I.C. § 12-121 based on the fact that this appeal was pursued frivolously and without foundation. In light of our prior decision in *Branson I* and the fact that the Bransons provide little or no argument in support of their position on appeal, we agree. Thus, we award attorney fees on appeal to Miracle pursuant to I.C. § 12-121, but decline the State's request for an award of attorney fees as a sanction under Rule 11.

V.

CONCLUSION

The final order of the IDWR is affirmed. Miracle is awarded attorney fees on appeal. Costs to both Miracle and the IDWR.

McDEVITT, C.J., and SILAK and SCHROEDER, JJ., concur.

JOHNSON, J., sat but did not participate.



912 P.2d 644

IDAHO SCHOOLS FOR EQUAL EDUCATIONAL OPPORTUNITY, an unincorporated association of superintendents of schools, By and Through John J. EIKUM, Roger Swanson, Richard Peters, L. Eldon Taylor and Donald Armstrong; Brian Silflow and Ganel Silflow, by and through their parents Dale and Patti Silflow, husband and wife; Donald Paul Crea, by and through his father Gary Crea; Andy Cook, by and through his father Larry Prally; Tavia Gilbert, by and through her parents Terry and Carolyn Gilbert; Gregory Lamm, by and through his mother Kathy Lamm; Sara Rae Gomez, by and through her parents Kathleen and Jose Gomez; Dietrich Stella and Jennifer Stella, by and through their parents Charles and Rebecca Stella; Gregory Daniels, by and through his mother Nancy Daniels; Gina M. Decker, by and through her parents Gene and Linda Decker; Jennifer A. Alder, by and through her parents Max and Judy Alder; Angela F. Gerrard, by and through her parents Roger and Rhoda Gerrard; Catherine A. Sporleder, by and through her mother Joanne Sporleder; Morgan Rounds and Seth Rounds, by and through their parents Ivan Rounds and Brenda Rounds; Kelli Longeteig, by and through her parents Willfred Longeteig and Beverly Longeteig; Don Hoffer, by and through his mother Kit Hoffer; Sarah Malloy, by and through her mother Susie Malloy; Kory Turnbow, by and through his

mother Donagene Turnbow; Shawna Olsen, Shannon Olsen, and Ryan Olsen, by and through their mother Teresa Olsen; on behalf of themselves and all other school people of the State of Idaho similarly situated, Plaintiffs-Appellants,

and

Moscow School District #281; Lapwai School District #341; Mullan School District #392; Potlatch School District #285; Whitepine Jt. School District #286; Kendrick Jt. School District #283; Kootenai School District #274; Cascade School District #422; St. Maries Jt. School District #41; Orofino Jt. School District #171; Culdesac Jt. School District #342; Genesee Jt. School District #282; Highland-Craigmont Jt. School District #305; Bruneau-Grandview Jt. School District #365; Dietrich School District #314; American Falls School District #381; Rockland School District #382; Valley School District #262; Challis Jt. School District #181; Horseshoe Bend School District #73; West Jefferson School District #253; Council School District #13; Midvale School District #433; Garden Valley School District #71; Richfield School District #316; Kellogg Jt. School District #391; Boundary County School District #101; Kamiah Jt. School District #304; Lakeland School District #272; Lewiston Independent School District #340; Wallace School District #393, Plaintiffs-Counterdefendants-Appellants,

and

Jerry L. Evans, in his capacity as Idaho State Superintendent of Public Instruction; Phil Batt, in his capacity as Governor of the State of Idaho, Plaintiffs-Respondents,

and

Danielle Luber, Kristin Luber, and Sarah Luber, by and through their parents Stephen and Lorie Luber; John Reese and Ellen Reese, by and through their parents Ron and Susie Reese; Heidi Poehling, Molly Poehling and Amy Poehling,

by and through their parents Mike and Sharon Poehling; Brady Roark, Jennifer Roark and Hailey Roark, by and through their parents Keith and Laurie Roark; Kimberly Mecham, Camille Mecham, Aubree Mecham and Morgan Mecham, by and through their parents Milo and Diane Mecham; and Thomas Ryan Healy, by and through his mother Christina Van Beuren, on behalf of themselves and all other school children residing in and attending school in Blaine County, Plaintiffs-in-intervention-Respondents,

and

Blaine County School District #61; Independent School District of Boise City, Plaintiffs-in-intervention-Counterdefendants-Respondents,

v.

The IDAHO STATE BOARD OF EDUCATION, by and through Roy E. MOSSMAN, Roberta Fields, Diane Bilyeu, Curtis H. Eaton, Joseph Parkinson, Karl Shurtliff, Keith Hinckley, and Jerry L. Evans, as members of the Idaho State Board of Education, Defendants-Respondents,

and

The Legislature of the State of Idaho, by and through Jerry Twigg as President Pro Tempore of the Senate and Michael Simpson as Speaker of the House, Defendants-Counterclaimants-Respondents.

No. 21818.

Supreme Court of Idaho,
Boise, September 1995 Term.

March 7, 1996.

Unincorporated association of school superintendents and others brought declaratory judgment action against State Board of Education and others alleging, inter alia, that method of funding public schools did not provide constitutionally required "thorough" education. After remand, 123 Idaho 573, 850

Levinston 05239.

The United States of America

To all to whom these presents shall come, Greeting:

WHEREAS, in pursuance of the provisions of the Revised Statutes of the United States, Chapter Six, Title Thirty-two, and the several supplemental thereto, there have been deposited in the General Land Office of the United States the Plat and Field Notes of Surveying the Certificate of the Register of the Land Office at Levinston, Idaho,

accompanied by other evidence whereby it appears that the Blue Jacket Mining Company of Delaware

has entered and paid for the Blue Jacket, Red Oxide, Extension, Dixie, Dixie No. 1, Ore, and Baltimore No. 1 lode mining claims,

designated by the Surveyor General as Surveys Nos. 2451, 2469, and 2477, embracing a portion of Sections twenty-seven and thirty-four in Township twenty-six-north of Range one west of the Boise Meridian, in the Crooks Cerral Mining District, Idaho County, Idaho.

and bounded, described, and platted as follows: Beginning for the description of the Blue Jacket lode claim, Survey No. 2451, at corner No. 1, a fir post five feet long, four inches square, marked 1-4-2451, in mound of earth and rock, from which the corner to Section twenty-six, twenty-seven, thirty-four and thirty-five in Township twenty-six north of Range one west of the Boise Meridian bears south sixty-three degrees thirty-one minutes east one thousand seven hundred six and nine-tenths feet distant;

Thence, first course, south seventy-four degrees fifty-one minutes west one thousand four hundred ninety-eight and nine-tenths feet to corner No. 2, a fir post five feet long, four inches square, marked 2-2-2-3-2451, in mound of earth and rock;

Thence, second course, north fifteen degrees nine minutes west two hundred ninety-nine and nine-tenths feet to a point from which

485349

discovery bears north seventy-four degrees fifty-one minutes east seven hundred forty-nine and nine-tenths feet distant; five hundred ninety-nine and nine-tenths feet to corner No. 3, a fir post five foot long, four inches square, marked 3-2-2451, in mound of earth and rock;

Thence, third course, north seventy-four degrees fifty-one minutes east one thousand four hundred ninety-eight and nine-tenths feet to corner No. 4, a fir post five feet long, four inches square, marked 4-1-2451, in mound of earth and rock;

Thence, fourth course, south fifteen degrees nine minutes east five hundred ninety-nine and nine-tenths feet to corner No. 1, the place of beginning; the survey of the lode claim as above described extending one thousand four hundred ninety-eight and nine-tenths feet in length along said Blue Jacket vein or lode;

Beginning for the description of the Red Oxide lode claim, Survey No. 2451, at corner No. 1, identical with corner No. 4 of said Blue Jacket lode claim, from which said section corner bears south fifty-one degrees twenty-nine minutes east two thousand one hundred fifty-three feet distant;

Thence, first course, south seventy-four degrees fifty-one minutes west one thousand four hundred ninety-eight and nine-tenths feet to corner No. 2, identical with corner No. 3 of said Blue Jacket lode claim;

Thence, second course, north fifteen degrees nine minutes west one hundred ninety-two feet to a point from which discovery bears north seventy-four degrees fifty-one minutes east five hundred ninety-

nine and five-tenths feet distant; four hundred ninety feet to corner No. 3, a fir post five feet long, four inches square, marked 2-2451, with mound of earth;

Thence, third course, north seventy-four degrees fifty-one minutes east one thousand four hundred ninety-eight and nine-tenths feet

to corner No. 4, a fir post five feet long, four inches square, marked 4-2451, with mound of earth;

Thence, fourth course, south fifteen degrees nine minutes east four hundred ninety-two feet to corner No. 1, the place of beginning; the survey of the lode claim as above described extending one thousand four hundred ninety-eight and nine-tenths feet in length along said Red Oxide vein or lode;

Beginning for the description of the Attention lode claim,

Survey No. 2451, at corner No. 1, a fir post five feet long, four inches square, marked 1-2451, with mound of earth and rock, from which the corner to Sections twenty-seven, twenty-eight, thirty-three and thirty-four in Township twenty-six north of Range one west of the Boise Meridian bears south eighty-nine degrees fifty minutes west one thousand seventy-three and thirty-two-hundredths feet distant;

Thence, first course, north fifty degrees ten minutes east one thousand four hundred ninety-nine and eight-tenths feet to corner No. 2, identical with corner No. 2 of said Red Oxide lode claim;

Thence, second course, south fifteen degrees nine minutes east three hundred feet to a point from which discovery bears south fifty degrees ten minutes west three hundred feet distant; five hundred ninety-nine and nine-tenths feet to corner No. 3, identical with corner No. 2 of said Blue Jacket lode claim;

Thence, third course, south fifty degrees ten minutes west one thousand four hundred ninety-nine and eight-tenths feet to corner No. 4, a fir post five feet long, four inches square, marked 4-1-2451, with mound of earth;

Thence, fourth course, north fifteen degrees nine minutes west five hundred ninety-nine and nine-tenths feet to corner No. 1, the place of beginning; the survey of the lode claim as above described extending one thousand four hundred ninety-nine and eight-tenths feet in length along said Attention vein or lode;

Beginning for the description of the Dixie lode claim, survey No. 2451, at corner No. 1, a fir post five feet long, four inches square, marked 1-2451, with mound of earth and rock; from that said corner to section twenty-six, twenty-seven, thirty-four and thirty-five bears south fifty-two degrees twenty-four minutes east one thousand three hundred eighty-three and thirteen-hundredths feet distant;

Thence, first course, south seventy-four degrees fifty-one minutes west one thousand four hundred ninety-eight and nine-tenths foot to corner No. 2, a fir post five feet long, four inches square, marked 2-2451, with mound of earth and rock;

Thence, second course, north fifteen degrees nine minutes west three hundred feet to a point from which discovery bears north seventy-four degrees fifty-one minutes east six hundred ninety-nine and five-tenths feet distant; six hundred feet to corner No. 3, identical with corner No. 2 of said Blue Jacket lode claim;

Thence, third course, north seventy-four degrees fifty-one minutes east one thousand four hundred ninety-eight and nine-tenths foot to corner No. 4, identical with corner No. 1 of said Blue Jacket lode claim;

Thence, fourth course, south fifteen degrees nine minutes east six hundred feet to corner No. 1, the place of beginning; the survey of the lode claim as above described extending one thousand four hundred ninety-eight and nine-tenths feet in length along said Dixie vein or lode;

Beginning for the description of the Dixie No. 1 lode claim, survey No. 2451, at corner No. 1, identical with corner No. 4 of said

Dixie lode claim, from which said corner to section twenty-six, twenty-eight, thirty-three, and thirty-four bears north sixty-four degrees fifty-two minutes west one thousand three hundred fifty-nine feet distant;

Thence, first course, north fifty degrees ten minutes east one thousand four hundred ninety-nine and eight-tenths feet to corner

No. 2, identical with corner No. 3 of said Extension lode claim; Thence, second course, south fifteen degrees nine minutes east three hundred feet to a point from which discovery bears south fifty degrees ten minutes west two hundred ninety-nine and nine-tenths feet distant; six hundred feet to corner No. 3, identical with corner No. 2 of said Dixie lode claim;

Thence, third course, south fifty degrees ten minutes west one thousand four hundred ninety-nine and eight-tenths feet to corner No. 4, a fir post five feet long, four inches square, marked 4-2451, with mound of earth;

Thence, fourth course, north fifteen degrees nine minutes west six hundred feet to corner No. 1, the place of beginning; the survey of the lode claim as above described extending one thousand four hundred ninety-nine and eight-tenths feet in length along said Dixie No. 1 vein or lode;

Beginning for the description of Survey No. 2469 at corner No. 1, a fir post five feet long, marked 1-2469, with mound of earth and rock, from which said corner to Section twenty-seven, twenty-eight, thirty-three and thirty-four bears south sixty-three degrees nine minutes thirty seconds west one thousand fifty-eight and nine-tenths feet distant;

Thence, first course, north fifty degrees ten minutes east one thousand four hundred ninety-nine and eight-tenths feet to corner No. 2, identical with corner No. 3 of said Red Oxide lode claim, also marked 2-2469;

Thence, second course, north fifteen degrees nine minutes east three hundred feet to a point from which discovery bears south fifty degrees ten minutes west five hundred feet distant; four hundred ninety-two feet to corner No. 3, identical with corner No. 3 of said Blue Jacket lode claim, also marked 3-2469;

Thence, third course, south fifty degrees ten minutes west one thousand four hundred ninety-nine and eight-tenths feet to corner No. 4, identical with corner No. 1 of said Extension Lode claim, also marked 1-2469.

Thence, fourth course, north fifteen degrees nine minutes west four hundred ninety-two feet to corner No. 1, the place of beginning said Survey No. 2469 extending one thousand four hundred ninety-nine and eight-tenths feet in length along the Ore vein or lode;

Beginning for the description of Survey No. 2477 at corner No. 1, identical with corner No. 4 of said Dixie No. 1 lode claim, also marked 1-2477, from which said corner to Section twenty-seven, twenty-eight, thirty-three and thirty-four bears north fifty degrees eleven minutes west one thousand eight hundred five and eight-tenths feet distant;

Thence, first course, north fifty degrees ten minutes east one thousand four hundred ninety-nine and eight-tenths feet to corner No. 2, identical with corner No. 3 of said Dixie No. 1 lode claim, also marked 2-2477.

Thence, second course, south fifteen degrees nine minutes east three hundred feet to a point from which discovery bears south fifty degrees ten minutes west one hundred forty-nine and eight-tenths feet distant; five hundred ninety-nine feet to corner No. 3, a five post five feet long, four inches square, marked 3-2477, with mound of earth and rock.

Thence, third course, south fifty degrees ten minutes west one thousand four hundred ninety-nine and eight-tenths feet to corner No. 4, a five post five feet long, four inches square, marked 4-2477, with mound of earth and rock;

Thence, fourth course, north fifteen degrees nine minutes west five hundred ninety-nine feet to corner No. 1, the place of beginning said Survey No. 2477 extending one thousand four hundred ninety-

nine and eight-tenths feet in length along the Baltimore No. 1 vein or lode, the premises, herein granted, containing in the aggregate one hundred twenty-nine and eight hundred eighty-four-thousandths acres.

