

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 63-27475
Date Received: 6/18/1992
Receipt No: W014921
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

JANICEK PROPERTIES LLC
1284 S GOSLING WAY
EAGLE ID USA 83616

Phone: (208) 880-0328

2. Date of Priority: 06/20/1943

3. Source: PURDAM GULCH CREEK Trib. to: MASON CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 Lot	County	Type
03N	01W	15	SE	SE	NE	ADA	

5. Description of diverting works:

PUMP INDITCH TO GRAVITY IRRIGATION

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	3/15	11/15	1.6	

7. Total Quantity Appropriated is:
1.6 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
03N	01W	15	SW	NE	IRRIGATION	40
			SE	NE	IRRIGATION	40
					Section Acres	80
					Total Acres	80

11. Place of use in counties: ADA

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

13. Other Water Rights Used:

14. Remarks:

Ownership changed by DB 4/16/2004

15. Basis of Claim: Beneficial Use

RECEIVED

APR 15 2001

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

WATER RESOURCES
WESTERN REGION

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.
 Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided, if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
	63-27475				

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

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

OR

If your water right(s) and/or adjudication claim(s) are for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s)

George B Davis
 3440 Davis Lane, Meridian, ID 83142

4. New Owner/Claimant(s)

Janicek Properties, LLC

Name Connector (Check one): ☐ and, ☐ or, ☒ and/or

New Mailing Address

1284 S Gosling Way

City, State and ZIP Code

Eagle, ID 83616

New Telephone Number

(208) 880-0328

5. Date you acquired the property

July 3, 1996

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

7. Signature of New Owner(s) or Claimant(s)
(include title if applicable)

Brad Janicek
Lutero Janicek

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only

Received by KB Date 4-15-04 Fee 0
 Receipted by _____ Date _____ Receipt No. _____
 Processed by _____ AJ Date _____ WR _____ Date _____

COPY

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

RECORDED - REQUEST OF

GRANT DEED

DEPUTY

2001 SP 28 AM 10:55

101100063

FOR VALUE RECEIVED, BRADLEY J. JANICEK and LOUANN JANICEK, as Grantor, do hereby grant, bargain, sell and convey unto JANICEK PROPERTIES, L.L.C., an Idaho limited liability company, as Grantee, whose current address 1284 S. Gosling Way, Eagle, Idaho, 83616, the following described premises in Ada County, Idaho, to-wit:

SE 1/2 NE 1/4, Section 15, 3N, 1W of the Boise Meridian,
Ada County, Idaho.

TO HAVE AND TO HOLD The said premises, with their appurtenances, unto the said Grantee, and said Grantee's heirs and assigns, forever. This Grant is subject to all encumbrances made or suffered by the Grantor, reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that Grantor(s) will warrant and defend the same from all lawful claims whatsoever.

DATED This 28 day of September, 2001.

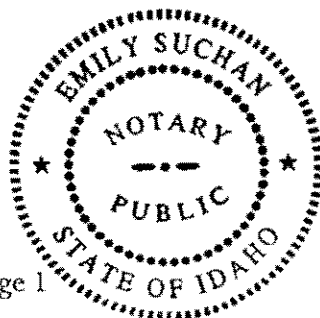
Bradley J. Janicek
Bradley J. Janicek

LouAnn Janicek
LouAnn Janicek

STATE OF IDAHO)
 : ss.
County of Ada)

On this 28 day of September, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared Bradley J. Janicek, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

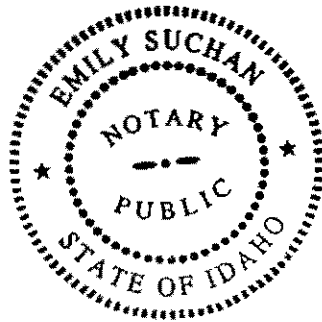


Emily Suchan
Notary Public for Idaho
Residing at Meridian, ID
My comm. exp.: 08/26/06

STATE OF IDAHO)
 : ss.
County of Ada)

On this 28 day of September, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared LouAnn Janicek, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Emily Suchan
Notary Public for Idaho
Residing at Meridian, ID
My comm. exp.: 08/25/06

COMMITMENT FOR TITLE INSURANCE
PIONEER TITLE COMPANY OF ADA COUNTY (208)373-3700
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
SCHEDULE A

File Number: P149250

1. Effective Date: JUNE 7, 1996 as of 7:30 A.M.

PIONEER TITLE COMPANY
8151 W. RIFLEMAN
ATTN: KATHY COONTZ (373-3619)

WEST ONE BANK
607 E. CLEVELAND BLVD; CALDWELL
ATTN: JOHN DERGIN (455-3624/(F)454-1587)

PIONEER 1031 COMPANY
8151 W. RIFLEMAN
ATTN: ROB ONNEN

TITLE INQUIRIES SHOULD BE DIRECTED TO:
JOHN POOLE
SR. TITLE OFFICER (PHONE 373-3660)
8151 W. RIFLEMAN
BOISE, ID 83704

2. Policy or Policies to be issued:

A. ☒ ALTA Owner's Policy, (4-6-90) ☒ Standard Coverage ☐ Extended coverage
Amount \$295,000.00
Premium \$1140.00

Proposed Insured: BRADLEY J. JANICEK AND LOU ANN JANICEK

B. ☒ ALTA Loan Policy, (4-6-90) ☐ Standard Coverage ☒ Extended coverage
Amount \$163,000.00
Premium \$263.20

END 8.1 \$10.00
END 100/116 \$25.00

Proposed Insured: WEST ONE BANK, IDAHO

3. The estate or interest in the land described or referred to in this Commitment and covered herein is:

FEE SIMPLE

4. Title to the fee simple estate or interest in said land is at the effective date hereof vested in:

RICHARD DAVIS, AS HIS SEPARATE ESTATE

5. The land referred to in this Commitment is described as follows:

THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 3 NORTH,
RANGE 1 WEST, BOISE MERIDIAN, ADA COUNTY, IDAHO.

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B - SECTION I

File Number: P149250

REQUIREMENTS

The following are the requirements to be complied with:

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to wit:

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B - SECTION 2

File Number: P149250

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records, or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

B. General Exceptions:

- (1) Rights or claims of parties in possession not shown by the public records.
- (2) Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey or inspection of the premises including, but not limited to, insufficient or impaired access or matters contradictory to any survey plat shown by the public records.
- (3) Easements, or claims of easements, not shown by the public records.
- (4) Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
- (5) (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
- (6) Taxes or special assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

*PARAGRAPHS 1,2,3,4,5 AND 6 WILL NOT APPEAR AS PRINTED EXCEPTIONS ON EXTENDED COVERAGE POLICIES, EXCEPT AS TO SUCH PARTS THEREOF, WHICH MAY BE TYPED AS A SPECIAL EXCEPTION IN SCHEDULE B-SECTION 2.

C. Special Exceptions:

1. GENERAL TAXES FOR THE YEAR 1996, WHICH ARE LIENS, ARE NOT YET DUE AND PAYABLE.
2. ANY, RIGHT OR INTEREST IN ANY MINERAL, MINERAL RIGHTS, OR RELATED MATTERS, INCLUDING BUT NOT LIMITED TO OIL, GAS, COAL, AND OTHER HYDROCARBONS.

CONTINUED

3. AN EASEMENT CONTAINING CERTAIN TERMS, CONDITIONS AND PROVISIONS AFFECTING A PORTION OF SAID PREMISES AND FOR THE PURPOSES STATED HEREIN.
FOR: POWER LINE EASEMENT
IN FAVOR OF: IDAHO POWER COMPANY
RECORDED: DECEMBER 23, 1974
INSTRUMENT NO.: 909785
AFFECTS: BEGINNING AT THE EAST QUARTER CORNER OF SECTION 15, TOWNSHIP 3 NORTH, RANGE 1 WEST, BOISE MERIDIAN; THENCE WEST ALONG NORTH SIDE OF HALF SECTION LINE A DISTANCE 500 FEET; THENCE NORTH 30 FEET; THENCE EAST TO COUNTY ROAD PROPERTY LINE
4. RIGHTS OR CLAIMS TO RIGHTS OF WAY FOR DITCHES, CANALS, LATERALS OR SLOUGHS AS THE SAME MAY EXIST ON, OVER OR ACROSS SAID PREMISES.
5. RIGHTS OF THE PUBLIC TO PORTIONS OF SAID PREMISES, IF ANY, WHICH MAY LIE WITHIN THE RIGHT OF WAY FOR TEN MILE RD.
AS DISCLOSED BY VARIOUS INSTRUMENTS OF RECORD.
6. UNRECORDED LEASEHOLDS, IF ANY, RIGHTS OF PARTIES IN POSSESSION OTHER THAN THE VESTEES HEREIN, RIGHTS OF SECURED PARTIES UNDER FINANCING STATEMENTS AS TO PERSONAL PROPERTY LOCATED ON THE PREMISES HEREIN AND THE RIGHTS OF TENANTS TO REMOVE TRADE FIXTURES.
7. JUDGMENT FOR THE AMOUNT HEREIN STATED AND OTHER AMOUNTS DUE.
CREDITOR: ACTION COLLECTION SERVICE, INC., AN IDAHO CORPORATION
DEBTOR: RICHARD C. DAVIS
AMOUNT: \$394.76
CASE NO.: CVOC9504606M
RECORDED: OCTOBER 6, 1995
INSTRUMENT NO.: 95073430
ATTORNEY FOR CREDITOR: PETER D. SHEARER
THE LIEN OF SAID JUDGMENT DEPENDS UPON THE IDENTITY OF THE JUDGMENT DEBTOR WITH: RICHARD DAVIS
N/A
8. IF THE PERSON MENTIONED IN SCHEDULE A, PARAGRAPH 4, IS PRESENTLY MARRIED, THE SPOUSE MUST EXECUTE ANY CONVEYANCE OR ENCUMBRANCE OF THE SUBJECT PROPERTY PURSUANT TO REQUIREMENTS OF CHAPTER 10, TITLE 55, IDAHO CODE, RELATING TO HOMESTEADS
OR WE MUST BE FURNISHED SATISFACTORY PROOF THAT:
A. THE SUBJECT PROPERTY IS NOT VESTEE'S OR THEIR SPOUSE'S PRINCIPAL RESIDENCE
OR
B. PROOF THAT THE VESTED OWNER IS NOT MARRIED
9. POSSIBLE MATTERS RELATING TO GENERAL EXCEPTIONS PARAGRAPHS 1 THRU 6, HEREIN IN CONNECTION WITH ANY EXTENDED COVERAGE POLICY SHOWN IN SCHEDULE A TO BE ISSUED. ADVERSE MATTERS IF ANY, WILL BE SHOWN IN A SUPPLEMENTAL REPORT TO THIS COMMITMENT, OR ON AN UPDATED COMMITMENT, AND WILL BE SHOWN AS SPECIAL EXCEPTIONS IN ANY POLICY TO BE ISSUED UNLESS CLEARED TO THE SATISFACTION OF THE COMPANY.

END OF EXCEPTIONS

CONTINUED

NOTE: IT APPEARS THAT THE LEGAL DESCRIPTION OF THE PROPERTY DESCRIBES MORE THAN 20 ACRES. IF A DEED OF TRUST IS ANTICIPATED TO BE USED TO SECURE THE FORTHCOMING DEBT, WE RECOMMEND THAT YOU CONSULT WITH YOUR ATTORNEY AND IN PARTICULAR, WITH REFERENCE TO SECTION 45-1502 OF THE IDAHO CODE WHICH PROVIDES IN PART THAT A DEED OF TRUST MAY BE USED TO SECURE A DEBT IN REAL PROPERTY "NOT EXCEEDING TWENTY (20) ACRES."

NOTE: FOR REFERENCE PURPOSES ONLY.
THE ADDRESS OF THE PROPERTY IS:
625 TEN MILE RD.
MERIDIAN, ID 83642

NOTE: GENERAL TAXES FOR THE YEAR 1995, WHICH WERE LIENS, IN THE ORIGINAL SUM OF \$1693.92, ARE PAID. PARCEL NO. 242S1215131760

NOTE: THE ABOVE AMOUNT OF TAXES DOES NOT REFLECT A HOME OWNERS EXEMPTION. ANY NEW BUYER MUST APPLY TO THE COUNTY ASSESSOR'S OFFICE FOR SAID EXEMPTION.

NOTE: THERE IS NO NOTICE OF RECORD AND THEREFORE NO SEARCH HAS BEEN MADE FOR ANY UNPAID ASSESSMENTS, CHARGES OR FEES FOR SEWER, WATER, GARBAGE, IRRIGATION AND OTHER POSSIBLE UTILITY SERVICES.

NOTE: IF THE PROPOSED INSURED UNDER THE POLICY TO ISSUE HAS ANY QUESTIONS CONCERNING THE COVERAGE OR EXCLUSIONS FROM COVERAGE, THE COMPANY WILL BE PLEASED TO PROVIDE AN EXPLANATION.

NOTE: PURSUANT TO THE STATE OF IDAHO INSURANCE REGULATIONS, A CANCELLATION FEE IS TO BE CHARGED ON ALL CANCELLED ORDERS. UNLESS OTHERWISE ADVISED, ORDERS WILL BE CONSIDERED CANCELLED SIX MONTHS AFTER THE EFFECTIVE DATE ON THE COMMITMENT. THE AMOUNT OF THE FEE ASSESSED SHALL BE IN ACCORDANCE WITH OUR RATE FILING WITH THE IDAHO DEPARTMENT OF INSURANCE.

FAXED
11:26 AM
LF 06-26-96

AGREEMENT FOR PURCHASE/SALE OF REAL PROPERTY

THIS AGREEMENT is made and entered into this 25th day of March, 1996, and is by and between Richard G. Davis and E. Joanne Davis, husband and wife, hereinafter referred to as "Seller", and Brad J. Janicek and LouAnn Janicek, husband and wife, hereinafter referred to as "Buyer".

WITNESSETH:

In consideration of the earnest money paid by buyer to Seller, and the mutual benefits to be received by each party, the parties agree as follows:

1. Description of property: Seller agrees to sell all of his right, title, and interest in and to that certain parcel of real property described below to Buyer, and Buyer agrees to purchase said real property from Seller. That property is legally known as:

SE 1/2 NE 1/4, Section 15, 3N, 1W of the Boise Meridian, Ada County, Idaho;

Which shall include all outbuildings, residences, ditches and ditch rights, water rights, subsurface rights, all appurtenances and attachments, which are all jointly hereinafter referred to as "the premises".

2. Purchase price: Buyer agrees to pay to Seller the total sum of Two hundred ninety-five thousand two-hundred fifty dollars (\$295,250.00), to be paid as follows:

(a) The cash down payment of two hundred seventy thousand dollars (\$270,000) (which includes the three thousand dollars (\$3,000.00) earnest money paid by Buyer to Seller at the execution of this Agreement); and

(b) The sum of Twenty five thousand two hundred fifty dollars (\$25,250.00) payable by a mortgage note to Seller secured by a second mortgage on the premises. Said note shall bear interest at the rate of 7% per annum, and shall be amortized over a period of five years, and shall be payable in equal annual installments of principal and accrued interest. The maker shall have the unrestricted right of prepayment.

3. Buyer's contingencies. Buyer's agreement to purchase the premises from Seller is contingent upon the following events:

(a) That Buyer shall obtain acceptable financing to complete the purchase.

(b) Seller shall be able to deliver good and merchantable title to the premises and that title is free and clear of all liens and encumbrances other than 1996 accruing property taxes.

4. Closing: The parties shall make good faith efforts to close this sale on or before July 1, 1996. The closing agent shall be Pioneer Title company, and the parties agree to divide the closing costs as follows:

(a) Seller alone shall pay the cost of a policy of title insurance, insuring good title to Buyer, for the total amount of the purchase price.

(b) Buyer alone shall pay all points, fees, or costs required by lender as Buyer's cost incurred in Buyer's obtaining financing, except the cost of any environmental survey required, which shall be split.

(c) All other costs, including, but not limited to, recording fees and fees of the closing agent, shall be borne equally between Seller and Buyer.

5. Taxes, assessments, and insurance: The closing agent shall pro-rate the real property taxes and pertinent assessments for water for 1996, according to 1995 assessments, to and through the date of closing. All real property taxes and assessments owing, including any penalties and interest, through the year ending 1995 shall be paid by Seller, and may be deducted by the closing agent from Seller's net proceeds. It is understood that Buyer will obtain their own policy of hazard insurance and assume all risk of loss from the date of closing forward. Closing agent shall make all other adjustments commonly made by closing agents.

6. Condition and possession: The sale of this property is "as is" and is without warranty except as to title and environment quality. Seller warrants that there are no charges or costs against the property arising from public services such as sewer, water, electrical, or otherwise, or if such charges exist that Seller will pay them through the closing agent through the date of Buyer's possession.

Seller agrees that Buyer shall have possession of the premises at the date of closing.

7. Earnest money: As consideration for this Agreement, Buyer hereby delivers to Seller the sum of three thousand dollars (\$3,000.00) earnest money. In the event that Buyer fails to close and consummate the sale according to the terms of this Agreement, then fifteen hundred (\$1500.00) of the total earnest money shall be retained by Seller, not as a forfeiture but to defray the costs and expenses Seller has incurred and the balance returned to the Buyer. In the event of a failed contingency or a failure by Seller to otherwise perform, then Seller shall return all earnest money to Buyer upon demand.

8. Title and title insurance: At closing Seller shall execute and deliver to Buyer a warranty deed conveying good and merchantable title to Buyer, which shall be subject only to a first mortgage in favor of Buyer's lender, and 1996 taxes and Seller's second mortgage. Seller shall purchase for Buyer an owners' policy of title insurance, which policy shall insure good and merchantable title as required by this Agreement.

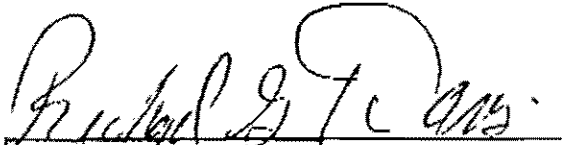
9. Default or breach: In the event either party to this Agreement shall breach any covenant or warranty or shall be in default of a obligation to the other, that party shall pay, in addition to damages or other loss occasioned by said breach or default, reasonable attorney fees to the non-defaulting party.

10. Entire agreement: This document shall contain the entire agreement of the parties. All conversations, oral representations, or statements shall have no further force and effect. Any modification or change to this Agreement shall be valid only if it is memorialized in writing and signed by both parties hereto. This Agreement shall not be recorded, and shall survive the closing documents only as to those matters not addressed in any closing document.

Seller further understands that the attorney who has drawn this Agreement has acted as the attorney for Buyer alone, and in the event Seller has any questions concerning the meaning of any of the terms of this Agreement, he is advised to retain independent counsel. The execution of this Agreement by Seller indicates his understanding and acceptance of all terms and conditions.

IN WITNESS WHEREOF the parties hereto have executed this Agreement this day and year first above written.

Seller:


Richard G. Davis

Buyer:


Brad J. Janicek

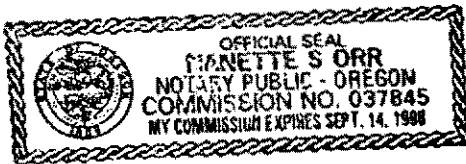

E. Joanne Davis


LouAnn Janicek

STATE OF OREGON)
) ss.
County of Jackson)

On this 3rd day of ^{April}~~March~~, 1996, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard G. Davis, known to me to be the person who executed the within and foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

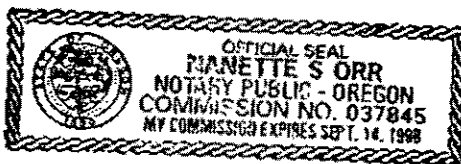


Nanette S Orr
Notary Public for Oregon
Residing at: 4000 S Pacific Hwy Medford 97501
My Comm. Exp.: Sept. 14, 1998

STATE OF OREGON)
) ss.
County of Jackson)

On this 3rd day of ^{April}~~March~~, 1996, before me, the undersigned, a Notary Public in and for said State, personally appeared E. Joanne Davis, known to me to be the person who executed the within and foregoing instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



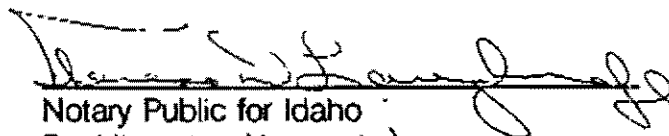
Nanette S Orr
Notary Public for Oregon
Residing at: 4000 S Pacific Hwy Medford OR
My Comm. Exp.: September 14, 1998

STATE OF IDAHO)
) ss.
County of Ada)

On this 26th day of March, 1996, before me, the undersigned, a Notary Public in and for said State, personally appeared Brad J. Janicek, known to me to be the person who executed the within and foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

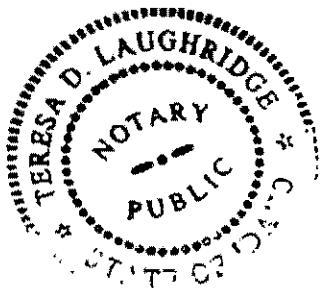


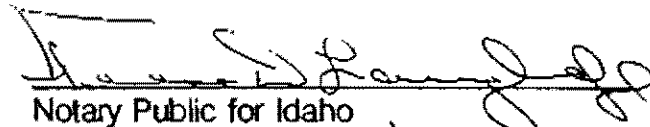

Notary Public for Idaho
Residing at: Meridian
My Comm. Exp.: 8-17-2000

STATE OF IDAHO)
) ss.
County of Ada)

On this 26th day of March, 1996, before me, the undersigned a Notary Public in and for said State, personally appeared LouAnn Janicek, known to me to be the person who executed the within and foregoing instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.




Notary Public for Idaho
Residing at: Meridian
My Comm. Exp.: 8-17-2000

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: **A63-27475**
Date Received: 6/18/1992
Receipt No: W014921
Received By: Dr. J.H.

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name: GEORGE B DAVIS
Address: 3440 DAVIS LANE
MERIDIAN ID

83642

2. Date of Priority: JUN 20, 1943

3. Source: PURDAM GULCH

Trib. to: MASON CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
03N	01W	15	SE	SE	NE		ADA

5. Description of diverting works:
PUMP INDITCH TO GRAVITY IRRIGATION

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	1.600		

7. Total Quantity Appropriated is:
1.600 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
03N	01W	15	SW	NE		IRR	40.0
			SE	NE		IRR	40.0

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10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	80.0
					Total Acres	80.0

11. Place of use in counties: ADA

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

13. Other Water Rights Used:
NAMPA-MERIDIAN IRRIGATION DISTRICT

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 Individuals:

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

Signature of Claimant(s): _____ Date: _____
_____ Date: _____

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State of Idaho)
) SS.
County of _____)

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

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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

A63-27475

Date Received

6-18-92

Receipt Number

W014921

RECEIVED
JUN 23 1992

Department of Water Resources
Western Regional Office

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) GEORGE B. DAVIS Phone (208)Mailing Address 3440 Davis Lane Meridian Zip 836422. Date of Priority (Only one (1) per claim) 6-20-19433. Source of water supply (a) PURDAM GULCH
which is tributary to (b) MASON CREEK4. a. Location of existing point of diversion is: Township 3N Range 1W Section 15,
SE 1/4 of SE 1/4 of NE 1/4, Govt. Lot, _____ B.M., County of ADA

Additional points of diversion if any: _____

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. Pump in ditch to gravity irrigation

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6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For IRR purposes from 03/15 to 11/15 amount 1.6 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 1.6 (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.) _____

10. Description of place of use:

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

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

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
3N	1W	15			40	40													80

Total number of acres irrigated 80

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

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.

Nampa-Mendocino I.D. or None ()

14. Remarks:

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Last Name _____ Ident No. _____

Copies: White -State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use ☒ 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 ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments _____

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

Signature of Claimant (s) Sam B. Davis Date 6/8/92

Date _____

For Organizations: I do solemnly swear or affirm that I am _____ Title _____
of _____, that I have signed the foregoing
Organization
document in the space below as _____ of _____
Title Organization
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____ Date _____

State of Idaho/or _____)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 17th day of June, 19 92

SEAL

Notary Public Joyce E. Bux

Residing at Meredon

My Commission Expires 4-29-92

Please Print Name

17. Notice of Appearance:

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

Signature _____

Address _____

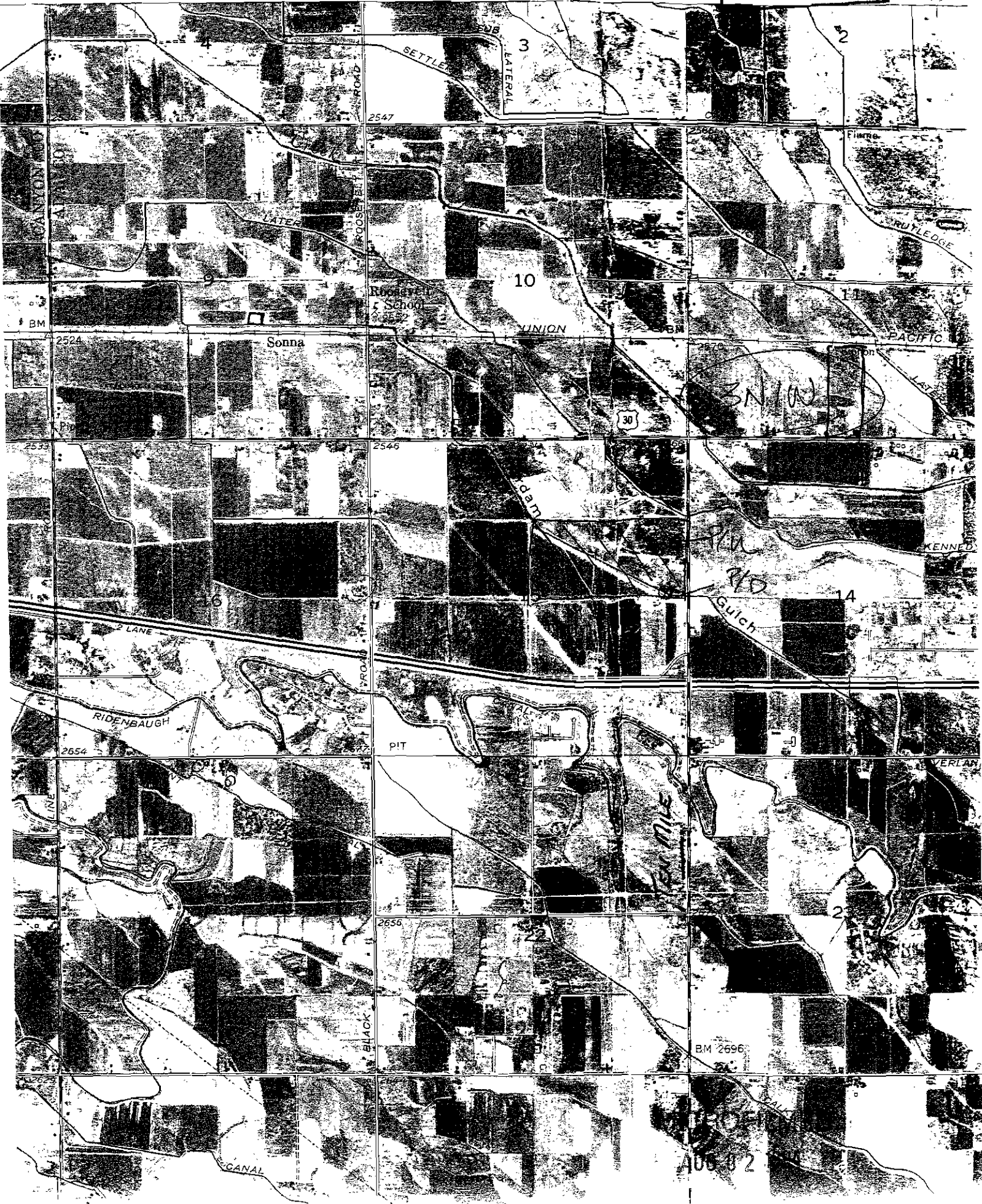
Date _____

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AUG 02 1994

Last Name _____ Ident. Number _____

Copies White-State, Yellow-Claimant



ADJUDICATION CLAIM REVIEW CHECKLIST

4-3-91

CLAIMANT'S NAME DAVIS, GEORGE B.

CLAIM IDENT. NO. _____

DATE RECEIVED 6/8/92

RECEIPT # 12014921

AMOUNT \$ 90.00

	YES	NO	Require Info?
1. Is the name and address complete with zip code?	☒	☐	*
2. Is a priority date entered?	☒	☐	*
Is the priority date acceptable in view of mandatory filing dates?			
See Adjudication Memos #1 and #4 to determine if a Permit is required.			
3. (a) Is a source entered?	☒	☐	*
(b) Is a tributary to entered? (if required) N/A	☒	☐	*
4. Is the legal description of the p.d. sufficient?	☒	☐	*
5. Is there a description of the diverting works?	☒	☐	*
6. Are the water uses appropriate for the form? The short form is limited to domestic and stockwater uses with direct diversion. All claims that include storage or instream stockwater must use long form	☒	☐	*
Is the period of use included?	☒	☐	*
Is a quantity claimed for each use?	☒	☐	*
7. Is a total quantity claimed entered?	☒	☐	*
8. If required is a consumptive use entered? N/A	☒	☐	*
Is the consumptive use correct? N/A	☒	☐	*
9. Are the non-irrigation uses listed properly? If this claim is on the short form, and more than one domestic use is listed, single ownership must be stated. If not under single ownership, see Adjudication Memo # 4 N/A	☒	☐	*
10. Is (are) the place(s) of use and purpose(s) indicated?	☒	☐	*
11. Is (are) the county(ies) entered?	☒	☐	*
12. Is the ownership of p.u. checked?	☒	☐	*
13. Are other water rights listed or "none" indicated? (See Item No.'s 16 & 17 for checking other water rights)	☒	☐	*
14. If required, are remarks correct? (If the claimant does not own the place of use, authority for filing the claim must be explained in the remarks.) N/A	☒	☐	*
15. Is the basis of the claim indicated?	☒	☐	*
16. If the basis of claim is shown as license, permit, or decree is the existing water rt. no. listed? N/A (Compare claim with the existing water rt. and either attach a proof report or state in comments that the existing right was compared to the claim)	☒	☐	*
17. If the basis of claim is shown as beneficial use, or not marked, are there existing water rights shown in our records using the legal desc. or name on the claim? N/A (If yes, describe the right in "Comments" and attach a proof report) NOTE: If the claim is for dom/stock this check is not as necessary unless it is located within an area where dom/stock rights were decreed.	☒	☐	*
18. If the claimant requested a monthly docket sheet, is payment enclosed? (If yes, describe payment status in "Comments" below.) N/A	☒	☐	*
19. Is the claim signed by the claimant, and is the signature appropriate? Organizations must complete the organization block.	☒	☐	*
20. Has the claim been signed, sealed, and dated by a notary?	☒	☐	*
21. Was this claim filed on time, or was an extension granted?	☒	☐	*

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See remarks

23. Should this claim be data entered? YES / NO

Claim reviewed by: Cyt Date 6/22/92

Claim data entered by: JH Date 11-4-92

Claim is being returned to claimant: (Yes) (No)

Claimant is being notified of modifications: (Yes) (No)

Comments: Other claims filed in timely manner - No late fee
* A63-18292 Domestic filed 8/30/89 receipt ~~6/20/95~~
W005287

Michael C. Creamer [ISB No. 4030]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for Janicek Properties LLC

RECEIVED

NOV 06 2008

DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 39576

Subcase No. 63-27475

AMENDED SECOND AFFIDAVIT
OF MICHAEL P. LAWRENCE IN
SUPPORT OF JANICEK'S
MEMORANDUM OF COSTS AND
REQUEST FOR ATTORNEYS'
FEES

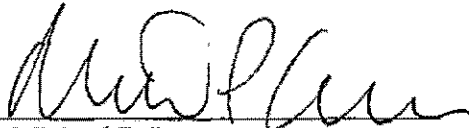
State of Idaho)
) ss.
County of Ada)

MICHAEL P. LAWRENCE, being first duly sworn upon oath, deposes and states:

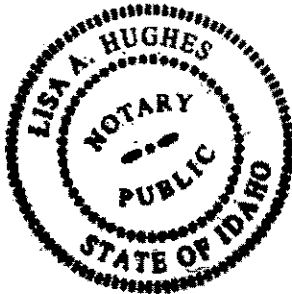
1. I am an attorney licensed to practice law in the state of Idaho. I make this affidavit based upon personal knowledge and to the best of my information and belief.
2. I am with the firm of Givens Pursley LLP and represent Janicek Properties LLC ("Janicek") in the above-captioned subcase.

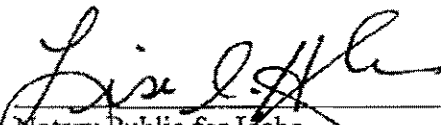
3. A copy of the reporter's transcript of the Status Hearing Before Special Master Theodore Booth, *In re SRBA*, Case No. 39576, Subcase No. 63-27475 (Aug. 27, 2007) is attached to this affidavit as Exhibit A.

DATED this 4th day of November 2008.


Michael P. Lawrence

SUBSCRIBED AND SWORN to before me this 4th day of November, 2008.




Notary Public for Idaho
Residing at Bonanza, Idaho
My commission expires: 3.22.2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4TH of November, 2008, the foregoing was filed, served, or copied as follows:

ORIGINAL FILED

Clerk of Fifth Judicial District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
Fax: 208-736-2121

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

SERVICE

Nampa and Meridian
Ringert Clark
c/o Daniel V. Steenson & S. Bryce Farris
P.O. Box 2773
Boise, ID 83701-2773
Fax: 208-342-4657

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098
Fax: 208-287-6700

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

Chief of Natural Resource Division
Office of the Attorney General
P.O. Box 44449
Boise, ID 83711-4449
Fax: 208-334-2690

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

David W. Gehlert
US Department of Justice, Natural Resources
Environment & Natural Resources
1961 Stout Street - 8th Floor
Denver, CO 80294
Fax: 303-844-1350

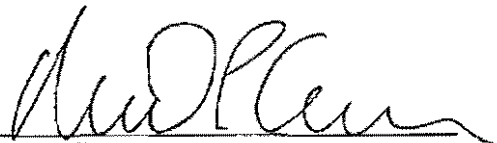
☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

USDI Bureau of Reclamation
c/o US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724
Fax: 208-334-1414

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

Pioneer Irrigation District
c/o Scott L. Campbell
Moffatt Thomas Barrett Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701-0829
Fax: 208-385-5384

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail


Michael P. Lawrence

1 TRANSCRIPT OF PROCEEDINGS 2 August 27, 2007 3 4 SPECIAL MASTER BOOTH: Okay. Okay, well, let's 5 go ahead and proceed. It sounds like we have everybody 6 here. We're on record in the Snake River Basin 7 Adjudication and we'll take up subcase 63-27475. 8 My name's Theodore Booth, presiding as Special 9 Master. We have participating by telephone Mr. Michael 10 Lawrence, representing Janicek Properties LLC, who is the 11 claimant of this water right; we have Mr. Bryce Farris 12 representing objector Nampa and Meridian Irrigation 13 District; and participating by telephone also we have Gay 14 Lynn Gerry (sic) with the Bureau of Reclamation, as well as 15 Dave Gehlert with the United States Department of Justice 16 on behalf of the Bureau of Redamation; and we have Deputy 17 Attorney General Nick Spencer for the Idaho Department of 18 Water Resources. 19 We're here on a status conference. Looking at 20 the trial scheduling order I see today is also the deadline 21 for a motion for IDWR to prepare a 706 report. But before 22 we go there, I notice that the trial scheduling order has a 23 settlement conference that was to be held on August 15, 24 2007 at 10 a.m. at the Western Regional Office of IDWR. 25 So I guess first I'd like to ask did that 2	1 provide us with some additional information and so we're 2 still working down that road to settlement. 3 SPECIAL MASTER BOOTH: Okay. Thank you, Mr. 4 Lawrence. 5 Mr. Farris, let me ask you: Looking at the 6 objection, is this the -- I mean, the objection objects to 7 pretty much all elements of the water right, including that 8 the water right should not exist, and then it has a comment 9 with respect to the claimed water as waste water from the 10 Nampa and Meridian Irrigation District, so on and so forth. 11 Is it still the position of the Nampa and Meridian 12 Irrigation District that the water right should be 13 disallowed or is this one of these cases where you're 14 seeking inclusion of a waste water remark? 15 MR. FARRIS: This is one of those cases that the 16 District's position is that the water right should be 17 disallowed. 18 SPECIAL MASTER BOOTH: Thank you. Okay. 19 Well, let's move onto the motion for a 706 20 report. 21 Does any party see a need at this time for the 22 preparation of a 706 report by IDWR which would set forth 23 the basis of their recommendation? 24 MR. LAWRENCE: This is Michael Lawrence again. 25 Coming into this matter at this late stage, I am not aware 4
1 settlement conference happen, and if so, what sort of 2 progress may have be made towards settling. 3 Mr. Spencer, do you want to start out? 4 MR. SPENCER: Your Honor, I can provide part of 5 that information. The settlement conference was not held. 6 I received a call the morning of the conference from Julie 7 Fischer indicating that Mr. Farris had made a settlement 8 proposal to her which she needed to review with her client, 9 and they had decided that rather than holding a meeting 10 simply for exchanging of papers, that it would be more 11 appropriate to vacate the conference so that she could 12 review the document and get with her client. 13 Since that time, pursuant to this notice of 14 substitution of counsel, I understand that Ms. Fischer has 15 withdrawn, Mr. Lawrence has substituted in her place, and I 16 have no information beyond that in terms of where the 17 parties are in moving towards settlement. 18 SPECIAL MASTER BOOTH: Thank you. 19 Would anybody else like to add anything to the 20 record with respect to settlement efforts in this subcase? 21 MR. LAWRENCE: This is Michael Lawrence speaking. 22 I had an opportunity this morning to speak with Mr. Farris, 23 and I've reviewed his proposal that he forwarded to Ms. 24 Fischer, and at this time we're not prepared to reach 25 settlement on his proposal, but Mr. Ferris has agreed to 3	1 of information right now that would lead us to believe that 2 we would like the Department to prepare a 706 report. But 3 given my late coming, if the other parties would agree to 4 extending this deadline for motions to prepare 706 reports 5 for another week so I could learn a little bit more about 6 this, I would appreciate it. 7 SPECIAL MASTER BOOTH: All right. Is there any 8 objection to moving that deadline out a week? 9 Let me just state a couple things with respect to 10 the deadline for the motion for 706 report. One is, I'd 11 like to give IDWR plenty of lead team to prepare those. 12 They're incredibly busy and so the more lead time, the 13 better. 14 We have a trial date set for January 17th, 2008, 15 but probably more importantly is the deadline for discovery 16 served and responses complete, meaning that if IDWR did go 17 ahead and prepare a 706 report, you know, there -- the 18 parties may want to take IDWR's deposition with respect to 19 the 706 report and/or notify the other parties that they 20 intend to call IDWR as a witness. 21 Now maybe that's not so important because 22 typically IDWR would be called as a witness even by the 23 court at trial for the purpose of at least putting the 24 Director's Report into evidence. And of course my 25 understanding is a party can take IDWR's deposition whether 5

1 a 706 report is filed or not, but just with those comments
2 in mind, is there any objection to moving that deadline out
3 a week?
4 Okay, hearing no objection --
5 Nick, is the Department okay with that?
6 MR. SPENCER: Yes, that's fine, Your Honor.
7 SPECIAL MASTER BOOTH: Okay, I will order that
8 deadline. What's a week from today?
9 September 4th, 2007, deadline motions for 706
10 report. September 4, 2007, at the close of business.
11 Okay. I'll just make one further note with
12 respect to this waste water issue, and that is that,
13 today -- I don't know if Diana's got it on the web yet --
14 but I've issued an order in a waste water subcase that
15 was -- the objector's New York Irrigation District -- I
16 don't have the subcase number in front of me -- the
17 claimant is Candler (sic), who is represented by Tom
18 Dominick. There was a motion for summary judgment. I've
19 issued an order on that motion for summary judgment which I
20 believe is going out today and also should be posted on the
21 court's website today.
22 I don't know if the matters that were discussed
23 in that motion for summary judgment are relevant to the
24 waste water issues that are presented in this subcase, but
25 to the extent that they are, I just wanted to give

6

1 everybody heads up that they should be able to get their
2 hands on a copy of that order on summary judgment shortly.
3 Does anybody have anything further with respect
4 to the status conference in this subcase?
5 Okay. Does anybody see -- we don't have any
6 other status conferences scheduled prior to the
7 December 17, 2007 pretrial conference. Does anybody see
8 any need for any additional status conferences before that
9 date?
10 And let me just note that if the need arises in
11 the future, prior to that date, we can certainly arrange
12 for that to happen upon motion of any party, okay?
13 Well, I guess we'll see you on December 17th at
14 10:30 a.m. for the final pretrial conference.
15 We'll be in recess. Thank you.
16
17
18
19
20
21
22
23
24
25

7

1 REPORTER'S CERTIFICATE
2
3
4 STATE OF IDAHO)
5)
6 COUNTY OF MINIDOKA)
7
8 I, MAUREEN NEWTON, Official Court Reporter and
9 Notary Public, in and for the Fifth Judicial District of
10 Minidoka County, Idaho, do hereby certify that the above
11 and foregoing typewritten pages contain a true and correct
12 transcription of my shorthand notes taken upon the occasion
13 set forth in the caption hereof, as reduced by means of
14 computer-aided transcription by me or under my direction.
15
16 Witness my hand, this the 13th day of October,
17 2008.
18
19
20
21
22
23
24
25


MAUREEN NEWTON, CSR #321
Court Reporter and Notary Public
For the State of Idaho
My commission expires 9-10-2012

8

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SEP 11 2008

DEPARTMENT OF
WATER RESOURCES

S. BRYCE FARRIS (ISB #5636)
RINGERT LAW CHARTERED
455 South Third Street
P.O. Box 2773
Boise, Idaho 83701
Telephone: (208) 342-4591

Attorneys for Nampa & Meridian Irrigation District

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

In Re SRBA

Case No. 39576

Subcase No. 63-27475

AFFIDAVIT OF S. BRYCE FARRIS

STATE OF IDAHO)
County of Ada) ss.

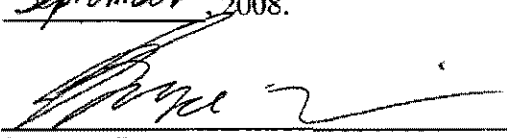
S. Bryce Farris, being first duly sworn upon his oath, deposes and says that:

1. I am an attorney at the law firm of Ringert Law Chartered, which represents Nampa & Meridian Irrigation District (NMID) in the above-captioned matter, and I make this Affidavit based upon my personal knowledge and I am competent to testify to the matters contained herein.

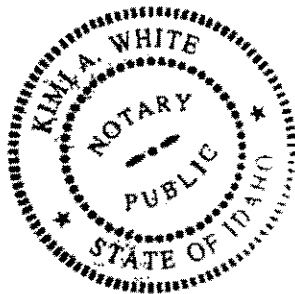
2. I have reviewed the attorney fees incurred by NMID during the period of August 15, 2007 and August 28, 2008 relating to the above-referenced subcase. This is the same period of time listed in Exhibit A to the Affidavit of Michael P. Lawrence in Support of Janicek's Memorandum

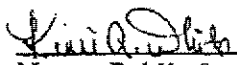
of Costs and Request for Attorneys' Fees. During said time period NMID incurred \$8,488.00 in attorney fees relating to the above-referenced subcase.

DATED this 10th day of September, 2008.


S. Bryce Farris

Sworn to and subscribed before me this 10th day of September, 2008.




Notary Public for Idaho
Residing in Boise, Idaho
My Commission Expires: 8/31/10

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of September, 2008, a true and correct copy of the foregoing was served upon all parties listed below by:

☒ U. S. mail, postage prepaid
☐ hand delivery

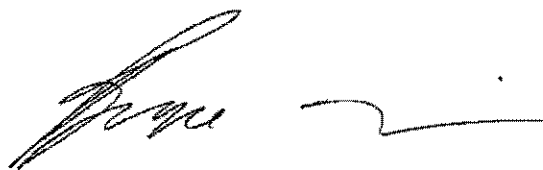
☐ express mail
☐ facsimile

Janicek Properties, LLC
c/o Michael P. Lawrence
Givens Pursley, LLP
601 W. Bannock Street
P.O. Box 2720
Boise, ID 83701-2720

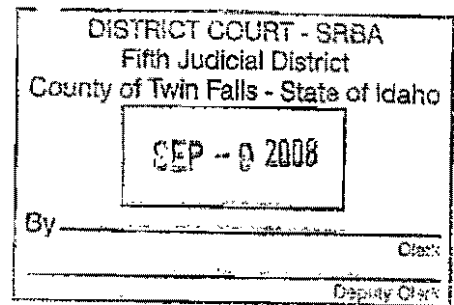
USDI Bureau of Reclamation
Represented by:
US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098

Pioneer Irrigation District
c/o Scott L. Campbell
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701-0829



S. Bryce Farris



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

In Re SRBA	)	SUBCASE: 63-27475
	)	
Case No. 39576	)	ORDER OF REFERENCE APPOINTING
	)	SPECIAL MASTER THEODORE R. BOOTH
	)	

On May 2, 2008, a *Special Master's Report and Recommendation* was issued for the above-captioned water right. On August 29, 2008, a *Memorandum of Costs and Request for Attorneys Fees* was filed by Janicek Properties LLC, through their counsel of record Michael C. Creamer and Michael P. Lawrence of Givens Pursley LLP.

Therefore, IT IS ORDERED that Special Master Theodore R. Booth be appointed to preside over the above-captioned *Memorandum of Costs and Request for Attorney Fees* and conduct all proceedings necessary to issue a recommendation consistent with *AOI*, and the authority previously conferred in the *Order of Reference for 63*, as to the underlying merits of the *Memorandum of Costs and Request for Attorney Fees*.

Dated September 9, 2008.

A handwritten signature in black ink, appearing to read "John M. Melanson".

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF REFERENCE APPOINTING SPECIAL MASTER THEODORE R was mailed on September 09, 2008, with sufficient first-class postage to the following:

JANICEK PROPERTIES LLC

Represented by:
MICHAEL P LAWRENCE
PO BOX 2720
BOISE, ID 83701
Phone: 208-388-1200

NAMPA AND MERIDIAN

Represented by:
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SEP 11 2008
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

**NMID'S MEMORANDUM
IN OPPOSITION TO JANICEK
PROPERTIES' REQUEST FOR
ATTORNEY FEES AND COSTS**

COPY

because “the legal question pressed by the Objectors was not a close one” and this case involved “well-settled prior appropriation principles.” However, NMID respectfully disagrees that the issues presented in this subcase were “not a close one” or that the legal principles were “well-settled.” In fact, Janicek’s rhetoric clashes with the suggestion that this case was unique, that costs should be awarded because “the nature of this case was exceptional” and the fact that Janicek’s attorneys apparently billed more than \$43,000.00 on well settled principles and issues that were not close.

Janicek is asking this Court to award attorney fees and costs when the Court itself found that the objection was meritorious and necessary to protect NMID’s paramount rights and interests. Janicek laches on to the fact that NMID position that water in the Purdam Drain was not subject to appropriation was rejected, however, it cannot be denied that this Court found that a remark was necessary to protect NMID’s interests, that such a remark was not included in Director’s Report for this right, and that it was necessary for NMID to file an objection in order to protect its interests. NMID ultimately prevailed on its objection. Thus, not only is Janicek not the prevailing party in this case, but there is no basis for the assertion that NMID’s position was not warranted to protect its interests, or that its position was frivolous, unreasonable or without merit.

II. STANDARD OF REVIEW

In *In Re SRBA Case No. 39576, Subcase No. 65-03702, Order Denying Attorney Fees and Granting Motion to Disallow Attorney Fees* (Sept. 23, 2002), this Court has set forth the standard of review for requests for attorney fees. A prevailing party may recover reasonable attorney fees where the criteria established by I.R.C.P. 54(e)(1) are met. Idaho Rule of Civil Procedure 54(e)(1) provides, in pertinent part:

Rule 54(e)(1). Attorney Fees. – In any civil action the court may award reasonable attorney fees, which at the discretion of the court may include paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract. Provided, attorney fees under section 12-121, Idaho Code, may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation. . . .

Rule 54(d)(1) requires a court to consider “the final judgment or result of the action in relation to the relief sought by the respective parties, whether there were multiple claims, multiple issues, . . . or other multiple or cross issues between the parties, and the extent to which each party prevailed upon each of such issues or claims.” I.R.C.P. 54(d)(1).

I.R.C.P. 54(e)(2) provides that when a court awards attorney fees under I.C. § 12-121, it shall make written findings as to the basis and reasons for awarding such attorney fees. The amount of attorney fees granted by the court shall be considered pursuant to the factors set forth in I.R.C.P. 54(e)(3). In reviewing the request by Janicek for attorney fees, the following factors should be considered: a) whether Janicek was the prevailing party; b) whether attorney fees are provided for by statute; c) whether NMID and/or BOR brought, pursued or defended its objection frivolously, unreasonably, or without foundation; and d) the factors set forth in I.R.C.P. 54(e)(3).

III. ARGUMENT

A. Prevailing Party.

The first question that must be addressed in order to award attorney fees is whether Janicek was the prevailing party. Janicek contends that it was the prevailing party because the “Court granted Janicek’s Motion for Summary Judgment in full and recommended that Janicek be decreed a water right with the elements recommended by the Idaho Department of Water Resources.”

Janicek Memo. at 3-4. This statement is not accurate because this Court did not recommend that the water right be decreed as recommended by IDWR. Instead, this Court recognized that “NMID is the paramount appropriator of the water that can be so identified, and as such the right of NMID to capture and re-use this water is superior to Janicek’s right in two respects.” The Court went on to hold that:

despite the fact that no waste water remark was included in the *Director’s Report*, for purposes of the administration of both Janicek’s right and the NMID’s paramount right(s), this Special Master finds and concludes that the partial decree issued for Janicek’s water right should contain the following remark:

This Special Master finds that the remark is necessary to define Janicek’s right to show that the right is not subject to the same panoply of rights associated with a water right with a source that does not include waste water. Furthermore, such a remark prevents any injury resulting to the paramount appropriator.

Memorandum Decision, pg. 11 of 14 (emphasis added).

As recognized by this Court, “Counsel for Janicek argued that no such remark would be necessary. Counsel for the NMID argued that any right of Janicek to use the waste water of the NMID should be qualified by a remark.” *Memorandum Decision*, pg. 9 of 14. In other words, despite Janicek’s opposition, this Court held that the recommendation of IDWR for this right must include a remark to recognized NMID paramount rights and to prevent any injury to the paramount appropriator.

NMID does not disagree that this Court rejected its position that Janicek’s water right should be disallowed, however, NMID’s objection was clearly warranted in order to recognize and protect its paramount rights and to prevent any injury resulting. For Janicek to now argue that the Court

granted its Motion for Summary Judgment in full and that the right is the same as recommended by IDWR is incorrect, fails to consider this Court's recognition and the need to protect NMID's paramount rights, and fails to consider this Court's conclusion that a remark in the water right is necessary to do so.

Obviously, on the one hand, Janicek has argued that since NMID's position that the right should be disallowed was rejected then Janicek should be the prevailing party. However, on the other hand, NMID can just as easily argue that it is the prevailing party because Janicek's position that no remark was necessary and the Court's conclusion that the objection was warranted because of the "necessary" inclusion of a remark to protect NMID's paramount rights. Indeed, applying Rule 54(d)(1), NMID could and should be characterized as the prevailing party in this case. The ultimate remedy sought by NMID, which was to protect its paramount rights, protect its rights to recapture and re-use the waste water in the Purdam Drain and recognition of its rights being paramount to Janicek's claim, was the result reached in this case. NMID's requested remedy and the remedy fashioned by this Court are different but arguably the same result because the intent of the remark is still to protect NMID's rights and prevent future injury. At a minimum, since Janicek's argument that a remark is not necessary was rejected, since Janicek was unwilling to recognize NMID's rights and since the Court found that the inclusion of a remark was necessary, and thus substantiating the need for NMID to file an objection to the Director's Report, there should be no prevailing party in this case.

B. NMID's Position Was Not Frivolous, Unreasonable or Unfounded.

The SRBA is set up so that all claimants must file claims to their respective water rights and

all persons or entities objecting to those claims must do so or the objections will be deemed waived.

In other words, the SRBA essentially invites litigation by requiring parties to present and litigate their respective positions in subcases. Obviously there can be, and have been, circumstances where a claim or objection is brought frivolously, unreasonably and without foundation. However, the SRBA Court has encountered numerous subcases in which claims and/or objections were withdrawn after further facts or laws were discovered, and has encountered numerous subcases which involve unique legal issues that may be of first impression for the Court. This Court cannot award attorney fees and costs simply because a particular legal theory was rejected, especially considering the fact that the objection was found to be warranted by the inclusion of a remark necessary to protect the objector's rights. Because of the very nature of the SRBA, it is an extremely harsh result to award attorney fees and costs in any subcase. NMID is not suggesting that attorney fees and costs may not be warranted in any SRBA subcase, but the Court cannot award fees and costs in a situation when the objection was found to be warranted and necessary just because a portion of the legal position was rejected.

As this Court has previously stated:

An award of attorney fees is not a matter of right, and a court should award fees under I.C. § 12-121 only where the court is left with the abiding belief that the action was pursued, defended, or brought frivolously, unreasonably, or without foundation. **An action is not deemed frivolous by a court merely because it ultimately fails.** “[I]n deciding whether an award of attorney’s fees is proper, ‘the sole question is whether the losing party’s position is plainly fallacious as to be deemed frivolous, unreasonable, or without foundation.’” Also, I.C. § 12-123(b) defines “frivolous conduct” as conduct that **obviously serves merely to harass or maliciously injure or is not supported in fact or warranted under existing law or a good faith argument for modifying the existing law.**

In Re SRBA Case No. 39576, Subcase No. 65-03702, Order Denying Attorney Fees and Granting

Motion to Disallow Attorney Fees (Sept. 23, 2002) (citations omitted) (emphasis added).

In this case, as previously discussed under the “prevailing party” analysis, NMID did not ultimately fail on its objection. However, even if it can be suggested that NMID ultimately failed on its objection because a portion of its argument was rejected, that does not deem the objection as frivolous. *Id.* Moreover, there is no evidence that NMID objected to Janicek’s rights merely to harass or maliciously injure. With respect to whether NMID’s position was supported in fact or warranted under existing law or a good faith argument for modifying the existing law, the answer is clearly yes that NMID’s position was warranted under existing law or was a good faith argument to modify existing law. NMID respectfully disagrees with Janicek’s contentions that “the legal question pressed by the Objectors was not a close one” and this case involved “well-settled prior appropriation principles.” *Janicek Memo.* at 9 and 10.

This Court is well aware of the issues presented in this subcase as the subcase was thoroughly brief and argued. However, because NMID’s position is at issue, it is necessary to address Janicek’s current arguments.

NMID argued that the Purdam Drain was constructed by NMID and is owned operated and maintained by NMID and therefore the water in the Purdam Drain was not subject to appropriation. NMID’s position was supported by the contracts for the construction of the drain, the allocation of the water collected in the drains provided in said contracts, Idaho law regarding ditch and drainage rights and the case of *Sebern v. Moore*, 44 Idaho 410, 258 P. 176 (1927), and in particular the last sentence of the decision which provided that water collected in the drain was the “owner of the drain” and not subject to appropriation. In that case the “owner of the drain” was the drainage

district and which was someone other than the fee title landowner. It is possible for an entity to own the ditch/drain and not own the fee title land. Indeed, ditch rights, which are distinguishable from water rights, have been held to be real property, owned by irrigation entities and the water within them is not subject to appropriation. This Court interpreted *Sebern* to mean that in the event the appropriator is unable to use all the water in the drain, then any remaining balance is subject to appropriation. This interpretation of *Sebern* was an issue of first impression, and NMID disagrees that the issue “was not a close one.” This Court held that the Purdam Drain was distinguishable from NMID’s delivery canals, which are facilities owned by NMID and not subject to appropriation, because the delivery canals have some type of infrastructure at the point of diversion to regulate the amount diverted. However, there are water rights which do not have such an infrastructure and where the water is private water not subject to appropriation due to the development and control of the water (i.e. storage facilities/dams and private ponds in which no such infrastructure exists, there is no precise point of diversion, water is intercepted and collected, and the water is not subject to appropriation). NMID is not trying to re-argue this subcase, but rather points out that despite Janieek’s assertions that this was “not a close one” or that it involved “well settled principles of law” there are varying points of views and interpretations of the law, *Sebern* and this Court’s decision.

Moreover, even though NMID’s argument that the water was not subject to appropriation was rejected by the Court, the Court made it abundantly clear that NMID is the paramount appropriator, that a remark was necessary to prevent “any injury resulting to the paramount appropriator [NMID].” As previously discussed, *supra*, NMID’s objection cannot be found to be frivolous when it ultimately prevailed in obtaining a remark to prevent any injury.

Janicek has also suggested that NMID's position was frivolous because of NMID's and other irrigation district's position on other drainage claims or its failure to pursue a waste water remark. *Janicek Memo.* pg. 5, note 3. First, NMID's position and approach with regard to different subcases is inadmissible and irrelevant to this particular subcase. Second, the parties negotiations or discussions, or lack thereof, are inadmissible under Rule 408 of the Idaho Rules of Evidence. However, to the extent the Court is inclined to consider Janicek's arguments, it should be noted that it is not incumbent upon NMID to suggest resolutions. NMID could just as easily assert that Janicek never suggested any settlement, never recognized NMID's paramount rights and never requested a remark or even requested mediation. Moreover, it should be noted that NMID did submit a written settlement offer to Janicek before its current counsel became involved which included a right to divert from the Purdam Drain for irrigation purposes. This offer was not met with any written counter-proposal or request for mediation, but rather with a motion for summary judgment filed by Janicek. The point is that to the extent Janicek argues that NMID's approach to this subcase or the possible resolution of this subcase was unreasonable, such an argument is not supported.

C. Amount is Unreasonable.

NMID contends that Janicek's request for attorney fees and discretionary costs should be rejected for the reasons stated herein. Accordingly, this Court should not need to decide the issues of whether the requested fees are reasonable. However, in the alternative, and because NMID would likely waive its objection if it did not raise it, NMID objects to Janicek's requested fees as being unreasonable.

Janicek seeks to recover more than \$43,000.00 in attorney fees for this subcase. Keep in mind

that this subcase included no depositions and did not go to trial. By comparison, NMID spent \$8,488.00 during the same time period on this particular subcase. *See Affidavit of S. Bryce Farris*. Thus, Janicek's attorney charged it more than five (5) times the amount of attorney fees incurred by NMID for the same subcase. This Court is well aware of the facts and issues presented in this case and it simply does not follow that Janicek's requested fees in excess of \$43,000.00 were reasonable under any of the factors enumerated in Rule 54(e)(3).¹

In addition, a review of the detailed transaction file for the attorney fees incurred by Janicek shows that from May 7, 2008 to August 28, 2008 these fees relate solely to the current memorandum for fees and costs. Adding up the fees during that period shows that Janicek has been charged \$9,396.50 for the memorandum of fees and costs alone. Thus, Janicek's attorney fees for this current memorandum of fees and costs amounts to more than NMID has incurred to date for this entire subcase. It is axiomatic that Janicek's requested fees are not reasonable.

D. Discretionary Costs.

During this part of Janicek's memorandum, Janicek suggests that the costs incurred were exceptional because "this case was exceptional" and because this case involved a "unique body of law." *Janicek's Memo.* at 5. Again, this argument obviously conflicts with Janicek's arguments that this case was not a close one or that this case involved well settled principles of law. Nonetheless, this Court should deny Janicek's request for discretionary costs.

First, for the reasons previously stated, *supra*, Janicek is not the prevailing party in this

¹ As previously mentioned, the unreasonable amount attorney fees requested by Janicek clashes with Janicek's suggestion that this case was not a close one and that it involved well settled principles of law.

subcase. At the end of the day, Janicek's recommendation was modified to include a remark which was necessary to protect NMID's paramount rights and interests. Accordingly, Janicek is not a prevailing party entitled to an award of costs.

Second, an award of costs to be paid by NMID and/or BOR is not warranted in this subcase. As previously explained, the SRBA is set up to invite litigation in order for claimants and objectors to resolve any and all differences. Some claims get dismissed and some objections get rejected by the SRBA Court, but the Court does not and cannot award costs in every instance. Especially when, like in this subcase, the objection was found to be warranted. It is not uncommon for claimant or objector to incur costs in order to support and/or defend their respective positions. The discretionary costs claimed by Janicek include administrative costs such as copying, courier services and long distance charged which are clearly not exceptional costs, and then engineering costs and a title report which are commonly incurred by claimants and objectors in the SRBA. There is nothing exceptional about these costs and it is not uncommon in the SRBA for parties to incur such costs to support their positions. If the SRBA Court is going to begin awarding copying charges, title report charges and engineering costs then "Katy bar the door" because every claimant and/or objector will be claiming the same.

In support of its claim for discretionary costs, Janicek characterizes this case as a "David versus Goliath" and that Janicek "is an entity with **limited funds** to defend itself against legal attacks." This assertion by Janicek is unsupported and completely irrelevant to the issues at hand. To the extent this Court is inclined to consider such a suggestion, whether intentionally or not, it should be noted that Janicek owns a minimum of seventy acres in the heart of the development of

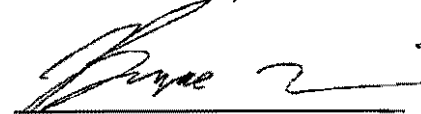
Meridian, Idaho, at the location where the new I-84/Ten Mile Interchange is proposed and the property is likely valued in the millions of dollars. If Janicek is going to make unsupported contentions that it has "limited funds" then both the Court and NMID should be entitled to discover evidence supporting such an allegation.

IV. CONCLUSION

For the reasons stated herein, Janicek's request for attorney fees and discretionary costs should be denied. NMID does not dispute that its position that the water in the Purdam Drain was not subject to appropriation was rejected, but this case does not warrant an award of costs and fees against NMID. NMID's position was not frivolous, unreasonable or unfounded. To the contrary, NMID's objection was necessary as this Court found to protect its paramount rights and interests. NMID prevailed in obtaining a remark, which this Court's recognized as necessary to protect its rights and interest and avoid future injury. Moreover, Janicek's discretionary costs were not uncommon or exceptional for a contested water rights subcase in the SRBA.

DATED this 10th day of September, 2008.

RINGERT LAW, CHTD.



S. BRYCE FARRIS
Attorneys for the NMID

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of September, 2008, a true and correct copy of the foregoing was served upon all parties listed below by:

☒ U. S. mail, postage prepaid
☐ hand delivery

☐ express mail
☐ facsimile

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AUG 29 2008

DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 39576

Subcase No. 63-27475

**MEMORANDUM OF COSTS AND
REQUEST FOR ATTORNEY FEES**

Janicek Properties, LLC ("Janicek"), by and through its counsel Givens Pursley LLP, as a prevailing party in the above-captioned subcase, hereby files this Memorandum of Costs and Request for Attorney Fees seeking reimbursement of its costs and fees against the Objectors Nampa & Meridian Irrigation District ("NMID") and the United States Bureau of Reclamation ("BOR") (collectively "Objectors"). This Memorandum is filed pursuant to Rule 54 of the Idaho Rules of Civil Procedure and the authority cited herein, and is supported by the accompanying *Affidavit of Michael P. Lawrence* ("Lawrence Affidavit"). Janicek seeks to recover \$3,939.41 in discretionary costs and \$43,320.50 in attorney fees.

I. THIS MOTION IS TIMELY

Idaho Rule of Civil Procedure 54(e)(5) states

At any time after the verdict of a jury or a decision of the court, any party who claims costs may file and serve on adverse parties a memorandum of costs, itemizing each claimed expense, but such memorandum of costs may not be filed later than fourteen (14) days after entry of judgment A memorandum of costs prematurely filed shall be considered as timely.

This Memorandum is timely because it comes after a decision of the court and prior to the fourteen-day deadline following the entry of judgment. The pertinent decision of the court was the *Memorandum Decision and Order on Motion for Summary Judgment, In re SRBA Case No. 39576, Subcase No. 63-27475* (May 2, 2008) (“Order”). This Order, however, was not an entry of final judgment and neither was the accompanying *Special Master’s Recommendation for Partial Decree*. The entry of final judgment will occur when the SRBA Court’s Presiding Judge issues an order of partial decree pursuant to Idaho R. Civ. P. 54(b)—an event that has not yet occurred.¹

II. DISCRETIONARY COSTS²

Janicek is entitled to an award of discretionary costs under Rules 54(d)(1)(A), (B) and (D). These provisions allow for an award of discretionary costs to the prevailing party “upon a

¹ That the order of partial decree is the entry of final judgment in an SRBA subcase is clear from the following language contained in the standard 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 the 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.
(Emphases added.)

² This Memorandum includes only discretionary costs allowed pursuant to Rule 54(d)(1)(D). Janicek has not incurred costs that prevailing parties are entitled to as a matter of right under Rule 54(d)(1)(C).

showing that said costs were necessary and exceptional costs reasonably incurred, and should in the interest of justice be assessed against the adverse party.” Idaho R. Civ. P. 54(d)(1)(D). In awarding discretionary costs, it is sufficient for a court to “[e]xpress findings as to the general character of requested costs and whether such costs are necessary, reasonable, exceptional, and in the interests of justice.” *Hayden Lake Fire Protection Dist. v. Alcorn*, 141 Idaho 307, 314, 109 P.3d 161, 168 (2005).

Janicek’s requested discretionary costs are as follows:

DESCRIPTION	AMOUNT
Professional Fee: TitleOne Corporation – title research	\$500.00
Professional Fee: SPF Water Engineering – water flow study	\$3,183.44
Photocopies	\$155.40
Long Distance Telephone Calls	\$9.61
Courier Service	\$22.28
Messenger Services	\$25.00
Facsimile charges	\$19.00
Copy Expense	\$24.68
TOTAL	\$3,939.41

As discussed below, Janicek’s request satisfies the standards for an award of discretionary costs.

A. Janicek is the prevailing party.

Janicek is the prevailing party in this case. Rule 54(d)(1)(B) states “[i]n determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties.” This Court granted Janicek’s Motion for Summary Judgment in full and recommended that Janicek be decreed a water right with the elements recommended by the Idaho

Department of Water Resources ("IDWR"). *Memorandum Decision and Order on Motion for Summary Judgment, In re SRBA Case No. 39576, Subcase No. 63-27475* (May 2, 2008)

("Summary Judgment Decision"). This result is entirely the opposite of the result sought by NMID and BOR in this subcase. Their position was that Janicek's water right "should not exist." *NMID Objection at 2; BOR Response at 2*. NMID and BOR have not sought to alter or amend the Summary Judgment Decision and the Special Master's Recommendation. Janicek clearly is the prevailing party in this subcase.

B. Janicek's discretionary costs were exceptional.

All of Janicek's requested costs were exceptional costs, in large part because the nature of this case was exceptional. The Idaho Supreme Court "has always construed the requirement that a cost be 'exceptional' under I.R.C.P. 54(d)(1)(D) to include those costs incurred because the nature of the case was itself exceptional." *Hayden Lake*, 141 Idaho at 314, 109 P.3d at 168. On summary judgment, Janicek established that the Objectors' position was unfounded as a matter of law. Nevertheless, the manner in which the Objectors pressed their position required Janicek to retain a hydrologist consultant to evaluate and be prepared to respond to the Objectors' ground water modeling and stream discharge data, and to independently collect discharge data, and review and prepare various diagrams, maps and expert reports in the course of discovery and trial preparation.

Moreover, the allegation that NMID owned Purdam Gulch Creek required Janicek to incur the cost of retaining a title examination by TitleOne Corporation to be able to properly refute this assertion. This cost was particularly appropriate (and exceptional) inasmuch as NMID failed, in response to Janicek's discovery requests or otherwise, to produce relevant or substantial evidence of its own supporting its claimed legal title to Purdam Gulch Creek. In

other words, NMID made the bare assertion of its adverse title, and of Janicek's trespass, but left it to Janicek to incur the expense to develop relevant facts.

The nature of proof that potentially would be required should a trial have ensued in this subcase also is exceptional in comparison with other civil matters and in comparison with other SRBA matters. This is a water rights case involving a unique body of law that derives from the common law of the western states, statutes, unique administrative procedures and decisions, and the developing body of law in the SRBA itself. This case also involved a not insubstantial amount of historical research concerning the Janicek property in particular, and irrigation development under federal reclamation in the Treasure Valley generally.

Unlike most SRBA subcases, which involve challenges to particular elements of a water right or claims of forfeiture or abandonment, this subcase essentially involved NMID's and BOR's asserted claims of adverse title to Janicek's real property and the water Janicek diverts. NMID asserted that the source of water in Purdam Gulch Creek was solely from irrigation water delivered by BOR and used by NMID patrons. BOR then proffered a supporting brief and an expert to provide supporting testimony to that effect. NMID further asserted (without providing any quantitative facts) that its patrons beneficially used the water in Purdam Gulch Creek under a paramount right to Janicek's.

Also, unlike the numerous subcases in Basin 63 where irrigation districts have objected to water rights on the assertion that the rights are based on use of the districts' "waste water," here NMID and BOR did not pursue a waste water remark.³ Instead they argued that Janicek's water right "should not exist" at all. *NMID Objection* at 2; *BOR Response* at 2 (emphasis added).

³ The possibility of such an approach never arose in this case until BOR's attorney raised it for the first time at the summary judgment hearing. At the August 28, 2007 status conference, NMID's attorney stated flatly

All of these factors contributed to making this subcase and the costs Janicek incurred defending its water right claim exceptional.

C. Janicek's discretionary costs were necessary and reasonable.

Discretionary costs under Rule 54(d)(1)(D) "may include 'long distance phone calls, photocopying, faxes, travel expenses' and additional costs for expert witnesses." *Hayden Lake*, 141 Idaho at 314, 109 P.3d at 168, citing *Auto. Club Ins. Co. v. Jackson*, 124 Idaho 874, 880, 865 P.2d 965, 971 (1993); *Bailey v. Sanford*, 139 Idaho 744, 755, 86 P.3d 458, 469 (2004); *Turner v. Willis*, 116 Idaho 682, 686, 778 P.2d 804, 808 (1989).

As set forth in the *Lawrence Affidavit*, the photocopying and copy expenses were necessary to prepare briefing and discovery responses in this matter. *Lawrence Affidavit*, ¶ 8. In addition, long distance telephone and facsimile charges were necessary to communicate with NMID, BOR, and the SRBA Court, as were the courier and messenger charges. *Id.* As discussed above, the professional/consultant fees for title research, water flow analysis and critical review of BOR's expert's conclusions were necessary to reasonably defend against NMID's Objection and BOR's Response. *Id.*

D. An award of discretionary costs is in the interests of justice.

This has been a "David versus Goliath" subcase. On one side stands Janicek, a small limited liability company owned and managed by Brad and Lou Ann Janicek to operate their family farm. This is an entity with limited funds to defend itself against legal attacks. On the other side stands the federal government (BOR), represented and assisted by attorneys from the United States Attorney General's Office, the Department of Justice and the Solicitors' Office of

that this subcase was different from the other Basin 63 waste water cases where inclusion of a standard remark was the practice for settling the objections.

the Department of Interior. Alongside BOR is NMID, a quasi-governmental irrigation district with an assessment base of nearly 70,000 irrigated acres.

Ironically, because Janicek is a taxpayer and a patron of NMID, its own taxes and assessments have helped fund the litigation against it. Janicek, in other words, has been paying for both sides of litigation that Janicek did not bring. Janicek was forced to defend the essential validity of a water right that has been diverted from Purdam Gulch Creek and beneficially used on its land for nearly sixty years, *and* to defend its title in that irrigated land against an attack that the Court found to be “without merit.” While the cost of engaging in litigation like this might be insignificant to NMID and BOR, it is very significant to Janicek. The interests of justice are served by awarding Janicek its discretionary costs.

III. ATTORNEY FEES PURSUANT TO IDAHO CODE § 12-121

A. Janicek is entitled to an award of attorney fees.

Idaho Rule of Civil Procedure 54(e)(1) and Idaho Code Section 12-121 give this Court discretion to award attorney fees to the prevailing party.⁴ The test for awarding attorney fees is whether “the case was brought, pursued or defended frivolously, unreasonably or without foundation.” Idaho R. Civ. P. 54(e)(1); *In Re SRBA Case No. 39576, Subcase Nos. 65-02949A*

⁴ Idaho Rule of Civil Procedure 54(e)(1) states:

In any civil action the court may award reasonable attorney fees, which at the discretion of the court may include paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract. Provided, attorney fees under section 12-121, Idaho Code, may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation; but attorney fees shall not be awarded pursuant to section 12-121, Idaho Code, on a default judgment.

Idaho Code Section 12-121 states:

In any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties, provided that this section shall not alter, repeal or amend any statute which otherwise provides for the award of attorney's fees.

and 65-02949B, *Order Recommending Attorney Fees and Denying Motion to Disallow Attorney Fees*, slip op. at 3 (Sep. 17, 2002) (citing *Owner-Operator Independent Drivers Ass'n, Inc. v. Idaho Public Utilities Comm'n*, 125 Idaho 401, 408, 871 P.2d 818, 825 (1994)).

B. Janicek indisputably is the prevailing party.

Janicek is the prevailing party in this subcase. *See discussion, supra*. As discussed below, Janicek is entitled to an award of attorney fees in the amount of \$43,320.50 because NMID and BOR brought and pursued this subcase frivolously, unreasonably and without foundation.

C. NMID's and BOR's position was frivolous, unreasonable and without foundation.

NMID's objection to Janicek's water right recommendation was based on its entirely novel theory (which BOR both directly and tacitly joined in) that Janicek established its water right by trespassing on a drain (i.e., Purdam Gulch Creek) "owned" by NMID, and that Janicek was diverting water that NMID "owned." *NMID Objection* at 2; *NMID Memorandum in Opposition* at 2, 6-11; *BOR Opposition to Janicek's Motion for Summary Judgment* at 2. As this Court found, this position was "without merit." *Order* at 12 (emphasis added).

Neither NMID nor BOR advanced any facts to support NMID's assertion that it owns Purdam Gulch Creek. *See Order* at 12 ("neither the NMID nor the BOR have produced any recorded instruments showing a real property interest in Janicek's real property"). They also made no attempt to describe the nature of NMID's interest in Purdam Gulch Creek, except to say that NMID "owns" it. Although it was not disputed that BOR undertook substantial earthwork in excavating Purdam Gulch Creek to facilitate drainage in the early 1900's, and that NMID and/or BOR periodically undertook additional drainage maintenance work in Purdam Gulch Creek thereafter, these facts did not rise to the level of establishing any interest in Purdam Gulch Creek,

let alone an extent of title coming close to the outright ownership NMID claimed.

Consequently, this Court could not determine the nature of NMID's interest in Purdam Gulch Creek, except to say that it did not "own" it. *See, id.* ("whatever the precise nature of the [NMID's right] to use Janicek's property . . . , Janicek's water right was not initiated, and has not been maintained in trespass").

Importantly, the meritless trespass allegation (i.e., as against NMID's ownership of a drain and all of the water in it) was the only argument pursued by NMID and BOR against Janicek. Unlike numerous other objections brought by irrigation districts attempting to define their interests in water running in channels constructed or used by them as drains, NMID did not base its objection on the source being waste water. In these other "waste water" subcases of which counsel is aware, the irrigation districts and BOR were satisfied with a remark on the decree identifying the source either in whole or in part as "waste water." Throughout this subcase, however, NMID asserted that its objection to Janicek's water right was different than these "waste water" subcases. NMID, backed by BOR, was ardent in maintaining that Janicek's diversion was in trespass.

They were far less ardent when it came to proffering supporting facts, however. This is significant. It is one thing to press in good faith for an extension, modification or reversal of existing law. Idaho Code § 12-123(1)(b). However, given the clear statements of authority governing the issue in this subcase, including the express statutory right to appropriate water from natural streams and from drains (I.C. §§ 42-101-107), and the oft-stated principle that a water right is only the right to beneficially use water, the legal question pressed by the Objectors was not a close one.

NMID's and BOR's apparent lack of effort in attempting to further their position bears directly on whether they pursued it frivolously, unreasonably and without foundation. Granted, BOR employed a hydrologist who would have opined as to the source of water in Purdam Gulch Creek, but neither BOR nor NMID presented *any* evidence concerning the actual extent to which they or their patrons beneficially used water (i.e., the only right in water that can be "owned") water in Purdam Gulch Creek, or that Janicek's use of the water infringed on anyone else's beneficial use. These are facts that must be established if one is to assert title in water, paramount or otherwise.

Rather than providing such evidence, in its first responses to Janicek's discovery requests seeking information on this issue NMID asserted only that one subdivision used some undisclosed amount of Purdam Gulch Creek water and that some other unknown amount is redelivered via the Kennedy Lateral to unspecified NMID lands. *See Lawrence Affidavit, Ex. D.*⁵ Because of the lack of clarity as to the extent, if any, of NMID's use of Purdam Gulch Creek waters (i.e. whether it beneficially used all of the waters potentially identifiable as waste waters), Janicek filed supplemental discovery requests. In response to these requests, NMID conceded that "NMID does not divert and put to beneficial use all of the water in the Purdam Drain." *Lawrence Affidavit, Ex. E.* In short, it took Janicek two rounds of discovery requests to obtain the information necessary to reach the conclusion that should have been apparent to NMID and BOR all along under well-settled prior appropriation principles—that NMID cannot "own" all of the water in Purdam Gulch Creek because neither it nor its patrons use it all.

⁵ It is unclear whether the subdivision or the other lands to which NMID claims to deliver its Purdam Gulch Creek waste waters lie within NMID's service area. This, of course, would be necessary to claim a paramount right to waste waters. *Thompson v. Bingham*, 78 Idaho 305, 308, 302 P.2d 948, 949 (1956) ("seepage water or waste water . . . may be intercepted and taken by such owner at any time and used on the land to which it is appurtenant").

No evidence suggesting that NMID owned Purdam Gulch Creek or its waters was offered. In other words, the Objectors' position apparently was to "throw something at the wall and see what sticks." In dozens of other subcases this strategy may have worked, presumably because the claimants were not willing or financially able to resist, and so they settled. Here that strategy required Janicek to incur substantial costs to show that NMID's and BOR's position lacked any adhesive qualities.

The Court found the trespass allegation to be "without merit." Because NMID and BOR brought and pursued this entire action unreasonably and without foundation, Janicek should be awarded its attorney fees as requested.

IV. RULE 54(E)(3) ATTORNEY FEE AWARD FACTORS

Rule 54(e)(3) enumerates factors that the Court must consider to determine the amount of attorney fees to award. Based on these factors discussed below, this Court should award Janicek its full requested amount of attorney fees.

(A) The time and labor required.

To defend against NMID's and BOR's allegations, Janicek's attorneys spent substantial time evaluating the factual and legal basis for NMID's, BOR's, and Janicek's respective claims of interest to Purdam Gulch Creek, and researching the body of law governing waste water appropriations. Additional time was spent preparing and reviewing supplemental discovery requests and responses to discern what facts, if any, would suggest that Janicek was diverting water from Purdam Gulch Creek that otherwise would have been used by NMID patrons or others. No such facts were obtained. Janicek's attorneys devoted substantial time to briefing these issues on summary judgment. The actual time spent by Janicek's attorneys on this matter is set forth in detail in the *Lawrence Affidavit* and the exhibits thereto.

(B) The novelty and difficulty of the questions.

As discussed above, the issue raised by NMID and BOR in this case was at least unique, albeit unfounded. Unlike other subcases where irrigation districts conceded that water right claimants at a minimum have a right to appropriate alleged “waste water,” Janicek had to prove, first and foremost, that it was entitled to a water right at all. As posed, the issue required Janicek to incur expenses to be prepared to establish the extent of its title to the bed and banks of Purdam Gulch Creek where it crosses its property, to confirm that water was available in Purdam Gulch Creek sufficient to support its appropriation, and that Idaho law allows Janicek’s appropriation. Janicek’s attorneys’ efforts included researching the factual and legal basis for NMID’s, BOR’s, and Janicek’s respective claims of interest to Purdam Gulch Creek and its waters, and researching the body of law governing waste water appropriations. Janicek respectfully submits that the novelty and difficulty of the issues raised by NMID and BOR supports a full award of attorney fees.

(C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.

This case presented issues with significant potential adverse impacts on Janicek’s business. Janicek was referred to attorney Michael Creamer at Givens Pursley LLP by Janicek’s general business counsel, in large part due to Mr. Creamer’s knowledge of Idaho water law and his experience with irrigation districts and BOR project developments and operations in the Treasure Valley and elsewhere. This was an important factor in Janicek’s defense of the objections, particularly inasmuch as NMID and BOR also were represented by counsel experienced and skilled in these areas. Janicek respectfully submits that this factor supports a full award of attorney fees.

(D) The prevailing charges for like work.

As set forth in the *Lawrence Affidavit*, the prevailing rates for this kind of work in Ada County, Idaho, are between \$175 and \$300 per hour. The rates actually charged by Janicek's counsel are within that range. The overall cost of the representation also is appropriate given the nature and course of the litigation.

(E) Whether the fee is fixed or contingent.

The attorney fee paid by Janicek is based upon the time actually worked by Janicek's attorneys on this matter.

(F) The time limitations imposed by the client or the circumstances of the case.

There were no particular time limitations.

(G) The amount involved and the results obtained.

The fees incurred by Janicek to successfully defend its water right against the objections by NMID and BOR were commensurate with the result obtained. The result of Janicek's success on summary judgment is that Janicek holds a 1951-priority water right to divert 1.4 cubic feet per second to irrigate a seventy acre farm. Had Janicek not prevailed, it would not hold a water right to irrigate these seventy acres and would have to obtain another water source to ensure an adequate irrigation season supply. This might have required purchasing an existing water right. Accordingly, it was reasonable to incur \$43,320.50 in attorney fees to obtain the result in this subcase.

(H) The undesirability of the case.

This subcase arguably was undesirable given the significant disparity of resources available to defend Janicek's position when compared with the resources of the parties marshaled against it.

(I) The nature and length of the professional relationship with the client.

This is the first matter for which Givens Pursley LLP has represented Janicek.

(J) Awards in similar cases.

Janicek's counsel is not aware of any subcases similar to this one. That is, this is the only subcase of which Janicek's counsel is aware in which an irrigation district and BOR alleged that a claimant was not entitled to a water right at all because of alleged trespass. Janicek's counsel is also not aware of any other "waste water" subcases involving irrigation districts and BOR where attorney fees were requested or awarded. Janicek's requested attorney fees and costs are, however, comparable to fees incurred in other civil litigation Janicek's counsel have been involved in with multiple parties, use of experts and analysis of technical data, discovery, motion practice and oral argument as was the case here.

(K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.

Janicek's counsel did not use or charge Janicek fees for automated legal research.

(L) Any other factor which the court deems appropriate in the particular case.

Janicek respectfully submits that the above factors, in and of themselves, warrant this Court's award of Janicek's attorney fees.

V. ATTORNEY FEES MAY BE AWARDED AGAINST BOR

The Court may award attorney fees against BOR under Rule 54(e) and Idaho Code Section 12-121. Although the issue has not been squarely decided in Idaho or elsewhere, Janicek contends that the McCarran Amendment, 43 U.S.C. § 666, does not prohibit such an award.

Here, there was no justification for BOR's position that Janicek was not entitled to a water right. As this Court has concluded, the argument that Janicek trespassed on a drain owned

by NMID was “without merit.” *Order* at 12. BOR did not provide any evidence to support the assertion that Janicek was trespassing. Of course, BOR did not file the original objection against Janicek (NMID did), but it did file a response supporting NMID’s objection, as well as briefing opposing Janicek’s motion for summary judgment. Also, it appears that BOR generally assisted and supported NMID in this litigation by providing affidavits and expert analysis. *See, e.g., NMID Memorandum in Opposition* at 3-4 (citing Affidavit of Jerry Gregg, Area Manager for BOR’s Snake River Area Office). BOR was thus complicit in NMID bringing and pursuing its objection, and it should be responsible for paying Janicek’s attorney fees.

A. The McCarran Amendment does not preclude an award of attorney fees against BOR.

Janicek anticipates that BOR will argue that the McCarran Amendment precludes an award of attorney fees against the United States. However, to Janicek’s knowledge, no court has ever held as much.

The McCarran Amendment provides:

Consent is hereby given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances: *Provided*, That no judgment for costs shall be entered against the United States in any such suit.

(43 U.S.C. § 666, emphasis in original.)

The scope of the McCarran Amendment’s “cost proviso” was addressed by the U.S. Supreme Court in *United States v. Idaho, Ex Rel Dir, Dept. of Water Res.*, 508 U.S. 1 (1993). In that case, the Court discussed whether the “cost proviso” prohibited the State of Idaho from charging the federal government filing fees for SRBA claims. In reaching its holding, the Court

agreed with the Idaho Supreme Court's observation that "'fees' and 'costs' mean two different things in the context of lawsuits." *Id.* at 8. But, because it found that the "fees" for filing SRBA claims were indistinguishable from other court "costs," the Court found that the McCarran Amendment precluded charging the federal government "the sort of fees that Idaho sought to exact." *Id.* In that case, the "fees" were intended to help finance the administrative costs of the SRBA.

The upshot, however, is that the U.S. Supreme Court agreed that "costs" and "fees" are different, and that the McCarran Amendment's "cost proviso" applies to only those fees that are actually costs. Idaho statutes and case law recognize the distinction between costs and fees also.

In particular, Idaho decisions and statutes make a clear distinction between "costs" and "attorney fees." Clearly the distinction is intended to be meaningful. "The general rule is that costs do not include attorney fees unless attorney fees are expressly included in the definition of the term costs." *Noble v. Ada County Elections Board*, 135 Idaho 495, 504, 20 P.3d 679, 688 (2000) (citing 20 AM. JUR. 2D *Costs* § 1 (1995) and 20 C.J.S. *Costs* § 125 (1990)). See also, Idaho Code 42-1423 (prohibiting judgment for costs *or* award of attorney fees against the State of Idaho in general stream adjudication); Idaho R. Civ. P. 37(a)-(f) (allowing award of attorney's fees, costs *or* expenses as sanctions); Idaho R. Civ. P. 11 (providing for payment of a party's expenses *and* reasonable attorney's fee as a sanction); *Hellar v. Cenarrusa*, 106 Idaho 571, 578, 682 P.2d 524, 531 (1984) (recognizing American rule that attorney fees are to be awarded only where authorized by statute or contract); *Jones v. Berezay*, 120 Idaho 332, 815 P.2d 1072 (1991) (award of costs and attorney fees, *or either*, is not a prerequisite to an order granting voluntary dismissal pursuant to Rule 41(a)(2)); *Joyce Livestock Company v. United States of America*, 156

P.3d 502, 144 Idaho 1 (2007) (analyzing SRBA court's denial of attorney fees award as against the United States in McCarran Amendment litigation where claim not pursued frivolously).

There is one instance where the consistent and clear demarcation between costs and attorney's fees may appear blurred — Idaho R. Civ. P. 54(e)(5), which states that when attorney fees are “allowable by statute or contract they shall be deemed as costs in an action and processed in the same manner as costs and included in a memorandum of costs.” This Rule, then, instructs litigants and the courts as to how attorney fees, when allowable to a prevailing party, are to be presented to and processed by the Court — i.e., “in the same manner as costs.” Rule 54 does not, however, transmute attorney fees into costs or define them as such.

In previous attorney fee litigation in the SRBA, the United States has struggled to read Rule 54(e)(5) to eliminate the distinction altogether. But the effort makes sense only because it was attempting to avoid the risk of an attorney fee judgment by forcing “attorney fees” into a “cost” pigeon hole of the McCarran Amendment — something neither the Idaho Rules of Civil Procedure nor the McCarran Amendment contemplate. Because neither Idaho statutes nor the McCarran Amendment's “cost proviso” expressly include attorney fees in a definition of costs, they do not prohibit an award of attorney fees against BOR. *Noble*, 135 Idaho 495, 504, 20 P.3d 679, 688 (2000) (costs do not include attorney fees unless attorney fees are expressly included in the definition of the term costs).

The United States' argument that the McCarran Amendment's “cost proviso” exempts it from an attorney fee judgment has been expressly rejected at least once already in the SRBA. *See In re SRBA*, Case No. 39576, *Amended Memorandum Decision and Order on the United States' Motions to Withdraw and Defer Claim and Costs' Motion for Conditions on Any Dismissal and Motion for Sanctions*, pp. 8-14 (filed by Special Master Brigitte Bilyeu on Jan.

30, 1996) (awarding attorney fees to a private party against the United States pursuant to I.R.C.P. 11 and concluding that *United States v. Idaho, Ex Rel Dir, Dept. of Water Res.*, 508 U.S. 1 (1993), did not hold that the McCarran Amendment exempted the United States from attorney fees under Idaho Rules of Civil Procedure, but rather exempted it only from certain fees for administrative and judicial expenses incurred in the SRBA)." *Id.* at 8.

Accordingly, because BOR is a non-prevailing party in this subcase, Idaho Code Section 12-121 allows an award of attorney fees against it. The McCarran Amendment does not prohibit such an award. Janicek respectfully submits that BOR may be required by this Court to pay Janicek's attorney fees.

VI. CONCLUSION

Janicek respectfully submits that the interests of justice warrant this Court awarding Janicek its reasonable, necessary, and exceptional discretionary costs in the total amount of \$3,939.41 and its attorney fees in the amount of \$43,320.50 because Janicek is the prevailing party and NMID and BOR brought and pursued this litigation frivolously, unreasonably, and without foundation. To the best of Janicek's knowledge and belief, the items listed herein as costs and attorney fees are correct, were reasonably incurred by Janicek in defense of its water right claim, and the costs and attorney fees claimed are in compliance with Idaho Rules of Civil Procedure 54(d) and 54(e).

DATED this 28th day of August, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By


Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th of August, 2008, the foregoing was filed, served, or copied as follows:

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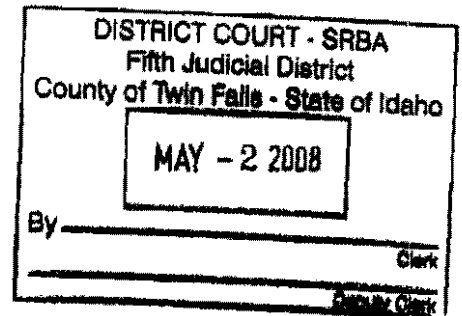
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Michael P. Lawrence



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

In Re SRBA) **Subcase 63-27475**
) **(Janicek Properties, LLC)**
Case No. 39576)
) **MEMORANDUM DECISION AND**
) **ORDER ON MOTION FOR SUMMARY**
) **JUDGMENT**
)
) **SPECIAL MASTER'S REPORT AND**
) **RECOMMENDATION**

Summary of Ruling: The water in Purdam Gulch Creek, which includes seepage and waste water from the Nampa & Meridian Irrigation District, is public water of the state and therefore subject to appropriation and beneficial use in accordance with Idaho law, regardless of whether the creek is a natural stream or watercourse. The partial decree for Janicek's water right should include a remark regarding the use of wastewater. Janicek's water right was not initiated in trespass. The license agreement entered into by the NMID and Bradley Janicek in 1996 for the use of water from the Sky Pilot drain does not estop Janicek from asserting a claim to a water right from Purdam Gulch Creek.

I. APPEARANCES

Michael C. Creamer and Michael P. Lawrence, Givens Pursley, LLP, Boise, Idaho, for claimant Janicek Properties, LLC.

S. Bryce Farris, Ringert Clark Chartered, Boise, Idaho, for objector Nampa & Meridian Irrigation District.

David W. Gehlert, United States Department of Justice, Denver, Colorado, for respondent United States of America, Department of Interior, Bureau of Reclamation.

Scott L. Campbell, Dylan B. Lawrence, Moffat, Thomas, Barrett, Rock & Fields, Chartered, Boise, Idaho, for intervenor Pioneer Irrigation District.

II. STATEMENT OF FACTS

The water right claim at issue herein is based upon beneficial use. The right is claimed by Janicek Properties, LLC ("Janicek"), and was recommended in the Basin 63, Part 2, *Director's Report* with the following elements:

Source: Purdam Gulch Creek
Quantity: 1.400 cfs
Priority Date: 03/01/1951
Point of Diversion: T03N R01W S15 SESENE
Purpose and Period of Use: Irrigation 03/01 to 11/15
Place of Use: T03N R01W S15 SWNE (34.00 acres) SENE (36.00 acres) 70 acres total

The source of the claimed right has been referred to in the briefing as Purdam Gulch, Purdam Slough, Purdam Slough Drain, Purdam Drain, and Purdam Gulch Creek. The name of source is not at issue herein, and accordingly the name used in the *Director's Report* – Purdam Gulch Creek -- will hereinafter be used.

On June 1, 1915, the United States of America, Department of Interior, Bureau of Reclamation ("BOR") and the Nampa & Meridian Irrigation District ("NMID") entered into a contract ("1915 Contract") designed to meet two goals: 1) secure additional water supply for the NMID, particularly storage water from the Boise Project, which included Arrowrock and Deer Flat reservoirs; and 2) to construct a system of drains to remove canal seepage and irrigation infiltration water that had been raising the water table and making or threatening to make some lands within the NMID incapable of cultivation. 1915 Contract, pp. 1-2, Exhibit C to the *Affidavit of Michael P. Lawrence*. The 1915 Contract contemplated that the drains to be constructed would have sufficient capacity to drain seepage water that originated both in the lands lying above the NMID, as well as seepage water originating within the NMID itself. *Id.*, pp. 3-4. The 1915 Contract contemplated the construction of only "principal" drains, to which individual and community farm drains could be connected. *Id.*, p 4.

The parties to the contract (the BOR and the NMID) agreed, as between themselves, to an apportionment of the right to water developed in the drainage system.

Id., p. 7. The 1915 Contract also contemplated that some funds may need to be used as compensation for damages for interference with existing rights with sources of water in the “drains, sloughs or natural channels” within the NMID, where the deepening of such channels and the construction of the drains may interfere with such rights. *Id.*, pp. 16-17. The “Estimate of Cost” attached to the 1915 Contract states: “The proposed [drainage] ditches will follow the natural drainage courses as closely as feasible, and these channels will be straightened and deepened. Five Mile Creek, Wilson Slough, Purdam Gulch, Elijah Slough.” *Id.*, Estimate of Cost at p. 1.

The 70 acre place of use for Janicek’s claimed right is wholly within the boundaries of the NMID. *Affidavit of John P. Anderson*, p. 2. Janicek’s property receives NMID water delivered through the Kennedy Lateral. *Id.* Janicek’s property also receives drainage benefits by the NMID. *Id.* Janicek’s property is near the top of the Purdam Gulch Creek drain, which begins less than one mile to the east. *Id.* Janicek is the owner of the land through which Purdam Gulch Creek passes and upon which Janicek’s claimed point of diversion is located. *Affidavit of Bradley J. Janicek*; *Affidavit of Jerry Gregg*, Exhibit G (Map of Boise Project). Janicek is the record owner, in fee simple, of the real property that includes the bed and banks of Purdam Gulch Creek where said Creek crosses his property. *Affidavit of Bradley J. Janicek*. There are no instruments of record which describe the NMID’s real property interests in the bed and banks of Purdam Gulch Creek where it crosses Janicek’s property. *Id.*

The Purdam Gulch Creek drain, along the relevant stretch, is constructed to a depth of approximately twelve feet (12’). *Affidavit of Robert D. Schmidt*. Essentially all of the water that collects in the Purdam Gulch Creek drain is water from canal seepage and irrigation infiltration occurring within NMID lands. *Id.* The vast majority of the water in the Purdam Gulch Creek drain results from the interception of shallow ground water, and direct surface runoff may contribute water at some times of the year, depending on precipitation conditions. *Affidavit of Scott N. King*, p. 3.

By 1914, after several years of widespread irrigation both outside and within the boundaries of the NMID, and prior to the construction of the drain in Purdam Gulch Creek, the water table in the vicinity of Purdam Gulch Creek had risen to between zero

feet (0') and six feet (6'). *Affidavit of Jerry Gregg*, Exhibit E. In the absence of this irrigation, the water table would have been much lower. *Affidavit of Robert D. Schmidt*. The computer model of subsurface flow utilized by Robert Schmidt predicts that the pre-development water table would have been 13.6 feet below the bottom of the drain (which was constructed to a depth of approximately 12 feet). *Affidavit of Robert D. Schmidt*. In the absence of the shallow ground water that contributes to the Purdam Gulch Creek drain, it is unlikely that pre-development surface runoff into Purdam Gulch Creek would have yielded sufficient water in either volume or continuity of flow to be beneficially useable for the irrigation of farm land.

The NMID recaptures and re-uses water from the Purdam Gulch Creek drain downstream from Janicek's point of diversion. The NMID pumps water from the drain to the Kennedy Lateral to be used by NMID landowners. Additionally, water in the drain is diverted into a pressurized irrigation system for the St. James Place Subdivision. *Affidavit of John P. Anderson*. Neither the NMID nor the BOR have alleged that the NMID recaptures and re-uses all of its water that finds its way into the Purdam Gulch Creek drain, nor are there any facts in the record showing that Janicek's diversion has caused the flow of water in the drain to be insufficient for NMID's purposes of re-use. Upon leaving the boundaries of the NMID, the water in the Purdam Gulch Creek drain enters the boundaries of the Pioneer Irrigation District.

Neither the NMID nor the BOR have ever communicated to Janicek that his diversion works or his use of the water from the drain have caused injury to the drainage ditch, interfered with the functioning of the system, or hindered NMID's maintenance of the drain. *Affidavit of Bradley J. Janicek*.

III. ISSUES PRESENTED

The *Motion for Summary Judgment* filed by Janicek and the opposition thereto filed by the NMID and the BOR raise the following issues:

1. Was the water in Purdam Gulch Creek -- which is a drain constructed by the Bureau of Reclamation ("BOR") pursuant to a contract between the BOR and the

Nampa & Meridian Irrigation District ("NMID") dated June 1, 1915 – subject to appropriation on March 1, 1951?

2. Should the partial decree issued for Janicek's water right contain a remark for purposes of defining, clarifying, or administering the right?

3. Was Janicek's claimed water right initiated in trespass and therefore invalid?

4. Is Janicek estopped to assert a water right from the Purdam Gulch Creek drain by reason that one of the members of Janicek Properties, LLC (Bradley Janicek) had previously entered into a license agreement with the NMID for the use of water out of the Sky Pilot drain?

IV. MATTER DEEMED FULLY SUBMITTED FOR DECISION

Oral argument occurred in this matter on April 16, 2008. The parties have not requested an opportunity to submit additional briefing, nor does this Special Master require any additional briefing. Therefore, this matter is deemed fully submitted for decision the next business day, or April 17, 2008.

V. STANDARD OF REVIEW ON SUMMARY JUDGMENT

A motion for summary judgment shall be rendered if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c); *Olsen v. J. A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990). All controverted facts are liberally construed in favor of the non-moving party. *Tusch Enterprises v. Coffin*, 113 Idaho 37, 740 P.2d 1022 (1987). The burden at all times is upon the moving party to prove the absence of a genuine issue of material fact. *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 452 P.2d 362 (1969). The moving party's case must be anchored on something more than speculation, and a mere scintilla of evidence is not enough to create a genuine issue. *R. G. Nelson, A.I.A. v. Steer*, 118 Idaho 409, 797 P.2d 117 (1990). All doubts are to be resolved against the moving party, and the motion must be denied if the evidence is such that conflicting inferences may be

drawn therefrom and if reasonable people might reach different conclusions. *Doe v. Durtschi*, 101 Idaho 466, 716 P.2d 1238 (1986). The court is authorized to enter summary judgment in favor of non-moving parties. *Barlow's Inc. v. Bannock Cleaning Corp.*, 103 Idaho 310, 647 P.2d 766 (Ct. App. 1982).

VI. ANALYSIS

1. Was the water in the Purdam Gulch Creek drain subject to appropriation on March 1, 1951?

For the reasons set forth below, this Special Master holds that on the date of appropriation and beneficial use of the water of the Purdam Gulch Creek drain by Janicek's predecessor-in-interest (March 1, 1951), the water therein was public water of the state of Idaho and subject to appropriation and beneficial use.

The NMID and the BOR argue that the Purdam Gulch Creek drain is not a natural stream or watercourse¹, and therefore the water therein is not subject to appropriation. Janicek argues that the Purdam Gulch Creek drain is a natural watercourse, but further argues that irrespective of whether the drain is, or is not, a natural watercourse, Janicek's appropriation of water is valid because waste, seepage, and spring waters are subject to appropriation under Idaho Code § 42-107, which states:

42-107. Priority – Waste, seepage, and spring waters. – All ditches now constructed or which may hereafter be constructed for the purpose of utilizing seepage, waste or spring water of the state, shall be governed by the same laws relating to priority of right as those ditches, canals and conduits constructed for the purpose of utilizing the waters of running streams.

¹ The Idaho Supreme Court has defined a natural water course as:

[A] stream of water flowing in a definite channel, having a bed or sides or banks, and discharging itself into some other stream or body of water. The flow of water need not be constant, but must be more than mere surface drainage occasioned by extraordinary causes; there must be substantial indications of the existence of a stream, which is ordinarily a moving body of water.

Burgess v. Salmon River Canal Co., 119 Idaho 299, 305, 805 P.2d 1223, 1229 (2001); *Loosli v. Heseman*, 66 Idaho 469, 481, 162 P.2d 393, 398 (1945).

This Special Master agrees with Janicek and holds that a determination of whether the Purdam Gulch Creek drain is, or at sometime was, a natural watercourse is immaterial, and that the water in the drain is public water of the state and therefor was subject to being appropriated by Janicek's predecessor-in-interest.²

The argument put forth by the NMID and the BOR relies upon a the statement contained in the last sentence of *Sebern v. Moore*, 44 Idaho 410, 258 P. 176 (1927):

Where there has been no appropriation of waste or seepage water prior to the construction of the drain in which such water collects, said water is in the possession of the owner of the drain, and is therefore not subject to appropriation under [I.C. § 42-107].

Sebern, 44 Idaho at 418, 258 P. at 178. Janicek argues that this statement is *dictum*, and was not necessary for the determination made in that case. Janicek also points out that this statement has not since been cited by any Idaho court. For the reasons set forth below, this Special Master finds that this statement in *Sebern* is not inconsistent with the holding herein that Janicek has a valid water right with a source of the Purdam Gulch drain.

The statement in *Sebern* is in regard to appropriations of waste or seepage water pursuant to Idaho Code § 42-107. In reading Idaho Code § 42-107, it should be noted that the statute applies to “*utilizing* seepage, waste or spring *water of the state . . .*” Two key observations to be made are: 1) the statute envisions “*utilizing*” the water (i.e. beneficial use), as opposed to drainage of water for the purpose of elimination; and 2) the water is “*water of the state*” as opposed to private water.³ The statement made by the *Sebern* court presupposes that the person who constructed a ditch to collect seepage and waste water did so with the intent of beneficially using all of the water so collected. The

² There is considerable uncertainty in making a factual determination – either from the affidavits on file, or at trial on the matter – as to the hydraulic properties of Purdam Gulch Creek prior to human manipulation of the flow of water in the area. Whatever those hydraulic properties may have been, they have not existed for many years, and did not exist in 1951 at the time of appropriation of the subject right. Large scale irrigation had raised the water table in the Purdam Gulch and elsewhere, and a deep drain was excavated by the BOR for the purpose of lowering the water table. Janicek's predecessors-in-interest made the appropriation of water under the conditions as they essentially exist today, not under the conditions that existed prior to the excavation of the drain.

³ The common law doctrine relating to private water has been recognized in Idaho, and the definition is codified in I.C. §§ 42-212 and 213. It is not contended by any party in this subcase that the water in the Purdam Gulch Creek drain is private water.

statement simply does not address the situation where the person or entity that constructed the drainage ditch does not beneficially use all of the water so collected, leaving a balance of *water of the state* in the ditch. Any water collected in the drain but not appropriated for beneficial use by the person or entity that constructed the drain, remains water of the state, and as such it is subject to appropriation in accordance with Idaho law. For this reason, the determination of whether the Purdam Gulch Creek drainage structure is a natural stream or not is immaterial – what matters is that the water is water of the state.

The NMID argues that there is no difference between Janicek drawing water from the Purdam Gulch Creek drain and drawing water directly out of NMID's delivery canals. This Special Master is not persuaded by this argument because there is a clear distinction between the two.

The NMID's diversions from the running streams of the state are required to have some type of infrastructure at the point of diversion that is designed to regulate and control the amount of water diverted. In this way, the amount of water diverted is in line with the amount entitled to be diverted under the applicable water right(s), and the conveyance system can be turned off at the end of the applicable period of use. A ditch constructed for the purpose of intercepting and collecting seepage or waste water from saturated soils, on the other hand, does not and can not have any such infrastructure. Such a ditch does not even have a precise point of diversion. The ditch will collect whatever water drains into it, and there simply is no way to regulate, limit, or shut off the flow of water into the drainage ditch. Because of this inability to regulate and limit the flow of water into the ditch, it is certainly possible that the amount of public water collected in the drain exceeds that which can be beneficially used by the person or entity that constructed the ditch – in terms of quantity, annual volume, and period of use. Because any balance of unused water in the drainage ditch is still public water of the state, it is subject to appropriation under the laws of the state.

The "*dictum*" sentence from *Sebern* is not necessarily an incorrect statement of the law, but rather it is incomplete. A more complete statement is: Idaho Code § 42-107 provides that public waters of the state that are found in the form of seepage, waste,

or spring waters, may be collected by means of ditches and appropriated under the same laws relating to priority as the waters of running streams. Because the extent of such an appropriation is determined by the extent of beneficial use, in the event that the appropriator is unable to beneficially use all of the water so collected, any balance remaining in the ditch is subject to appropriation by other users in accordance with Idaho law. Where such appropriator is able to beneficially use all of the water so collected, and “where there has been no appropriation of waste or seepage water prior to the construction of the drain in which such water collects, said water is in the possession of the owner of the drain, and is therefore not subject to [subsequent] appropriation under [I.C. § 42-107].” *Sebern*, 44 Idaho at 418, 258 P. at 178.

Under this rule, it would not matter whether the right to the use of the water by the constructor of the ditch was based upon the beneficial use of the water so collected in the drain (as is contemplated by I.C. § 42-107), or whether the right to the use of the drain water is based upon the right of a paramount appropriator to recapture and reuse identifiable water previously diverted from a natural stream (as is the right of the NMID in the instant case). The alternative interpretation of the statement in *Sebern* essentially creates a license for the continued wasting of water by placing a servitude on the water which prevents it from being used by others until it comeslingles with a natural stream, i.e. the original appropriator is not using the water and others are precluded as well from using the water.

2. Should the partial decree issued for Janicek’s water right contain a remark for purposes of defining, clarifying, or administering the right?

At oral argument on summary judgment, the parties discussed whether a remark should be included in Janicek’s water right - should such right exist – regarding the legal effect of the water right having a source that includes waste water. Counsel for Janicek argued that no such remark would be necessary. Counsel for the NMID argued that any right of Janicek to use the waste water of the NMID should be qualified by a remark.

Under Idaho Code § 42-1411(2)(j), the director of IDWR may include in a director’s report “such remarks and other matters as are necessary for definition of the

right, for clarification of any element of a right, or for administration of the right by the director.” I.C. § 42-1411(2)(j). The *Director’s Report* for water right 63-27475 contains no remark regarding the fact that a substantial portion of the water in Purdam Gulch Creek drain is waste water and seepage coming from lands irrigated by water diverted from the Boise River under NMID’s water rights. Under Idaho law, the NMID has the right to recapture and re-use any of this water that can reasonably be identified as originating from water diverted under its water rights. *Hidden Springs Trout Ranch, Inc. v. Hagerman Water Users, Inc.*, 101 Idaho 677, 680, 619 P.2d 1130, 1133 (1980)(citing *Colthorp v. Mountain Home Irr. Dist.*, 66 Idaho 173, 157 P.2d 1005 (1945)); *United States v. Haga*, 276 F. 41 (D. Idaho 1921). This right to recapture and re-use is unaffected by junior appropriations of the waste and seepage water. *Hidden Springs*, 101 Idaho at 680, 619 P.2d at 1133. The water so re-used by NMID is pursuant to the right(s) under which the water was first diverted, and not as an independent water right to the use of the seepage and drain water. *A&B Irr. Dist. v. Aberdeen-American Falls Ground Water Dist.*, 141 Idaho 746, 753, 118 P.3d 78. Such re-use by NMID would necessarily have to occur within the parameters of the right under which the water was diverted – importantly within the allowable place of use. The NMID is the paramount appropriator of the water that can be so identified, and as such the right of the NMID to capture and re-use this water is superior to Janicek’s right in two respects.

First, the NMID’s right is superior based on relative priority dates. Janicek’s right has a priority date of 1951, the NMID rights are much earlier. *NMID’s Memorandum in Opposition*, p. 3. Accordingly, any re-use of the water in the drain that is identifiably NMID water would be a use under those earlier priority dates. Secondly, and irrespective of the relative priority dates, NMID is the paramount appropriator and has the right to cease wasting the water, in good faith change the place or manner of wasting it, or to recapture it, so long as the NMID applies it to beneficial use within the parameters of the water right(s) under which it was diverted. *Sebern*, 44 Idaho at 418, 258 P. at 178 (citing *United States v. Haga*, 276 F. 41). Janicek does not have a vested right to such seepage and waste water as against the NMID’s paramount ownership.

In accordance with the foregoing, and despite the fact that no waste water remark was included in the *Director's Report*, for purposes of the administration of both Janicek's right and the NMID's paramount right(s), this Special Master finds and concludes that the partial decree issued for Janicek's water right should contain the following remark:

The source of this water right includes waste water. This right remains subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place or manner of wasting it, or to recapture it.

This Special Master finds the remark is necessary to define Janicek's right to show that the right is not subject to the same panoply of rights associated with a water right with a source that does not include waste water. Furthermore, such a remark prevents any injury resulting to the paramount appropriator.

3. Was Janicek's claimed water right initiated in trespass and therefore invalid?

The NMID argues that the Purdam Gulch Creek drain is a "facility owned, operated, and maintained by NMID," and that Janicek's diversion of water constitutes a trespass upon that NMID owned facility. *NMID's Memorandum in Opposition*, p. 6. Under Idaho law, one cannot initiate a water right in trespass. *Idaho Power Co. v. Buhl*, 62 Idaho 351, 111 P.2d 1088 (1941); *Jones v. McIntire*, 60 Idaho 338, 344, 91 P.2d 373 (1939). As explained below, this Special Master holds that Janicek's water right was not initiated in trespass

The affidavits on file in this subcase demonstrate that Janicek is the owner of record, in fee simple, of the real property where his point of diversion is located. *Affidavit of Bradley Janicek*, pp. 1-2. Furthermore, Janicek's diversion works in the Purdam Gulch Creek drain have not interfered with NMID's or BOR use of the drain. *Id.* p.2. The NMID describes the Purdam Gulch Creek drain as a "facility" of the NMID. *NMID's Memorandum in Opposition*, p. 2. There is no question that this facility – the Purdam Gulch Creek drain – is an inseparable component or fixture of the real property

upon which it lies. The nature and extent of NMID's property interest for this facility in Janicek's real property is not clearly described. It may be that the NMID has an easement by prescription over Janicek's property, or perhaps if the land had not been patented into private ownership prior to the construction of the ditch, the 1866 ditch rights-of-way act might be applicable. 43 U.S.C. § 661 (1866). As pointed out in Janicek's *Reply Memorandum*, neither the NMID nor the BOR have produced any recorded instruments showing a real property interest of the NMID or BOR in Janicek's real property. Suffice it to say that whatever the precise nature of the NMID to use Janicek's property, such interest allows use, not possession.

The traditional common-law elements for a cause of action in trespass are: 1) an invasion; 2) which interferes with the right of exclusive possession of the land; and 3) which is a direct result of some act committed by the defendant. *Mock v. Pollatch Corp.*, 786 F. Supp. 1545, 1548 (D. Idaho 1992). Further, the common-law requirement for trespass *quare clausum fregit* is that it must be against a possessory interest in real property. As such, an action for trespass does not lie against a property interest in the form of an easement, which is an incorporeal hereditament and not possessory.⁴ *Socony-Vacuum Oil Co. v. Bailey*, 202 Misc. 364, 365, 109 N.Y.S.2d 799, 801 1952 (citing Pollock's Law of Torts, 14th ed. 1939, p. 299; Tiffany, Law of Real Property, 3rd ed. 1939, Vol. 3, § 814; (Cf. *First Baptist Church v. Witherell*, 1832, 3 Paige 296 and *Shaw v. Beveridge*, 1842, 3 Hill 26 (in which trespass was held to lie for interference with right of owner of church pew on theory such right was not an easement but a property right and therefore 'real estate'))).

Whatever the nature of the NMID's interest in Janicek's property along the location of the Purdam Gulch Creek drain, such an interest is not for the exclusive possession of the real estate, rather it is Janicek who is entitled to such exclusive possession. Accordingly, the assertion that Janicek or his predecessors-in-interest have trespassed upon property owned by the NMID is without merit. Janicek's water right was not initiated, and has not been maintained in trespass.

4. Is Janicek estopped to assert a water right from the Purdam Gulch Creek drain?

The NMID asserts that Janicek is estopped to assert the subject water right because Janicek knows that it must get NMID permission to pump from a drain facility operated by the NMID. The factual underpinning of this argument is a license agreement entered into between Bradley Janicek and the NMID in 1996 that allowed Bradley Janicek to temporarily pump from the Sky Pilot drain. This Special Master finds this argument to be unpersuasive, and holds that Janicek is not so estopped.

As pointed out by Janicek in its *Reply Memorandum*, the factual relationship between Janicek's claim to a water right from the Purdam Gulch Creek drain and the temporary use of NMID water by Bradley Janicek's is insufficient to estop Janicek, and the agreement entered into by Bradley Janicek cannot be construed as an admission by Janicek Properties, LLC as to any issues in this subcase. One obvious distinction is that in 1951, a water right could be appropriated through diversion and beneficial use. In 1996, however, had Bradley Janicek sought a water right from the Sky Pilot drain, he would have needed to file an application for permit to appropriate the water. It is unlikely that Mr. Janicek would go to such measures if all he needed was a temporary use of water. Janicek's use of the water of the Purdam Gulch Creek drain, on the other hand, was not pursuant to a license agreement, and because the such use involved the application to beneficial use of public water of the state, prior to change in law in 1971 to a mandatory permit requirement, Janicek's water right was perfected upon such application to beneficial use. Accordingly, Janicek is not estopped to claim the right in the SRBA.

VII. ORDER AND RECOMMENDATION

In accordance with the foregoing, the *Motion for Summary Judgment* filed by Janicek Properties LLC is **granted**. Therefore, IT IS RECOMMENDED that water right

⁴ It should also be noted that a water right, which is a usufructory right and not possessory, is also an incorporeal hereditament, and as such a common law action for trespass will not lie for interference with a

63-27475 be decreed with the elements as set forth in the attached *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*.

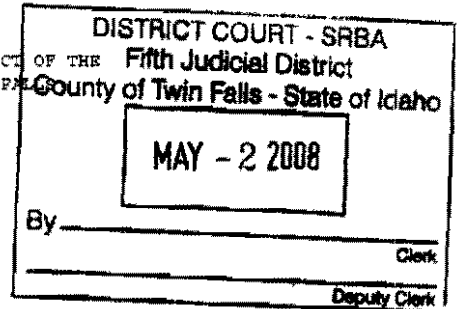
Dated May 2, 2008

A handwritten signature in black ink, appearing to read 'Theodore R. Booth', written over a horizontal line.

THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

water right.

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



In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 63-27475

NAME AND ADDRESS: JANICEK PROPERTIES LLC
1284 S GOSLING WAY
EAGLE, ID 83616

SOURCE: FURDAM GULCH CREEK TRIBUTARY: MASON CREEK

QUANTITY: 1.40 CFS

PRIORITY DATE: 03/01/1951

POINT OF DIVERSION: T03N R01W S15 SKSENE Within Ada County

PURPOSE AND			
PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-01 TO 11-15	1.40 CFS

PLACE OF USE:	Irrigation	Within Ada County
	T03N R01W S15	SWNE 34.0
		SENE 36.0
	70.0 Acres Total	

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

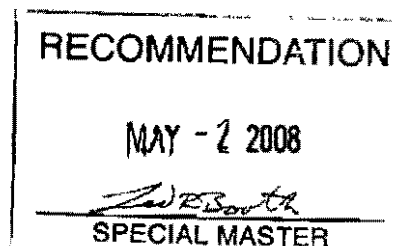
The source of this water right includes waste water. The right remains subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place or manner of wasting it, or to recapture it.

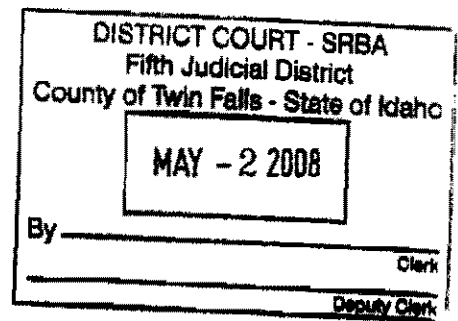
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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.

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication





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

In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

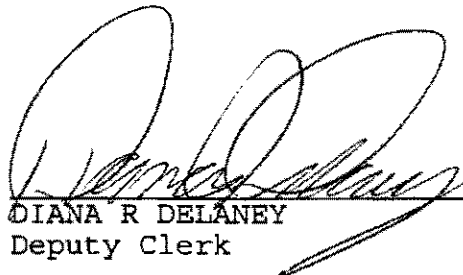
Water Right(s): 63-27475

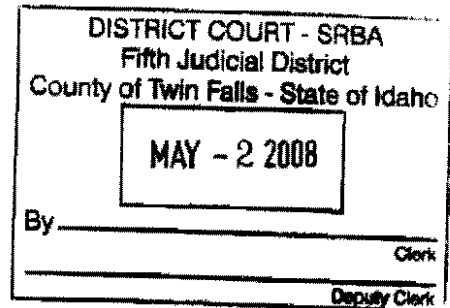
On May 02, 2008, Special Master THEODORE R. BOOTH issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (A01), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED May 02, 2008.


DIANA R DELANEY
Deputy Clerk



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

In Re SRBA)
Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 63-27475

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on May 02, 2008, with sufficient first-class postage prepaid to the following:

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

JANICEK PROPERTIES LLC
Represented by:
MICHAEL P LAWRENCE
PO BOX 2720
BOISE, ID 83701
Phone: 208-388-1200

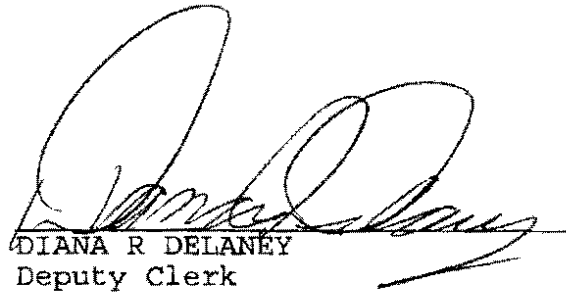
NAMPA AND MERIDIAN
Represented by:
S. BRYCE FARRIS
455 S THIRD ST
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

CERTIFICATE OF MAILING

PAGE 1
05/02/08

PIONEER IRRIGATION DISTRICT
Represented by:
SCOTT L CAMPBELL
101 S CAPITOL BLVD 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000

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



DIANA R DELANEY
Deputy Clerk

CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION AND ORDER ON MOTION FOR SUMMARY JUDGMENT was mailed on May 02, 2008, with sufficient first-class postage to the following:

JANICEK PROPERTIES LLC

Represented by:
MICHAEL P LAWRENCE
PO BOX 2720
BOISE, ID 83701
Phone: 208-388-1200

NAMPA AND MERIDIAN

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

PIONEER IRRIGATION DISTRICT

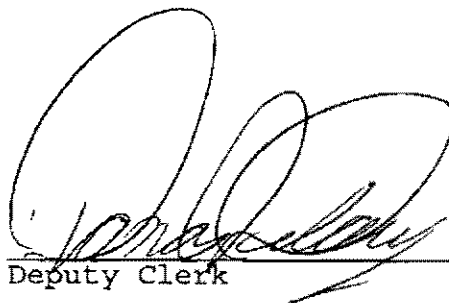
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USDI BUREAU OF RECLAMATION

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550 WEST FORT STREET, MSC 033
BOISE, ID 83724

DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098



S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third Street
P.O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

RECEIVED
APR 22 2008
DEPARTMENT OF
WATER RESOURCES

Attorneys for Nampa & Meridian Irrigation District

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

In Re SRBA

Case No. 39576

)
) Subcase No. 63-27475
)

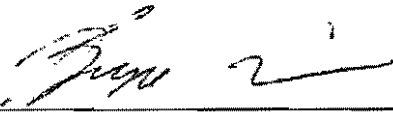
) NOTICE OF SERVICE OF
) NAMPA & MERIDIAN IRRIGATION
) DISTRICT'S ANSWERS TO JANICEK
) PROPERTIES, LLC'S SECOND SET OF
) INTERROGATORIES, REQUESTS FOR
) ADMISSION, AND REQUESTS FOR
) PRODUCTION
)

COMES NOW Nampa & Meridian Irrigation District, by and through its counsel of record,
Ringert Clark Chartered, and pursuant to Idaho Rules of Civil Procedure, hereby gives notice that
on the 21st day of April, 2008, Nampa & Meridian Irrigation District's Answers to Janicek
Properties, LLC's Second Set of Interrogatories, Requests for Admission, and Requests for
Production, was served by hand delivery to the following:

Michael C. Creamer
Michael C. Lawrence
Givens Pursley, LLP
P.O. Box 2720
Boise, Idaho 83701-2720

DATED this 21st day of April, 2008.

RINGERT CLARK CHARTERED

By: 

S. Bryce Farris
Attorney for Nampa & Meridian
Irrigation District

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April, 2008, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

Michael C. Creamer
Michael C. Lawrence
Givens Pursley, LLP
P.O. Box 2720
Boise, Idaho 83701-2720

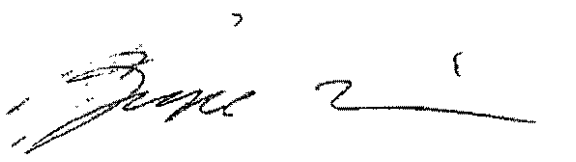
USDI Bureau of Reclamation
Represented by:
US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

Director of IDWR
P.O. Box 83720
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Chief, Natural Resources Division
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April 14, 2008

via FedEx Mail

Diana R. Delaney, Chief Deputy Clerk
Snake River Basin Adjudication
DISTRICT COURT
253 Third Ave., North
Twin Falls, Idaho 83303-2707

Re: SRBA Case No. 39576
Subcase No. 63-27475

Dear Ms. Delaney:

Enclosed for filing in the above listed subcase is the following document:

1. **NOTICE OF SERVICE OF UNITED STATES' SUPPLEMENTAL
RESPONSES TO JANICEK PROPERTIES LLC'S FIRST SET OF
DISCOVERY REQUESTS TO THE UNITED STATES OF AMERICA**

Sincerely,

David A. Jarvis
Paralegal

Enclosures

RECEIVED

APR 17 2008

DEPARTMENT OF
WATER RESOURCES

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Assistant Attorney General
Environment and Natural Resources Division

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Counsel for the United States

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

In In Re SRBA	)	Subcase No. 63-27475
	)	
Case No. 39576	)	NOTICE OF SERVICE OF UNITED STATES'
	)	SUPPLEMENTAL RESPONSES TO JANICEK
	)	PROPERTIES LLC's FIRST SET OF
	)	DISCOVERY REQUESTS TO THE
	)	UNITED STATES OF AMERICA

COMES NOW the United States, by and through its counsel of record and pursuant to I.R.C.P. Rules 26(b)(1) and 26(e), and hereby gives notice that on the 14th day of April 2008, the United States served *United States' Supplemental Responses to Janicek Property LLC's First Set of Interrogatories, Requests for Admission, and Requests for Production to the United States of America* upon counsel for Janicek Properties LLC.

DATED this 14th day of April, 2008.

Respectfully submitted,



David W. Gehlert
Environment and Natural Resources Division
U.S. Department of Justice

Attorney for the United States of America

CERTIFICATE OF SERVICE

I certify that on this 14th day of April 2008, I served a true and correct copy of the foregoing NOTICE OF SERVICE OF UNITED STATES' SUPPLEMENTAL RESPONSE TO JANICEK PROPERTIES LLC's FIRST SET OF DISCOVERY REQUESTS TO THE UNITED STATES OF AMERICA as indicated below:

via FedEx Mail:

CLERK OF THE SRBA COURT
SRBA Courthouse
District Court
253 3rd Avenue North
Twin Falls, ID 83303
Phone: 208-736-3011

via First Class U.S. Mail prepaid:

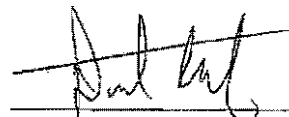
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David W. Gehlert

DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
APR - 4 2008	
By _____	Clerk
_____	Deputy Clerk

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

In Re SRBA	) Subcase 63-27475
	)
Case No. 39576	) ORDER GRANTING PIONEER
	) IRRIGATION DISTRICT'S MOTION TO
	) PARTICIPATE

On March 27, 2008, the Pioneer Irrigation District, by and through its attorney Scott L. Campbell, filed a *Motion to Participate* together with a *Memorandum* in support thereof. Pursuant to SRBA Administrative Order 1, § 10(k), and I.R.C.P. 24(b), Pioneer Irrigation District sought permissive intervention, alleging that subcase 63-27475 involves questions of law and fact that are closely related to the issues that will arise in several subcase in which the Nampa & Meridian Irrigation District had objected to Pioneer Irrigation District's water right claims. The matter was heard on April 1, 2008

Based upon the contents of the *Motion*, and upon the comments of the participants at the hearing, this Special Master finds that Pioneer Irrigation District has adequately demonstrated the existence of common questions of law and/or fact, and that allowing participation will not unduly delay the proceedings or prejudice the rights of the original parties. Accordingly, the *Motion to Participate* is **granted**.

Date April 4, 2008



THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING PIONEER IRRIGATION DISTRICT'S MOTION TO PARTICIPATE was mailed on April 04, 2008, with sufficient first-class postage to the following:

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USDI BUREAU OF RECLAMATION

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RECEIVED

MAR 31 2008

DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 39576

Subcase No. 63-27475

**JANICEK PROPERTIES, LLC's,
REPLY MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

This memorandum presents Janicek Properties, LLC's ("Janicek"), reply to responses filed by Nampa & Meridian Irrigation District ("NMID") and the U.S. Bureau of Reclamation ("BOR"),¹ to Janicek's Memorandum in Support of Motion for Summary Judgment ("Janicek Initial Memo").

INTRODUCTION

This subcase contrasts two important Idaho water law policies; the first is the policy requiring maximum beneficial use of the State's waters, and the second is the policy that abhors any attempt to hoard water by those who do not put it to beneficial use. This subcase arises from

¹ NMID's and BOR's Response Memorandums are referred to herein as the "NMID Memo" and "BOR Memo," respectively.

yet another legal challenge by senior-priority water delivery entities asserting “ownership” of Idaho’s public waters as against other claimants without regard to the Constitutional and statutory mandates requiring that appropriations of public waters are put to beneficial use.²

Ninety-three years ago, BOR went onto what historically has been variously referred to as Purdam Gulch or Purdam Slough, or Purdam Slough Drain, or Purdam Drain or Purdam Gulch Creek (hereafter “Purdam Gulch Creek”), and made extensive excavations to induce the drainage of water-logged lands within the boundaries of the federal Boise Project and NMID. Water that historically occurred in the area of these excavations was thereafter augmented by the induced drainage and those commingled waters have, but for the Janicek diversion, flowed essentially unimpeded downstream into Mason Creek, and ultimately into the Boise River for nearly a century. Except for NMID’s alleged diversion from Purdam Gulch Creek of an unknown quantity of water to a fourteen-lot subdivision that was not even platted until the late summer of 2002, and a vaguely described cross-diversion of water from Purdam Gulch Creek to NMID’s Kennedy Lateral, neither NMID nor BOR have presented *any* evidence even hinting that either of them ever have beneficially used all of the water flowing in Purdam Gulch Creek.

Despite approximately a century of *non-use* of the waters of Purdam Gulch Creek by the NMID and BOR, and despite Janicek’s undisputed fifty-six years of *actual* beneficial use of Purdam Gulch Creek waters, NMID is comfortable asserting that it “owns” all of the water in

² See e.g.; *American Falls Reservoir Dist. No. 2 v. Idaho Dept. of Water Resources*, 143 Idaho 862, 154 P.3d 433 (2007) (challenging, inter alia, IDWR authority to confirm actual beneficial use of water by calling senior before curtailing juniors); *A & B Irrigation Dist. v. Aberdeen-American Falls Ground Water Dist.*, 141 Idaho 746, 118 P.3d 78 (2005) (stating that, rather than hoarding non-beneficially used water, irrigation districts must divert less water); *State v. Hagerman Water Right Owner’s, Inc.*, 130 Idaho 727, 947 P.2d 400 (1997) (rejecting assertion that no portion of a water right is forfeited so long as some portion of it is beneficially used.)

Purdam Gulch Creek, and that as against all others who would use the water, NMID can hold that water without use indefinitely.

Presumably standing on the thinnest ledge of a 2001 quitclaim deed from BOR, NMID goes on to assert exclusive ownership of Purdam Gulch Creek across Janicek's property. In its zeal to sweep up as much "title" as it can carry in both arms, NMID forgets even the statute enacted in 1996 *for its own benefit* (Idaho Code 42-1102) providing that the existence of a canal, ditch or conduit (i.e., Janicek's pump) constitutes notice that the owner of the canal, ditch or conduit (i.e., Janicek) has a right-of-way and all rights incident thereto. Whatever BOR purported to convey without any warranties of title to NMID in 2001, it was accepted by NMID subject to Janicek's pre-existing rights. No facts have been presented by NMID or BOR to support NMID's claim of ownership of Purdam Gulch Creek, let alone facts that might rise to a level that would preclude summary judgment for Janicek.

NMID incorrectly asserts that the premise of Janicek's claim is that Janicek has made an appropriation from a natural water course. And both NMID and BOR have made a considerable attempt to create disputed facts on this issue. The undisputed substantial facts show Purdam Gulch Creek to be a natural water course. But to be very clear, as a matter of law, Janicek's appropriation is valid regardless of whether Purdam Gulch Creek is a natural water course. Idaho Code Section 42-101 confirms the right to appropriate the waters "flowing in their natural channels." The complement to that statute is Idaho Code Section 42-107, which confirms the right to appropriate waste, seepage and spring waters wherever they arise under "the same laws relating to priority of right" as appropriations of the waters of running streams.

Whatever NMID's or BOR's rights might be with respect to operation and maintenance of Purdam Gulch Creek as a drain—an issue not properly raised in the SRBA—cases such as

Sebern and Haga, discussed herein, confirm that such waste, seepage and spring waters are *public waters* subject to appropriation under I.C. Section 42-107. NMID's contracts with BOR, in which they purport to allocate between themselves their respective interests in water that might accrue in constructed drains, cannot alter these statutory rights to appropriate, or the bedrock requirement that beneficial use is the basis and limit of a water right or otherwise diminish the rights of a third party such as Janicek who has diverted water to beneficial use under the laws of this State.

NMID's water rights allow it to divert water from the Boise River through its canals and ditches to its patrons for irrigation. Idaho cases such as *Hidden Springs*, *Sebern and Haga* discussed further below, tell us that NMID's water right also includes the right to cease wasting, to reduce or eliminate seepage and to recapture water for beneficial use on the original lands for which the water right was appropriated. But NMID's incidental right to recapture water is inextricably tied to NMID's fundamental obligation to beneficially use it. NMID cannot claim and hoard water in the Boise River under its water rights any more than it can claim and hoard waste or seepage water in a drain or elsewhere, without demonstrating that every portion claimed as against someone else is beneficially used. NMID has not, and cannot demonstrate that in this case.

UNDISPUTED FACTS

The following facts are undisputed:

- (1) NMID does not "own" Purdam Gulch Creek;
- (2) In 1915, NMID and BOR admitted that Purdam Gulch Creek was a "natural drainage course" that would be "straightened and deepened" for drainage purposes.

(3) Purdam Gulch Creek contains a combination of natural flows and waste and seepage waters.

(4) NMID does not put to beneficial use all of its waste and seepage waters that collect in Purdam Gulch Creek.

ARGUMENT

NMID and BOR have not met their burden of showing that Janicek is not entitled to the water right recommended by IDWR. As the non-moving parties in this summary judgment proceeding, it is their burden to overcome the presumption created by IDWR's recommendation. "The director's report constitutes *prima facie* evidence of the nature and extent of a water right acquired under state law." *In re SRBA Case No. 39576, Subcase No. 63-08447 ("Kandler")*, *Memorandum and Order on Motion for Summary Judgment*, slip op. at 10 (Aug. 28, 2007), *citing* Idaho Code § 42-1411(4)-(5). "The objecting party has the burden [of] going forward with evidence to rebut the presumption established by the director's report. This presumption is overcome when the 'opponent produces substantial evidence of the nonexistence of the fact [presumed].'" *Id.* at 10-11 (*quoting Bongiovi v. Jamison*, 110 Idaho 734, 738, 718 P.2d 1172, 1176 (1986)).

IDWR's recommendation for the Janicek right finds the source of water to be Purdam Gulch Creek. NMID and BOR have not provided substantial evidence of the non-existence of this fact presumed by the recommendation. NMID and BOR cannot show that Purdam Gulch Creek is not a natural watercourse or that it does not contain public waters subject to appropriation, either of which, as a matter of law, is fatal to their case. Even if they could show that Purdam Gulch Creek is not a natural watercourse, however, it would not preclude Janicek's recommended appropriation under Idaho law. NMID and BOR have not shown NMID "owns"

either Purdam Gulch Creek or the water within it. They have raised no genuine issues of fact and cited no provision of law preventing this Court from decreeing Janicek the water right recommended by IDWR.

I. THE SOURCE OF WATER FOR THE JANICEK RIGHT IS PURDAM GULCH CREEK.

NMID and BOR have not produced substantial evidence that Purdam Gulch Creek is not a natural watercourse. (*Kandler*, slip op. at 10-11.) They cannot, therefore, rebut the presumptive weight of IDWR's recommendation or the substantial evidence offered by Janicek showing that Purdam Gulch Creek is a natural watercourse. As such, and in accordance with Idaho law, Janicek is entitled to appropriate its waters.

NMID and BOR rely on a report prepared by A.D. Foote in 1887 as their primary evidence on this issue. (Aff. of B. Farris, Ex. A ("Foote Report").)³ NMID asserts that Purdam Gulch Creek historically was not a natural watercourse because the Foote Report does not mention it by name as a "main" drainage channel. (NMID Memo at 4). Their intended implication seems to be that only those streams specifically named in the Foote Report actually existed in the Boise Valley. Elsewhere in the Foote Report, however, the author acknowledges the existence of "a number of natural drainage channels" lying west of Ten Mile Creek (i.e., where Purdam Gulch Creek runs). (*Foote Report* at 45.)⁴ On this point then, the Foote Report at

³ Foote's report was prepared for the Idaho Mining and Irrigation Company, ostensibly to attract investors to fund development of irrigation projects in Idaho. The report is laced with statements of hyperbole, such as "with reasonable care in laying out the irrigating channels, not an acre of land need be lost in swamp or alkali; neither need there be a drop of water allowed to run to waste in drainage channels." (*Foote Report* at 18 (emphasis added).) Propaganda such as this was infamously portrayed in *Angle of Repose*, Wallace Stegner's novel chronicling the failure of the early speculative irrigation projects in the Boise River valley. The Foote Report is of historical interest primarily as an example of promotional literature of the day.

⁴ "The channel of Indian Creek is narrow, deep, and in rock; it will, therefore, not be available as a branch canal [for delivering water]. There are, however, a number of natural drainage channels leading from the Main Canal line, between Ten-Mile Creek and the end of the Main Canal, which will be used for the purpose." (*Foote Report* at 45.)

least documents that water courses other than the few proposed to be incorporated into an irrigation distribution system—courses such as Purdam Gulch Creek—existed in 1887.

NMID and BOR also both quote (without further explanation) Foote's statement that the main drainage channels in the area "are creeks for a month or two only in the early spring, and dry for the remainder of the year." (NMID Memo at 4; BOR Memo at 3 (*citing Foote Report* at 17).) If NMID and BOR mean for this quotation to show that Purdam Gulch Creek is not a natural watercourse containing public waters subject to appropriation, they are wrong. It is well-settled that a water course with no more than springtime flows is a natural watercourse upon which water rights may be established. *See U.S. v. Haga*, 276 F. 41, 45 (D. Idaho 1921).

Haga involved a dispute over waste and seepage waters in Eight Mile Creek, a tributary of the Boise River located "just a few miles southeast" of Purdam Gulch Creek. (BOR Memo at 6, n.7.) The *Haga* court found that

during the early springtime at least, Eight Mile creek received a little water from the natural drainage, but it is further to be conceded that after the commencement of the irrigation season most of the water flowing in the channel . . . has its source in surface waste and seepage incident to the use of water from the government canals in the irrigation of lands lying along or near the creek above the defendant's point of diversion . . .

[T]here is no showing that naturally during the irrigation season, it actually makes a contribution to the river flow. There is a continuous channel, it is true, and there are doubtless short periods of unusual run-off in extraordinary seasons when there is a discharge to the river. . .

[S]ubstantially all of the water in the creek during the irrigation season comes from plaintiffs canals by the way of surface waste from irrigated fields and the seepage of percolating waters from the same source . . .

From the evidence as a whole the conclusion is irresistible that the stream in its natural state is not dependable as a source of irrigation even in May, and generally speaking after May, the creek is only a dry channel.

Haga, 276 F. at 42-43. Yet on these facts, the *Haga* court had “no hesitation in holding without discussion that Eight Mile Creek is a natural water course or channel.” *Id.* at 45.⁵ The facts presented to rebut the presumption that Purdam Gulch Creek is a natural watercourse (i.e., that virtually all of the water in Purdam Gulch Creek derives from waste or seepage or return flow) instead comport with facts in *Haga* that supported the conclusion that Eight Mile Creek was a natural watercourse, and they do not rebut IDWR’s recommendation.

BOR also cites Foote’s “sketch” on page 43 of the report as evidence that Purdam Gulch Creek is not a natural watercourse. A “sketch” is precisely what this document is. By no means is it a detailed or comprehensive representation of the landscape in 1887.⁶ This sketch is a schematic drawing of proposed laterals radiating from Ten-Mile and Five-Mile Creeks—a conveyance system that notably never came to pass. This sketch is not any evidence, let alone substantial evidence, to rebut the presumption that Purdam Gulch Creek is a natural watercourse.

BOR asserts that the *lack* of maps depicting Purdam Gulch Creek in its annual reports and other historical records establishes that it is not a natural watercourse. This *absence* of evidence in its own records hardly proves the non-existence of such maps elsewhere or that Purdam Gulch Creek is not a natural channel. BOR’s affiant, Mr. Gregg, does not say that BOR

⁵ The *Haga* Court might as well have been quoting the R. Schmidt Affidavit proffered by the BOR, which is apparently intended to establish the same kind of hydrologic facts for Purdam Gulch Creek that the *Haga* Court found to be consistent with the existence of a natural water course. Mr. Schmidt acknowledges that some of the water in Purdam Gulch Creek is not NMID’s waste or seepage waters. Mr. Schmidt states that “essentially all,” not all, of the water in Purdam Gulch Creek is waste or seepage waters. (Aff. of R. Schmidt, ¶ 10.) Indeed, Mr. Schmidt admits that “[e]liminating irrigation activity . . . reduced drain flow at [Janicek’s point of diversion] . . . to 0.3 cfs.” (Aff. of R. Schmidt, ¶ 7.) It is therefore undisputed that some of the water in Purdam Gulch Creek is not NMID’s waste or seepage waters.

⁶ Foote’s sketch is entitled “Sketch showing the Distribution of Water by Means of Natural Drainage Channels and Lateral Canals.” The title makes clear that the only features Foote intended to show were those natural drainage channels referenced in his text that were intersected by and potentially suitable for distributing live irrigation water from the “Main Canal.” Consequently, the sketch does not depict natural channels that did not meet these criteria such as Indian Creek (mentioned by Foote as “much the largest” of the creeks (Foote Report at 17) but unsuitable to convey irrigation water (Foote Report at 45)) or others such as Purdam Gulch Creek.

has no such records, only that he is “not aware of any.” (Aff. of J. Gregg, ¶ 12.) In any event, Mr. Gregg admittedly does not have plenary knowledge of all of BOR’s documents—he is “familiar with many” but not all of BOR’s records. (See *id.* at ¶ 2.) It further must be conceded that Mr. Gregg does not have plenary knowledge of all documents or maps in existence that might describe or depict the Purdam Gulch Creek area. BOR’s non-existent maps and records cannot rise to the level of substantial evidence of the non-existence of Purdam Gulch Creek as a natural watercourse. It cannot overcome the presumption created by IDWR’s recommendation.

The photographs proffered by BOR are equally unpersuasive.⁷ First, these photographs are not of Purdam Gulch Creek near Janicek’s property; BOR admits that they were not even taken within NMID’s boundary (they were taken within the Pioneer Irrigation District). (BOR Memo at 3, n.4.) They therefore tell the viewer nothing about Purdam Gulch Creek in the vicinity of the Janicek property. What they do show, if anything, is this: A dredge situated on top of a bank covered with cattails from which a stream of surface water meanders and cascades into a newly excavated trench (Aff. of J. Gregg, Ex. H.); and a dredge (perhaps the same one from a different angle) on top of a bank covered with cattails with an excavated trench filled with water in the foreground. (Aff. of J. Gregg, Ex. I). If these photographs establish anything, it is that surface water was present in the area where the photographs were taken when dredging commenced. Anything else would be speculation.

BOR and NMID cannot explain away their admission in the 1915 contract signed by both parties that Purdam Gulch Creek was a “natural drainage course.” (Aff. of M. Lawrence, Ex. C) NMID does not address this at all, and BOR attempts to dismiss the contract’s specific language

⁷ Janicek does not waive its right to object to the admission of these photographs or any other evidence preferred by NMID or BOR on various grounds including of lack of foundation and relevance.

as a “general reference” that (for reasons unexplained) should not be read to mean what it says. BOR’s self-serving denial now in the context of this litigation of a statement it made in 1915 is unpersuasive. Nor does BOR’s response on this point contradict the only affirmative evidence presented to this Court regarding Purdam Gulch Creek’s status as a natural watercourse.

In summary, NMID and BOR have not offered substantial evidence to rebut the presumption created by IDWR’s recommendation that Purdam Gulch Creek is a natural watercourse. NMID and BOR have offered no affirmative proof and have not offered any substantial evidence of the nonexistence Purdam Gulch Creek. On the other hand, IDWR’s recommendation is that the source of Janicek’s right is Purdam Gulch Creek, and Janicek has provided affirmative proof in the form of an admission by both NMID and BOR in 1915 that Purdam Gulch Creek was a natural drainage course prior to being straightened and deepened to facilitate drainage.

II. REGARDLESS OF WHETHER PURDAM GULCH CREEK IS A NATURAL WATERCOURSE, JANICEK IS ENTITLED TO A WATER RIGHT AS A MATTER OF LAW.

It would be easy to get wrapped up in speculation about what the absence of maps in BOR files might mean, or whether or how historical photos showing flowing water in one location might be used to extrapolate what circumstances existed several miles away nearly one hundred years ago. But speculation on these points is all one might do. That is not enough to meet NMID’s or BOR’s burden here. As Janicek already has argued, even if Purdam Gulch Creek was not a natural watercourse, Janicek is entitled to a water right as recommended by IDWR because Idaho Code Section 42-107 allowed Janicek’s predecessors to appropriate waste, seepage and spring waters wherever they might arise, particularly those that arise on Janicek’s property.

NMID argues that Janicek has trespassed on Purdam Gulch Creek and the water within it. This is incorrect as a matter of fact and a matter of law. NMID and BOR offer no evidence whatsoever to support allegations that NMID holds exclusive rights to the bed and banks of Purdam Gulch Creek. Moreover, NMID does not “own” the water in Purdam Gulch Creek—as a matter of law, those waters belong to the state and are subject to appropriation.

A. Janicek has not trespassed because NMID does not “own” Purdam Gulch Creek.

There is no basis for NMID’s and BOR’s assertions that NMID “owns” Purdam Gulch Creek. (See NMID Response at 6, 7, and 9; BOR Response at 2.) As discussed in Janicek’s opening memorandum, Janicek holds record fee title to the property through which Purdam Gulch Creek passes and on which Janicek’s point of diversion is located. (Janicek Initial Memo at 5-6.) Neither NMID nor BOR have pointed out in their responsive briefing any recorded documents establishing NMID’s ownership of any portion of Janicek’s property. NMID has not argued or presented any facts to suggest that it holds title to Janicek’s property through adverse possession.⁸ “The party opposing a motion for summary judgment may not rest merely on the allegations in the pleadings, but rather the non-moving party must produce evidence to contradict the assertions of the moving party.” (*Kandler*, slip op. at 5 (citation omitted).) Given the indisputable facts presented by Janicek, and NMID’s and BOR’s failure to produce any evidence whatsoever on this issue, NMID cannot be found to “own” the bed and banks of Purdam Gulch Creek within the boundaries of Janicek’s property.

⁸ In addition to the requirements of I.C. § 5-210, the elements of adverse possession include that the possession has been actual, open, visible, notorious, continuous and hostile to the party against whom the claim is made. *Luce v. Marble*, 142 Idaho 264, 272, 127 P.3d 167, 175 (2005).

NMID and BOR do not explain the nature or source of interest, if any, NMID holds to the portion of Purdam Gulch Creek that crosses Janicek's property. As mentioned in the Janicek Initial Memo at 6-7, it is conceivable that NMID holds a prescriptive easement across Janicek's property for conveying drainage water away from its irrigated lands.⁹ If so, NMID must have derived it by virtue of BOR, which was the entity that excavated the channel, and presumably operated and maintained it before quitclaiming whatever interest BOR had to NMID in 2001. Whatever interest BOR had and that NMID may have acquired, it was subject to Janicek's existing rights.

Idaho Code 42-1102 provides among other things, that

The existence of a visible ditch, canal or conduit shall constitute notice to the owner, or any subsequent purchaser, of the underlying servient estate, that the owner of the ditch, canal or conduit has the right-of-way and incidental rights confirmed or granted by this section.

Janicek's diversion system or "conduit" has been in existence since at least 1951, fully fifty years before BOR purported to convey any interest it had in Purdam Gulch Creek to NMID. NMID accepted that interest, if any, subject to the rights confirmed or granted by Section 42-1102.

And even if NMID holds a prescriptive easement, Janicek has committed no trespass because that easement cannot be entirely exclusive. "Under Idaho law, trespass is the 'wrongful interference with the right of exclusive possession of real property.'" *Luce v. Marble*, 142 Idaho 264, 274, 127 P.3d 167, 177 (2005) (quoting *Moon v. N. Idaho Farmers Ass'n*, 140 Idaho 536, 541, 96 P.3d 637, 642 (2004)). There is no such thing as an easement of exclusive possession.

⁹ Janicek does not concede this point. NMID argues that under Idaho Code Sections 42-1208 and 42-1209, Janicek is required to obtain NMID's consent to divert water from within a NMID easement. However, the enactment of these statutes post-dates Janicek's diversion of water from Purdam Gulch Creek by 30 years (in the case of 42-1208) and 53 years (in the case of 42-1209). Thus, to the extent that Janicek's diversion works encroach on a NMID easement, these statutes are inapplicable.

Luce, 142 Idaho at 273, 127 P.3d 176 (citing *Drew v. Sorensen*, 133 Idaho 534, 541, 989 P.2d 276, 283 (1999); *Viebrock v. Gill*, 125 Idaho 948, 953, 877 P.2d 919, 924 (1994) (“An unlimited easement is virtually a conveyance of ownership, rather than an easement.”). So, even if NMID holds an easement, it is not and cannot be an easement of exclusive possession, and Janicek has therefore not committed a trespass.¹⁰

No caselaw cited by NMID changes this conclusion. Both *Idaho Power Co. v. City of Buhl*, 62 Idaho 351, 111 P.2d 1088 (1941) and *Jones v. McIntire*, 60 Idaho 338, 344, 91 P.2d 373 (1939) recite the general rule that a water right cannot be initiated in trespass upon private lands.¹¹ As discussed, however, Janicek has not trespassed on private lands.

Similarly, *Rabido v. Furey*, 33 Idaho 56, 62, 190 P. 73 (1920), is inapposite to this case. The *Rabido* Court recited what it called a “generally recognized principle that a valid water right cannot be initiated by using another’s ditch against his will, or by any other trespass,” but it did so only in passing. The *Rabido* Court did not rely on this proposition in reaching its holding, and no other reported case citing *Rabido* has relied on this statement or attempted to interpret it. The only reported case that might be considered as relying on this statement (albeit, without citing or quoting it directly) is *Washington County Irr. Dist. v. Talboy*, 43 P.2d 943, 946 (1935). In *Talboy*, the Idaho Supreme Court cited *Rabido* for the proposition that “No one can make an appropriation from a reservoir or canal for the obvious reason that the waters so stored or

¹⁰ Similarly, if NMID’s “trespass” allegation is viewed in easement law terms, NMID has not shown that Janicek has unreasonably interfered with its easement.

¹¹ For reasons that are completely unrelated to Janicek’s claim, the Supreme Court in *Idaho Power* and *Jones* held that no trespasses occurred. In *Idaho Power*, where information necessary to apply for a water right permit on another party’s land was obtained through observation beyond the premises and not by physical entry onto the premises, the Court upheld the water right permit because a trespass “must be physical, not merely mental.” In *Jones*, where the waters of springs naturally flowed across another party’s private lands onto the claimant’s lands, the Court held that claimant’s water right was valid because it was established without trespassing on the upstream property owner’s lands.

conveyed are already diverted and appropriated and are no longer 'public waters.'¹² The *Talboy* Court made this statement, however, in the context of analyzing the scope of a reservoir or canal owner's ownership rights in the diverted water; specifically, whether the owner was entitled to withhold water from patrons who apply to rent it (the Court answered this question in the negative). This interpretation is not applicable to the present case.¹³ Also, review of the authorities cited by *Rabido* shows it is merely an extension of the general rule stated in *Idaho Power* and *Jones* that a water right cannot be initiated in trespass upon private lands. That is, one cannot take water from an irrigation ditch *owned* and used by another to convey irrigation water for beneficial use without the other's consent because doing so would constitute a trespass.

B. Janicek has not trespassed because NMID does not "own" the water in Purdam Gulch Creek.

The rationale by which NMID claims ownership of the water in Purdam Gulch Creek is contrary to Idaho law regarding water rights and the appropriation of waste and seepage waters. NMID asserts that it "owns" the waters in Purdam Gulch Creek because it paid for the construction and enlargement of drains within its boundaries, because a contract with BOR provided NMID with the right as against BOR to the water developed or captured in the drains, and because NMID allegedly owns, operates, and maintains the drains. None of these actions, however, give NMID "ownership" of the waste and seepage waters that collect in Purdam Gulch Creek. The only ownership right one can obtain in the state's waters is ownership of the right of

¹² Here of course is why NMID's suggestion that Janicek's diversion is tantamount to sticking a straw into the Ridenbaugh Canal is incorrect. NMID's patrons presumably beneficially use all the water delivered through the Ridenbaugh, a fact that does not exist with respect to Purdam Gulch Creek.

¹³ Notably, the *Rabido* Court also found that water impounded in a reservoir becomes "the property of the appropriators and owners of the reservoir, impressed with the public trust to apply it to a beneficial use." *Id.* at 945. Thus, the *Rabido* Court explained a diverter's ownership rights in waters are limited by its obligation under the public trust to apply the water to a beneficial use.

beneficial use upon making a valid appropriation. *Coulson v. Aberdeen Springfield Canal Co.*, 39 Idaho 320, 323-24, 227 P. 29 (1924) (The waters of this state belong to the state and the right to the beneficial use thereof is all that can be acquired). NMID has presented no facts suggesting it beneficially uses water from Purdam Gulch Creek in any quantity that might preclude Janicek's diversion and use.

The law concerning waste and seepage water has been stated many times: "[S]urface waste and seepage water may be appropriated . . . subject to the right of the owner to cease wasting it, or in good faith to change the place or manner of wasting it, or to recapture it, so long as he applies it to a beneficial use." *Hidden Springs Trout Ranch, Inc., v. Hagerman Water Users, Inc.*, 101 Idaho 677, 680, 619 P.2d 1130, 1133 (1980) (emphases added); *Colthorp v. Mountain Home Irr. Dist.*, 66 Idaho 173, 179, 157 P.2d 1005, 1007 (1945); *Sebern v. Moore*, 44 Idaho 410, 416, 417, 418, 258 P. 176, 178 (1927).

The right to appropriate waste and seepage water is codified in Idaho Code Section 42-107, which states

All ditches now constructed or which may hereafter be constructed for the purpose of utilizing seepage, waste or spring water of the state, shall be governed by the same laws relating to priority of right as those ditches, canals and conduits constructed for the purpose of utilizing the waters of running streams.¹⁴

The Idaho Supreme Court recently confirmed that this statute authorizes appropriations of waste and seepage waters in drainage facilities. *See A & B Irrigation Dist. v. Aberdeen-American Falls Ground Water Dist.*, 141 Idaho 746, 750, 118 P.3d 78, 82 (2005) ("the Court has recognized that

¹⁴ Idaho's water right permitting statutes also recognize the right to appropriate seepage water. *See* I.C. § 42-202 ("any person . . . intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters . . . or other public waters in the state of Idaho, shall . . . make an application to the department of water resources for a permit to make such appropriation" (emphasis added)).

drain, waste and seepage waters may be appropriated and put to beneficial use.”) (citing Idaho Code § 42-107; *Hidden Springs Trout Ranch*, 101 Idaho at 680, 619 P.2d at 1133; *Colthorp*, 66 Idaho at 179, 157 P.2d at 1007; *Sebern*, 44 Idaho at 418, 258 P. at 178).

These cases and statutes make clear that one can establish a water right in another’s so-called waste and seepage water regardless of whether the diversion is initiated from a natural stream. Indeed, the statute contemplates that the diversion will not be from a natural stream, but provides that prior appropriation laws will apply as if it were. This is because these waters are deemed public waters. *See Haga, supra*; I.C. § 42-202.

Of course, the Idaho cases also make clear that such water rights relying in whole or in part on waste or seepage are subject to the rights of the “paramount owner,” to cease wasting, but only “so long as [the paramount owner] applies it to a beneficial use.” *Hidden Springs*, 101 Idaho at 680, 619 P.2d at 1133. NMID and BOR would like this court to rule that NMID is the paramount owner of not only the water it diverts from the Boise River, but also all water in Purdam Gulch Creek even if it does not put it to beneficial use (which it does not) and to rule that, despite this non-use, NMID can preclude others from obtaining water rights in its waste and seepage waters.¹⁵ This, however, is not the law in Idaho.

NMID and BOR rely on the final sentence of *Sebern* for the proposition that “[w]here there has been no appropriation of waste or seepage water prior to the construction of the drain in

¹⁵ NMID cites a 1981 memorandum from former IDWR Director A. Kenneth Dunn as support for its position that NMID can preclude others from appropriating waste and seepage waters (or any waters, for that matter) within its boundaries. (NMID Memo at 7; Aff. of B. Farris, Ex. B.) On its face, however, this memorandum is simply an informal guidance document setting forth internal agency policies for ease of administration. The memorandum is devoid of citation to legal authority, and it is unclear whether its policies are still employed by IDWR or if they ever officially were at all. Moreover, the memorandum discusses policies when reviewing applications to appropriate water as of 1981—30 years after Janicek’s predecessors began diverting and using water from Purdam Gulch Creek. In short, the policies contained in the memorandum are inapplicable to this Court’s determination in this matter. (We nevertheless note that the memorandum expressly acknowledges that waste and seepage waters from constructed drains are subject to appropriation.)

which such water collects, said water is in the possession of the owner of the drain, and is therefore not subject to appropriation under [I.C. § 42-107].” *Sebern*, 44 Idaho at 418-19, 258 P. at 178. This statement, however, is *dictum*. It was not necessary for the determination of *Sebern* because, in that case, an appropriation of waste or seepage water had been made prior to construction of the drain. This language’s lack of authority is underscored by the fact that it has not been relied upon in any reported appellate case since. Finally, unless the Court in *Sebern* was assuming that the owner of a drain was beneficially using the water that collected there, this lone statement—never again cited by an Idaho court—is irreconcilable with an uninterrupted line of Idaho cases prohibiting one who does not beneficially use water from precluding others from exercising their rights to its use. The most recent decision in this regard was *American Falls Reservoir Dist. No. 2 v. Idaho Dept. of Water Resources*, 154 P.3d 433, 450 (2007) (“AFRD #2”), which reaffirmed that irrigation districts may not waste or unnecessarily hoard water without putting it to some beneficial use.

Save one narrow exception not applicable here,¹⁶ all waters in the state are public waters subject to appropriation. It is well-settled that waste and seepage waters are public waters. As stated by the Court in *U.S. v. Haga* in construing the language in I.C. § 42-107, “whatever may be the classification of the water source, the water must belong to the state. It must be public water subject to appropriation.” *Haga*, 276 F. at 44. However much waste and seepage water collects in Purdam Gulch Creek, it is public water subject to appropriation.

Moreover, all public water—including so-called waste and seepage water—is “impressed with the public trust to apply it to a beneficial use.” *AFRD #2*, 154 P.3d at 450. Put another

¹⁶ Idaho Code Section 42-212 defines 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.”

way, any right to appropriate water is valid only to the extent that the water is put to beneficial use. *See U.S. v. Pioneer Irr. Dist.*, 144 Idaho 106, ___, 157 P.3d 600, 604 (2007) (“In Idaho it is a well-settled rule of public policy that the right to the use of the public water of the state can only be claimed where it is applied to a beneficial use in the manner required by law,” (quotation marks omitted)). Beneficial use, it has been said, is the basis, measure and limit of the right to public waters. *Id.* at ___, 157 P.3d at 604-06. *See also* I.C. § 42-104 (“The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such purpose, the right ceases.”)

None of the actions cited by NMID—construction, enlargement, operation or maintenance of a drainage system, or entering a contract with BOR—is enough to create an ownership interest in waste or seepage water that collects in Purdam Gulch Creek because those actions do not put water to beneficial use. There is no evidence that NMID has or has ever intended to put all of the waste and seepage water that collects in Purdam Gulch Creek to beneficial use.¹⁷ Indeed, all evidence suggests that the majority of water in Purdam Gulch Creek attributable to NMID’s waste and seepage is not used by NMID at all. Without using the waste and seepage waters it claims to own, NMID owns nothing.¹⁸

¹⁷ The 1915 contract between NMID and BOR to excavate drainage facilities—the same document that calls Purdam Gulch Creek a “natural drainage course”—shows that the sole purpose of constructing drainage facilities was to remove water from waterlogged lands, not to collect waste or seepage waters for NMID’s reuse. The contract recited NMID’s need to remove excess water yet at the same time obtain more irrigation water. But, rather than contemplating reusing the drain water, the contract provided NMID with BOR storage water. (Aff. of M. Lawrence, Ex. C (1915 contract, pp. 1-3).) These provisions show that the original intent in excavating drain facilities was to remove (and abandon) excess water from NMID’s lands, and that NMID had no intent to reuse it.

¹⁸ NMID cites Idaho Code Section 42-110 for the proposition that “Water diverted from its source pursuant to a water right is the property of the appropriator while it is lawfully diverted, captured, conveyed, used, or otherwise physically controlled by the appropriator.” However, this portion of Section 42-110 was not added until 2004—more than 50 years after Janicek’s predecessor’s began diverting water. Moreover, whatever rights this provision confers must be limited the constitutional requirement that water rights must be put to beneficial use.

It is undisputed that water flows in Purdam Gulch Creek year-round. (Aff. of S. King, ¶ 7; Aff of B. Janicek, ¶ 7) NMID, of course, does not provide irrigation water to its patrons year-round; its water rights are instead limited to use during the irrigation season. The fact that NMID has no water right under which it can put its waste, seepage, or return flow water to beneficial use during the non-irrigation season necessarily means that NMID cannot put such water to beneficial use. Part of Janicek's use of Purdam Gulch Creek water occurs outside the season of use for NMID's water rights. (Aff. of B. Janicek, ¶ 5.)

It is further undisputed that NMID does not put all of its waste or seepage water that collects in Purdam Gulch Creek to beneficial use during the irrigation season. Janicek has diverted and used water from Purdam Gulch Creek during the irrigation season for over 50 years and not once has NMID complained that this use has interfered with its alleged use of water from Purdam Gulch Creek. (Aff. of B. Janicek, ¶ 6.) The only logical conclusion from this is that NMID does not beneficially use all of the waste, seepage and return flow water that collects in Purdam Gulch Creek; if it had then presumably at some point it would have sought to curtail Janicek's use.

While it is not apparent (or relevant in this proceeding) whether NMID's alleged diversions from Purdam Gulch Creek to the Saint James Place subdivision or the Kennedy Lateral are a proper exercise of the incident rights of its original appropriation,¹⁹ NMID's

¹⁹ NMID arguably cannot legally divert water from Purdam Gulch Creek to irrigate St. James Place Subdivision or lands via the Kennedy Lateral because those are not the lands to which the recaptured water is appurtenant. See *Thompson v. Bingham*, 78 Idaho 305, 308, 302 P.2d 948, 949 (1956) ("seepage water or waste water . . . need not be continued and it may be intercepted and taken by such owner at any time and used on the land to which it is appurtenant"). The land to which irrigation water is appurtenant is the land to which it is applied. See I.C. § 42-101 ("the right to the use of any of the public waters . . . shall become the complement of, or one of the appurtenances of, the land or other thing to which, through necessity, said water is being applied"). That a water right is appurtenant to the land on which it is applied within irrigation districts is recognized in Idaho Code Section 42-915, which states that a "water right shall forever remain a part of said tract of land [irrigated by the water]." This interpretation was confirmed recently by the Idaho Supreme Court in *U.S. v. Pioneer Irr. Dist.*, 157 P.3d 600,

“paramount right” to water in Purdam Gulch Creek that can be identified as waste or seepage water exists only insofar as NMID puts it to beneficial use. “Neither the Idaho Constitution, nor statutes, permit irrigation districts and individual water right holders to waste water or unnecessarily hoard it without putting it to some beneficial use.” *American Falls Reservoir Dist. No. 2 v. Idaho Dept. of Water Resources*, 154 P.3d 433, 451 (2007). “Hoarding” is precisely what NMID is trying to do in this case; NMID is attempting to establish an exclusive right to public waters without putting it to beneficial use. This is unconstitutional and unlawful and this Court should not sanction it by ruling in NMID’s favor in this matter.

In summary, because the waters in Purdam Gulch Creek are public waters, Janicek is entitled to appropriate them under state law. This is true even if the waters are NMID’s waste or seepage waters and regardless of whether Purdam Gulch Creek is a natural channel. NMID’s “paramount” right to recapture water is limited to the extent that NMID actually puts such water to beneficial use. In any case, however, Idaho law is clear that this paramount right does not preclude others from establishing water rights in the so-called waste or seepage waters.

III. NMID’S LICENSE AGREEMENT WITH BRADLEY JANICEK DOES NOT ESTOP JANICEK WITH RESPECT TO ITS WATER RIGHT IN PURDAM GULCH CREEK.

The 1996 license agreement NMID entered into with Bradley Janicek (one member of Janicek Properties, LLC) for water diversions from the Sky Pilot Drain (the “Sky Pilot License”) does not estop Janicek from asserting a water right on Purdam Gulch Creek. The question one might ask is: Why would Bradley Janicek enter into a license agreement with NMID to use

608 (2007). The *Pioneer* Court also noted that “The Reclamation Act provides that ‘the right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, measure, and limit of the right.’ 43 U.S.C. § 372.” *Id.* at 604 (emphasis added). The right of an individual irrigator to recapture and reuse the waste or seepage waters appurtenant to its property within an irrigation district would be abrogated if NMID is allowed to recapture and reuse waste and seepage waters elsewhere within its boundaries.

water from a different drain on different property he operates individually as a lessee? A myriad of reasons present themselves, most of which would have nothing to do with Janicek Properties, LLC's diversion from Purdam Gulch Creek, and all of which must be affected by different attendant facts. Another reasonable question might be why would Janicek enter into a license agreement with NMID to divert water from Purdam Gulch Creek when it already had a 1951 water right out of Purdam Gulch Creek? The issues are unrelated, dependent on different facts, and quite possibly different rules. The Sky Pilot License is not an admission by Janicek Properties as to any issue in this subcase. Nor is Janicek Properties, LLC somehow estopped by decisions or actions taken by one of its members on that members' own behalf in unrelated circumstances.

In any event, not until NMID's objection in this subcase, has NMID ever asserted that Janicek or its predecessors did not have a right to divert water from Purdam Gulch Creek without NMID's permission. (Aff. of B. Janicek at ¶ 6)

CONCLUSION

NMID and BOR have not provided the substantial evidence necessary to rebut the presumption created by IDWR's recommendation and therefore have not raised a genuine issue of material fact. NMID and BOR have attempted to lay claim to water they do not beneficially use, and invalidate a lawful appropriation of water from Purdam Gulch Creek. That appropriation, supported by the *prima facie* evidence of IDWR's recommendation, and by undisputed facts showing continuous diversion and beneficial use by Janicek and its predecessors, requires as a matter of law, that Janicek be decreed as a water right as

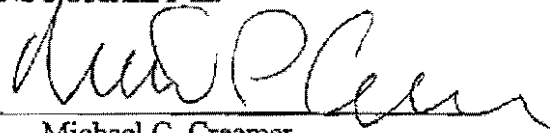
recommended by IDWR. Janicek respectfully requests this Court enter summary judgment in its favor.

DATED this 28th day of March, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By



Michael C. Creamer
Michael P. Lawrence

I HEREBY CERTIFY that on this 28th of March 2008, the foregoing was filed, served, or copied as follows:

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Michael P. Lawrence

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MAR 28 2008

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DEPARTMENT OF DISTRICT COURT - SRBA
WATER RESOURCES TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA) NOTICE SETTING HEARING
Case No. 39576)
SUBCASE NO: 63-27475

Please be advised that Special Master THEODORE R BOOTH
has set for hearing the MOTION TO PARTICIPATE AND EXPEDITED HEARING
REQUEST.

TUESDAY, APRIL 01, 2008 at 11:00 AM (MT)

SRBA
DISTRICT COURT
253 3RD AVENUE NORTH
TWIN FALLS, ID

Parties may participate by telephone by dialing the number
225-383-1099 and when prompted entering the code 675342.

Dated: MARCH 27, 2008

/S/ DIANA R DELANEY
Deputy Clerk
Snake River Basin Adjudication

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

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CERTIFICATE OF MAILING

I Certify that a true and correct copy of the NOTICE SETTING HEARING was mailed on MARCH 27, 2008, with sufficient first-class postage to the following:

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NAMPA AND MERIDIAN

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PIONEER IRRIGATION DISTRICT

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USDI BUREAU OF RECLAMATION

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Counsel for the United States

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

In Re SRBA	)	Subcase Nos. 63-27475
	)	
	)	Case No. 39576
	)	
	)	AFFIDAVIT OF ROBERT D.
	)	SCHMIDT
_____	)	
STATE OF MINNESOTA	)	
	) ss.	
County of Isanti	)	

I, ROBERT D. SCHMIDT, being duly sworn upon oath, state as follows:

1. I am employed as a groundwater hydrologist consultant to the Bureau of Reclamation. I have a masters degree in Geoengineering/Hydrology and was an employee of the Bureau of Reclamation's from 1998 to 2006. Prior to that, I was a hydrologic consultant from 1997-1998. From 1975 to 1995 I worked for the Bureau of Miles and the Bureau of Reclamation, where all of my work was involved with groundwater hydrology.
2. I constructed a computer model of subsurface flow in a portion of the Boise Valley that includes the constructed portion of the Purdam drain. I used this model (called the Purdam model in this affidavit) to determine the effects of irrigation activity

(canal seepage and on-farm infiltration) on aquifer head conditions and subsurface flow into the Purdam drain at the location of the Janicek point of diversion (POD).

3. The Purdam model was developed using the widely-applied analytic element modeling method and a groundwater modeling software package developed for the EPA called GFLOW. Surficial hydrologic features in the model area, including canals, drains, creeks and rivers are all represented in the model as head-specified boundary elements.

4. The boundaries of the Purdam model are aligned with surface water flow features. On the east and west sides the model boundaries are Ten Mile Creek and Mason Creek. On the north and south sides the boundaries are the Boise River and the New York canal. Due to stratigraphic layering which dips to the northwest, and northwest-southeast trending fault structures which parallel the creek boundaries, almost all of the hydrologic influences affecting Purdam drain return originate within the model area.

5. Head conditions for most canals and drains in the model area were derived from a digital elevation map (DEM) based on highly accurate LIDAR (Light Detection and Ranging) data. On-farm infiltration and precipitation in the model area is represented by spatially-distributed aquifer recharge rates derived from Boise Valley agricultural water budget data. I calibrated the Purdam model using both head and flow data. Fifty-five USGS observation wells located within the model area were used for head calibration and seepage measurements from the Ridenbaugh canal and the Kennedy lateral were used for flow calibration.

6. I first used the calibrated model to predict subsurface discharge to the Purdam drain under present irrigation conditions. The model predicted drain return upstream of the POD location to be 5.1 cfs, which is comparable to drain flow measurements made in early October 2007, by Reclamation. Uncertainty in drain return predictions is estimated to be about 20 percent of the predicted rate.

7. I next used the model to simulate Purdam drain return under "pre-development" conditions. In the "pre-development" model I eliminated all irrigation activity (canal seepage and on-farm infiltration) on Boise Project and non-project NMID lands. However the "pre-development" model assumed the continued existence of the constructed 12 foot deep Purdam drain. In addition, the "pre-development" model included infiltration due to precipitation and to irrigation activity in a portion of the Pioneer Irrigation District and on some nearby private lands. Eliminating irrigation activity on Boise Project and non-project NMID lands reduced drain flow at the POD by 4.8 cfs, from 5.1 cfs to 0.3 cfs. The water table elevation beneath the POD declined by 16.5 feet (from 2564.9 feet to 2548.4 feet).

8. I obtained hydrographs of observation wells near the POD which show a seasonal trend in depth to water. The water table rises throughout the irrigation season and declines during winter months. Between the end of one irrigation season and the start of another, the water table surface typically declines four to six feet, but the decline can be as much as nine feet.

9. The pre-development model, which predicts that the water table beneath the Purdam drain would decline by approximately 16.5 feet (or about 13.6 feet below the bottom of the Purdam drain) in the permanent absence of all irrigation activity, is entirely consistent with the seasonal water table response observed in these wells. I estimate that in the permanent absence of all irrigation activity it would take three to five years for the water table on the Sunrise Terrace to return to its pre-development level.

10. The Purdam drain model results demonstrate that canal seepage and on-farm infiltration from Boise Project and non-project NMID lands within the model area are responsible for essentially all of the subsurface return flow to the Purdam drain at the location of the POD.

Further your affiant sayeth naught.

DATED this 14th Day of March, 2008.



Robert D. Schmidt
Groundwater Hydrologist

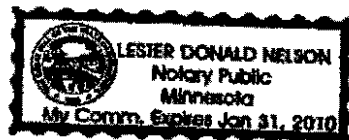
SUBSCRIBED AND SWORN to before me this 14th Day of MARCH, 2008.

Notary Public for Minnesota



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My Commission Expires: JAN, 31, 2010



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DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 39576

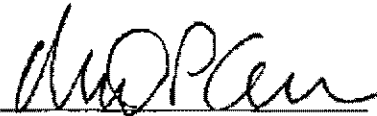
Subcase: 63-27475

**NOTICE OF SERVICE OF JANICEK
PROPERTIES LLC'S SECOND SET OF
INTERROGATORIES, REQUESTS FOR
ADMISSION AND REQUESTS FOR
PRODUCTION OF DOCUMENTS TO
NAMPA MERIDIAN IRRIGATION
DISTRICT**

Janicek Properties, LLC , through its counsel Givens Pursley LLP, hereby gives notice to all parties and counsel of record that on March 20, 2008, it served upon Nampa and Meridian Irrigation District, Janicek Properties, LLC's Second Set of Interrogatories, Requests for Admission, and Requests for Production of Documents.

Dated this 20th day of March, 2008.

GIVENS PURSLEY LLP


Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of March 2008, the foregoing was filed, served, or copied as follows:

ORIGINAL FILED

Clerk of Fifth Judicial District Court
Snake River Basin Adjudication
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Counsel for the United States

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

In In Re SRBA	)	Subcase No.63-27475
	)	
Case No. 39576	)	
	)	
	)	UNITED STATES' OPPOSITION TO
	)	JANICEK PROPERTIES' MOTION FOR
	)	SUMMARY JUDGMENT
_____	)	

COMES NOW Respondent, the United States, by and through the undersigned counsel, and submits this Memorandum in Opposition to Claimant, Janicek Properties, LLC's (Janicek) Motion for Summary Judgment.

Introduction

Janicek's motion for summary judgment asks this court to sanction an appropriation of wastewater¹ from a drain constructed by the Bureau of Reclamation

¹ "Waste or drain water is surplus water which results from delivery of dedicated water." *A & B Irr. Dist. v. Aberdeen-American Falls Ground Water Dist.*, 141 Idaho 746, 750, 118 P.3d 78, 82 (2005) (citing *Jensen v. Boise-Kuna Irr. Dist.*, 75 Idaho 133, 135, 269 P.2d at 755-56 (1954)).

(Reclamation) and now owned by the Nampa & Meridian Irrigation District (NMID). Janicek's motion must be denied because the Idaho Supreme Court has directed that wastewater collected in a constructed drain is not subject to appropriation.

Standard of Review

Summary judgment may only be granted upon a showing "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). "[I]f any genuine issue of material fact remains unresolved summary judgment is improper." *McKinley v. Fanning*, 100 Idaho 189, 190, 595 P.2d 1084, 1085 (1979); *Nielsen v. Provident Life and Accident Ins. Co.*, 100 Idaho 223, 596 P.2d 95 (1979). In ruling on a motion for summary judgment, "all facts and inferences must be drawn in favor of the nonmoving party...." *Thompson v. City of Idaho Falls*, 126 Idaho 587, 590, 887 P.2d 1094, 1097 (Idaho Ct. App. 1994); *Ashby v. Hubbard*, 100 Idaho 67, 69, 593 P.2d 402, 404 (1979) ("facts should be liberally construed in favor of the party against whom summary judgment is sought and all doubts are to be resolved against the moving party"). Finally, this Court has the authority to enter summary judgment in favor of the non-moving parties. *Barlow's Inc. v. Bannock Cleaning Corp.*, 103 Idaho 310, 647 P.2d 766 (Ct. App. 1982).

Argument

I. NO WATER RIGHT CAN BE RECOGNIZED IN PURDAM DRAIN.

Janicek claims to be entitled to a water right because Purdam Drain (called Purdam Gulch Creek by Janicek) "is and was a natural water course" prior to Reclamation's construction of the drain. MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT at 7 (MEM. IN SUPP.). Janicek is simply wrong in claiming that Purdam Drain was a natural water course prior to Reclamation's construction. Even if some form of channel may have existed

downstream of the present site of Janicek's diversion, no natural waterway existed at the site prior to Reclamation's construction of the drain.

A report done by A.D. Foote² in 1887, REPORT ON THE IRRIGATING AND RECLAIMING OF CERTAIN DESERT LANDS IN IDAHO AND OTHER PROJECTS CONNECTED THEREWITH, described the area where the Boise Project is now located as desert lands with limited vegetation. It explained that the main stream channels in the area of Janicek's claim – Indian, Ten Mile and Five Mile Creeks – contained water “for a month or two only in the early spring, and [were] dry for the remainder of the year.” REPORT at 17. The report also included a sketch of “natural drainage channels” existing at that time. Although the proposed laterals shown in the sketch reached the area of Janicek's claim, no “natural drainage channel” is shown there. *Id.* at 43.

Construction of the Ridenbaugh Canal and other features of the Boise Project rapidly changed the character of the land surrounding the claim site as seepage and return flows waterlogged the land. The 1915 contract relied on by Janicek explained that “the groundwater table is rising in the District [NMID] and in places is already close to the surface.”³ Contract at 2, Exhibit C to the AFFIDAVIT OF MICHAEL LAWRENCE. Photos of the construction of Purdam Drain in 1914 show that even several miles downstream from the claim site the land was a flat and featureless marsh covered by cattails.⁴ See Exhibits H and I to the AFFIDAVIT OF JERRY

² Foote is generally regarded as the father of large scale irrigation in the Boise Valley. See <http://www.idahohistory.net/Reference%20Series/0190.pdf>.

³ Modeling by hydrologist Robert Schmidt confirms what is apparent from the historic record: but for “canal seepage and on-farm infiltration from Boise Project and non-project NMID lands” there would be no reliable water supply at the claim site. AFFIDAVIT OF ROBERT SCHMIDT at ¶ 8.

⁴ The photos are of the construction of the initial segment of the Purdam drain within the Pioneer Irrigation District. That construction stopped at the Phyllis Canal. See Exhibit F to the AFFIDAVIT OF JERRY GREGG. NMID and Reclamation then entered into the 1915 contract which provided for the extension of Purdam drain into NMID's lands. Construction of the extension

GREGG. None of those photos show any evidence of a natural water course. Nor do any of the maps accompanying Reclamation's annual reports or any other historic record maintained by Reclamation show evidence of a natural water course prior to the construction of Purdam Drain. AFFIDAVIT OF JERRY GREGG at ¶ 12.

The only evidence Janicek cites to support its claim that a natural water course existed prior to construction of the drain is a cost estimate attached to the 1915 contract between Reclamation and NMID which provided for the construction of a drainage system. That contract addressed the construction of a series of drainage systems that included 13 ditches spanning more than 50 miles in length.⁵ Estimate of Cost at 5, included within Exhibit C to the AFFIDAVIT OF MICHAEL LAWRENCE. The estimate of costs includes a list of "proposed ditches" that "will follow the natural drainage courses as closely as feasible, and these channels will be straightened and deepened." *Id.* at 1.

Although Purdam Gulch is included on that list, the list does not establish that a natural water course existed at the claim site prior to the construction of Purdam Drain for two reasons. First, given the lack of reference to a channel or gulch at the claim site on any map prior to the beginning of the construction of the drainage system in 1913, the reference to "these channels" in the list should be read as a general reference to channels where they existed, not as an affirmative statement that channels actually existed along the entire course of the proposed ditches.

took place in 1916. *See* Exhibit G to the AFFIDAVIT OF JERRY GREGG.

⁵ The contract also addressed ownership of the water within the ditches to be constructed. It provided that "[t]he right to water developed in the drainage system herein provided for shall belong to the Boise Project and the old water right lands of the District [i.e., NMID's land located outside the Project]. Contract at 7, Exhibit C to the AFFIDAVIT OF MICHAEL LAWRENCE.

Second, even assuming that some form of natural gulch or channel existed at the time the drain was constructed, both the historic documents and the modeling of the water table discussed above demonstrate that there was no natural flow at the claim site. Instead, any water that may have been present derived from irrigation within the Boise Project and NMID's non-project land. In short, there is no viable evidence of a natural water course at the claim site prior to Reclamation's construction of the drain.

The Idaho Supreme Court held that there can be no appropriation of water from a constructed drain in *Sebern v. Moore*, 44 Idaho 410, 258 P. 176 (1927). Specifically, the court ruled that

where there has been no appropriation of waste or seepage water *prior to construction of the drain in which such water collects*, said water is in the possession of the owner of the drain and is therefore not subject to appropriation under C.S. § 5562 [now I.C. § 42-107].”

258 P. at 178 (emphasis added). The rationale for that rule is rooted in fairness: a later potential water user should not be allowed to enjoy a “free ride” on the original appropriator’s efforts and expense in constructing the drain and collecting the wastewater.

There is no question that Purdam drain collects wastewater. Indeed, Janicek appears to concede the point.⁶ MEM. IN SUPP. at 9 (“Much of the water in Purdam Gulch Creek may derive from seepage or return flows from irrigation deliveries”). To the extent Janicek does not concede the water is wastewater, both historic documents and the hydrologic evidence noted above establish that essentially all of the water claimed by Janicek is wastewater. *E.g.*,

AFFIDAVIT OF ROBERT SCHMIDT.

⁶ Janicek also concedes that appropriations of wastewater are subject to legal limitations. As Janicek explains, “NMID, BOR or their consumers could undertake efforts to prevent seepage and other incidental return flows and Janicek could not complain.” MEM. IN SUPP. at 12 n.7.

Janicek argues that the wastewater it claims to have appropriated has lost its status as wastewater because it “has become part of the public waters by virtue of having been commingled with waters of natural watercourses and the aquifer.” MEM. IN SUPP. at 12. That argument cannot succeed for two reasons.

First, as shown above, the drain reach at the claim site is not a natural water course and therefore water within the drain is not “public water” subject to appropriation. Moreover, Janicek has yet to provide any evidence of a source of water for the drain other than irrigation wastewater and this Court has no basis for finding that non-wastewater is present.

Second, even assuming *arguendo* there is some small quantity of natural water flowing in the drain, more than 80 years ago the United States District Court for the District of Idaho clarified that commingling wastewater with other water does not change its character.⁷ *United States v. Haga*, 276 F. 41 (D. Id. 1921). Idaho courts have long followed that rule. *E.g. Sebern*, 44 Idaho at 17-18, 258 P. at 178 (citing *Haga*). The Idaho Supreme Court recently reiterated that commingling water does not change its character in its decision in *A & B Irrigation*. Although, as Janicek notes, the court affirmed then-Presiding Judge Burdick, it did not accept all of his reasoning. In particular, it rejected the very proposition Janicek relies on. *Cf.* MEM IN SUPP. at 11.

The Idaho Supreme Court began its discussion of the issue by noting that under the rationale applied by the trial court, as well as that of the court’s own prior decision in *Jensen v. Boise-Kuna Irr. Dist.*, 75 Idaho 133, 269 P.2d 755 (1954), groundwater captured and commingled with wastewater in a drain would lose its character as groundwater and be treated as wastewater. *A & B Irrigation*, 141 Idaho at 751, 118 P.3d at 83. The court then expressly

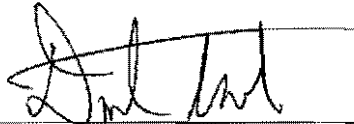
⁷ *Haga* arose on Eight Mile Creek within the Boise Project, just a few miles southeast of the claim site.

rejected the proposition that commingling water changes its nature. Instead, as the court explained, “[t]o the extent that the source of appropriated water can be identified it retains that characterization.” 141 Idaho at 753, 118 P.3d at 85. Thus, even assuming *arguendo* that there is some “natural” water in the drain, as a matter of law the wastewater in the drain remains wastewater.

Conclusion

Janicek claims to have initiated his appropriation in 1951, decades after Reclamation constructed the drain which collects the wastewater he claims to have appropriated. Consequently, the water Janicek claims is not subject to appropriation and the motion for summary judgment must be denied.

DATED this 14th day of March, 2008.



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CERTIFICATE OF MAILING

I certify that on March 14, 2008, I served true and correct copies of the foregoing **UNITED STATES' OPPOSITION TO JANICEK PROPERTIES' MOTION FOR SUMMARY JUDGMENT** as follows:

via Facsimile:

Clerk of the District Court (Original)
Snake River Basin Adjudication
Phone: 208-736-3011
Fax: 208-736-2121

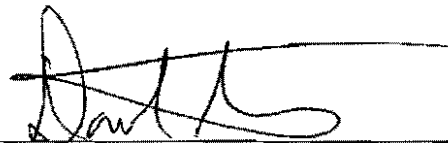
Idaho Department of Water Resources
Document Depository
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A handwritten signature in black ink, appearing to read "David W. Gehlert", written over a horizontal line.

David W. Gehlert

RECEIVED

MAR 14 2008

DEPARTMENT OF
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Attorneys for Nampa & Meridian Irrigation District

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

In Re SRBA

Case No. 39576

Subcase No. 63-27475

**NMID'S MEMORANDUM
IN OPPOSITION TO JANICEK
PROPERTIES MOTION FOR
SUMMARY JUDGMENT**

COMES NOW Objector, Nampa & Meridian Irrigation District (NMID), by and through its attorneys of record, Ringert Clark Chartered, and submits this Memorandum in Opposition to Claimant, Janicek Properties, LLC (hereinafter "Janicek") Motion for Summary Judgment.

I. INTRODUCTION

On or about February 19, 2008, Janicek filed a Motion for Summary Judgment requesting the Court to dismiss NMID's objection to the recommendation for water right no. 63-27475. Janicek contends that NMID cannot show that it owns the Purdam Gulch Creek (hereinafter "Purdam Drain") or the water flowing in it. "Janicek does not dispute that [Bureau of Reclamation] BOR has

NMID'S MEMORANDUM IN OPPOSITION TO JANICEK PROPERTIES' MOTION FOR
SUMMARY JUDGMENT - Page 1

altered the Purdam [Drain] from its original state to facilitate drainage of irrigated lands within NMID's boundaries, and that NMID has assumed the responsibility for ongoing work to maintain Purdam [Drain's] drainage capabilities." *Janicek Memo*, pg. 5. However, Janicek's argument is premised on the fact that at the time of Janicek's initial diversion and appropriation (1951), the Purdam Drain was a natural stream subject to appropriation. Janicek's Motion is flawed because for the following reasons:

1. At Janicek's claimed point of diversion, the Purdam Drain is a constructed drain that was constructed and/or paid for by NMID in 1916, and NMID has been operating and maintaining the Purdam Drain since that time. The Purdam Drain may have been enlarged downstream of Janicek's point of diversion, but it was a newly constructed portion of the Purdam Drain at Janicek's point of diversion;
2. The Purdam Drain is a facility of NMID which NMID uses to deliver water to landowners located downstream of Janicek's claimed point of diversion. Thus, Janicek's alternative argument that NMID has not beneficially used the water in the Purdam Drain is false and without merit;
3. Janicek's claimed point of diversion is an impermissible trespass of NMID's Purdam Drain, and Janicek has not obtained the permission of NMID. Idaho law is well settled that one cannot appropriate water through the trespass upon the land of another nor use the ditch of another against his will. The Idaho Department of Water Resources (IDWR) has confirmed this principle; and
4. Janicek knows that he may not divert water from NMID's drains and facilities as he

has previously sought NMID permission to temporarily pump from NMID's drains.

Janicek's current position is inconsistent with the License Agreement he entered into with NMID in 1996 to temporarily pump for NMID's Sky Pilot Drain.

Based upon these facts, Janicek's argument is akin to asserting that a water right can be established in NMID's Ridenbaugh Canal because it was an extension of a natural stream. Such an argument cannot be sanctioned under Idaho law. At a minimum, there continues to remain material issues of fact which would preclude summary judgment.

II. STATEMENT OF FACTS

A. NMID.

NMID is an irrigation district organized under Title 43 of the Idaho. NMID is also a drainage district authorized under Chapter 3, Title 43 of the Idaho Code. NMID was formed in approximately 1904. However, NMID's water rights go back to the 1800s because it purchased the assets of Boise City Irrigation and Land Company, including the water rights, canals, laterals and drain ditches owned by the Boise City Irrigation and Land Company. By 1915, some lands within NMID were incapable of irrigation because of high water tables and NMID entered into a contract with BOR to construct and enlarge a drainage system. *See Affidavit of Michael Lawrence*, Ex. C and *Affidavit of Jerry Gregg*. This drainage system involved both the construction of new drains and the enlargement of existing drains. NMID paid for the construction and enlargement of the drains and miles and miles of drainages were constructed and enlarged as part of this endeavor. *Id.* It should be further noted that the contract between NMID and BOR further provided NMID with the right to the water developed or captured in said drainage system. *Id.* pg. 7, ¶ 5.

B. THE CONSTRUCTION OF THE PURDAM DRAIN.

The earliest accounts of a drainage system are provided in a report by A.D. Foote dated 1887. *See Affidavit of S. Bryce Farris, Ex. A.* This report discusses and provides illustrations of drains for the Ten Mile, Indian, Black and Five Mile. Those drains only had water for “a month or two only in the early spring and were dry the remainder of the year.” *Id.* pg. 17. Noticeably absent is any mention of the Purdam Drain.

Part of the construction of NMID’s drainage system in 1915 included the construction and enlargement of the Purdam Drain.¹ Janicek latches on to the fact that portions of the Purdam Drain may have been enlarged and thus there is a natural creek that must have existed at the location of Janicek’s point of diversion. However, this is contrary to the actual evidence. Even if, for arguments sake, portions of the Purdam Drain existed prior to 1915, there is no dispute that the portion across Janicek’s property did not exist. Janicek’s property lies within a half of a mile of the beginning of the Purdam Drain. Janicek’s property is at the farthest upstream end of the Purdam Drain. This portion of the drain was constructed in or around 1916 and did not exist prior to that time. *See Affidavit of Jerry Gregg.* Thus, even if portions of the Purdam Drain downstream of Janicek’s claimed point of diversion may have been a natural drainage, the relevant reach where Janicek’s claimed point of diversion is located was newly constructed by BOR for NMID.

C. JANICEK’S DIVERSION.

Janicek’s property is located within the boundaries of NMID and Janicek has been

¹ The construction also included the Sky Pilot Drain which as discussed, *infra*, is a drain in which Janicek sought NMID’s permission to temporarily pump from and entered into a recorded license agreement allowing him to do so.

apportioned benefits for both irrigation and drainage purposes. Janicek's property is delivered water by NMID via the Kennedy Lateral. There is no dispute that Janicek's property is located within NMID and has been apportioned benefits prior to 1943, which is when Janicek suggests his predecessor began diverting from the Purdam Drain.

The recommendation for water right no. 63-27475 lists the priority date of March 1, 1951. Interestingly, even though the priority date is 1951, Janicek suggests that he or his predecessor has been diverting from the Purdam Drain since 1943. Nevertheless, as previously discussed, the claimed point of diversion is located within a half of a mile of the beginning of the Purdam Drain and is located below NMID's Ridenbaugh Canal.

D. NMID'S OPERATION OF THE PURDAM DRAIN AND DELIVERIES.

Since at least 1915, NMID has operated and maintained the Purdam Drain as part of its drainage system. Janicek does not dispute that NMID operates and maintains the Purdam Drain, including the portion located across Janicek's property. Janicek has suggested that NMID's objection is without merit because NMID does not beneficially use the water in the Purdam Drain. This argument is contrary to the undisputed facts.

NMID does deliver water to its landowners via the Purdam Drain. *See Affidavit of John P. Anderson*. Said deliveries are located below Janicek's claimed point of diversion. *Id.* NMID has a pump station downstream of Janicek's property which pumps from the Purdam Drain and delivers irrigation water to NMID's landowners, including St. James Place Subdivision. *Id.*

III. STANDARD OF REVIEW

The standard of review under Rule 56 of the Idaho Rules of Civil Procedure is well

established and NMID does not disagree with the standard provided in Janicek's Memorandum. *Janicek's Memo*. Pgs. 3-4. However, NMID would like to point out and remind the Court that: (1) all controverted facts are liberally construed in favor of the non-moving party (NMID); and (2) the burden at all times is on the moving party (Janicek) to prove the absence of a genuine issue of material fact. Lastly, the Court is authorized to enter summary judgment in favor of the non-moving parties. *Barlow's Inc. v. Bannock Cleaning Corp.*, 103 Idaho 310, 647 P.2d 766 (Cl. App. 1982).

IV. ARGUMENT

A. THE PURDAM DRAIN, AT THE LOCATION OF JANICEK'S POINT OF DIVERSION, WAS CONSTRUCTED AND/OR PAID FOR BY NMID.

The Purdam Drain, which was constructed and/or paid for by NMID in 1915 is no different from NMID's Ridenbaugh Canal or other laterals. As with those facilities, the Purdam Drain is a facility owned, operated and maintained by NMID and a landowner cannot simply stick a pump in NMID's facilities and create their own independent water right. Indeed, it is a well settled rule of Idaho law that an appropriation of water cannot be made or a water right issued to appropriate water acquired through trespass upon the land of another. *Idaho Power Co. v. Buhl*, 62 Idaho 351, 111 P.2d 1088 (1941); *Jones v. McIntire*, 60 Idaho 338, 344, 91 P.2d 373 (1939). Nor can a valid water right be initiated by using the ditch of another against his will. *Rabido v. Furey*, 33 Idaho 56, 62, 190 P. 73 (1920). "Where there has been no appropriation of waste or seepage water prior to the construction of the drain in which such water collects, said water is in the possession of the owner of the drain, and is therefore not subject to appropriation under C.S., sec. 5562 [now I.C. § 42-107]." *Sebern v. Moore*, 44 Idaho 410, 258 P. 176 (1927). In this case, the drains, i.e. the Purdam Drain, were constructed and enlarged for NMID and such construction was paid for by NMID. The drains

are owned, operated and maintained by NMID and any claimed water rights within said drains after 1915 would amount to a trespass.

Consistent with the above-referenced law, the Idaho Department of Water Resources has made it clear that appropriations within the boundaries of an irrigation district such as NMID may not be approved without the permission of the irrigation district. As explained by former Director A. Kenneth Dunn in a Memorandum dated September 8, 1981, this requirement of permission by the irrigation district also applies even if the facility is characterized as a "natural channel." *See Affidavit of S. Bryce Farris*, Ex. B. NMID does not concede that the Purdam Drain in the location of Janicek's claimed point of diversion could be characterized as a "natural channel" but for argument sake, even if it could, it would still require the written agreement of NMID.

Furthermore, Janicek is estopped from taking the position that the permission of NMID is not required to pump from NMID's drain due to the fact that Janicek has previously requested the permission of NMID to temporarily pump from an NMID facility known as the Sky Pilot Drain. In fact, in December of 1996, NMID and Janicek entered into a license agreement, recorded in the records of Ada County, Idaho, to temporarily pump from the Sky Pilot Drain. *See Affidavit of S. Bryce Farris*, Ex. C. Like the Purdam Drain, the Sky Pilot Drain is a drain constructed and paid for by NMID and is owned operated and maintained by NMID. It is inconsistent for Janicek to acknowledge and seek NMID's permission to pump from the Sky Pilot Drain, and to also suggest that he can acquire a water right in NMID's Purdam Drain without NMID's consent.

Additionally, as explained, *supra*, NMID does deliver water to its landowners via the Purdam Drain downstream of Janicek's claimed point of diversion. Janicek's suggestion that there was no

intent by NMID to beneficially use the water developed by the construction of NMID's drainage system is directly contrary to the provisions of the 1915 contract which expressly provides NMID the right to the water developed in the drains. Thus, Janicek's claimed point of diversion is not only a trespass of NMID's Purdam Drain, but also amounts to an interference with NMID's prior rights to deliver water to downstream landowners.²

Janicek suggests that NMID's position is akin to suggesting that no water rights could be perfected in a natural stream, including the Boise River or the Snake River, because the natural stream has been modified. This argument is misplaced. The distinction between the Purdam Drain and the Boise River is that the Purdam Drain is NOT a natural stream. A more appropriate analogy would be to a drain or ditch constructed out of the Boise River. Said drain or ditch is not a "natural stream" and is not subject to appropriation. Water diverted from its source, i.e. the Boise River, "is the property of the appropriator while it is lawfully diverted, captured, conveyed, used or otherwise physically controlled by the appropriator." I.C. § 42-110. In this case, the water in the Purdam Drain is diverted captured, conveyed, used or physically controlled by NMID in NMID's Purdam Drain and is not subject to appropriation. As discussed, *supra*, water in the Purdam Drain belongs to NMID pursuant to its contract with BOR in 1915 which provides NMID the right to the water developed in the constructed drainage system. Furthermore, the water is in possession of the owner

² Pursuant to I.C. § 42-1209, Janicek may not cause or permit his pump and pipeline within NMID's easement without its written consent. Diverting water upstream of NMID's diversions, with a later priority, amounts to an injury and an unreasonable interference with NMID's rights. Furthermore, pursuant to I.C. § 42-1208, NMID's right-of-way for the Purdam Drain is not subject to adverse possession. While this subcase does not specifically address easement and rights-of-way issues, it further shows that Janicek's claimed point of diversion within the Purdam Drain and NMID's easement is improper and should not be judicially sanctioned by the SRBA Court.

of the drain, i.e. NMID, and is not subject to appropriation pursuant to I.C. § 42-107 and *Sebern v. Moore, supra*.

The bottom line is that the undisputed evidence is that the Purdam Drain, in the location of Janicek's claimed point of diversion, is a facility that was constructed for NMID and is owned, operated and maintained by NMID. Janicek's cursory argument that the Purdam Drain is a natural channel subject to appropriation is simply not supported by the facts. Accordingly, NMID requests that the Court issue an order granting NMID summary judgment and disallowing Janicek's claim as an improper trespass. In the alternative, it is clear that there are sufficient material issues of fact which would preclude the granting of Janicek's motion.

B. THE WATER IN THE PURDAM DRAIN IS NMID'S WASTE WATER.

Generally, an irrigation district has the right to recapture and reuse seepage or waste water from irrigation of lands within its boundaries. *Colthrup v. Mountain Home Irr. Dist.*, 66 Idaho 173, 179 (1945); *Sebern v. Moore*, 44 Idaho 410 (1927). "[S]eeage water or waste water running from one's land to that of another need not be continued and it may be intercepted and taken by such owner at any time and used on the land to which it is appurtenant." *Thompson v. Bingham*, 78 Idaho 305, 308 (1956). Appropriation of surface waste and seepage is "'subject to the right of the owner to cease wasting it, or in good faith, to change the place and manner of wasting it, or to recapture it, so long as he applies it to beneficial use.'" *Colthrup*, 66 Idaho at 179. The appropriator of waste water has not right to compel the original appropriator to continue to return the waste or seepage water to the stream source. *Hidden Springs Trout Ranch v. Hagerman Water Users Assoc.*, 101 Idaho 677, 680-81 (1980). The appropriator of surface waste and seepage water "cannot acquire a

prescriptive right to the continued flow of waste or seepage water from the land of another.”

Thompson v. Bingham, supra.

More recently, in *A & B Irrigation Dist. v. Aberdeen-American Falls Ground Water District*, 141 Idaho 746, 118 P.3d 78 (2005), the Idaho Supreme Court considered the enlargement claims in the Snake River Basin Adjudication by A & B Irrigation District for water captured in its drains. The captured water was not used on lands which were part of A & B’s original water rights, but rather an enlargement. The Supreme Court held that the use of the recaptured water was not valid because it was being used on new, additional lands which were not part of A & B’s original rights. However, the Court made it clear that :

A & B may use the water on its original appropriated lots. “It is well settled law that seepage and waste water belong to the original appropriator and , in the absence of abandonment or forfeiture, may be reclaimed by such appropriator as long has he is will and able to put it to a beneficial use.” *Reynolds Irrigation Dist. V. Sproat*, 70 Idaho 217, 222, 214 P.2d 880, 883 (1950) (citing *U.S. v. Haga*, 276 F.41, 43 (D. Id. 1921)); *see also Sebern*, 44 Idaho at 418, 258 P. at 178.

Id. at 752 (emphasis added).

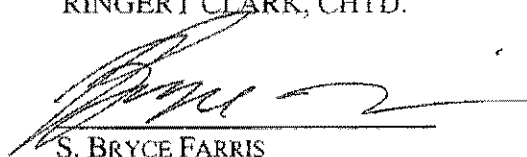
Janicek argues that he is entitled to NMID’s waste water. This argument again fails because the water in NMID’s drain has been reclaimed and/or recaptured by NMID and is not subject to appropriation for the reasons set forth *supra*. Again, “[w]here there has been no appropriation of waste or seepage water prior to the construction of the drain in which such water collects, said water is in the possession of the owner of the drain, and is therefore not subject to appropriation under C.S., sec. 5562 [now I.C. § 42-107].” *Sebern v. Moore*, 44 Idaho 410, 258 P. 176 (1927) (emphasis added).

V. CONCLUSION

The undisputed facts are that the Purdam Drain is a constructed drain, which is part of NMID's drainage system, and is used to deliver water to NMID's landowner. The water in the Purdam Drain is owned and controlled by NMID in its constructed drain and is not subject to appropriation. Accordingly, NMID respectfully requests that the Janicek's Motion be denied. In addition, the Court has the authority to grant summary judgment to the non-moving party and NMID requests that the Court do so based upon these facts.

DATED this 13th day of March, 2008.

RINGERT CLARK, CHTD.

A handwritten signature in black ink, appearing to read "S. Bryce Farris", is written over a horizontal line.

S. BRYCE FARRIS
Attorneys for the NMID

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of March, 2008, a true and correct copy of the foregoing was served upon all parties listed below by:

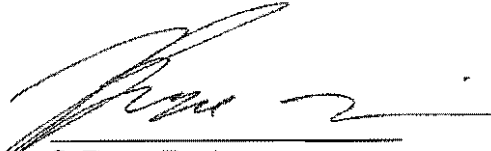
☒ U. S. mail, postage prepaid
☐ hand delivery

☐ express mail
☐ facsimile

Janicek Properties, LLC
c/o Michael P. Lawrence
Givens Pursley, LLP
601 W. Bannock Street
P.O. Box 2720
Boise, ID 83701-2720

USDI Bureau of Reclamation
Represented by:
US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098


S. Bryce Farris

CONFIDENTIAL

of water to NMID's landowners, including the land owned by Brad Janicek and/or Janicek Properties, LLC (hereinafter "Janicek").

3. Janicek's property is located within the boundaries of NMID and has been apportioned benefits by NMID, including drainage benefits. NMID delivers irrigation water to Janicek's property via a NMID facility known as the Kennedy Lateral. The Purdam Drain also courses through Janicek's property. The Purdam Drain begins less than one mile to the east of Janicek's property and is located below NMID's main delivery canal known as the Ridenbaugh Canal.

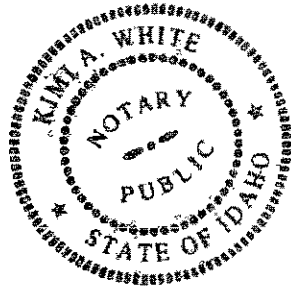
4. The Purdam Drain is a drain that is operated and maintained by NMID. Most of NMID's drainage system was constructed by the United States Bureau of Reclamation (BOR) pursuant to a contract in 1915. NMID's operation and maintenance includes cleaning, maintaining, repairing the Purdam Drain and NMID has done so over the years where the Purdam Drain courses through Janicek's property.

5. NMID also uses the Purdam Drain to deliver water to its landowners. NMID has a pump station, operated and owned by NMID, downstream of Janicek's property. NMID has two pumps that recover water from the Purdam Drain and divert it back to the Kennedy Lateral to provide water to NMID's landowners. NMID has another pump that delivers pressure irrigation water to St. James Place Subdivision. In addition, landowners within NMID have obtained NMID's permission over the years to pump water from the Purdam Drain as supplement water during short or low water years.

DATED this 28 day, of February, 2008.

John P. Anderson
John P. Anderson

Sworn to and subscribed before me this 28th day of February, 2008.



Kim A. White
Notary Public for Idaho
Residing in Boise, Idaho
My Commission Expires: 04/01/10

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of March, 2008, a true and correct copy of the foregoing was served upon all parties listed below by:

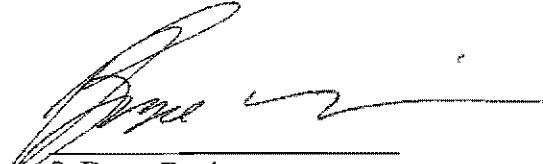
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Janicek Properties, LLC
c/o Michael P. Lawrence
Givens Pursley, LLP
601 W. Bannock Street
P.O. Box 2720
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USDI Bureau of Reclamation
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Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098


S. Bryce Farris

COOPER

operation and maintenance of the drainage system located within the boundaries for Nampa & Meridian Irrigation District (NMID).

3. On or about June 1, 1915, Reclamation and NMID entered into an agreement concerning the construction of a drainage system within NMID's boundaries. A true and correct copy of said agreement is attached hereto as **Exhibit A**.

4. On or about November 5, 1918, Reclamation and NMID entered into another agreement concerning the construction of a drainage system within NMID's boundaries. A true and correct copy of said agreement is attached hereto as **Exhibit B**.

5. Continuing until approximately the 1970's, Reclamation prepared annual reports for the Boise Project. These reports contain information regarding project construction, operation and maintenance activities, which include activities relating to construction, operation, and maintenance of drains within the project.

6. Attached as **Exhibit C** is a true and correct copy of a portion of the Annual Report for 1915, which includes information regarding the construction and operation of NMID's drainage system.

7. Attached as **Exhibit D** is a true and correct copy of a portion of the Annual Report for 1916, which includes information regarding the construction and operation of NMID's drainage system.

8. Attached as **Exhibit E** is a true and correct copy of a document entitled, "Map Showing Location of Proposed Drainage Ditches for the Nampa-Meridian Irrigation District" dated March 1914. This map was included as Exhibit B to the 1914 Annual Report.

9. Attached as **Exhibit F** is a true and correct copy of a document entitled, "General

Map” of the Boise Project, which was included as part of the 1914 Annual Report.

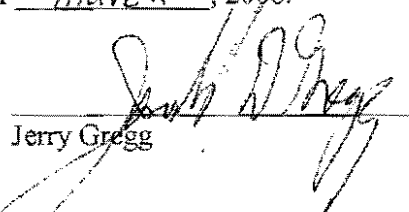
9. Attached as **Exhibit G** is a true and correct copy of a document entitled, “General Map” of the Boise Project, which was included as part of the 1916 Annual Report.

10. Attached as **Exhibit H** is a true and correct copy of a photograph taken on June 22, 1914, which shows an electric dredge excavating Purdam Slough Drain through the Lemp ranch. This portion of the Purdam drain is located several miles or more downstream of the location of the point of diversion for 63-27475.

11. Attached as **Exhibit I** is a true and correct copy of a photograph taken on June 22, 1914. This is another photograph taken on the same day, which shows an electric dredge excavating Purdam Slough Drain through the Lemp ranch. This portion of the Purdam drain is located several miles or more downstream of the location of the point of diversion for 63-27475.

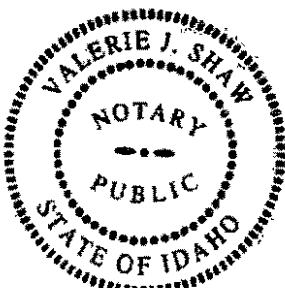
12. I am not aware of any historic records maintained at the SRAO that would show the existence of a creek at the location of the point of diversion for 63-27475 prior to commencement of construction of the Purdam drain in 1914.

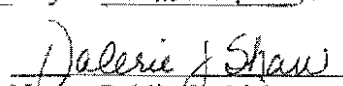
DATED this 12 day, of March, 2008.



Jerry Gregg

Sworn to and subscribed before me this 12 day of March, 2008.





Notary Public for Idaho
Residing in Meridian, Idaho
My Commission Expires: 6/2/2012

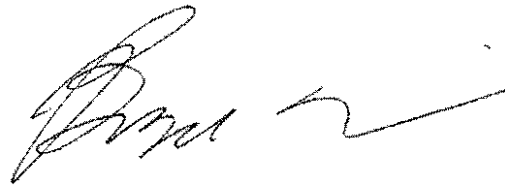
CERTIFICATE OF SERVICE

I hereby certify on this 13th day of March 2008 I caused to be served a true and correct copy of the foregoing document via email first-class mail to the individuals listed below.

Janicek Properties, LLC
c/o Michael P. Lawrence
Givens Pursley, LLP
601 W. Bannock Street
P.O. Box 2720
Boise, ID 83701-2720

USDI Bureau of Reclamation
Represented by:
US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098



S. BRYCE FARRIS

NAMPA & MERIDIAN IRRIGATION DISTRICT

JUNE 1, 1915

EXHIBIT

tabbies

A

S. E. files
9-14-217

Draft of July 24, 1914.

THIS AGREEMENT made this 1st day of June 1915, between the UNITED STATES OF AMERICA, acting for this purpose by the Secretary of the Interior, under the provisions of the Act of Congress of June 17, 1902 (32 Stat. 388) known as the Reclamation Act, and acts amendatory thereof or supplementary thereto, and the Act of Congress of February 21, 1911 (36 Stat. L. 925), the party of the first part, hereinafter called the United States, and the NAMPA & MERIDIAN IRRIGATION DISTRICT, an Irrigation District organized under the laws of the State of Idaho, and located in Canyon and Ada Counties, Idaho, acting for the purposes of this contract under authority of Title 14 of the Idaho Revised Codes, including Sections 2396, 2397, and 2398, the party of the second part, hereinafter called the District-

WITNESSETH- That,

WHEREAS, the District includes within its boundaries about Twenty-four Thousand Five Hundred Fifty-seven (24,557) acres of irrigated land, Twenty-two thousand six hundred twelve (22,612) acres of which are entitled to receive water from the District; the remainder being irrigated with water from the Settlers' and New York Canals; and whereas, the District owns and controls that certain canal known as the Ridenbaugh Canal through which water is supplied from Boise River to the lands

of the District for irrigation and domestic purposes, and whereas, the natural flow of Boise River which the District is entitled to divert under its priorities and appropriations, is insufficient during the latter part of said irrigation seasons to furnish a complete water supply for the lands of the District, and the District desires to secure a certain amount of stored water in order to furnish its land owners and water users a more complete water supply during the low water periods of the irrigation season, and

WHEREAS, the ground water table is rising in the District and in places is already close to the surface, so that a large part of the lands of the District are likely to become permanently ruined and incapable of producing crops, or bearing any share of the expense of the District, unless a drainage system is promptly provided; and whereas, it is believed that such a drainage system will reclaim considerable areas which cannot now be cultivated successfully on account of such seepage conditions, and will check the spread of such seepage conditions, and save other large areas which are now threatened with destruction from the same cause; and

WHEREAS, the United States is now constructing, under the provisions of the Reclamation Act, that certain irrigation project known as the Boise Project, including the Arrowrock and Deer Flat storage reservoirs, and a portion of the lands

of the District have been subscribed to said project by the individual owners of such lands; and

WHEREAS, it is believed that under existing conditions the only way in which the additional water supply and drainage system required by the District can be secured promptly and at a cost which the land owners of the District can afford to pay, is by means of a contract between the District and the United States, under the provisions of the Acts of Congress of June 17, 1902 (32 Stat. 388) and February 21, 1911 (36 Stat. L., 925) and Title 14 of the Idaho Revised Codes.

NOW, THEREFORE, it is hereby agreed-

1. That as a part of the general drainage system of its Boise project, the United States will construct for the Nampa & Meridian Irrigation District, a drainage system to a total cost of Five Hundred Fifty-seven Thousand Dollars, (\$557,000). The location of the drains, to be constructed, is shown on the map attached hereto and marked Exhibit "A", it being understood that in general drains numbered "one" on the said map will be constructed first, drains numbered "two" will be constructed next, drains numbered "three" will be constructed last, so far as said limit of expenditure will allow such work to go, such drainage system to have sufficient capacity in its main drains to carry the seepage water flowing into the District from the lands lying above the

District and draining into it, as well as that originating in the District itself. The Supervising Engineer in charge of such construction shall have the right to make changes in the alignment of the drains shown on the attached map, and in grades and cross-sections, where such changes shall be found in his judgment to be necessary or desirable to increase the efficiency or economy of the system. It is understood that in case any part of the work shown on the said map shall prove unnecessary for the benefit of District lands, such part may be omitted by mutual consent of the parties hereto. It is fully understood that the United States is to expend only Five Hundred Fifty-seven Thousand Dollars (\$557,000), including cost of preliminary work in drainage construction for the District, under this contract, and to stop when such limit of expenditure has been reached. It is not expected that the lands of the District can be completely drained at this cost nor a drainage system extended to each farm unit, but that only a number of principal drains will be constructed with which individual and community farm drains can be connected.

2. That for the purposes of this contract, irrigable lands in the District which are now entitled to $5/8$ of a miners' inch of water or more per acre, out of the present water rights of the District, or of the Settlers' District or through ownership of stock in the New York Canal Company,

are considered as old water right lands and referred to herein under that name; irrigable lands in the District which have no water right from the District or the Settlers' District, and have not been irrigated through ownership of stock in the New York Canal Company, are considered as project lands and referred to herein under that name, and irrigable tracts of land in the District which are entitled to some water from the present water rights of the District, or of the Settlers' District or through ownership of stock in the New York Canal Company, but less than $5/8$ of an inch per acre, shall be considered as old water right lands to the extent of the number of acres for which the water right of such tract will provide $5/8$ of an inch per acre, and project lands as to the remainder thereof.

3. That the District will pay to the United States for that portion of the above described drainage work in the District, equitably chargeable to the old water right lands in the District, the sum of Two Hundred Sixty-six Thousand Dollars (\$266,000), in the same number of annual installments not less than ten (10) and same percentage of the total in each annual installment as is fixed by the Secretary of the Interior for the lands of the Boise Project in his Public Notice announcing the construction charge for the Boise Project, the first installment to be due and payable one (1) year after the day on which said Public Notice for the Boise

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Project is issued by the Secretary of the Interior, and one installment on the same day of each year thereafter until all installments are paid, and will use the taxing power of the District and all the powers and resources of the District to collect said sums of money and pay the same to the United States when due. The benefits of the expenditures of said sum of Two Hundred Sixty-six Thousand Dollars (\$266,000) for drainage shall be apportioned among the old water right lands of the District. No portion of said sum of Two Hundred Sixty-six Thousand Dollars (\$266,000) shall be apportioned to the project lands in the District but the balance of the said sum to be expended on drainage works in the District as provided in paragraph 1 hereof shall be charged to the general expense of the Boise Project and the project lands in the District shall pay the construction, operation and maintenance charges provided in paragraphs 11 and 12 hereof.

4. That after the construction thereof, the District will maintain said drainage system in good serviceable condition, at its own expense, and shall charge the cost thereof to the old water right lands in the District in the proportion which the amount of construction cost chargeable to the old water right lands in the District, to-wit, Two Hundred Sixty-six Thousand Dollars (\$266,000), bears to the total construction cost, to-wit, Five Hundred Fifty-seven Thousand

Dollars (\$557,000), and will charge the balance to the United States. In case the District shall fail or neglect to maintain said drainage system in good serviceable condition, the United States may maintain or repair the same and charge the cost thereof to the District, which cost the District will promptly pay.

5. The right to water developed in the drainage system herein provided for shall belong to the Boise Project and the old water right lands of the District, and be divided between said Boise Project and said old water right lands of the District in the same proportion as the cost of the drainage system herein provided, and the drains to be constructed under this contract shall be subject to use by the lands of the Boise Project whether outside or inside the District, as well as the old water right lands of the District.

6. That the District will pay to the United States the sum of Twenty-four Thousand Eight Hundred Forty-----Dollars for storage capacity in Arrowrock Reservoir- a reservoir to be constructed by the United States on Boise River in Boise and Elmore Counties, Idaho, and to have a capacity of between 200,000 and 250,000 acre-feet- and the United States will provide for the District that portion of the total storage capacity of Arrowrock Reservoir which Twenty-four thousand Eight Hundred Forty -----Dollars

is of the total cost of said reservoir, and will deliver at the downstream end of the outlets of the Arrowrock Reservoir, for the District each year after the completion of said reservoir, the same proportion of the stored water available from said reservoir at such times after three (3) days notice from the District to the United States officer in charge, and in such quantities as the District may direct not in excess of the District's proportionate part of the available outlet capacity. The total cost of said reservoir will be determined and stated by the Secretary of the Interior in his Public Notice of the charges to be made for the Boise Project, and to include all cost and expenses of whatsoever nature or kind for the purpose of, growing out of, in connection with, or resulting from the construction of said reservoir including engineering expenses and overhead charges, and such interest, if any, as may be payable on account of advances under the provisions of the Act of Congress of June 25, 1910 (36 Stat. L. 835), or other legislation by Congress.

7. The said sum of Twenty-four Thousand Eight Hundred forty Dollars shall be paid by the District to the United States in the same number of annual installments not less than ten (10) and some percentage of the total in each annual installment as is fixed by the Secretary of the Interior for the lands of the Boise Project in his Public Notice announcing the con-

struction charge for the Boise Project, the first installment to be due and payable one (1) year after the day on which said Public Notice for the Boise Project is issued by the Secretary of the Interior and one installment on the same day of each year thereafter until all installments are paid; and the District will use the taxing power of the District, and all the powers and resources of the District to collect said sums of money, and pay the same to the United States when due, and will also pay each year its proportionate share of the cost of operation and maintenance of said reservoir and delivery of water therefrom, as announced by the Secretary of the Interior.

8. No interest will be charged on any of the said installments for drainage work, or stored water, or money to be paid to the United States for operation and maintenance, on account of the drainage works or stored water, until due; but any part thereof which may remain unpaid after the same is due shall bear interest from maturity until paid at ten per cent (10%) per annum, and the United States shall not be obliged to deliver or turn out for the District any stored water while the District is in default on any of the payments herein provided to be made by the District to the United States.

9. The District agrees to distribute the amount of

water delivered to it by the United States under this contract in full compliance with the provisions of said Reclamation Act of June 17, 1902, and the rules and regulations thereunder, and to use and distribute the same only upon the lands within the District, and in compliance with the provisions of Section 2 of the Act of Congress of February 21, 1911 (36 Stat. L. 925) known as the Warren Act.

10. The stored water from Arrowrock Reservoir hereinabove agreed to be purchased by the District, shall be diverted from Boise River through the canal system of the District and delivered to old water right lands in the District to supplement the water supply of such lands at times when the natural flow of Boise River is insufficient, and the benefits and cost of such stored water shall be apportioned to such lands; Provided, however, that no portion of said stored water is to be delivered, and no part of the cost thereof apportioned to those old water right lands of the District to which the first priority right of the District has been allotted under the classification of lands as to priority, which has been made by the District, it being considered that the lands having the first priority right need no stored water.

11. For the project lands in the District, the United States will provide both storage capacity in the reservoirs

of the United States and carrying capacity in the United States Canal System of the Boise Project, and each year after the completion of the Arrowrock Reservoir, will deliver to the District for distribution to the project lands in the District lying under the canal system of the District, as nearly as practical, the same proportionate share per acre of the water actually available from said works of the United States, both flood water and stored water, as is provided for similar lands in the United States Boise Project, outside of the District, except as otherwise provided in paragraph 12 hereof, but not more, however, than is needed for beneficial use on said land, and for the project lands in the District lying above the canal system of the District a similar water supply will be furnished directly by the United States through the laterals and canals of the United States. The water supply for the project lands in the District shall be carried through the Main Canal of the United States Boise Project, and that portion for the project lands lying under the canal of the District delivered to the District at convenient points in the District where laterals or distributing canals from the Canal System of the United States reach or cross the canal of the District, and will there be received by the District and distributed by the District to the project lands in the District entitled to the use thereof; under the provisions of a certain contract for the distribution

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of water, between the parties hereto, dated April 1, 1909, it being understood that the said certain contract shall remain in effect until such time as a new contract shall be mutually agreed upon by the parties hereto, providing for a different method of distribution of water and division of the cost of distribution.

12. The District will promptly apportion to the project lands in the District a total of Three Million Three Hundred four thousand five hundred (\$3,304,500) Dollars, being a charge of Seventy-five (\$75.00) Dollars per acre as the benefits under this contract to said lands; provided, however, that if the building charge per acre announced by the Secretary of the Interior in his Public Notice for similar lands of the Boise Project, is less than Seventy-five (\$75.00) Dollars per acre, then the assessment of benefits against the project lands in the District shall be reduced to the same amount per acre as is announced by the Secretary of the Interior for the similar lands of the Boise Project, and the District will collect the sums so apportioned to such project lands in the District and pay the same to the United States in the same number of annual installments not less than ten (10) and same schedule of graduated payments as is fixed by the Secretary of the Interior in his Public Notices for similar lands of the Boise Project outside of the District. Provided, that should the construction charge per acre announced by the

Secretary of the Interior, for the Boise Project for a full water right, be in excess of Seventy-five Dollars (\$75.00) per acre of irrigable land, the benefits to be assessed to the project lands in the District under this contract and collected by the District under this contract from the said project lands for the payment to the United States of the construction charge, shall nevertheless be only Seventy-five Dollars (\$75.00) per acre, and the number of installments and the percentage of the total payable in each annual installment shall be the same number and percentage as for the lands of the Boise Project outside of the District, but in that event, the amount of both stored water and flood water furnished for such project lands in the District by the United States shall be the same proportion of the amount furnished per acre to the lands of the Boise Project outside of the District as Seventy-five Dollars (\$75.00) per acre is to the charge announced for the Boise Project lands outside of the District; Provided, that in that event, the owners of project lands in the District, individually or the District on behalf of all the project land owners in the District, may, if they or it so elect, by supplemental contract with the United States, secure from the United States works additional water sufficient to make their water rights equal in amount per acre to the rights furnished by the United States to similar project lands

outside of the District, by payment of the difference between Seventy-Five (\$75.00) Dollars per acre and the charge announced by the Secretary of the Interior in his Public Notice for the lands of the Boise Project outside the District, but the amount to be apportioned to the project lands in the District under this present contract shall not be in excess of Seventy-Five (\$75.00) Dollars per acre. The installments of the charges apportioned to the project lands in the District shall be due and payable from the District to the United States on the same dates as fixed by the Secretary of the Interior in his Public Notice for the payment of the charges for the lands of the Boise Project outside of the District. The District will be reimbursed by the United States for the cost of distributing the water to said project lands in the District by the payment to the District of the pro-rata share of the cost of operation and maintenance provided in the contract of April 1, 1909, between the District and the United States, until the expiration of said contract as provided in paragraph 11 hereof and thereafter under the new contract provided to be made in paragraph 11 hereof. The project lands in the District shall pay the same operation and maintenance charge per acre as announced by the Secretary of the Interior for similar lands of the Boise Project and the same shall be collected by the District for the United States and paid over by the District

to the United States, and upon notice from the officer of the United States in charge of the Boise Project, the District will withhold the delivery of water from such project lands in the District as are in default in the payment of said operation and maintenance charge.

13. It is fully understood that the old water right lands of the District shall not in any event be liable for any part of the charges herein agreed to be apportioned to and collected from the project lands, nor the project lands for any portion of the charges herein agreed to be apportioned to or collected from the old water right lands in the District, and the United States agrees to waive the right to hold either of said two classes of land for any part of the charges herein agreed to be apportioned to and paid by the other, but will look to the old water right lands for the old water right land charges and the project lands for the project land charges.

14. No interest will be charged on any of said installments for water to be supplied to said project lands in the District until due, but any part thereof which may remain unpaid after the same is due, shall bear interest from maturity until paid at ten (10%) per cent per annum, and the United States shall not be obliged to deliver or turn out for the District any water for such project lands in the District as

are in default on any of the payments herein provided to be made. Provided, the project lands in the District shall be subject to the same provisions as to residence, cultivation and limit of area as the lands of the Boise Project outside of the District.

15. The United States will assent to the release by the Payette-Boise Water Users' Association of such lands in the District as have been subscribed under stock subscription and contract to the said association, and have therefore become subject to the lien provided in such subscription and contract for the repayment of a proportionate part of the cost of the Payette-Boise Project from the lien and obligation of such stock subscription, and also release and cancel the contract under date of October 12, 1906, between the Nampa & Meridian Irrigation District, and the Payette-Boise Water Users' Association, providing for a credit to the subscribed lands of the District for existing works, as regards both the old water right lands and the project lands.

16. The Payette-Boise Water Users' Association agrees to join in the release of said stock subscription contracts and liens upon conditions above stated, and its name is subscribed hereto in evidence thereof.

17. Where any appropriations of water have been made and water rights acquired by parties other than the District

out of any of the draws, sloughs or natural channels of the Nampa & Meridian Irrigation District, and such rights are interfered with by the deepening of such channels and the construction of the said drainage system in the District, it is understood that the money herein provided for the construction of drainage works shall be available for the satisfaction of any just claims for damages and of judgments, liabilities or obligations on account of, growing out of, or resulting from the interference with any such rights by the deepening of such channels and construction of such drainage system, and that the United States may pay such claims, judgments, liabilities and obligations out of said money. Any lateral construction which may be agreed upon between the District and the United States as being necessary to replace the rights of flow through natural drainage lines, may be built by the United States as a part of the drainage system herein contemplated.

IN WITNESS WHEREOF, the parties hereto have caused their names and seals to be attached the day and year first above written, the Nampa & Meridian Irrigation District, and the Payette-Boise Water Users' Association, acting in pursuance of resolutions of their Board of Directors, of which

certified copies are hereto attached and made a part hereof.

NAMPA & MERIDIAN IRRIGATION DISTRICT,

(seal)

By H. B. CARPENTER.

ATTEST:

President.

G. A. REMINGTON,
Secretary.

PAYETTE-BOISE WATER USERS' ASSOCIATION.

(seal)

By J. W. BRANDT.

ATTEST:

W. L. GIRARD,
Secretary.

(Sgd) Andrews A Jones
First Asst SECRETARY OF THE INTERIOR, for
and on behalf of the United
States.

BOISE PROJECT

CONTRACT

NOV. 5, 1918

GRACE & MERIDIAN IRRIGATION DISTRICTS.

EXHIBIT

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13

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

Boise, Idaho, Dec. 19, 1918 191

District Counsel,

~~XXXXXXXXXXXX~~ to the Director and Chief Engineer (through Chief
of Construction).

signature by Secretary of the Interior

Subject: Forwarding contract for ~~approval~~.

The contract described below is forwarded herewith.

Agreement dated November 5, 1918 --- Boise Project.

Executed by ----NAMPA & MERIDIAN IRRIGATION DISTRICT--

~~XXXXX~~ Signed by Secretary of the Interior

Estimated amount involved, \$39,846.00.

Purpose of agreement: Water rights for lands in townsite of Nampa.
(See instructions on back, par. 6.)

Form of contract approved by telegram from King dated Aug. 27, 1917,
as per letter of District Counsel dated Aug. 13, 1917. See also
telegram from District Counsel to Chief Counsel dated Nov. 7, 1917,
and telegram from Holgate to Stoutmeyer dated Nov. 8, 1917.

~~XX~~
~~XX~~
bond transmitted.)

Advise Chief ~~of Construction~~, Denver, Colorado, and Project
Manager at Boise, Idaho.

and District Counsel at Boise, Idaho.

of the ~~approval~~ of the above.
signing

X B. A. STOUTMEYER.
(Signature.)

(The blanks below to be filled in the Washington Office.)
Signed by E. C. Finney, First Assistant Secretary of the Interior
~~Approved by~~

Date of ~~approval~~ signature OCT 18 1921

Bond, if any, approved by same officer on same date.

(Sgd) A. P. Davis
Director and Chief Engineer.

DECEMBER 90767 DEC 23 18

Received by letter to Director, Washington, for consideration, attention being paid to letter of December 19, 1918, from District Counsel to Director.
RECEIVED BY MR. W. W. WATSON
Chief of Construction.
Denver, Colorado, December 24, 1918.

INSTRUCTIONS.

1. This form is devised to render unnecessary the writing in the Washington office and in the field of various routine letters in reference to contracts.

2. The project or other office where the contract originates will transmit one copy of this form in excess of the number of offices which are to be advised of approval. For example, in usual case where the project manager and Chief of Construction are to be advised, three copies should be sent to the Washington office.

3. The Chief of Construction will make proper notation on each copy of the contract showing the date when the contract is forwarded by him.

4. Any special matter or information relative to the contract too long to write on the form should be set out in a statement or certificate accompanying the other papers.

5. When reference is made to previous correspondence the date thereof should be given.

(INSERTED IN DENVER OFFICE.)

Enclosures:

- 1 Orig. & 3 copies of form letter.
- 1 " & 2 " " contract,
- Original letter of December 19, 1918, from District Counsel B. E. Stoutemyer to Director.
- Original letter of December 21, 1918 from District Counsel B. E. Stoutemyer to Director.
- Original certificate from District showing vote authorizing contract, and 2 copies thereof.

SUPPLEMENTAL CONTRACT

between the

NAMPA & MERIDIAN IRRIGATION DISTRICT and the UNITED STATES.

---0---

Draft of December 20, 1917.

THIS AGREEMENT, made this 5th day of November, 1918, between the UNITED STATES OF AMERICA, acting for this purpose through E. C. Finney, Esq. Assistant Secretary of the Interior, under the provisions of the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto, and particularly Sections 2 and 3 of the Act of Congress of February 21, 1911 (36 Stat. 925), hereinafter referred to as the United States, and the NAMPA & MERIDIAN IRRIGATION DISTRICT, an irrigation district organized under the laws of the State of Idaho, hereinafter referred to as the District.

WITNESSETH, THAT:

1. WHEREAS, under that certain contract between the United States and the Nampa & Meridian Irrigation District, dated June 1, 1915, it is provided that as a part of the general drainage system of its Boise Project, the United States will construct for the Nampa

& Meridian Irrigation District, a drainage system to a total cost of Five Hundred Fifty-seven Thousand (\$557,000) Dollars, and that the District will pay to the United States for that portion of the above described drainage work in the District equitably chargeable to the old water right lands in the District, the sum of Two Hundred Sixty-six Thousand (\$266,000) Dollars, and whereas, the drainage system contemplated under the provisions of said contract, and estimated to cost approximately Five Hundred Fifty-seven Thousand (\$557,000) Dollars, has been constructed at a cost of approximately Three Hundred Forty Thousand (\$340,000) Dollars, and whereas, it is not necessary to spend the balance of the said Five Hundred Fifty-seven Thousand (\$557,000) Dollars on the said drainage system, and whereas, neither the District nor the United States desires to spend any money unnecessarily on said work.

IT IS HEREBY AGREED that said drainage construction shall be terminated at a cost of not to exceed THREE HUNDRED FORTY THOUSAND (\$340,000) Dollars, and the amount to be paid by the District to the United States for that portion of the said drainage works equitably chargeable to the old water right lands in the District shall be reduced in like proportion as the said cost of Three Hundred Forty Thousand (\$340,000) Dollars is less than the said estimated cost

of Five Hundred Fifty-seven Thousand (\$557,000) Dollars, namely to 266/557ths of Three Hundred Forty Thousand (\$340,000) Dollars, or One Hundred Sixty-two Thousand Three Hundred Sixty-nine and Eighty-four/hundredths (\$162,369.84) Dollars.

2. AND WHEREAS, said estimate of the actual cost of Three Hundred Forty Thousand (\$340,000) Dollars contains an allowance for certain items of contingent liability and expense which may or may not have to be paid, and whereas, there is also some possibility of additional credits from the sale or transfer of equipment.

IT IS HEREBY AGREED that should the actual cost as finally determined be less than Three Hundred Forty Thousand (\$340,000) Dollars, the Secretary of the Interior will furnish the District a statement of such actual cost and in that event the amount to be paid by the District to the United States for that portion of the said drainage works equitably chargeable to the old water right lands in the District, shall be reduced to 266/557ths of such actual cost so stated by the Secretary of the Interior.

3. AND WHEREAS, the said contract of June 1, 1915, provides for furnishing water rights for the project lands of the District at a charge of Seventy-five (\$75.00) Dollars per acre, with a proviso that if the building charge announced

by the Secretary of the Interior in his Public Notice for similar lands of the Boise Project, is less than Seventy-five (\$75.00) Dollars per acre, then the assessment of benefits against the project lands in the District shall be reduced to the same amount per acre as is announced by the Secretary of the Interior for similar lands of the Boise Project, and whereas, the Secretary of the Interior, in his Public Notice of July 2, 1917, for the said Boise Project has announced a construction charge of Eighty (\$80.00) Dollars per acre with a proviso that if within one year all the irrigable lands of the Boise Project are duly pledged to return the payment of the construction and operation and maintenance charges either through individual contracts, water users' association contracts, or through irrigation districts, duly organized and confirmed by judicial decree, then the said charge of Eighty (\$80.00) Dollars per acre will be reduced to Seventy (\$70.00) Dollars per acre, and further provides that if all of that portion of the project lying northeast of Indian Creek between the Nampa & Meridian Irrigation District and the New York Canal, is duly pledged to return the payment of the construction and operation and maintenance charges, then the said construction charge of Eighty (\$80.00) Dollars per irrigable acre for a full water right will be reduced to Seventy

(\$70.00) Dollars per irrigable acre in said portion of the project, and whereas, the said portion of the Boise Project is the portion immediately adjoining the District, and whereas, the landowners of the District, through the organization of an irrigation district and the said contract between the District and the United States have already complied with all those provisions required of the said adjacent lands of the Boise Project as the conditions upon which the said Seventy (\$70.00) Dollar rate may be secured;

IT IS HEREBY AGREED and understood that the said rate of Seventy (\$70.00) Dollars per acre of irrigable land is the rate applicable to the said project lands of the Nampa & Meridian Irrigation District.

4. AND WHEREAS, the said contract between the District and the United States provides that the charges agreed to be paid by the District to the United States shall be payable in the same number of annual installments not less than ten (10) and same schedule of graduated payments as is fixed by the Secretary of the Interior in his Public Notice for similar lands of the Boise Project outside of the District, and whereas, under the provisions of the Act of Congress of August 13, 1914, known as the Reclamation Extension Act, and the Public Notice issued by the Secretary of the Interior under date of July 2, 1917,

the charges for most of the lands of the Boise Project will be payable in twenty (20) annual installments upon the schedule of graduated payments set out in Section two of said Extension Act.

IT IS AGREED and understood by the parties hereto that the construction charges agreed to be paid by the District to the United States for drainage, storage rights and full water rights, shall be due and payable in twenty (20) annual installments upon the schedule of graduated payments set out in Section 2 of the said Extension Act, namely:- The first four of such installments shall each be two per centum, the next two installments shall each be four per centum, and the next fourteen each six per centum, of the total construction charge.

5. AND WHEREAS, in allotting water rights and apportioning benefits under the said contract of June 1, 1915, the District omitted to furnish any water rights to, or assess any benefits against, the dry lands within the corporate limits of the City of Nampa, and whereas there are about Two Thousand Five Hundred Ninety-five and twenty-five/hundredths (2,595.25) acres of dry lands within the said corporate limits, and whereas, the said lands are arid lands, incapable of producing agricultural crops without irrigation, but fertile and productive if irrigated

and especially valuable for intensive farming purposes on account of their location, and whereas, there is no other available source of water supply for said lands except from the irrigation work constructed by the United States.

NOW, THEREFORE, it is hereby agreed that the District will purchase from the United States for said lands, and the United States will sell to the District for said lands, water rights from the irrigation works of the said Boise Project, and the District will pay the United States for said rights at the same rate per acre and will apportion benefits to said lands at the same rate per acre as other project lands in the District and the water rights to be furnished for said lands to be of the same kind and furnished upon the same terms and conditions as those furnished to project lands of the District outside of the corporate limits, except that the District may deliver the water to the landowners at the corporate limits of the town of Nampa and shall not be required to distribute the water within the corporate limits, and that in the construction of laterals for said lands the United States will not construct such laterals within the corporate limits of the City, except, where laterals of the same kind commonly built by the United States outside of the said corporate limits, can be built without any extra or unusual expense,

the water to be distributed within the said corporate limits by the landowners themselves, or by such agency as they may select and provide for that purpose at their own expense, and all structures or special construction or maintenance required by the ordinances, regulations and police power of the City, shall be provided by the landowners of the City at their own expense.

6. AND WHEREAS, under the provisions of Section 6 of said contract of June 1, 1915, the District purchased from the United States storage rights in Arrowrock Reservoir to the extent of the proportionate part of the storage capacity of said reservoir that Twenty-four Thousand Eight Hundred Forty (\$24,840.00) Dollars is of the total cost of said reservoir (\$4,750,000), and whereas, certain landowners of the District require some additional storage water and have applied to the District for approximately One Thousand Nine Hundred Ninety-two and three/tenths (1,992.3) acre-feet of additional storage capacity, and agreed to pay for the same;

IT IS HEREBY AGREED that in addition to the Twenty-four Thousand Eight Hundred Forty (\$24,840.00) Dollars provided in sections 6 and 7 of said contract of June 1, 1915, the District will pay to the United States the sum of THIRTY-NINE THOUSAND EIGHT HUNDRED FORTY-SIX and No/ hundredths (\$39,846.00) DOLLARS for storage capacity in

Arrowrock Reservoir, and the United States will furnish the District in addition to the proportionate part heretofore contracted, the use and benefit of that portion of the total storage capacity of Arrowrock Reservoir which Thirty-nine Thousand Eight Hundred Forty-six (\$39,846.00) Dollars is of the total cost of said reservoir, and will deliver at the downstream end of the outlets of said reservoir for the District each year, as nearly as is reasonably practical, the same proportion of the stored water actually available from said reservoir, the said storage to be in addition to the amount heretofore contracted for and to be furnished in the same manner and upon the same terms and conditions as the amount heretofore purchased under said contract of June 1, 1915.

7. AND WHEREAS, the Secretary of the Interior has approved rules and regulations for determining the irrigable acreage of the lands of the Boise Project outside of the District and under said rules and regulations has provided for certain reductions in irrigable acreage for rights of way of roads and canals;

IT IS HEREBY AGREED and understood by the parties hereto that the same reductions provided under said rules and regulations as to project lands outside of the District will be applied in determining the irrigable acreage of

project lands in the District.

8. No Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified and during his continuance in office, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company, as provided in section 116 of the Act of Congress approved March 4, 1909 (35 Stat. L., 1109).

UNITED STATES OF AMERICA,

By

SECRETARY OF THE INTERIOR.

NAMPA & MERIDIAN IRRIGATION DISTRICT,

By

DAN BARKER.

President.

(seal)

ATTEST:

G. A. REMINGTON.

Secretary.

(COPY-PH)

R E S O L U T I O N .

On motion duly seconded the following resolution was unanimously adopted:

WHEREAS, on November 7th, 1917, this Board adopted a plan for securing additional water rights from the Boise Project of the Reclamation Service of the United States, including a proposed contract therefor with the United States and submitted the same to the electors of the District at an election held December 11, 1917, at which election this Board was authorized to enter into said Contract and consummate said plan.

NOW, THEREFORE, Dan Barker, as President of this Board and G. A. Remington, Secretary of this Board is hereby authorized and directed to execute said Contract with the United States in the name of this District.

I, G. A. Remington, Secretary of the Nampa & Meridian Irrigation District, do hereby certify that the above is a true, full and correct copy of a certain resolution passed by the Board of Directors at their Meeting held November 6, 1918.

Witness my hand seal at Meridian, Idaho, this 30th day of November, 1918.

(seal)

G. A. REMINGTON,
Secretary,
NAMPA & MERIDIAN IRRIGATION DISTRICT.

THE STATE OF IDAHO

DEPARTMENT OF AGRICULTURE

LAND RECLAMATION DIVISION

ANNUAL

REPORT OF PROGRESS

OF

THE PROJECT

IN

FOR

1915

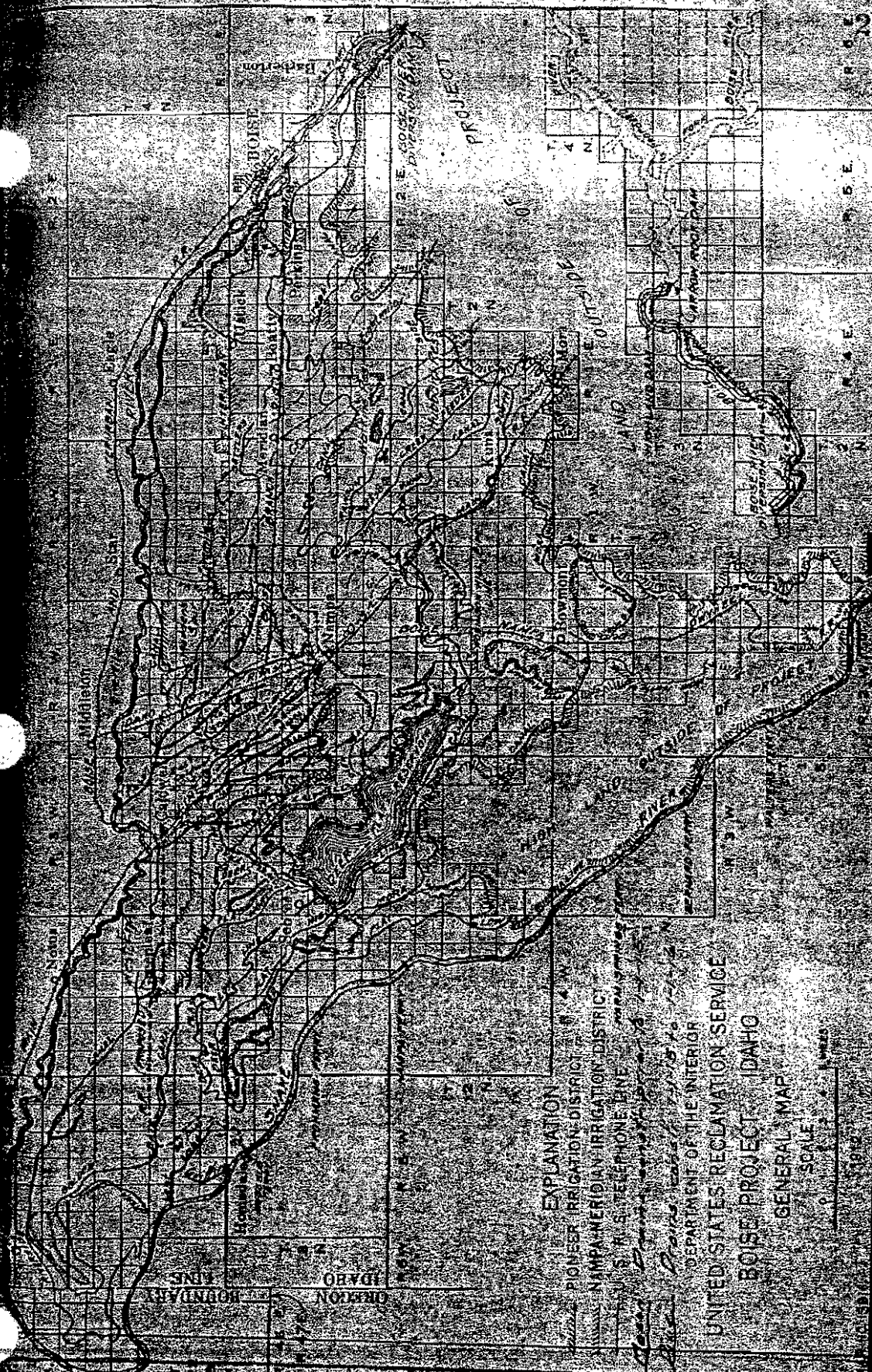
*Construction of
Drainage System*

By J. H. BARNES, Engineer.

EXHIBIT

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Under the terms of the supplemental contract, \$20,000 was set aside for proposed work within the Phoenix Irrigation District on the Phoenix River Water Control Project, in cooperation with the Maricopa Irrigation District.

Work under the original contract was about completed, but as it was found that the land which was left out of the 1935 project was not in accordance with the contract, it was decided to amend the contract to include the same. The amendment was approved by the Board of Directors of the Phoenix Irrigation District and the Board of Directors of the Maricopa Irrigation District.

The amendment provided that the Phoenix Irrigation District should be authorized to construct a levee on the south side of the Phoenix River, between the Phoenix River and the Maricopa River, and to construct a levee on the north side of the Phoenix River, between the Phoenix River and the Maricopa River.

The amendment also provided that the Phoenix Irrigation District should be authorized to construct a levee on the south side of the Phoenix River, between the Phoenix River and the Maricopa River, and to construct a levee on the north side of the Phoenix River, between the Phoenix River and the Maricopa River.

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The principal items of work on Project numbered lands were preliminary water studies in the Arena Sub-division. In this section about twelve well points were placed for

It should be understood that these areas referred to as
seared, are not necessarily entirely unproductive. The
water brought to the ground surface as a result of a high
water table does not present a dangerous quantity at once,
and lands with ground water within from four to six feet will
give some crops a better average yield. However, it is
probably only a question of time until lands does become
permanently damaged by ground water. For this reason it is economical to
begin reclaiming the land as soon as the ground water reaches a
level where an irrigation canal is sufficient for reclamation,
and where the effort has been accomplished in increasing quantities.

Permanence: The water is in direct charge of the district
engineer, and the location of the water, and has been established
by the district engineer, Mr. Gray and Engineer, Mr. C. H. Rob-
ertson, and all drainage locations in the Lower Meridian
district, and by Junior Engineer, Mr. S. S. Sargent and Instrument
Engineer, Mr. S. S. Sargent on construction, location and investiga-
tion in the Lower Meridian District and in miscellaneous areas.

The office work on maps, profiles and right of way
descriptions has been accomplished by H. S. Tillinghast
and Mr. S. S. Sargent, and by C. V. Linworth.

The district engineer and accounts has been in charge of C. H.
Robertson throughout the year.

CONSTRUCTION OF DRAINAGE

Plans and Progress: The drainage built during the

TABLE NO. 2.

The Service did all the work on this structure including No. 3 machine on April 15. They are operated on No. 1 to false work for track protection.

November 1st, then No. 3 machine for remainder of the year.

The typical plans of drainage culverts are shown in the appendix, (Plan C-3864) 24" cast iron pipe culvert on

the appendix, (Plan C-3864) 24" cast iron pipe culvert on the Five Mile Drain under Oregon Short Line Railroad and Caldwell Canal, and (Plan 4026) double 48" reinforced concrete pipe, on Five Mile Drain under Idaho Northern Branch of the Oregon

Short Line Railroad. This latter plan was approved by the Railroad Company, but had not been installed at the close

of the year. The No. 3 machine was operated on the Five Mile Drain from April 15 to November 1st, then No. 1 machine for remainder of the year.

The No. 1 machine was operated on the Five Mile Drain from April 15 to November 1st, then No. 3 machine for remainder of the year.

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EXHIBIT

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acreage of from 18,000 to 20,000 acres and the companies have sold stock amounting to 277 second-feet. That portion of this amount to which the company is entitled from the unregulated flow of the Boise River the United States carries and deliveries under contract signed March 3, 1906. At the end of the year an equitable charge is made against these companies based on the contract, in which the cost to them is made proportional to the entire cost of operating and maintaining the canals and laterals through which the water of the two companies is carried; the charges being directly proportional to the amount of water carried. In operating and maintaining the system through which New York water is delivered, the United States assumes control of the enlarged system furnishing all labor and material, the proportional part of the cost of which is covered by the annual charge against the companies interested made at the end of the year.

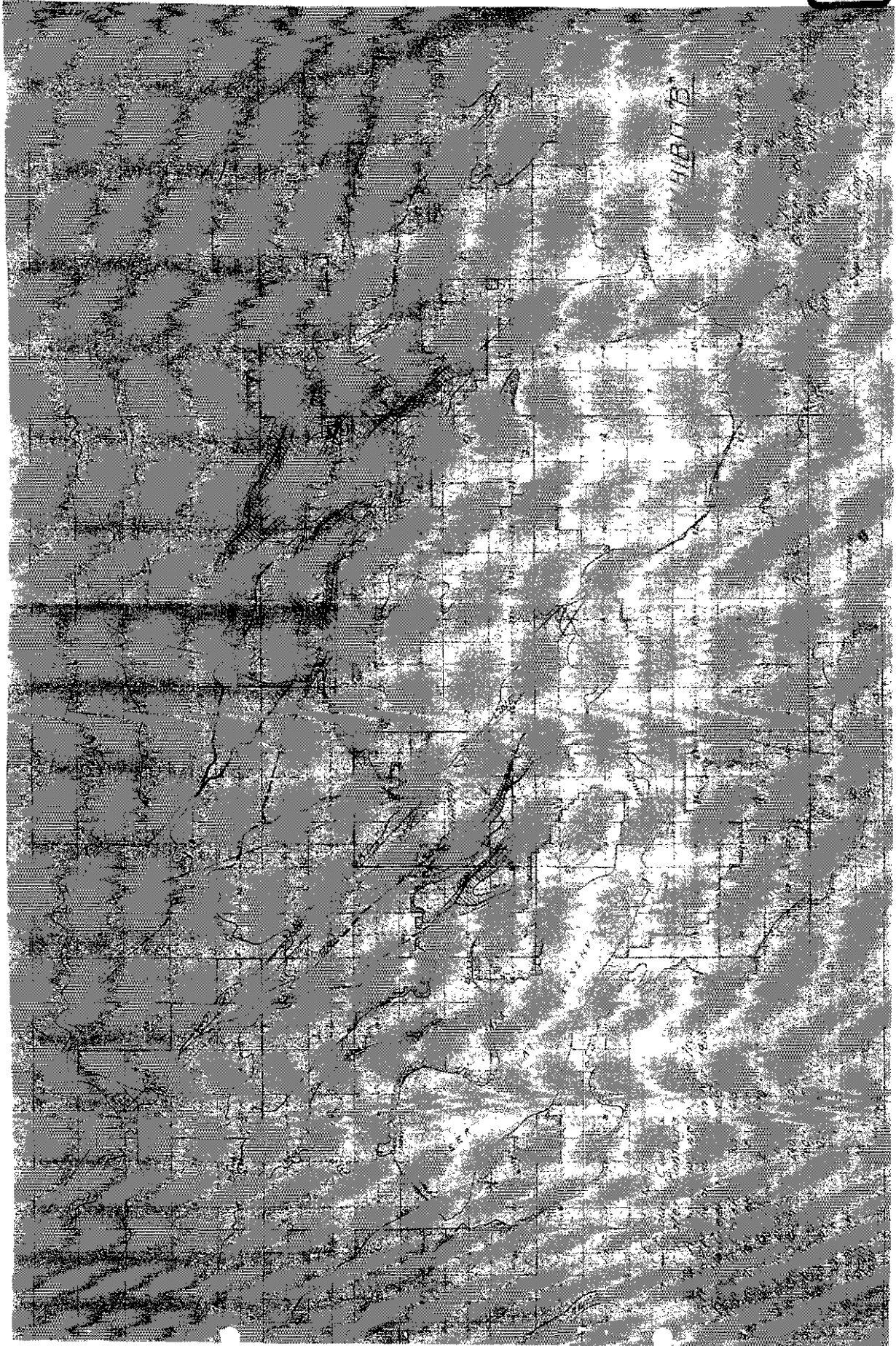
Parellel to the Main Canal and lying about three miles north of it is one of the oldest irrigation systems in the valley, known as the Ridenbaugh orampa-Meridian Irrigation System, embodying about 55,000 acres. Below or north of the Ridenbaugh Canal and included in the 55,000 acres are bodies of land which have no water right under the Ridenbaugh Canal and are dependent on the United States for water. A

contract has been entered into between the United

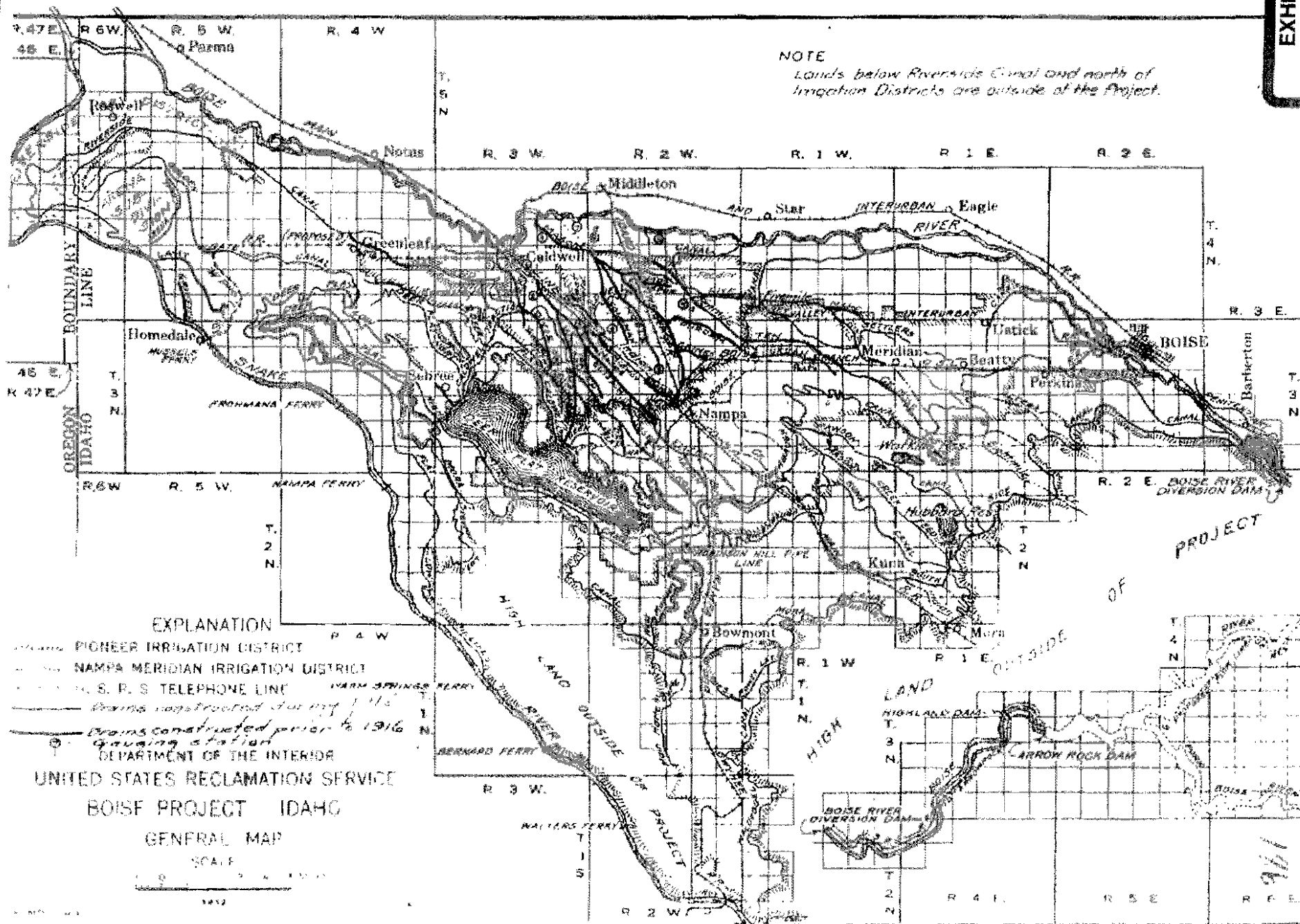
States and the Hampa-Meridian Irrigation District, whereby the officers of the District, through riders employed by them, agree to deliver water to Government users within their district drawing from their supply of water which is replenished at various points along their canal by means of natural and artificial feeders running north from the Government canal. At the end of the year the Hampa-Meridian Irrigation District submits a bill for operation and maintenance to the Reclamation Service based on the acreage served during the year.

Acreage Irrigated.

In addition to 18,000 acres of land covered by New York Canal stock, there were irrigated during 1912 on the Boise Project 43,725 acres of land of which 24,241 were above the Deer Flat Reservoir and 19,484 below. There were capable of irrigation under the constructed system over 200,000 acres of land or practically the entire acreage of the completed project. The remaining acreage to be reclaimed by the proposed canal system is that covered by siphon pipe lines of which the Chance, Brock, Macy and Elwood are now completed for operation during 1913. For the flood water lands or those lying above the Deer Flat Reservoir the irrigation season terminated on August 12th, except for such lands as could be irrigated with approximately 90 second feet of water transferred from the Riverside Canal. This also was prac-









P4-100-3348 Electric dredge excavating Purdam Slough Drain on Lemp's ranch. Arrowrock Division, Boise Project, ID. USBR photo by Walt Lubken. Jun 22, 1914.

EXHIBIT

I

Lubken



P4-100-3347 Electric dredge excavating Purdam Slough Drain on Lemp's ranch.
Arrowrock Division, Boise Project, ID. USBK photo by Walt Lubken. Jun 22, 1914.

RECEIVED

MAR 14 2008

DEPARTMENT OF
WATER RESOURCES

S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 South Third Street
P.O. Box 2773
Boise, Idaho 83701
Telephone: (208) 342-4591

Attorneys for Nampa & Meridian Irrigation District

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

In Re SRBA

Case No. 39576

Subcase No. 63-27475

AFFIDAVIT OF S. BRYCE FARRIS

STATE OF IDAHO)
) ss.
County of Ada)

S. Bryce Farris, being first duly sworn upon his oath, deposes and says that:

1. I am an attorney at the law firm of Ringert Clark Chartered, which represents Nampa & Meridian Irrigation District in the above-captioned matter, and I make this Affidavit based upon my personal knowledge and I am competent to testify to the matters contained herein.

2. Attached hereto as Exhibit A is a true and correct copy of the Report on the Irrigating and Reclaiming of certain Desert Lands in Idaho and other Projects Connected Therewith by A.D. Foote dated 1887.

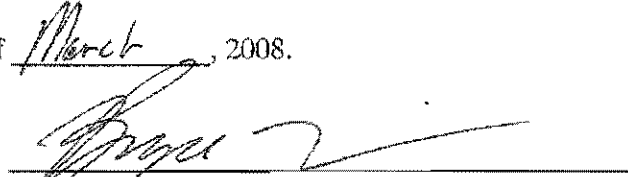
AFFIDAVIT OF S. BRYCE FARRIS - Page 1

COPY

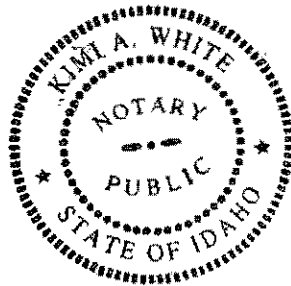
3. Attached hereto as Exhibit B is a true and correct copy of the Memorandum prepared by A. Kenneth Dunn, the former Director for the Idaho Department of Water Resources, dated September 8, 1981 regarding Appropriation of Water Within Irrigation District & Canal Company Areas.

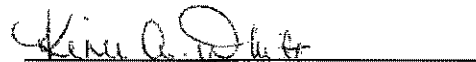
4. Attached hereto as Exhibit C is a true and correct copy of the License Agreement between Nampa & Meridian Irrigation District and Brad Janicek dated December 17, 1996 and recorded as instrument no. 96103946 in the records of Ada County, Idaho.

DATED this 13th day of March, 2008.


S. Bryce Farris

Sworn to and subscribed before me this 13th day of March, 2008.




Notary Public for Idaho
Residing in Boise, Idaho
My Commission Expires: 04/01/10

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of March, 2008, a true and correct copy of the foregoing was served upon all parties listed below by:

☒ U. S. mail, postage prepaid
☐ hand delivery

☐ express mail
☐ facsimile

Janicek Properties, LLC
c/o Michael P. Lawrence
Givens Pursley, LLP
601 W. Bannock Street
P.O. Box 2720
Boise, ID 83701-2720

USDI Bureau of Reclamation
Represented by:
US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098

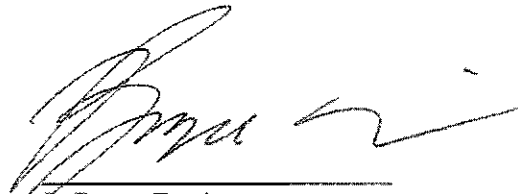
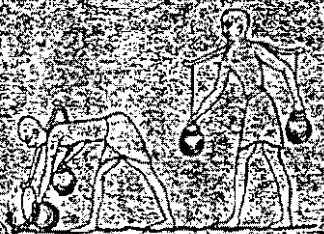

S. Bryce Farris

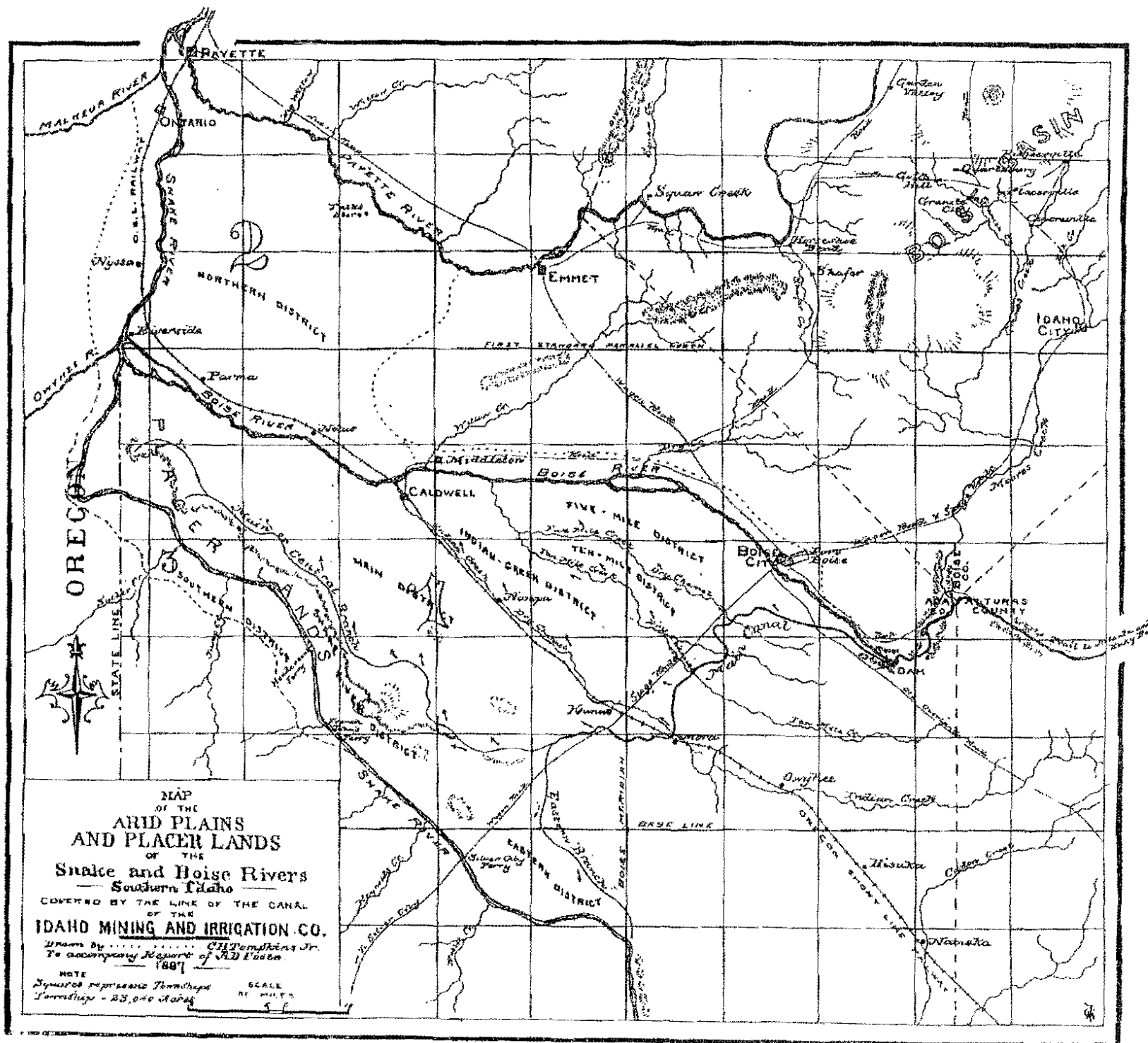
Exhibit A

REPORT
OF THE
IRRIGATING AND RECLAIMING
OF CERTAIN
DESERT LANDS
IN THE
STATE OF IDAHO
AND
OTHER PROJECTS CONNECTED THEREWITH

A. D. FOOTE

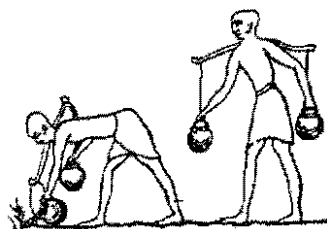


Approved and ordered, from the United States
this 14th day of February, 1891.



REPORT
ON THE
IRRIGATING AND RECLAIMING
OF CERTAIN
DESERT LANDS
IN
IDAHO
AND
OTHER PROJECTS CONNECTED THEREWITH

BY
A. D. FOOTE



"I removed his shoulder from the burden:
his hands were delivered from the pots."
—PSALMS LXXXI, C.

1887

BOISE
PUBLIC LIBRARY

Gen. C. H. Tompkins and Associates

Of the Idaho Mining and Irrigation Company:

Gentlemen:

Herewith I have the honor to submit to you a short report, embodying a description of your properties in Idaho, and a general review of the promise and prospects of your enterprise.

Since the writing of the report formerly submitted to you, I have resided continuously upon the tract to be irrigated. During this time close observation and investigation of this tract, of the conditions governing it, of the further results meanwhile obtained by irrigation here and elsewhere, and of the quality of the Snake River placers, have brought out many new facts, and confirmed most fully the opinions expressed in that report of the great value of these properties, and of the certainty of a speedy, large, and permanent return on the investment.

Very respectfully, your obedient servant,

*A. D. FOOTE,
Engineer in Charge.*

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THE LANDS AND THE WATER SUPPLY.

THE greater portion of the lands which form the subject of the following paper are situated in the southern part of Ada County, Idaho Territory, between the Snake and Boise rivers. They may be roughly described as lying in the form of a triangle, two sides of which are formed by the Snake and Boise rivers; the other side, or base, being the line of the proposed canal necessary for the irrigation of these lands.

Description
of
Lands.

This triangle is nearly equilateral, measuring about sixty miles on each side, and containing, approximately, four hundred thousand acres of land, three hundred and fifty thousand of which are available for irrigation and cultivation.

The land in this triangle lies in two great plains, with a high ridge between them trending nearly parallel to the Snake River, and dividing them unequally. The larger plain slopes toward the Boise River, the smaller toward the Snake, and both slope toward the confluence of these rivers.

Upon the opposite or north side of the Boise River, and along the eastern side of the Snake River, lies a second tract of nearly two hundred thousand acres of land, susceptible of irrigation; and on the west side of the Snake River, above and below the mouth of the Boise, there is a third tract of excellent land, easily irrigated, comprising some fifty thousand acres.

In the first-mentioned tract of land (the triangle between the Boise and Snake rivers) there is a vast body of auriferous gravel or sand, to which attention will be called hereafter.

It is proposed to convey the water of the Boise River upon the above-described lands for the purposes of irrigation and mining.

For some time past I have been engaged in the surveys and examinations requisite to determine, from a financial point of view, the advisability of undertaking this work.

It was necessary to determine:

Questions
to be
Determined

1. The water supply, with the legal measures necessary for, and the aspect of the law toward, its appropriation for the purposes desired.

II. The quantity, quality, and position of the lands, both in regard to irrigation and drainage.

III. The various conditions appertaining to the lands, including climate, productiveness, situation, railroad communications, timber, and other inducements for settlers to occupy the lands.

IV. The lines of canal and cost of building them, and the methods of distribution and sale of water.

V. The extent, value, and method of working the placer mines.

The value and importance of irrigation being as yet, in this country, but little understood, I have deemed it advisable to make comparisons between this and similar undertakings oftener than conduces to brevity, or perhaps, clearness of statement, in order to show that irrigation is no novel thing, but, as history proves, has been successfully practiced in all the civilized ages of the world. In fact, all the earliest civilized communities we know of, could not have existed without it.

Catchment
Basin of
Boise River.

No Statistics
of
Rainfall.

The Boise River, heading in the Saw Tooth Mountains of Central Idaho, has a catchment basin of about 1,600,000 acres. The amount of moisture which falls in this region, chiefly in the form of snow, is wholly a matter of conjecture, as there are no statistics on the subject to be had. Trappers and prospectors estimate the depth of snow anywhere from five to fifty feet, depending somewhat on the locality or elevation.

Volume
of
Boise River.

It was necessary, therefore, to determine the discharge of the river by measurements made throughout the year. From reasonably accurate measurements of this discharge, extending over four years, I am able to give the following as a close approximation to the river volume, for each month of the year:

January.....	1,200	varying to	1,500	cubic feet per second.
February.....	1,200	" "	1,500	" " " "
March.....	1,500	increasing "	5,000	" " " "
April.....	5,000	" "	15,000	" " " "
May.....	15,000	" "	30,000	" " " "
June.....	30,000	decreasing "	10,000	" " " "
July.....	10,000	" "	3,000	" " " "
August.....	3,000	" "	1,200	" " " "
September.....	1,200	varying "	2,000	" " " "
October.....	1,200	" "	2,000	" " " "
November.....	1,200	" "	2,000	" " " "
December.....	1,200	" "	2,000	" " " "

The river appears never to rise suddenly to a dangerous degree. For many miles I have carefully examined its banks to find, if possible, any signs of ice-gorges, water-spouts, or other sudden changes in its habits, but could discover no evidences of the kind. Beginning about the first of March, it rises gradually, reaching its greatest height and volume about the first of June, then, gradually falling, reaches its lowest during the frozen period of winter. The great banks of snow in the mountains serve as self-acting reservoirs better than those artificially constructed, as these natural dams appear never to give way, but hold the year's collection of moisture until the time when it is most needed on the plains, and then send it down in a steady stream, increasing as the crops grow and diminishing as they ripen.

Habits
of the
River.

Natural
Reservoirs.

Artificial
Reservoirs.

While the majority of crops need little or no irrigation during the latter part of July and through August, grass and trees must have it. Fearing that there might be an insufficient quantity of water for the purposes requiring it during this period, I made an examination of the upper region of the Boise, for the purpose of discovering localities favorable for the cheap storage of water.

On Smith, Blind, and Fall creeks, tributaries of the South Boise, I found that the peculiarities of a former lava flow have rendered the construction of enormous reservoirs a matter of trifling expense, compared with the cost of such undertakings elsewhere. The lava has formed immense dikes across the valleys, in some cases resembling the work of man, through which the creeks have broken narrow channels. To build the reservoirs, it is only required that these channels should be dammed with earth, of which there is a sufficient quantity convenient in each case, thus raising the water by obstructing its natural outlet, so that the waste will flow over the lava dikes, which become indestructible waste weirs.

Lava Dikes
as
Waste Weirs.

Reservoirs
easily
Constructed.

The estimated capacity, cost, and value of the reservoirs which I located are shown in the following table:

TABLE SHOWING ESTIMATED CAPACITY, COST, AND VALUE OF RESERVOIRS
LOCATED ON THE UPPER WATERS OF BOISE RIVER.

Name of Reservoir.	Capacity in Cubic Feet.	No. Days Supply at 1,000 cu. ft. p. sec.	Capacity in 24-hour four-inch Miner's Inches.	No. Cubic Yards in Dam.	Material Used in Dam.	Price Per Cubic Yard	Cost.*	First Cost per Min's Inch.	Value of Water each Year at 5c. per Min's In.
Upper Fall Creek.....	522,730,000	8.05	290,400	75,838	loose rock and gravel	35c.	\$28,458	0.8 c.	\$14,580
Lower ".....	412,175,000	4.84	232,220	51,509	loose rock and gravel	35c.	19,349	2.5 c.	11,611
Smith Creek.....	1,672,704,000	18.30	929,220	69,154	loose rock and gravel	35c.	26,204	2.8 c.	40,464
Upper Blind Creek.....	6,690,816,000	77.44	3,717,320	241,667	gravel	20c.	50,833	1.4 c.	184,856
Lower ".....	313,632,000	2.59	174,340	46,666	gravel	30c.	21,833	12.53c.	8,712
Totals.....	9,618,048,000	111.23	5,343,260	535,908			\$147,217		\$267,163

Volume of
Water
throughout the
irrigating
Season.

The maximum discharge of the main canal, as shown hereafter, being about 4,000 cubic feet per second, it is evident from the table showing the discharge of the river that the only time when an additional supply of water can be needed, will be from July 15th to September 1st, forty-six days; the above table showing the capacity of the reservoirs, gives one thousand cubic feet per second for one hundred and eleven days, or say, one thousand cubic feet per second for eighteen days in July, and three thousand for thirty-one days in August.

In order to determine what would be a sufficient supply for the success of the enterprise in question, it was necessary to ascertain, as nearly as possible, the amount which would be required for irrigation. The amount requisite for mining can be adopted arbitrarily, at any time, in agreement with the necessities of the irrigating season.

Duty
of Water
Defined.

The "duty of water," as it is usually called in irrigation, is the number of acres of land which one cubic foot of water per second, or "second foot" of water, will irrigate.

Variability
as Shown in
Different
Countries.

It is difficult to state precisely what this number of acres will be in an untried locality, as experience in different localities in the same country gives varying results. The following table shows the variable duty of water in different countries:

* "COST" INCLUDES COST OF GATES AND CULVERTS AS FOLLOWS:

Upper Fall Creek Reservoir.....	\$1,000 00
Lower ".....	1,800 00
Smith Creek Reservoir.....	2,000 00
Upper Blind Creek Reservoir.....	2,500 00
Lower ".....	2,500 00

TABLE SHOWING THE DUTY OF WATER IN VARIOUS LOCALITIES.

LOCALITY.	Duty of Water.	REMARKS.
	ACRES.	
Jumna Canal, India.....	308	E. B. Dorsey, C. E., Trans. Am. Soc. C. E.
Ganges " ".....	232	" " " " " " " "
Canals of Upper India.....	267	" " " " " " " "
Canals of India, average.....	250	Lieut. Scott Moncrieff, R. E.
Genil Canal, Spain.....	240	E. B. Dorsey, C. E., Trans. Am. Soc. C. E.
Henares " ".....	157	Geo. Higgin, C. E.
Canals of Valencia, Spain.....	241	E. B. Dorsey, C. E., Trans. Am. Soc. C. E.
" " Northern Peru.....	160	" " " " " " " " No rain-fall
" " Chili.....	190	" " " " " " " " No rain-fall
" " Lombardy, Italy.....	90	Baird Smith, R. E.—Including Rice Crops.
" " Piedmont, ".....	60	" " " " " " " " Including Rice Crops.
" " Southern France.....	60	Lieut. Scott Moncrieff, R. E.
" " Algeria.....	140	Hall, State Eng. California.
" " Kern Co., Cal.....	108	" " " " " " " "
" " Los Angeles, Cal.....	300	" " " " " " " "
" " San Bernardino, Cal.....	300	" " " " " " " "
" " Tulare & Fresno, Cal.....	130	" " " " " " " "
S. Joaquin & King's R. Canal, ".....	150	" " " " " " " "
Chowchilla Canal, Cal.....	150	" " " " " " " "
Canals of Utah Territory.....	100	C. L. Stevenson, C. E., Trans. Am. Soc. C. E.
Canals of Colorado.....	100	Nettleton, State Eng., Colorado.
" " Cache la Poudre, Col.....	193	Prof. Mead, C. E.

Wm. Hammond Hall, State Engineer of California, in writing of the duty of water, says: "It is not proper to make a comparison with the water duty of Piedmont and Lombardy, where cereals require no irrigation, and where rice and marcite meadows consume so great a proportion of the water used." Further on in the same report from which the above was taken, Mr. Hall's assistant, J. D. Schuyler, says: "One hundred and fifty acres per cubic foot per second should not be taken as an unreasonably high duty for water."

The U. S. Commission on Irrigation, composed of Gen. B. S. Alexander, Col. Geo. W. Mendell, U. S. Eng'rs, and Prof. George Davidson, of the U. S. Coast Survey, reported that a duty of one hundred acres might be calculated upon for Central California.

The average duty of water given in the foregoing table for localities in the United States, amounts to one hundred and seventy acres, but owing to the scarcity of water and value of land in Los Angeles and San Bernardino counties, California, the duty of water there is far above the average.

In estimating the duty of water, however, climate, character of soil, and method of distribution, are by far the most important con-

The
Duty of
Water.

Duty of
Water for the
Lands of
the Snake River
Valley.

siderations, particularly the latter, to which I shall call attention further on. Bearing these considerations in mind, and using the experience in other countries as a guide, I feel assured that one hundred and fifty acres per cubic foot per second may be safely assumed as the duty of water for the lands of the Snake River Valley.

Volume of
Water Required
by Canal.

The estimated area to be irrigated, as given before, is about six hundred thousand acres. Allowing one hundred and fifty acres per cubic foot per second, it will require four thousand cubic feet per second for irrigation during ninety to one hundred days in the year, beginning in the latter part of May, the exact time depending somewhat upon the spring rains. From what has already been written concerning the water supply, it will be seen that over four thousand cubic feet per second can be obtained from the Boise River, exclusive of all prior claims, the total amount of these being very small.

Sufficient
in
Boise River.

Water
Right
Appropriation.

The appropriation has been made under the laws of the United States and Territory of Idaho, and consists of two hundred and twenty-five thousand "miner's inches," or four thousand and seven hundred cubic feet per second, sufficient to supply both the main canal and the Boise branch.*

Validity
of
Water Right.

The question of the validity of the water right has been most thoroughly examined. The laws of Idaho, and of many other of the Western States and Territories, abrogate entirely the common law doctrine of riparian rights, and subject all the waters running through the public lands of the United States to appropriation according to the laws of Congress—differing in this respect from the statutes of California and Nevada, which recognize in a measure riparian rights.

Between appropriators, priority of time gives priority of right.

Prior
Appropriations.

The prior appropriations on the Boise River amount to about

* A legal miner's inch, in Idaho Territory, is that quantity of water which will flow through an inch square orifice in an inch partition, with a pressure, or head, of water, extending four inches above the center of the orifice. Forty-eight of these miner's inches equal one cubic foot per second. In twenty-four hours, this miner's inch will discharge eighteen hundred cubic feet of water, which is a "twenty-four-hour miner's inch," and is the kind used in this paper, unless otherwise designated. The term appears to have originated as an *encin*, in Piedmont, Italy, about the middle of the XVI. century, was first adopted in this country in the placer mines of Georgia, and afterwards throughout the West Coast, both for mining and irrigation. It has many different values, depending upon the head, size of orifice, etc.; the most common, perhaps, being a six-inch head, above an orifice two inches high, delivering 43.0 cubic inches per second, or 2,250 cu. ft. in twenty-four hours. One cubic foot per second equals 38.4 six-inch miner's inches, or 48.0 Idaho miner's inches.

9,600 miner's inches (200 cubic feet per second), a comparatively insignificant quantity.

A full legal opinion as to the validity and incontestability of the water right under consideration has been obtained from the most eminent lawyers of the Territory (Messrs. Huston and Gray, and Mr. R. Z. Johnson, attorneys, of Boise City, Idaho), and this opinion, together with the abstract of title, deposited in the New York office of the Company.

Legal Opinion
as to Title.

The line of canal being on government land, the right of way is free, under the United States law.

Fertilizing
Qualities of the
Silt-bearing
Water.

IN obtaining water supplies for cities, purity is the first consideration. In supplying lands, however, impurity is the quality most desired; for water carrying sediment supplies the land with both food and drink.

Want of it
Shown in the
Henares Canal.

The Henares Canal, in Spain, although a beautiful piece of engineering and exhibiting every other factor of financial success, was yet a partial failure, for the reason that this subject of fertilization with water was not taken into consideration. The land had been exhausted by previous crops, and the cultivators were poor. The water brought by the canal was pure, and although it enabled the peasants who used it to increase their crops, the increase was not in proportion to the cost of the water, and they could not afford to pay for it. The canal company was forced to reduce its water rates below the cost of supply, with the hope of eventually improving the land by artificial fertilization. This hope is gradually being realized, and eventually the canal will be a profitable investment.

Value of
Sediment
in
Lombardy.

One of the irrigating canals of Lombardy gets \$22 per cubic foot per second more for its water than a neighboring canal "because of the valuable fertilizing matter brought down." *

In France.

"In the valley of the Moselle in France on land absolutely barren and worthless and with no manure, save the alluvial matter deposited by constant irrigation, the produce of two crops a year after a few years attains to four tons (hay) per acre. . . . The difference is very marked between the meadows irrigated with the silt-bearing waters of the Durance Canals and those of the clear cold Sorgues. So much so that the cultivators prefer to pay for the former ten or twelve times the price demanded for the latter." † . . .

"Although there are no satisfactory experiments to show how much of the beneficial effects of irrigation can be attributed merely to the water supplying moisture to the land and crops, or to the matter in solution and mechanically suspended in it, yet it is well known that the waters of the Durance produce more satisfactory results than the waters of some other rivers, for example, the Sorgues.

* Stewart: *Irrigation for Farm and Garden*.

† Moncrieff: *Irrigation in Southern Europe*.

The clear waters of that river can be had by the (land) proprietors almost gratis, nevertheless they prefer to form associations and at considerable expense to obtain water from the river Durance." *

On the Royal Jucar Canal in Valencia, Spain, and on the canals of the Turia, the silt is taken from the water channels and carefully saved for its value as manure. †

In Spain.

In California, "in filtering through the porous soil, all the sediment and fertilizing matter contained by the water is detained and acts as a perpetual restorative. Rich fields, producing large annual crops, are to be seen on Kern Island, that were barren wastes of pure sand before irrigation reclaimed and fertilized them." . . . In Los Angeles Co., "The clear pure water used for irrigation, coming as it does from artesian wells and springs, carries so little of the rich fertilizing sediment . . . that it does not restore the elements of plant growth to the soil and constantly enrich it, as does irrigation in some other parts of the State. . . . There are large tracts of land at a number of points along the foot-hills of the Sierras which are now fertile and productive, but which a few years ago were almost barren. The sediment in the water used for their irrigation has been retained on the surface and has made good soil. This is notably the case in the neighborhood of Folsome and also near Smartsville." ‡

In California.

In Kern County, California, the engineer in charge of Haggin and Carr's irrigation works there, "calculated that after the fifth year of cropping, the land irrigated with the river water carrying sediment gave eighteen per cent. better results than the land which was irrigated by the clear water from artesian wells."

Mr. Doremons, an engineer who has been employed on irrigation works in Utah since 1847, informed me that it was commonly known there that land too poor to grow a crop when first watered would in a few years become sufficiently enriched by irrigation from mountain streams to give fair results, and in time become as fruitful as the flat adobe lands of the valleys.

In Utah.

Gen. L. F. Cartee, of Boise, late Surveyor-General of Idaho, said to me: "Open a trench or furrow through a newly-plowed field, and

Value
of silt in
Boise River
Water.

* Wilson : *Trans. Inst. C. E.*, London.

† Moberieff : *Irrigation in Southern Europe*.

‡ Wm. Hammond Hall, State Eng., California, *Report*.

Value of
Silt in
Boise River
Water.

let that water (Boise River) run through it; at first it will soak through its banks, and by percolation wet the earth each side for a distance of perhaps two feet; by this time there will be a lining of fine silt to the trench, and no more water will go through it. You cannot irrigate by percolation with this water, and you need fear no seepage from your canals. There will be a little in the beginning, but it will not last. We have to irrigate here by letting the water flow over the surface in a sheet, or better, in little drills, such as are formed by a harrow, and the result is we get a layer of fine silt over our lands, which is the best fertilizer we can have. Our lands grow richer by cropping instead of poorer."

Mr. Stuart, whose farm is on the low land directly opposite Boise City, says: "If a ditch in which water has been running for several weeks be allowed to run dry, a fine grayish-green coating will be found to cover the bottom and sides from a quarter to half an inch thick. The sun shining on this will cause it to smell very badly in a few hours. I find my land does not grow wheat well at first, but after a couple of years I can get thirty to forty bushels to the acre. One portion of my land gets water from a pond or reservoir, where the water has stood and become clear. It does not make good crops like the muddy water. I would rather give two dollars an acre for muddy water than one for clear."

Mr. I. N. Coston, a member of the Legislature for many years, and one of the most successful farmers in Boise Valley, whose land is of much better quality than Mr. Stuart's, told me that it grew better and better with irrigation, and his statement is well supported by the yield from his land, as shown further on.

Mr. Payne, who has a large farm near Mr. Stuart, has been settled there several years longer than Mr. Stuart, and gets heavier crops. He says: "Constant cropping not only does not cause the land to deteriorate, but it improves under it, so long as we have this muddy water to irrigate with."

Much more testimony of this kind could be easily obtained, but I consider the foregoing sufficient to establish the value of silt-bearing water for irrigation, and also to prove that the water of the Boise River has this important quality, and that it will constantly restore to the lands irrigated by it those elements taken away by the crops, thus keeping them permanently fertile.

To an engineer the question of the drainage of a tract of land to be irrigated is quite as important as the water supply. The neglect of this subject in connection with irrigation has cost the government of India millions of dollars in reconstruction of canals, and, where the cost of re-alignment for the canals was too great, has left whole districts to deteriorate into uninhabitable marshes and white alkaline flats.

Importance
of
Drainage.

In the San Joaquin Valley, near Lake Tulare, there are tracts of land which seem to be impregnated to a great depth with alkaline salts; the effect upon them of irrigation is to cause these salts to rise to the surface and render the lands useless. I can discover little or no land of this description along the Boise or Snake rivers. The lands have a natural drainage sufficient to prevent any accumulation of salts left by the evaporation or the water.

Alkali
and Malaria
from Want of
Drainage.

Lands not easily drained are unfit for irrigation, whether alkaline or not; for if alkali does not appear, malaria will, and the land will steadily deteriorate in value. The lands of which I am writing have ample slope for all drainage purposes, ranging from ten to as high as fifty feet to the mile. The winter rain-fall has been sufficient to carve these apparently level plains into miniature independent drainage systems, each with its divide and drainage channels or depressions.

Drainage Slope
of
Boise Lands.

The main drainage of the tract of land south of the Boise is concentrated into Indian, Ten-Mile, Black, and Five-Mile creeks, which are creeks for a month or two only in the early spring, and dry for the remainder of the year.

Drainage
of
Boise Lands.

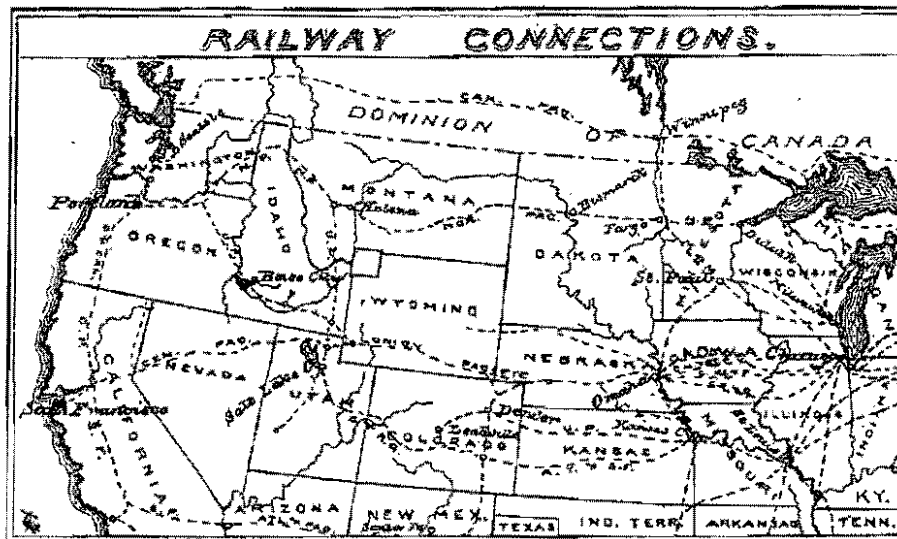
Indian Creek, which is much the largest, is some forty miles in length, heading in the bare hills to the east of Boise, and becomes a torrent, at times, for a few days in the spring. Its channel is cut deep into the lava, which underlies the lands along its course, thus rendering it harmless even at its greatest height. The other streams are never large enough to become dangerous. Attention will be called to these creeks again in describing the alignment of the proposed canal. The tract of land upon the north side of the Boise River lies in such a position as to have no drainage across it from higher lands, as a glance at the map will show. It has plenty of slope, however, for the necessary local drainage channels.

It is evident, therefore, that the whole of the lands in question have all the conditions necessary for proper drainage, and with reasonable care in laying out the irrigating channels, not an acre of land need be lost in swamp or alkali; neither need there be a drop of water allowed to run to waste in drainage channels.

The land being almost entirely unoccupied, there need be no extra expense or trouble in placing each channel in its proper position where it can most perfectly do the work desired.

Advantages
of
Location.

These lands may, at first sight, appear somewhat isolated in their location, and without markets or outlets for their productions. On



Mining
Markets.

the contrary, the extensive mining regions of Owyhee County on the south, of Western Idaho on the north, and of Wood River, Sawtooth, and Butte on the east, will for many years, as they do already, supply a lively market for fruit and vegetables.

These mining districts are giving evidence of great and continued productiveness, and their demands upon the agriculture of the neighboring plains will be enlarged in proportion to their own growth, as their climate does not permit of agriculture.

Oregon
Short Line and
Union Pacific
R.Rs.

The Oregon Short-Line R.R. runs directly through the lands in question, and has at present four stations on them, viz.: Kuna,

Nampa, Caldwell, and Parma. With the exception of Caldwell, on the Boise River, these are merely water stations.

Caldwell has a trifling amount of cultivated farming land near it, and is a shipping point for mining districts both to the South and North.

This railroad is under the control of the Union Pacific, and gives an outlet to Portland for wheat; it may here be mentioned that as the Portland market price for wheat is only six cents a bushel lower than that of Chicago, it offers better prices for wheat grown in the Snake River Valley, than the Red River Valley of the North can secure.

Eastward, the railroad connects at Shoshone with the branch road to the Wood River and Sawtooth mines; at Pocatello it connects with the Utah Northern for the Montana mines on the north, and Salt Lake City on the south; at Granger it connects with the main line of the Union Pacific, and through this to all points East.

Official letters from the President and Managers of the Union Pacific Railway guarantee to the company most favorable freight rates for traffic from and to these lands, both east and west. They also promise low rates for the carriage of immigrants and their effects to the tract, and express the readiness of the Union Pacific to aid in every way in its power the speedy settlement and subsequent prosperity of the section, rightly deeming it of great advantage to the railroad to have these desert plains converted to a vast farming and stock-raising district.

Portland
Wheat Markets.

Railroad
Connections.

Favorable
Freight
Rates.

Quality
and
Productiveness
of Boise Lands.

IN regard to the quality and productiveness of these lands, there is a certain amount of evidence to be found on the farms which are now under cultivation along the banks of the Boise River. Owing to the difficulty, financially an impossibility, of taking water in small ditches from the river to lands distant from it, there is but a narrow strip of land, contiguous to the river, upon which crops are grown.

It is the universal opinion of the farmers upon these lands that the outlying higher lands are far richer than their own. That this opinion is correct may be inferred from the fact that the higher lands consist largely of decomposed lava, which makes the richest soil known, while the valley lands have a large proportion of clay and sand, brought down by the, geologically, modern river.

Analysis
of
Soils.

The following letter and analysis from Prof. Johnson, of Yale College, are the results of his examination of the samples of soils which I selected from different points on the higher lands:

"NEW HAVEN, CONN., *February 25, 1884.*

"A. D. FOOTE, Esq.:

"*Dear Sir:* I give you herewith the results of analyses of the two samples of soil lately received from you. The analyses show that both soils contain a good store of all the elements of fertility, with the single exception of nitrogen. The considerable quantity of matters soluble in hydrochloric acid and the fineness of the soils afford strong presumption that they will, under due supply of water, yield abundant nourishment to crops.

Since ordinary crops, under favorable conditions, forage, by their roots, through a depth of several feet, no less than ten million pounds of soil per acre contribute to their nourishment; and, in such a mass of soil, the small amounts of sulphuric acid and nitrogen stated in the analyses represent considerable quantities, each hundredth of a per cent. corresponding to one thousand pounds per acre.

"Yours very truly,

"S. W. JOHNSON."

ANALYSES OF SOILS.

By PROFESSOR S. W. JOHNSON.

	Sample No. 1.	Sample No. 2.
Silica (soluble in hydrochloric acid).....	.016	.024
Oxide of iron and alumina.	1.624	2.025
Lime.....	1.200	.383
Magnesia.....	.768	.503
Soda.....	.026	.043
Potash.....	.119	.259
Sulphuric acid (SO ₄).....	.026	.023
Phosphoric acid (PO ₄).....	.111	.094
Carbonic acid (CO ₂).....	.866	trace
Chlorine.....	trace	trace
Silica (soluble in carb. soda, sal.).....	1.958	2.461
Titanic acid (TiO ₂).....	.869	.303
Matters dissolved or set free by cold concentrated hydrochloric acid.....	7.588	6.118
Sand, silicates, etc., insoluble in acid.....	92.417	93.862
	100.000	100.000
Organic matters contain of nitrogen.....	.055	.040

Placing no higher estimate, however, on the productiveness of the uplying lava lands than upon those along the river, the following statements of different farmers show what can be done on the low lands, and with absolutely no fertilizing element used except the water of the Boise River.

Mr. I. N. Coston, to whom I referred for information concerning the value of silt-bearing water, told me the following, as I noted it down:

Examples
of the
Productiveness
of the
Boise Lands.

"Last year, on ten acres of my poorest land, with imperfect irrigation, owing to a bar being formed in front of the headgate to my ditch at high water, as usual, I raised forty tons of red clover hay. I sold seventy-five thousand pounds (1,250 bushels) of onions, from two acres of land. Potatoes only gave me two hundred bushels to the acre. Have raised one thousand bushels on two acres. I have raised one hundred and thirteen bushels of barley on an acre; wheat from forty to sixty bushels; oats one hundred to one hundred and fifty bushels, carrots and turnips equally good in proportion with potatoes. Connecticut flint corn will grow well, especially upon the higher benches. I have raised sixty bushels to the acre in the bottoms. Prunes, the Germans say, grow better than in their own country. Apples, pears, peaches, plums, apricots, cherries, do as well if not better

Examples of
the Productive-
ness of the
Boise Lands.

than in the most favored spots in California. The elm, maple, black walnut, locust, etc., make our best shade trees."

Mr. B. B. Stuart, also referred to before, is said to have the poorest piece of land in the valley. He admits that it was rather poor when first plowed, but the water has improved it. He gives the following examples of what it will yield:

"I have been farming for five years on this tract. My principal crop has been grass, which improves under irrigation. I grow alfalfa and clover. My average crop is four tons to the acre in two cuttings. I can irrigate, cut, and put my hay in stack, for the cost of one ton per acre, leaving me three tons net. I raised fifteen acres of potatoes this year, which averaged one hundred and fifty bushels of marketable potatoes to the acre; about an average crop. I have raised corn every year until this year, never less than twenty-five bushels to the acre, and an average of thirty to thirty-five. I have raised wheat, but only in small quantities and not often, which averaged twenty-two bushels to the acre. I sold last summer from eighteen square rods of land, one hundred and twenty-five dollars' worth of strawberries, besides using all I wanted for the family. To sum up: I can, with irrigation, raise larger crops at about the same cost per acre here in this sage-bush desert, than I could, depending upon the rain-fall, in either Massachusetts, Missouri, or Oregon, in which States I have worked farms—besides always having clear weather to secure crops in."

Mr. Payne, a neighbor of Mr. Stuart's, having irrigated a year or two longer than Mr. Stuart, gets larger crops. This year he raised three hundred and sixty tons of alfalfa upon sixty acres of land (six tons per acre), and one hundred and sixty tons of red clover on forty acres (four tons per acre). He does not raise much wheat, because hay crops pay better at present. Oats sown with clover yielded thirty bushels per acre. He has usually very good flint corn. Potatoes yielded two hundred bushels per acre. Four years ago he set out two hundred apple trees, and this year realized two bushels per tree.

Doctor Wright, of Boise City, who has a farm near Middleton, told me that one field of his produced continuously for fourteen years, from fifty to sixty bushels of wheat per acre, and this year looks as well as ever.

C. W. Moore, the wealthiest farmer in Boise Valley, said that the

average yield for his farm was six tons of alfalfa, or four tons of clover, per acre, in addition to excellent pasturage from September to March. Examples of
the Productive-
ness of the
Boise Lands.

"One acre of clover, after furnishing its two crops of hay, will keep and fatten for market, during the winter, two beef animals, without grain or any other food whatever. There is something wonderful to the Eastern farmer in the fattening qualities of our clover. I think it is partly owing to the fact that we have no dew to injure it while it is being cured. My milk cows are as fat and give as much milk as anybody's, and I never feed them anything but clover hay in the winter. My hogs—and I have a large drove of them—I fatten in the clover fields the same as I do cattle. If we have snow enough to trouble them, I take them up and feed them on clover and alfalfa hay the same as other stock. I prefer clover to alfalfa in this country."

I have condensed the testimony of different farmers in the following table. It was very carefully prepared, and represents the average crops as given by each individual from his personal experience. In no case are the large or exceptional crops given.

TABLE.

SHOWING THE AVERAGE PRODUCTION PER ACRE OF LAND NEAR BOISE CITY, BEING THE ACTUAL EXPERIENCE OF EACH FARMER NAMED.

NAME.	Bushels Wheat.	Bushels Rye.	Bushels Oats.	Bushels Barley.	Bushels Corn.	Bushels Potatoes.	Bushels Apples.	Tons Alfalfa.	Tons Clover.	Tons Timothy.	Cost of applying Water per acre.	Cost of raising Hay per acre.	REMARKS.
B. B. Stuart..	18		35	40	25	250		6	4		\$1.50	\$0.00	Apple trees
Thos. Davis..	25		40	40	50	150	1,000						are from ten
Geo. Davis..	25		30	45	30	800							to fifteen
Saml Aiken..	25		40	50	25								years old
G. W. Gess..	20		35	35				3	3	1½	1.00	4.00	only.
C. W. Moore..	31	15	43					5	4	2½	1.25	6.00	"Cost of
G. D. Ellis..	25	20	40	50	25	300	800	4	4	2	0.50	4.00	applying
L. F. Currier..							1,000	6	4		1.00	6.00	water" does
M. E. Payne..	25		30		30	400		5	4		1.00	6.00	not include
John Buckley.			50	40	30	400							annual wa-
Wm. Berau..							1,000	5	5	2½	1.60		ter rent.
Sam. McDowel	25	25	50		30			5	5	2½	1.00	5.00	Value of
John Lemp..	25	25	45	45			800	6	6	1½	1.00	6.00	pasturage,
I. N. Coston..	40		50	50	60	400	1,000	6	6	2	1.00	6.00	after cutting
Average..	25.8	21.25	40.67	43.00	35.0	314.3	936.65	5.1	4.5	2.07	\$1.03	\$5.44	hay crop, more than pays water rent.

The foregoing statements concerning the productions of these lands will undoubtedly appear needless to any one acquainted with

the sage-covered lands of the arid West. I believe that without exception they are considered extremely fertile when water is applied to them. But the lava soil of these Boise lands is, I think, far above the average, more especially for growing grasses and cereals. These, I anticipate, will be the principal crops, because of the peculiar location of the lands in close proximity to an enormous extent of mountain pasture.

ONE who has not seen them can form no idea of the extent and richness of these mountain pastures of Central Idaho. I have wandered on horseback over hundreds of miles of them, and speak from personal knowledge. The grasses are chiefly perennial, unlike those of the great plains, and consequently keep up like the pasture lands of the East, and their fattening qualities are remarkable. Horses will fatten on them when ridden all day, and only turned loose to feed at night. The soil is rich and moist; running brooks and springs abound; quaking asp thickets, pines, and larches line the gulches or are scattered over the hillsides, furnishing shelter from sun and storm.

Surrounding
Pastures—
Their Extent
and Richness.

Rolling hills, seldom rocky, and immense high prairies, with their thick bed of grasses and flowers, form the ideal wild pasture land. There are millions of acres of these lands surrounding the Snake River Valley. At present they can be utilized only to the extent allowed by the capacity of the low valleys near the river for keeping stock alive through the winter. Every year finds the low valleys with less capacity for feed, because they are overstocked; and hay feeding and clover pasturage is already resorted to in winter, by the better class of stock-raisers, to the fullest productive limit of the farming land. But when these vast lower plains are reclaimed and irrigated, and each acre of land is capable of not only keeping alive, but keeping fat, two or three head of stock, there will then be a hundred head of cattle pastured in the mountains where there is one now, and the business of shipping fat cattle from this great valley every day in the year will be carried on to an extent hardly to be imagined.

Stock Raising.

In proof of the foregoing statement, I can cite the experience in the Truckee Valley, Nevada, where the winters are longer, surrounding pasturage no better, if as good, land stony and cleared with difficulty, and the price of water twice what it will be in the Snake River Valley.

Experience
in
Truckee Valley.

Mr. Robt. H. Lindsay, attorney-at-law, of Reno, Nevada, kindly furnished me the following statistics concerning hay growing and winter feeding for stock in the valley.

"According to the assessor's estimate, there are twelve thousand acres of land in the valley growing hay, the average crop of which is

four or five tons to the acre. This hay is stacked in the fields and sold by measurement to stock-owners at an average price of six to seven dollars per ton; never less than five, and this year it was eight dollars.

"The cost of water is excessive, being five dollars an acre per year, so that hay costs the farmer three dollars per ton when in the stack.

"At the present time (January, 1887) there are nine thousand five hundred head of cattle feeding in the valley; there would be more if there were more hay."

Comparison
between
Truckee and
Snake River
Valleys.

From these facts it will be seen that the farmer makes a net profit of from eight to twenty dollars per acre. If it pays so well to irrigate in Nevada, it will certainly pay equally well in the Snake River Valley, where the water tax is reduced one-half. It may be supposed that the Truckee meadows pay because of their proximity to San Francisco. On the contrary, the freight rates guaranteed by the Union Pacific R. R. bring the Snake River Valley as near or nearer to Chicago, financially speaking, than the Truckee Valley is to San Francisco, on the Central Pacific R. R.

Feeding
Stock
in Winter.

In the Snake River Valley, although a great many stock men now feed more or less in the winter, it is usually in such a desultory manner that it is difficult to tell whether it pays them or not, except in the saving of absolute loss by deaths, which would otherwise occur. Mr. C. W. Moore, however, kept a very careful book account with his feeding stock in order to ascertain precisely what hay was worth to feed. He found that stock-owners could afford to pay from six to eight dollars per ton for hay for feeding purposes, depending of course upon the price of cattle and upon freight charges.

Messrs. Ballentine and Eastman, also of Boise, estimated that they could afford to pay six dollars a ton for hay, and actually did buy a large amount at that price and feed it out. *

Cost and Profit
in Winter
Feeding.

Mr. Moore and Mr. Ballentine both said that the profit in feeding was not so much the gain in pounds weight as that every pound of the animal was raised in value several cents by feeding.

Profit of
Hay-making
to the Farmer.

* Taking hay as worth \$6 to \$8 per ton, crops four to six tons per acre, and applying water, cutting and stacking \$1.25 to \$2.00 per ton, and we have a profit to the farmer from hay-raising, of from \$16.00 to \$40.50 per acre, the value of the land for pasturage after cutting the crop being more than sufficient to pay the water rent.

For example, an animal weighing in the spring,									
when <i>not fed</i> during the winter, 800 lbs, is worth 3c. per lb, or \$24.00									
When <i>fed</i>	"	"	"	1000	"	"	5c.	"	50.00
									Difference, \$26.00
Cost of feeding and pasturage,									16.00
Profit per head in feeding,									\$10.00

Add to this the fact that there is no loss through exposure—and from this winter's experience it would seem that this item might occasionally be a large one—and it will be seen that there is profit in feeding stock in the winter, in addition to the fact that cattle will be larger, and calves healthier and of quicker growth, when properly cared for.

I repeat, therefore, that the peculiar location of these—when watered—rich hay-growing plains, near these vast grass-growing hills, forms a combination of pasture and feeding lands which cannot be excelled for stock-raising purposes in this country. It enables the stock-grower in Idaho to ship fat cattle East during the winter and spring with a decided advantage over the more expensive corn-fed stock of Nebraska and Kansas; and, through all the year, the mountains being so near the railroad, fat stock can be brought down and butchered and shipped, without danger from the excessive heats which prevail in the mid-West.

It may be thought that the labor of watering the land several times every year may add so much to the cost of raising crops as to render it unprofitable. By referring to the table of crops, it will be seen that from one to two dollars per acre, per year, is sufficient for this work; and when the loss, in rainy countries, from showers, at the time of harvesting, or the loss from the want of them at growing time, is taken into consideration, I think it self-evident that to have absolute control of the water, and to put it on or off as desired, must be a surer and more profitable method of farming than that which leaves the farmer at the mercy of a variable climate.

Another objection often made to the practice of irrigation is the labor of making ditches and getting the land prepared. This may be a very expensive operation upon stony and uneven, hard land, but on these mellow sage-bush plains it is quite another matter. A number

Combination of
Pasture and
Feeding Lands.

Advantages
for
Shipping Cattle.

Cost of
Applying
Water.

Cost of
Making
Ditches.

Preparing
the
Land.

of men from the mid-West have told me that it was far easier to clear and prepare these lands for irrigation than to break the new sod of the prairies. In fact, the preparing of these lands is often simply burning off the sage-bush, and harrowing in the wheat. No plowing done at all, except for the ditches.

C. W. Moore, before quoted, in speaking of a tract of several thousand acres which had been accidentally burned over, said that he "could put in a crop of wheat on that land for a dollar and a quarter an acre."

It is advisable, in connection with the productions and cultivation of these lands, to look into the question of their probable increase in value, and of their improvement being permanent. That they will increase in value may be considered certain, from the evidence furnished by similar undertakings.

Lands:
Increase in
Value by
Irrigation in
Idaho.

Lands capable of irrigation along the Boise River are worth now from ten to one hundred dollars per acre. There are none, I am sure, worth less than ten—if any are so cheap as that. Some of the land near Boise City is rented to Chinese gardeners at twenty-five dollars per acre, annually.

In the Truckee Valley, Nevada, Mr. Lindsay writes that the average value for the twelve thousand acres of irrigated land in the valley is forty dollars per acre, though there are choice lots worth one hundred.

In the Goose-creek Valley, Cassia Co., Idaho, I had occasion to inquire, several years ago, into the value of irrigated lands. At that time they were eighty miles from a railroad, one hundred and fifty from the nearest mines, and they are about fifteen hundred feet higher than the Boise lands; yet, wherever water could be had, they were worth from ten to twenty dollars per acre. I may add that there were thousands of acres that could not be watered, which were of no value.

C. L. Stevenson, C. E., of Salt Lake City, Utah, says, in a paper read before the American Society of Civil Engineers: "The lands in the Jordan Valley, from an original cost of one dollar and a quarter per acre, at once, on being watered, attained a value of fifteen to twenty dollars, and, in less than five years, a value of eighty to one hundred dollars per acre."

In Utah.

Elwood Mead, C. E., Prof. of Irrigation Engineering in the Colorado Agricultural College, in a similar paper, says: "Land, with water, sells for twenty-five to one hundred and fifty dollars per acre, but has no market value without water."

In Colorado.

Edward Bates Dorsey, C. E., in a paper read before the Am. Soc. C. E., said: "In Colorado land which can be irrigated sells for fifteen to fifty dollars per acre."

"George G. Anderson, Chief Eng. Northern Colorado Irrigation Co., in discussing Mr. Dorsey's paper, said: "The value he (Mr. Dorsey) gives for irrigable lands in Colorado is fully within the limits. Such lands, within a radius of ten miles of Denver, rate at seventy-five to one hundred dollars per acre."

In Kansas. H. V. Hinckly, M. Am. Soc. C. E., in discussing Mr. Dorsey's paper, wrote of his experience of nine years in Eastern Colorado and Southwestern Kansas, along the Arkansas River: "I have seen land appreciate wildly from five up to two hundred dollars per acre, on the advent of a canal, and afterwards fall to twenty to thirty dollars, where it belonged. Land where *full* crops cannot be raised with an *annual* certainty without irrigation, is permanently increased in value by irrigating facilities."

In California. F. Eaton, M. Am. Soc. C. E., writing of his experience at Riverside, San Bernardino Co., California, says: "These lands, before they were settled, were not even considered suitable for grazing purposes, as the average annual rain-fall did not exceed four inches; the wild grasses, in consequence, would seldom attain a growth that would furnish picking for sheep. The lands at that time, therefore, had hardly any value. When these lands were put under irrigation, some fourteen years ago, they sold for twenty-five dollars per acre. They have since been steadily advancing. I find them changing hands now at three hundred or four hundred dollars per acre for uncultivated lands, and from eight hundred to fifteen hundred for lands with matured vines and trees. It cannot be justly charged that these prices are stimulated by social, educational, and other advantages, while the products net the owners, annually, two hundred dollars per acre."

Wm. Hammond Hall, State Engineer of California, says in his last official report: "In California, lands purchased at three to ten dollars per acre, without opportunity or reasonable hope of irrigation, command fifty to two hundred dollars per acre when water is brought to them, and they have the privilege at hand to receive and pay for irrigation."

In Spain. I could quote many more instances, if necessary, both in this and foreign countries, showing equally well the permanently increased value attained by lands brought under irrigation; as in Spain, where, Mr. ~~Bate~~ reports, in a paper before the Institute of Civil Engineers,

J. F. Bateman

London: "This rate (28 shillings—\$7.00 per acre—for water) was cheerfully paid, and well it might be, because the increased value of the land was at least sevenfold;"—but enough, perhaps, has been said to prove that irrigation is profitable to the land-owners, at least.

made in the
Valleys of
northwestern
Idaho.

IN regard to the climate of this portion of the Snake and Boise River Valleys, there seems to be an opinion, in the East especially, that, being so far north, it is necessarily very cold; forgetting that Washington Territory is still further north, and has a comparatively warm climate. Newspaper reports of snow-slides, great depths of snow, and extreme cold in Idaho, refer to the mountain mining camps and communities at an elevation of many thousand feet above the Snake and Boise River Valleys. The elevation of these lands is about twenty-five hundred feet above the sea; they are distant some four hundred miles from the west coast, but have no high mountains between them and the ocean. Possibly for this reason, and also because high mountains on the north protect them, the climate is neither so warm nor so cold as that of New York or New England. The snow-fall on the plains is very light, and the cattle are driven to them from all the surrounding country for wintering.

Usually the winters are short, clear, bright, and still. From my experience in these localities, I should compare them with the winters of Virginia rather than those of New England.

Climate is much a matter of personal feeling; but to any one desiring a temperate climate, with reasonable changes, the southwestern valleys of Idaho offer one as pleasant as can be found.

The peach crop is not injured oftener than about once in ten years, which is as good evidence, perhaps, as could be offered as to the evenness and temperate nature of the climate. Immigrants from all the northern States and from northern Europe will find this climate far preferable to that which they have left. The dry air and light snow or rain-fall make more difference, probably, in its favor than the temperature as shown by the thermometer.

Absence
of Malaria.

If there were a possibility of developing malaria in this valley, irrigation, as practiced near Boise City, would have been the means of doing so already. A more slovenly system could not be imagined; yet this evil, combined with no system of drainage whatever, has as yet, apparently, done nothing to injure the health of the inhabitants.

Lumber
interests.

There is another advantage in the location of these lands which is

worthy of notice. The upper waters of the Boise River are heavily timbered with good varieties of pine and fir.

Mr. M. H. Goodwin and Mr. George Alexander, who are now engaged in the lumber business on the Boise River, have made careful estimates of the amount of standing timber within easy reach of the water, on the north and middle forks of the Boise River. I have examined the south fork myself, and together we found that there are about seventy-five millions of feet. At a distance from the streams, requiring roads and expensive hauling, there is probably as much more. At present, as the river's rapid current makes the booming of logs difficult, but little lumber is taken, and that by way of Moore's Creek very early in the spring, before the main river is high enough to break the booms.

By the building of the dam necessary for this irrigating canal, a long pond of dead water will be formed, where logs can be boomed or stopped, and then run down the canal to mills on the plains, as required.

While this floating of logs through the canal will be of considerable direct benefit to the canal owners, it will be of greater benefit to them as an inducement for incoming settlers to occupy lands. Cheap lumber, wood, fence-posts, etc., are of great importance to the farmer in a new country, and will often go far to determine his choice of residence.

There will be a great number of points along the canal line where Water Power. power for mills can be readily furnished.

In providing facilities for irrigating so vast an area of unoccupied Immigration. land as I have been describing, it is important to ascertain, if possible, what are the probabilities for its immediate settlement by farmers who will use the water. There is no doubt the land would be quickly taken up by speculators under the Desert Land Act, but this disposition of it would not be a desirable one for the water owners. Land-owners, who are not also land cultivators, will not buy water. This speculative appropriation of the land can be easily prevented by the canal owners refusing any contracts for water. Desert land cannot be held without water, and if it is made known that no water will be sold except to actual settlers, others will be prevented from coming in.

It is somewhat difficult to form a positive opinion in regard to the rapidity with which actual settlers would occupy this land; but we

Immigration. can form some idea from the fate of similar enterprises, and the fact that more advantages are offered on this tract than on most others.

One who has traveled through the arid West, and seen how every nook and corner, even high up in the mountains, where a little land and water can be brought together, is occupied, would scarcely doubt that these rich and attractive lands will be taken up as rapidly as the water can be brought to them. However, six hundred thousand acres is an area as large as three-quarters of the State of Rhode Island, and, being all arable, has room for a great number of people.

In Colorado, all lands under the canals, and which belonged to the Government, have been taken usually before the canals were finished, although the canal companies there charge from one dollar and a quarter to as high as fifteen dollars per acre, for the water right alone, exclusive of the annual charge of one dollar and a half per acre for the use of the water. The lands owned by the canal companies have been sold at from five to twenty dollars per acre, though naturally not as rapidly as the free grounds were taken up.

If the canals in Colorado, with a far harsher climate and a much greater elevation above the sea, with poorer pasturage surrounding them, with longer distances to a market for their productions (excepting stock), with a much higher price for water and for land, found little difficulty in getting customers for their water, it seems but reasonable to expect that these Snake River lands will be taken up with at least equal rapidity.

Immigrant
Rates :
Union Pacific
R.R.

The Union Pacific Railway Company has agreed to transport immigrants and their belongings at less than half rates over their lines. It has also agreed to open offices for information in the large cities, and to use all the power of its immense system of advertising and transportation offices in this country and Europe, to bring immigrants into the Snake River Valley.

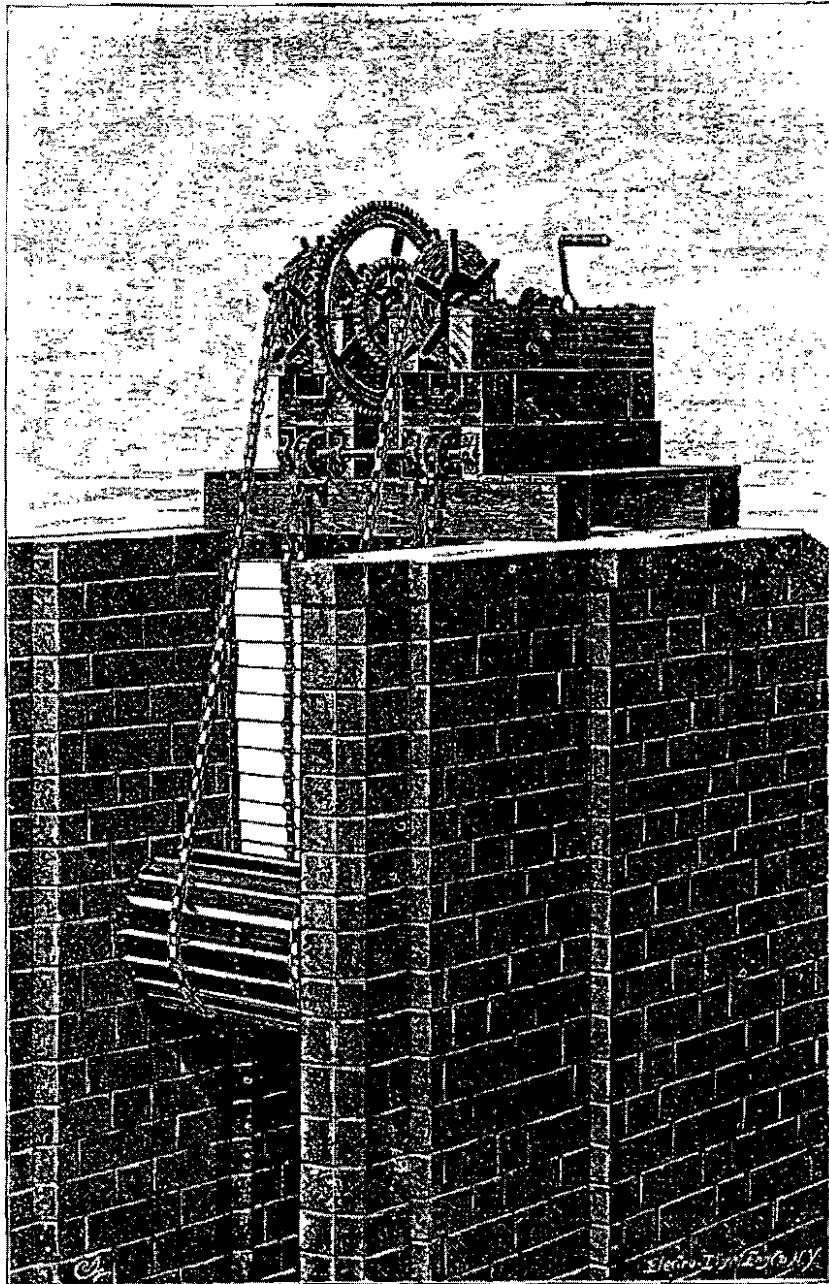
In building the canal, it will be good policy to employ, as far as consistent with economy, men who wish to settle on the lands, and their teams. If work for a year or two, at fair prices, can be offered as an additional inducement to immigrants, it will go far toward bringing them in, as it will give those who lack sufficient capital an opportunity to establish themselves comfortably, while getting their farms into productive condition.

I have excellent reasons for believing that large colonies from Denmark, Sweden, and Italy could be brought to these lands immediately, if an assurance of work for one year were given. It is well known that these races make excellent colonists, and the Italians would come with a traditionary and life-long experience in irrigation.

Colonists
from
Europe.

Finally, from the letters and inquiries already received by me, since I have been engaged in this enterprise, coming as they do from many different localities, Minnesota, Iowa, Nebraska, Kansas, Colorado, even California and Oregon, I am confident that the whole six hundred thousand acres will be occupied with actual settlers, within three years from the time water is brought to the land, and no settler allowed more than one hundred and sixty acres, unless wealthy enough to irrigate more.

Probability of
Speedy
Settlement.



CANAL LINES.

GENERAL FREMONT, in the report of his expedition of 1843, gives his first impressions of the Boise River in the following words:

" We were nearly opposite to the highest portions of the mountains on the left side of Snake River Valley, and, continuing on a few miles beyond, we came suddenly in sight of the broad green line of the Valley of the Rivière Boisé, black near the gorge where it debouches into the plains, with high precipices of basalt, between the walls of which it passes on, emerging from the mountains. Descending the hills, after traveling a few miles along the plain, the road brought us down upon the bottoms of the river, which is a beautiful rapid stream."

Position
of
Head-works.

In this gorge, about ten miles above the city of Boise, is the point selected for building the dam and head-works necessary for diverting the waters of the river into a canal, and spreading them out upon the plains below. This point is obviously the one to be chosen because of its natural peculiarities, singularly adapted for the building of the structures required.

The walls of the cañon are immense gravel banks, capped with basalt, and resting also on the basalt which at this point forms the bed of the river. Into this lower stratum the river has worn a channel a few feet deep. These combined advantages enable the engineer to construct the headgates and waste weir on opposite sides of the river, upon solid basalt foundations, while the river, undisturbed, is flowing between.

The steep gravel bluffs on either side are thickly strewn with broken fragments of rock fallen from the basalt bluffs above, which furnish excellent material for the masonry of the head-works; the same material, properly placed in the river, after the headworks are built, will, when backed with gravel and sand, dam the river permanently without fear of decay or movement, and raise it into the canal gates or over the waste weir.

The location is a very exceptional one; a broad bench of solid rock, not too smooth, slightly above the ordinary bed of the river, upon

which to build the head-works; a river bed of solid rock, upon which to build the dam and scouring-gate, and loose rock piled on either side, more than enough to supply the material for construction, needing only to be rolled down and placed in position. Certainly an engineer seldom finds natural conditions so favorable for his work.

Description
of
Head-works.

The headgates of the canal, of which there are to be six, each eight by twenty-four feet in the clear, are so constructed as to roll up like a curtain; the engraving on page 36, from a photograph of a working model, will give an idea of their construction. Their unusual size, which is necessary for the convenient admission of timber and wood, renders it impossible to use the ordinary sliding gate. This plan of a curtain is an adaptation from the gates used by the French Government in the slack-water navigation of the Seine.

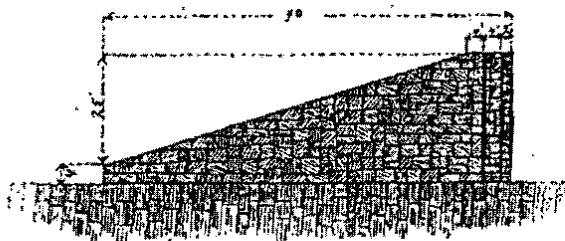
These six gates are placed close to the south bank of the river, and adjoining them, on their north side, will be placed a similar gate, for scouring purposes, reaching to the bottom of the river, some twelve feet lower than the canal gates. By means of this gate, all the sand and gravel which comes down the river during the flood season will be prevented from passing into the canal.

It is mainly for the reasons stated that this particular point, two miles up the cañon, is selected for the head-works, although there are other important ones why this location for the headgates is preferred.

The dam, adjoining the scouring-gate, will be built of sufficient height never to allow the water to run over it, while the waste weir adjoining the dam, and resting on the basalt bench, will be five hundred feet in length and from eight to twelve feet high. Adjoining this again, on the north, is the proper position for the small gates of the Boise City line of Canal,



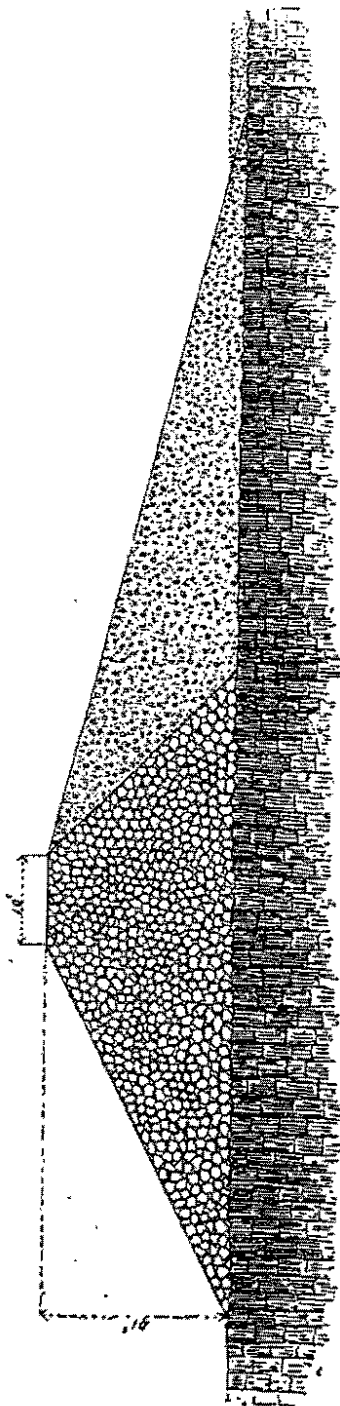
CROSS SECTION OF WASTE WEIR.



ELEVATION OF PIER.

running down the north side of the river, whenever it may be considered advisable that the latter should be built.

As before stated, the material for construction lies in great masses upon



the steep slopes of the gravel bluffs, above the head-works. All the masonry for piers and waste weir will be built with this material, laid in Portland cement, with the exception of the jambs and coping of the piers and the crest of the waste weir. These will be of granite, taken from a fine ledge lying within half a mile of the dam, with a good wagon-road already built.

The sand, for mortar, lies in a large beach, within three hundred yards of the works. This sand is one of the products of hydraulic mining, on the river above, and is extremely clear and sharp quartz, entirely without the smooth, water-worn feeling of most river sand.

After the masonry is finished, the dam will be constructed by dumping the loose rock from the bluffs into the river channel, and allowing it to take its natural slopes. When the mass is high enough, gravel will be dumped upon the upper side, until the whole is tight. It is needless to say that, with the sediment of the river water closing all interstices, such a dam will never move or decay.

The first two miles of canal line will follow the river closely, and will be built in the gravel bluffs, which are quite steep—in places nearly twenty-five degrees from the horizontal.

In order to reduce its cost, the canal, through the cañon, will be built narrow and deep, and with a heavy grade. The walls will be revetted throughout with stone, and the bottom payed. Although this plan includes expensive work, even with the material for the stone work

Main Line
of
Canal.

lying immediately above, it will be far cheaper than building the canal its full size with less grade, and when completed will make a perfect and enduring water channel.

The dimensions of the canal in the cañon for the first two miles will be, therefore, forty-seven feet wide on top, twenty-seven feet on the bottom, and seventeen and one-half feet deep, with a grade of four feet per mile; carrying four thousand cubic feet of water per second, with fifteen feet depth of water; calculated velocity, seven and seven-tenths feet per second.

At the end of the second mile, the dimensions will change to ninety feet wide on top, sixty-five at the bottom, twelve and one-half feet deep and grade of two feet per mile, carrying four thousand cubic feet of water per second when ten feet deep; calculated velocity, five and three-tenths feet per second. These velocities are calculated from the formula:

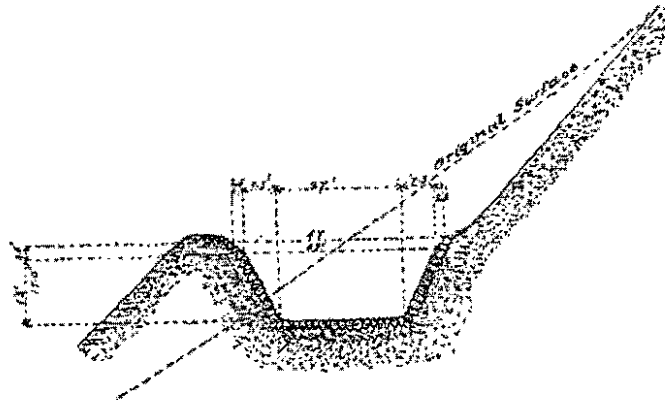
Formula
for
Discharge.

$$V = 90.5 \sqrt{R S}$$

In which V = mean velocity of water in feet per second.

R = Hydraulic mean depth.

S = Slope in feet per foot.



CANAL IN CAÑON.

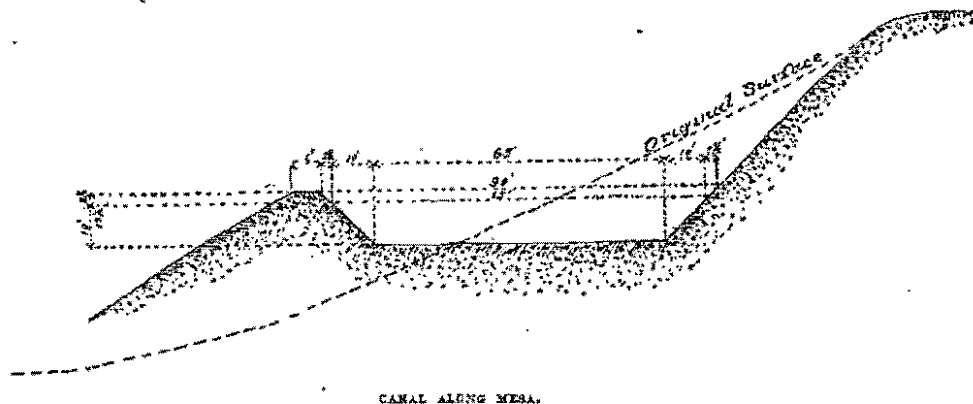
After careful comparison, I found that this formula gave results which agreed very closely with the actual discharge of the Ganges Canal, as found by a vast series of measurements made by Captain Allan Cunningham, R. E., near Roorkee, India. As these measurements were made with great care in the ordinary channel of the canal, without any special conditions interfering with or changing the nat-

ural flow through common earthen banks, I consider them a safe and accurate test for the formula.

This velocity of five and three-tenths feet per second is not too great for the banks to withstand, the material of which they will be constructed being a heavy, coarse gravel, and both Moncrieff and Professor Davidson testify that the Cavour Canal, with similar banks and equal or greater velocity of current, shows no ill effects from it.

It is evident that the greater the velocity, the smaller, and consequently cheaper, the channel required for carrying a given amount of water.

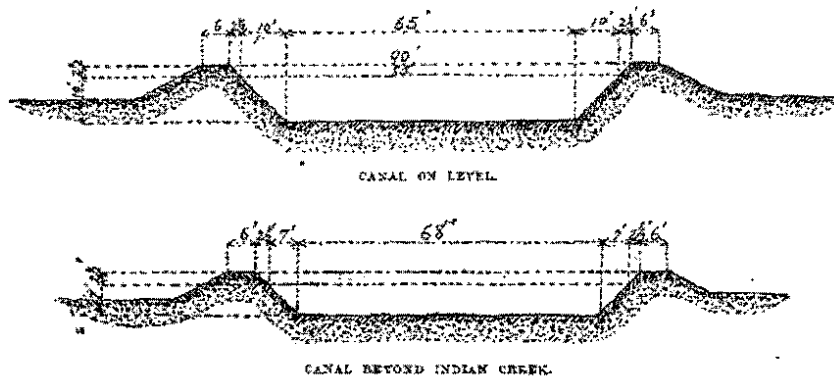
At the beginning of the third mile, just above the widening of the canal, will be placed a trap and small gate. This trap consists of a trench cut in the bottom of the canal and running diagonally upward across it from the gate. In this trench all small stones and sediment that fall, loosened by spring thaws, from the high bank of the canal in the cañon, will be caught, and pass out of the canal through the gate.



CANAL ALONG MESA.

From the beginning of the third mile the canal line passes along the mesa which forms a portion of one side of the valley of the Boise. Here heavy cutting and filling will be required, and though the work, owing to the nature of the material to be moved, will be inexpensive per yard, the aggregate cost will be heavy. In this part of the canal there will be one or two culverts, two bridges, and one or two small pipe openings in the banks to irrigate the lands between the canal and the river. At the tenth mile, opposite Boise City, the line turns

abruptly southward, and keeps a general trend from this point onward almost at right angles to the course of the Boise River, until it ends upon the divide between the Boise and Snake Rivers, some four miles south of Kuna, and thirty-two and one-half miles from the headgates.



Main Line of
Canal Crossing
Natural
Drainage.

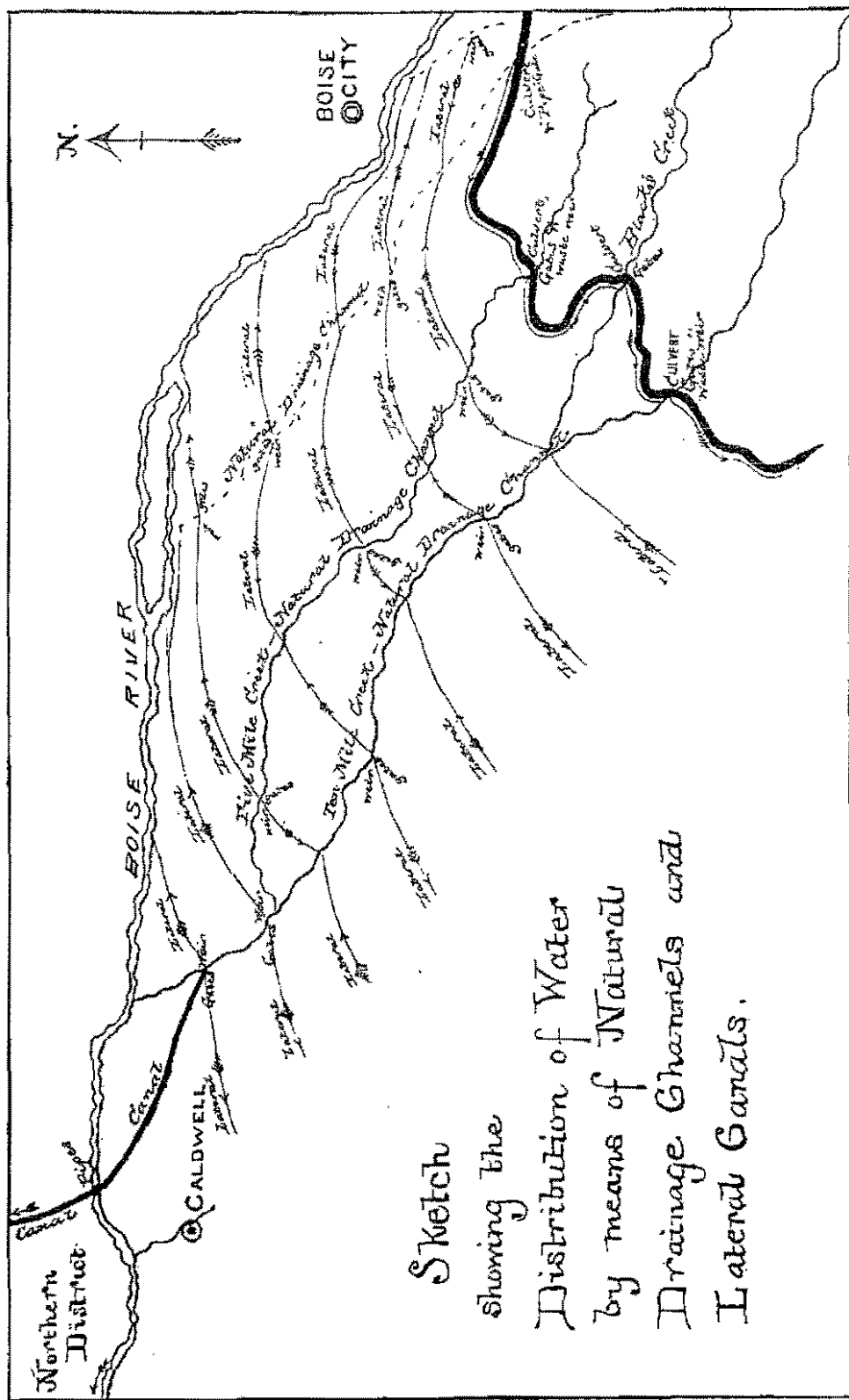
Although for thirty miles the natural drainage of the country is opposed to the course of the canal, little or no extra expense will be incurred in consequence. Five-Mile Creek, Black's Creek, and Ten-Mile are so small that they will pass under the canal in culverts, and, as will be shown further on, their channels will be utilized for distributing water over the lands, saving in this way much more expense than they cause. Indian Creek is a narrow channel cut in solid basalt, and will be crossed by a wooden or stone aqueduct, resting on stone piers.

I wish if possible to emphasize this remarkable situation; for I think it without precedent that a large canal, extending thirty miles across the natural drainage courses of a country, can be constructed with practically no expense beyond the usual cost of excavation.

Main Line
of
Canal.

From Five-Mile Creek onward the canal will be reduced in size one-third, because of the quantity of water taken out at this point to serve the lands north of the Boise River, as explained further on.

At Indian Creek there will be a drop of nine feet, in order to avoid rocky ground, and also for the purpose of passing under the railroad. This drop will be in the form of a chute across the creek, thus forcing the water through a small aqueduct. It will probably be also utilized for mill-power, as it is near the railroad, and, owing to the cou-



Sketch
 showing the
 Distribution of Water
 by means of Natural
 Drainage Channels and
 Lateral Canals.

stant demand of the placer mines for water throughout the year, the flow will be nearly continuous.

At the thirtieth mile also there will be a drop or chute of about eighteen feet fall, to avoid uneven ground and an undesirable curve in the line. This chute will be constructed in the form of a broad and shallow channel paved with stone, and here, also, the water can be used as a mill-power.

Although in the whole line of the canal there is but one piece of rock-cutting, and that a thin stratum of lava underlaid with gravel between Black's Creek and Ten Mile, the line is at no point far below the basalt bench, which extends from the Boise to the Snake River. Thus stone for masonry, piers, and waste weirs will always be convenient.

Five-Mile
Branch.

The first important branch to be taken from the main canal will be at Five-Mile Creek. At this point a waste weir will be constructed, and small branch gates, similar to the head gates, put in. The creek itself will be used as a branch canal. This is possible, owing to the shallowness and quick descent of the channel. It falls about twenty feet per mile, and by placing small weirs and gates about a mile apart, small lateral ditches can be taken out at the side, which will convey the water to each farm.

Use of Natural
Drainage
Channels, as
Distributaries.

It is seldom that circumstances will allow the use of natural drainage channels for irrigation, but in this case they are perfectly adapted to the purpose, with the additional advantages of being inexpensive and absolutely safe from breakage.

This system of using the natural channels for branch canals will be used throughout the entire six hundred acres of land under consideration, with slight modifications where necessary, and may be best explained by reference to the preceding sketch of Five-Mile, Black's, and Ten-Mile creeks. It will be observed that each lateral is the supply channel for the land below, while at the same time it receives the drainage from the land above, and carries any excess into the next branch, or natural drainage channel, where it is caught by the next lateral below, and turned back upon the land. By this method all waste is avoided and all the land is perfectly drained.

Five-Mile
District.

At Five-Mile Creek enough water will be taken out not only to irrigate the land lying to the north of it, called, for convenience, the

Five-Mile District, but also sufficient to cross the river about a mile above Caldwell, and irrigate the lands north of the Boise, called the Northern District.

The Five-Mile District will require three hundred and thirty-three, and the Northern District thirteen hundred and thirty-three cubic feet per second, making sixteen hundred and sixty-six cubic feet per second to be taken from the main canal at this point. This also includes the water taken from the main canal by "pipe" gates, above.

For crossing the river, a short canal, taking the water from Ten-Mile Creek, below the entrance to Five-Mile, will lead the water to the top of a basalt bluff, about one hundred and fifty feet high, forming one side of a short gorge through which the Boise River flows. By a system of large wrought-iron pipes, the water will be led from this point down under the river and up the opposite bluff, from which a canal will extend northward about twelve miles, conveying water to the entire Northern District, and by a system of natural channels and laterals, similar to that just described, will distribute the water to each farm.

Northern
District.

It may appear undesirable thus to convey water down the south side of the river and thence carry it across in pipes. But an examination of the line of canal necessary to take so large a volume of water down the north side of the Boise River to the same point will convince any one that the expense by that method would be far greater than by the one proposed.

At Black's Creek another waste weir and small branch gates will be constructed, and a larger one at the crossing of Ten-Mile.

Ten-Mile
District.

The channel of Indian Creek is narrow, deep, and in rock; it will, therefore, not be available as a branch canal.

There are, however, a number of natural drainage channels leading from the Main Canal line, between Ten-Mile Creek and the end of the Main Canal, which will be used for the purpose.

Indian Creek
District.

At the end of the main line, what is called the Main Branch leads down the divide between the Boise and Snake rivers. This line will be kept as high as possible; occasional "saddles," or low places in the divide, will force it down until, forty-five miles from its starting-point, it terminates on a hill, two hundred feet vertically above the Snake River, and some four miles south of the mouth of the Boise. This

Main Branch
Canal.

Main Branch is calculated to be much larger than will be necessary for irrigation, in order to supply the placer mines along the Snake River. Where the line is forced vertically down by the depressions of the land, chutes, similar to the one already described, will be put in. Numerous branch "pipe" gates will be put in along this line, upon both sides of the canal, where natural drainage channels offer the desired opportunities for the distribution of water for irrigation; those upon the north side intended to irrigate the "Main District," as it is called, and those upon the south side to irrigate the Snake River District and furnish water to the mines. From this branch, also, lines of pipe (probably two) will extend across to the lands lying upon the southwest side of the Snake River, called the Southern District.

Main District.

SNAKE RIVER
DISTRICT.

As the line of the Main Branch canal is nearly four hundred feet higher than these lands, it will require very small pipes to carry a large volume of water, and the expense will be proportionately lessened. From the ends of these pipes, canals will convey the water for irrigation along the foot-hills to the natural channels, distribute it to the laterals, and these in their turn to the respective farms, as in the preceding cases.

EASTERN
BRANCH.

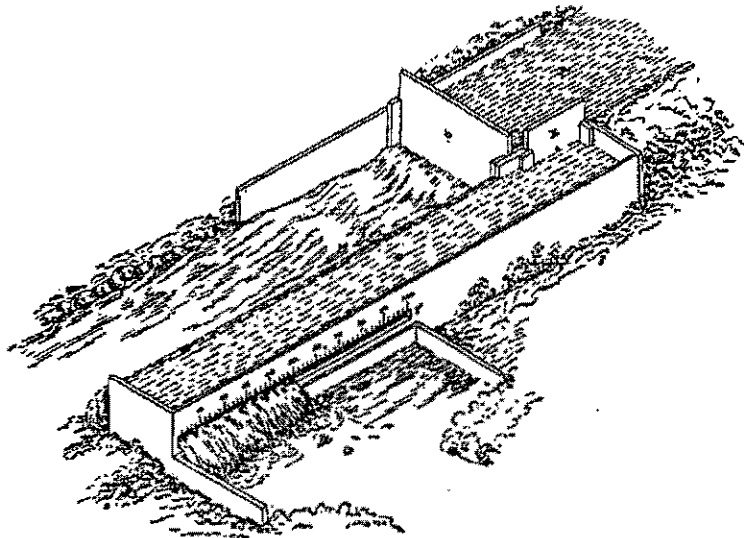
EASTERN
DISTRICT.

Another branch, called the Eastern Branch, will begin at the end of the Main Canal line and extend eastward up the Snake River about eighteen miles, to irrigate that track of land south of the divide, and east of the Silver City wagon road, called the Eastern District. By the same system of natural channels and laterals, the water from this branch will be distributed to each farm.

ENGINEERS of irrigation works are constantly referring to the want of some practical, inexpensive apparatus, by which small volumes of flowing water can be measured with reasonable accuracy, for delivering to consumers.

The common method of selling water, at a certain price per acre irrigated, has objections, in that it leads first to great waste of water, and second to dissatisfaction, both on the part of the irrigators and of the water owners.

It therefore seemed advisable to provide some method of selling water by a measured quantity, and at a regular price per unit of that quantity.



WATER METER.

In the *Transactions of the American Society of Civil Engineers*, a water-meter for irrigation is described, which has stood the test of long continued use under my own observation. I have found it to work admirably, and it is very easily and cheaply made. It is a modification of the common "measuring-box" used by the placer miners of the West. One side of the box is cut to the proper height to return all

Water-meters
for
Irrigation.

Water-meters
for
Irrigation.

water above a certain level back into the ditch from which it came; thus keeping the head, or pressure, above the delivering orifice, at a permanent level, without regard to the flow of the supply ditch. The box is also kept clear of floating leaves or grass, and may be quickly and easily adjusted to measure the amount of water desired. Moreover, the consumer, with his pocket-rule, can satisfy himself, at any time, that he is getting the amount of water he pays for.

By this means it will be a comparatively simple matter to measure, to each irrigator, the water he desires each day.

PLACER MINES

THE placer mines of Snake River have been known and worked for more than twenty years, but, owing to the scarcity of water, the fineness of the gold, and the large quantities of heavy black sand, their working has never been attended by that success which has characterized the other placers of Idaho.

Snake River
Mines
Long Known.

Where water could be easily obtained, moderate success has been achieved; but the difficulty of separating the black sand from the gold has told heavily against the miner, and only after long and costly experimenting has that knowledge been obtained through which large profits can be realized. This period of experiment is passed, however, and the desired process for saving the gold well proven; but nearly all the points where water is plentiful have been worked out, and new enterprises of larger magnitude are bringing water to the more inaccessible places and making large profits thereby.

Difficulty of
Saving
Fine Gold.

Success
Attained by
Long
Experiment.

The canal of this Company can distribute water along about sixty miles of the Snake River, lying immediately above the mouth of the Boise. As the upper twenty miles of this sixty has no large bodies of available placer mines on it, it is unnecessary for me to further allude to it in this connection. The lower forty miles, between French John's old ferry and the mouth of the Boise River, runs through a wide flat, bounded upon the north by bluffs of soft sedimentary deposits, which near the ferry rise precipitately about four hundred feet, and gradually dwindle to a long hill, two hundred feet high near the mouth of the Boise.

Position of
Canal in
Reference to
Mines.

The gold-bearing gravel lies in immense banks, or what were, when the river was higher and larger than it is now, bars. They extend along the river continuously from French John's old ferry to the mouth of the Boise, with low channels sometimes cutting them in two or crossing them. They vary, therefore, in width from a few feet to many miles, and in thickness from a few feet to two hundred. The "bed-rock," or underlying rock of these banks, is below the level of the river in the upper portion, but begins to rise above the river at about twelve miles below the French John ferry.

Amount of
Auriferous
Gravel Covered
by Canal.

Height of
Canal above
Placers.

The canal extends along the bluffs overlooking the upper part of the placers at an elevation of from three to four hundred feet above them. In the lower part the canal line extends along upon the gravel hills, but is still two hundred feet above the river. Thus it is evident that water, under a heavy pressure, can be conveyed to all the mines. The map accompanying this paper will show the position of the placers and canals.

Prospecting
the
Mines.

I have spent a great deal of time and labor prospecting these placer fields. I have sunk shafts, where the gravel was not so loose as to prevent; run tunnels into the sides of the bars, where I could not sink shafts; and dug hundreds of prospect holes, in order to get an accurate idea of the quantity and value of these immense auriferous deposits of gravel. I took accurately measured half cubic yards of gravel and washed them with rocker and pan, saving the black sand and gold. Some of these results were assayed and several were smelted. The results obtained varied from a few cents to eighty cents per cubic yard of gravel; assays made from the same sample by different assayers varied largely, while the gold visible in the sand was about the same in every instance. It is difficult to account for this great variation in the results of assays and smelting, but I find it is the experience of every one who deals with black sand. I quote an article written, I think, by Mr. Hanks, the well known metallurgist of San Francisco, who has studied and written much on the gravels and black sands of the West coast:

Inaccuracy of
Assays for Gold
in Black Sand.

"As a general proposition, the results from assays for gold are not as satisfactory or reliable as those for silver. The ordinary fire assay for gold, if the ore be of low grade, cannot be relied upon. Very great care has to be exercised in the selection of the sample in the first place, and the amount of gold is so minute that only delicate manipulation will probably save and weigh it. The finest of balances, with nicest adjustments, are required; and, altogether, when the whole is considered, miners of experience would *rather judge from the results of 'horning' or 'panning out' a good liberal sample of ore properly pulverized. They can tell by the 'colors' about what the ore will yield in the mill.* In assaying the gold sands of the rivers, streams, and sea-beaches, the same difficulty is met with; it contains a great amount of specular and titanite iron, and is called black sand by the miners. Platinum and iridium are often found in the same sand."

I have therefore thrown aside my values as obtained by assaying and smelting samples, and first depended entirely upon panning in forming my estimate of the value of these placer lands; and then compared the results thus obtained with the results of actual mining on precisely similar gravel deposits on the river near by. Certainly nothing but actual work on the lands themselves can give nearer their true value than does this work on neighboring properties of a precisely similar character, especially as these great Snake River bars are remarkably uniform. From these neighboring properties a mass of evidence has been collected, based on engineers' reports, on actual profits "per man," on comparison of amount of gold deposited in the assay office with the amount of gravel washed at the mine, etc. This evidence points to a value of from twenty to forty cents per cubic yard. Most of these mines can be worked for only a few months in the year, owing to the shortness of their water supply, and the water is brought to them under no "head," being simply run down over the face of the bank. The fact that it pays at all to work them under these conditions necessarily implies a fair value per yard.

"Panning"
the Proper
Method for
Determining
Value of
Gravel.

Value of Gravel
in Neighboring
and Precisely
Similar Mines.

Assisted by the Government land surveys and the surveyed line of the canal, I have determined the area of the placer lands controlled by the canal line to be between thirty-five and forty-five thousand acres. It is difficult to determine it precisely, without an extensive system of shafts to prove its limit on the northern edge. I am perfectly safe, however, in placing the area of these placer lands at thirty-five thousand acres. I could only determine the thickness or depth of gravel by the thickness disclosed at the sides of faces of the bluffs. Often I could get on three sides, and there is no reason to suppose that a great flat plain, which shows stratified gravel, seventy-five feet thick on three sides, contains any less in the center. These bars run from twenty to two hundred feet thick, as seen from their sides, averaging at least fifty feet.

Area of
Placer Lands.

Depth of
Gravel.

Supposing, however, that they are but twenty-seven feet thick, then each square foot of surface will make a cubic yard of gravel or forty-three thousand five hundred and sixty cubic yards to the acre, and thirty-five thousand acres would contain a little more than fifteen hundred million cubic yards of gravel. It is claimed for several mines on the river, as I have shown, that they obtain from twenty to

Amount of
Gravel.

Value of
Mines in
Aggregate.

forty cents from each cubic yard of gravel washed. I prefer to value it, however, at twelve cents per cubic yard. Allowing the cost of mining, including water at five cents per miner's inch, to be four cents per cubic yard, there would remain eight cents per yard profit in mining the gravel. Fifteen hundred million cubic yards, at eight cents per yard, makes the enormous sum of one hundred and twenty million dollars, which is the profit to be realized from these placer lands at the low valuation and high cost of mining which I have used as a basis for my estimate. It is approximately a profit of thirty-five hundred dollars an acre.

The above profit will not appear so very large when the time required to obtain it is realized. There is a practical limit to the rapidity with which gravel can be washed. By the system of washing which is described further on, the lands can be attacked at a number of different points at the same time. Say five points were taken and four thousand inches were used on each, or twenty thousand per day, two hundred and fifty days in a year, this would amount to five million inches.

Annual Income
from Mines,
and Time
Required to
Exhaust Gravel
Supply.

An inch of water will, in this loose gravel, wash from ten to twelve cubic yards in a day, but, as an elevator will have to be used for a portion of the gravel, it is, perhaps, as well to take as a basis for estimates the amount given by Hamilton Smith, Jr., as washed in the hard bottom gravel of the North Bloomfield mine, viz.: five cubic yards. Five million inches will, at this rate, wash twenty-five million cubic yards, or approximately six hundred acres of gravel, which, at a profit of thirty-five hundred dollars per acre, would yield a yearly income of two million dollars, and require sixty years to exhaust the supply of gravel.

Methods of
Separating Sand
and Gold
from Gravel.

The difficulty experienced in the past in effecting the separation of this Snake River gold has been overcome by the better methods now in use. As long as the endeavor was made to separate the gold at once from both the gravel and the black sand the results were disappointing; but by the principle now adopted of first separating by a simple method the sand and gold from the gravel, and then by a second operation separating the gold from the sand, very satisfactory results are obtained—even with the unfavorable conditions, resulting from lack of sufficient water supply and head, under which most of the mines along the river are at present worked. The canal of this com-

pany, as has already been shown, will have, in addition to abundant supply, the advantage of from two hundred to four hundred feet head of water above the placers.

Recently Mr. Chesebro, who owns and works a bar near Silver City Ferry, shipped a quantity of black sand to the Omaha smelting works, from which he obtained a return of \$865 per ton. If this last manner of obtaining the gold proves successful, it will simplify the mining operations very much, and at the same time yield much more gold, apparently, than the other methods. It appears, from the results of this shipment, that there is gold in the grains of sand which is not obtained by the amalgamating method, but is abstracted by the lead in the smelting furnace. I have had numerous assays of this sand which ran from three to eight hundred dollars per ton, but was inclined to put little confidence in them; by the explanation given above, however, they can be accounted for.

Smelting
Black Sand and
Gold.

Placer mining in California has been seriously checked, if not practically stopped, by the accumulation of tailings in the rivers. In the case under consideration there is no danger of anything of this kind occurring, as only a very small portion of the tailings will be discharged into the river, and the stream is not navigable.

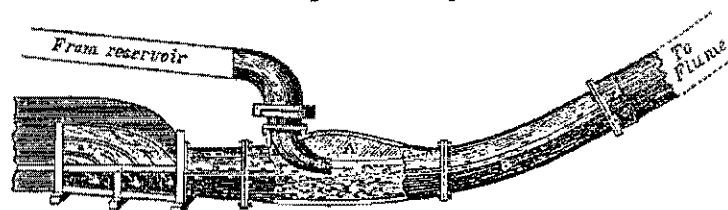
No Danger
from
Accumulation
of Tailings.

In working these wide bars there is a difficulty encountered in the way of grade which would have been insurmountable a few years ago. Take, for example, a bar of gravel extending back from the river, say two miles, and only one hundred feet high. Beginning at the river bank to wash, the grade necessary for the flume to carry the tailings into the river would bring the flume above the gravel long before the back side of the gravel bar was reached. In this case it would reduce the amount of available gravel more than one-half.

Overcoming
Difficulty
of Grade.

There is a machine invented by Mr. Cranston, formerly of California, improved and manufactured by Joshua Hendy, of San Francisco, California, by which this difficulty of grade is entirely overcome at slight additional expense; and by which all of these placer lands, which otherwise would be lost after washing, can be turned back into good agricultural land. The machine spoken of works upon the same principle as the sand blast, only using water instead of air to move the sand. It is in successful operation in Boise Basin, Idaho, and in several places in California and Oregon, and is thoroughly proved in regard

to its practicability. The following cut represents the original model, which has since been much improved in practice.



The gravel of these mines is generally so loose as to require little or no power to break or wash it down, and that which is usually exerted against the banks will here serve to raise the gravel into flumes. The machine will elevate to good advantage about twenty feet for every one hundred feet of water pressure, and its capacity depends upon the size of the machine and pressure of water used.

With this machine and the ownership of all these placer lands, the canal owners will be enabled to begin and carry through a systematic method of working this immense tract, and at the same time save it to agriculture. It is seldom that one company can control a tract of sufficient size to make such a system applicable; but in this case the ownership of the water controls the placers absolutely, because there is no other source from which water can be obtained for working them.

The question of cheap washing is, of course, a very important one. In California the cost of mining a cubic yard of gravel has been determined with great care in various mines to be a general average of three and one-half cents.

The conditions in the case of the Snake River placers are somewhat different. There are, as a rule, no large bowlders, "cement," "lava," "pipe clay," or hard gravel to cause expense, but in their stead is the extra cost entailed by the elevating machine. Neither is there, in this case, the immense cost of the long tunnels and paved flumes of the California mines. The "cleaning up" in either case will be about the same. I think there is little doubt but that the expenses in all the large mines in California, with the drawbacks mentioned, are greater per cubic yard than they will be here, even when using the hydraulic elevator; but to be within safe limits I have estimated the cost at four cents per yard, or nearly twenty-five per cent. greater than that of the California companies.

Placer
Mining Lands
Saved for
Agriculture.

Cost of
Washing
Gravel.

WORK DONE.

FULL, careful and repeated surveys have been made, the line of canal definitely established, and right of way secured; the result of this careful work being that while the line fits the ground so as to make no undue excess of excavation or fill, at the same time the curvatures are very gentle—a matter of great importance in a canal carrying such a large volume of water.

The maps, plans, cross sections, profiles, and detailed estimates, based on this thorough and long continued field work, are in the New York office of the Company.

Careful examination has been made of the country higher up the river, for the purpose of ascertaining the amount and quality of available timber, and for the location of suitable reservoir sites.

The policy has been to provide for all contingencies, and by this thorough preliminary work to unearth every difficulty which may possibly arise during the progress of the undertaking.

The gold placers have been extensively prospected, and 20,000 acres located for the Company.

Roads have been built for the more convenient transport of supplies, and construction work has been and is being continuously prosecuted on the canal, near the head-works.

Close study during constant residence on the tract confirms fully the opinion first held as to the great fertility and value of the land when irrigated, and the thorough prospecting of the placers more than confirms my first opinion, both as to extent and value.

Exhibit B

MEMORANDUM

TO: Staff

FROM: A. Kenneth Dunn
Director

DATE: September 8, 1981

RE: Appropriation of Water Within Irrigation District & Canal Company Areas

Applications to appropriate water within the boundaries of irrigation districts and within the service areas of canal companies cause several uncertainties in administration;

1. Is the water under the control of the district or canal company and not available for appropriation?
2. Is return flow available for appropriation if some water leaves the service area?

A proper and equitable administration of water demands that we adopt guidelines for the appropriation of water within the service area of canal companies and irrigation districts. The following guidelines will be followed in all permits issued in the future:

1. Constructed conveyances. When an additional use is to be made of water from a manmade canal, ditch or other constructed conveyance, whether for consumptive or nonconsumptive use, the appropriator must obtain the permission of the conveyance owner before he can divert any water. The source of water is the natural stream or river from which the conveyance heads. Therefore, the department will not issue a permit without evidence of a right of way to use the point of diversion and conveyance system and/or the written

permission of the owner of the conveyance works.

2. Natural channel conveyances or constructed drains. In many irrigation districts and canal companies, constructed drains and natural channels are used as integral parts of the delivery system. Runoff and seepage water collected in the drains and channels are used to supply water to shareholders lower in the project.

- a. When an appropriation from a natural channel, within which a substantial proportion of the flow is water injected into the channel and diverted from the channel by the irrigation district or canal company, is proposed for consumptive or nonconsumptive use, the potential exists for interference with the operation of the irrigation district or canal company. To insure that this local public interest is protected, any such permit issued will be conditioned as follows:

Water shall not be diverted under this permit until a written agreement with the irrigation district or canal company serving the area containing the point of diversion is filed with the department providing for coordination of the permitted use with the irrigation district or canal company operation.

- b. Usually the canal company either owns the land through which a constructed drain flows or has an easement for the drain. Any permit issued to appropriate water from a constructed drain within a canal company service area or an irrigation district boundary will carry the following condition:

Water shall not be diverted under this permit until

an easement or right of way with the owner of
the drain providing for access to the drain is
filed with the department.

The natural channel and drain is no longer considered a part of the
conveyance system below the last point of diversion from which the canal
company or irrigation district delivers water.

Exhibit C

LICENSE AGREEMENT

between

NANPA & MERIDIAN IRRIGATION DISTRICT

and

BRAD JANICEK

**17 December 1986
Instrument #88103946
Sky Pilot Drain**

5 0 1 0 0 7 1 0
ADA 03, RECORDER
J. DAVID LAVARRO
BOISE ID

NAMPA & MERIDIAN IRRIGATION DISTRICT
98 DEC 19 11 11 AM
FEE 24.00
RECORDED AT THE REQUEST OF

LICENSE AGREEMENT

LICENSE AGREEMENT, made and entered into this 17th day of December, 1996, by and between NAMPA & MERIDIAN IRRIGATION DISTRICT, an irrigation district organized and existing under and by virtue of the laws of the State of Idaho, party of the first part, hereinafter referred to as the "District", and

BRAD JANICEK, an individual,
5606 North Ten Mile Road, Meridian, Idaho 83642

party or parties of the second part, hereinafter referred to as the "Licensee",

W I T N E S S E T H:

WHEREAS, the Licensee is the tenant of the real property (burdened with the easement of the District hereinafter mentioned) particularly described in the "Legal Description" attached hereto as Exhibit A and by this reference made a part hereof; and,

WHEREAS, the District is the owner of the irrigation ditch known as the SKY PILOT DRAIN (hereinafter sometimes referred to as "ditch or canal"), an integral part of the irrigation works and system of the District, together with an easement therefor which includes easements to convey irrigation water, to operate and maintain the ditch or canal, and for ingress and egress for those purposes, and which ditch or canal and said easements therefor cross and intersect said described real property as shown on Exhibit B attached hereto and by this reference made a part hereof; and,

WHEREAS, the Licensee desires a license to engage in construction or activity affecting said ditch or canal or the District's easement in the manner and under the terms and conditions hereinafter set forth; and,

WHEREAS, it is necessary that the District protect absolutely its right to control any modification or alteration of its watercourses and its right of way along its watercourses;

NOW, THEREFORE, for and in consideration of the premises and of the covenants, agreements and conditions hereinafter set forth, the parties agree as follows:

1. The Licensee shall have the right to perform the activities affecting the ditch or canal in the manner generally described in the "purpose of License" attached hereto as Exhibit C and by this reference made part hereof, and in accordance with the "Special Conditions" stated in Exhibit D, attached hereto and by this reference made part hereof.

2. This agreement pertains only to the Licensee's activities affecting the ditch or canal for the purposes and in the manner described herein. The Licensee shall not change the location of the ditch or canal, bury the ditch or canal in pipe on the Licensee's property, or otherwise alter the ditch or canal without first obtaining the written permission of the District.

3. Each facility ("facility" as used in this agreement means any object or thing of any nature installed in or on the District's easement by the Licensee) shall be constructed, installed, operated, and maintained at all times by the Licensee and at the cost and expense of the Licensee.

4. The Licensee agrees to construct, install, operate, and maintain each facility in a safe manner and condition so that it will not constitute or cause a hazard to any person or property. The Licensee agrees to indemnify, hold harmless, and defend the District from all claims for damages arising out of any hazard or unsafe condition in or arising from the construction, installation, operation, and maintenance of such facility.

5. The Licensee agrees to construct, install, operate, and maintain each facility at such times and in such seasons and in a manner that will not interrupt or interfere with the flow of irrigation water in said ditch or canal or the delivery of irrigation water by the District. The Licensee agrees to indemnify, hold harmless, and defend the District from all claims for damages arising out of any impairment of the flow or delivery of irrigation water in said ditch or canal which may be caused by the construction, installation, operation, or maintenance, and any use or condition of any facility.

6. The Licensee agrees to construct, install, operate, and maintain each facility in a manner that will not cause an increase in seepage or any other increase in the loss of water from the ditch or canal, the subsidence of soil within the easement, or any other damage to the easement and irrigation works. The Licensee agrees to indemnify, hold harmless, and defend the District from all claims for damages arising out of any increase in seepage or other water loss from the ditch or canal, subsidence of

soil in the easement, or any other damage to the easement and irrigation works which may be caused by the construction, installation, operation, and maintenance, and any use or condition of any facility.

7. Any alteration of the District's easement by the Licensee, and any alteration of property adjoining the District's easement by the Licensee, including, but not limited to, the excavation of soil, shall be performed and maintained in a manner that will not cause an increase in seepage or any other increase in the loss of water from the ditch or canal, the subsidence of soil within the easement, or any other damage to the easement and irrigation works. The Licensee shall provide the District reasonable prior notice of any such alteration not identified in this agreement. The Licensee agrees to indemnify, hold harmless, and defend the District from all claims for damages arising out of any increase in seepage or other water loss from the ditch or canal, subsidence of soil in the easement, or any other damage to the easement and irrigation works which may be caused by the performance and maintenance, and any use or condition, of any alteration of the easement by the Licensee, and any alteration of property adjoining the easement by the Licensee.

8. The District reserves the right, at the District's option, to remove any facility installed by the Licensee and to repair any alteration by the Licensee of said ditch or canal and the easement therefor which does not comply with the terms of this agreement, and to remove any impediment to the flow of water in said ditch or canal and any unsafe condition or hazard caused by the Licensee, at any time, and the Licensee agrees to pay to the District, on demand, the costs which shall be reasonably expended by the District for such purposes. If the Licensee shall fail in any respect to properly maintain and repair such facility, then the District, at its option, and without impairing or in anywise affecting its other rights and remedies hereunder, shall have the right to perform the necessary maintenance and repairs and the Licensee agrees to pay to the District, on demand, the cost or expense which shall be reasonably expended or incurred by the District for such purposes. The District shall give reasonable notice to the Licensee prior to the District's performing such maintenance, repair or other work except that in cases of emergency the District shall attempt to give such notice as reasonable under the circumstances. Nothing in this paragraph shall create or support any claim of any kind by Licensee or any third party against the District for failure to exercise the options stated in this paragraph, and Licensee shall indemnify, hold harmless and defend the District from any claims made against the District arising out of or relating to the terms of this paragraph except for claims arising solely out of the negligence or fault of the District.

9. The Licensee agrees that the work performed and the materials used in installation of such facilities shall at all times be subject to inspection by the District and by the engineers for the District, and that final acceptance of the construction work shall not be made until all such work and materials shall have been expressly approved by the District. Such approval by the District shall not be unreasonably withheld.

10. The Licensee agrees that the District shall not be liable for any damages which shall occur to any facility, structure, plant, or any other improvement of any kind or nature whatsoever which the Licensee shall install on the said easement area of the District in the reasonable exercise of the rights of the District in the course of performance of maintenance or repair of said ditch or canal. The Licensee further agrees to suspend its use of the said easement area when the use of the easement area is required by the District for maintenance or repair under this or any other paragraph of this agreement.

11. Licensee shall notify the water superintendent of the District prior to and immediately after construction so that he or the District's engineers may inspect and approve construction.

12. Licensee shall place no structures of any kind above ground on the District's easement area except as referred to in this agreement or exhibits or plans thereto without the prior written consent of the District.

13. Should either party incur costs or attorney fees in connection with efforts to enforce the provisions of this agreement, whether by institution of suit or not, the party rightfully enforcing or rightfully resisting enforcement of the provisions of this agreement, or the prevailing party in case suit is instituted, shall be entitled to reimbursement for its costs and reasonable attorney fees from the other party.

14. The parties hereto understand and agree that the District has no right in any respect to impair the uses and purposes of the irrigation works and system of the District by this agreement, nor to grant any rights in its irrigation works and system incompatible with the uses to which such irrigation works and system are devoted and dedicated and that this contract shall be at all times construed according to such principles.

15. Nothing herein contained shall be construed to impair the easement and right of way of the District in the said ditch or canal and all uses of said ditch or canal by the Licensee and the license herein provided therefor shall remain inferior and subservient to the rights of the District to the use of said ditch or canal for the transmission and delivery of irrigation water.

16. In the event of the failure, refusal or neglect of the Licensee to comply with all of the terms and conditions of this agreement, the license of the Licensee under the terms hereof may be terminated by the District, and any facility, structure, plant, or any other improvement in or over said ditch or canal, and the right of way therefor, which may impede or restrict the maintenance and operation of such ditch or canal by the District with its equipment for the maintenance of its said ditch or canal may be removed by the District.

17. The Licensee agrees to pay attorney fees or engineering fees charged by the attorney for the District or by the engineers for the District in connection with the preparation of this License Agreement or in connection with negotiations covering the terms and conditions of this License Agreement.

18. Nothing in this agreement shall create or support a claim of estoppel, waiver, prescription or adverse possession by the Licensee or any third party against District.

19. The word "Licensee", if used in the neuter in this agreement, includes the masculine and feminine genders, the singular number includes the plural, and the plural number includes the singular.

The covenants, conditions and agreements herein contained shall constitute covenants to run with, and running with, all of the lands of the Licensee described in said Exhibit A, and shall be binding on each of the parties hereto and on all parties and all persons claiming under them or either of them, and the advantages hereof shall inure to the benefit of each of the parties hereto and their respective successors and assigns.

NAMPA & MERIDIAN IRRIGATION DISTRICT

By *Hal B. Wissell*
Vice-President

ATTEST:

Doris B. Coon
Its Secretary

LICENSEE

Brad Janicek
BRAD JANICEK

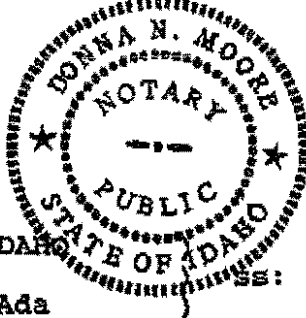
STATE OF IDAHO)

County of Canyon)

ss:

On this 17th day of December, 1996, before me, the undersigned, a Notary Public in and for said State, personally appeared Ralph B. Wessel and Donna R. Coon, known to me to be the President and Secretary, respectively, of NAMPA & MERIDIAN IRRIGATION DISTRICT, the irrigation district that executed the foregoing instrument and acknowledged to me that such irrigation district executed the same.

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



Donna N. Moore
Notary Public for Idaho
Residing at Nampa, Idaho
My Commission Expires: 11/04/2000

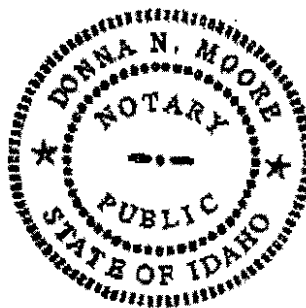
STATE OF IDAHO)

County of Ada)

ss:

On this 16th day of December, 1996, before me, the undersigned, a Notary Public in and for said State, personally appeared BRAD JANICEK known to me to be the individual that executed the foregoing instrument and acknowledged to me that he executed the same.

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

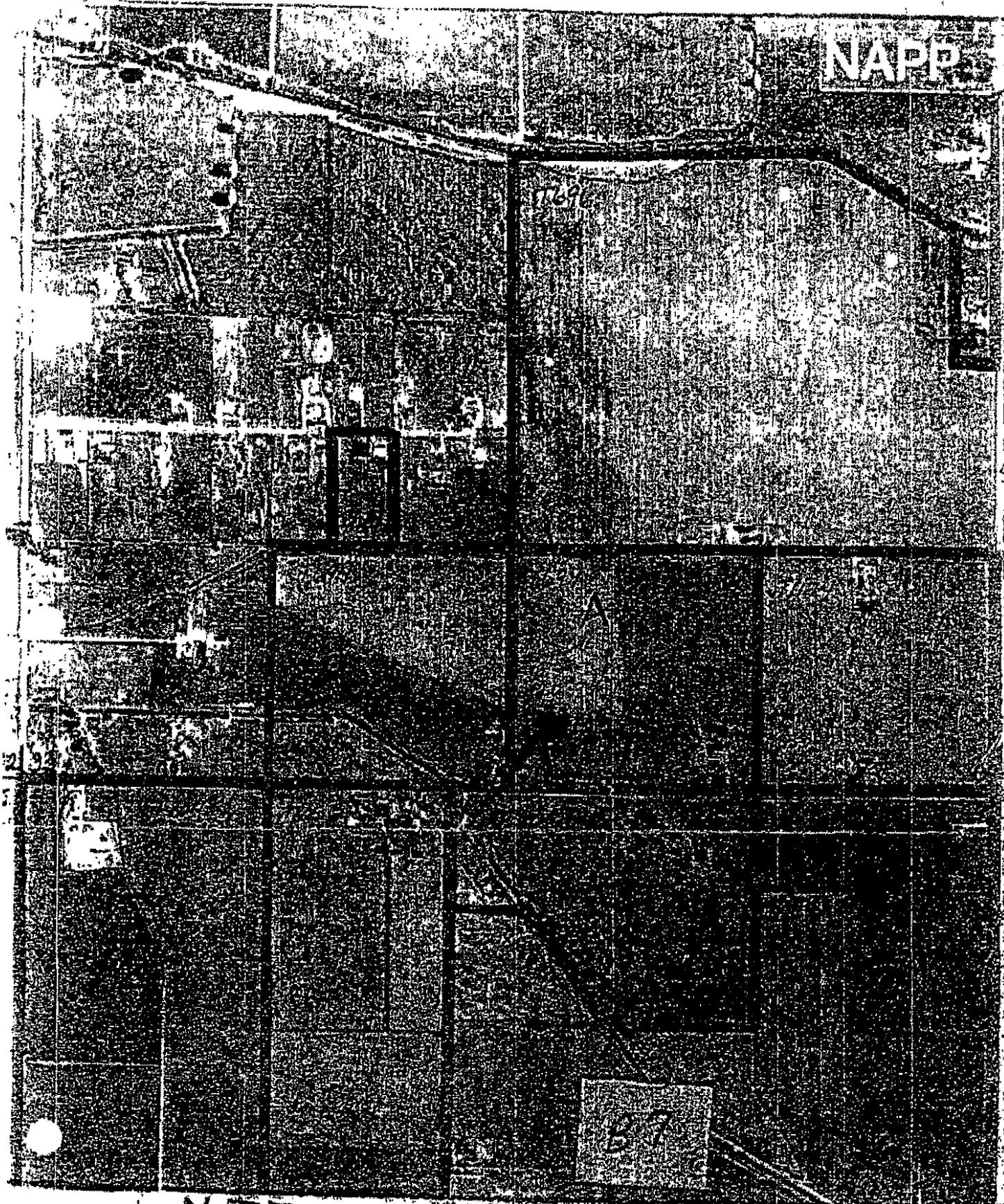


Donna N. Moore
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 11/04/2000

EXHIBIT A

Legal Description

The NW $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 4, Township 3 North, Range 1 West, B.M., Meridian, Ada County, Idaho.



Not to scale

EXHIBIT C

Purpose of License

The purpose of this License Agreement is to permit Licensee to pump not more than 50 miners inches of irrigation water from Sky Pilot Drain for the 1997, 1998, 1999, and 2000 irrigation seasons for irrigation only at the location designated in Exhibit B attached hereto.

EXHIBIT D

Special Conditions

a. This agreement shall terminate without notice on October 15, 2000 and the pump installed shall be removed no later than said date. No pumping from the Sky Pilot Drain shall be permitted after irrigation water is shut off in 2000.

b. Licensee as tenant rents the subject property from the owner, Jack C. Anderson, 5325 West Ustick Road, Meridian, Idaho 83642. Licensee represents to the District that said owner consents to the activities of Licensee permitted under the terms of this agreement and authorizes Licensee's execution of this agreement. Licensee agrees to indemnify, hold harmless and defend the District from any and all claims of said owners arising directly or indirectly from the subject of this agreement.

c. Neither Licensee nor the owners of the property referred to above nor any succeeding owners of the property described in Exhibit A shall acquire any rights against the District or any other party as the result of this agreement whether with respect to a right to divert or remove water from Sky Pilot Drain or otherwise. The only right granted by the District regarding water use under the terms of this agreement is the temporary use by Licensee to supplement their irrigation water supply during the 1997, 1998, 1999, and 2000 irrigation seasons.

d. Licensee shall place no structures of any kind above ground on the District's easement area except as referred to in this agreement or exhibits thereto without the prior written consent of the District. The District's easement along this section of Sky Pilot Drain is 100 feet, 50 feet to the left looking downstream, 50 feet to the right.

MAR - 3 2008

By
IN FALLS

Clerk

Deputy Const.

Subcase No. 63-27475

ORDER APPROVING
STIPULATION TO VACATE AND
RESET TRIAL DATE AND
SUGGESTED BRIEFING
SCHEDULE

SECRET

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

[illegible]

A hearing on the Motion for Summary Judgment filed by Janicek Properties, LLC, shall be heard on April 16, 2008 at 9:00 a.m., at the Idaho Supreme Court Building, 451 West State Street, Boise, Idaho, in the lower level conference room. The summary judgment briefing schedule set forth in the Motion is hereby adopted.

The deadline for completion of all discovery, meaning that all discovery is served and response is complete, including the taking of depositions of lay and expert witnesses, all interrogatories, requests for production / inspections and admissions, is set for April 21, 2008. Motions to compel should be filed accordingly so as to accommodate this deadline.

The pre-trial conference will be scheduled for May 6, 2008 at 10:00 a.m.
at the Snake River Basin Adjudication Courthouse, 253 - 3rd Avenue North, Twin Falls, Idaho.
Parties may participate by telephone by dialing the number 1-225-383-1099 and when prompted
entering the code 675342. If you have any difficulty connecting to this call, call the SRBA Court

Page 1 of 3

immediately at 208-736-3011. Counsel will exchange trial witness lists, trial exhibit lists and trial exhibits on or before this date.

The trial in subcase number 63-27475 will be held on May 21, 2008, beginning at 9:00 a.m. at the Idaho Supreme Court Building, 451 West State Street, Boise, Idaho, in the lower level conference room.

DATED this 3 day of March 2008.



Theodore R. Booth
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER APPROVING STIPULATION TO VACATE AND RESET TRIAL DATE AND SUGGESTED BRIFING SCHEDULE** was mailed on March 3, 2008, with sufficient first-class postage to the following:

Janicek Properties, LLC
c/o Michael P. Lawrence
Givens Pursley
601 W. Bannock St.
Boise, ID 83702

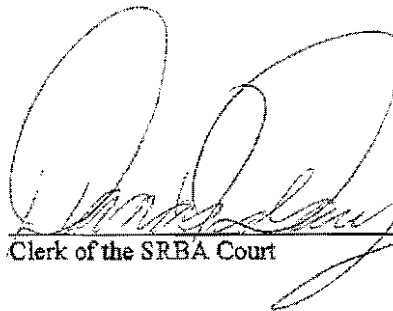
USDI Bureau of Reclamation
c/o David W. Gehlert
US Department of Justice, Natural Resources
Environment & Natural Resources
1961 Stout Street -- 8th Floor
Denver, CO 80294

Nampa & Meridian Irrigation District
c/o S. Bryce Farris
Ringert Clark
P.O. Box 2773
Boise, ID 83701-2773

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

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098

USDI Bureau of Reclamation
c/o US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724



Clerk of the SRBA Court

**ORDER APPROVING STIPULATION TO VACATE AND RESET
TRIAL DATE AND SUGGESTED BRIFING SCHEDULE**

EXCISE1716V0471\Order Approve Stip and Brief Sched.DOC

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DEPARTMENT OF
JUDICIAL ADMINISTRATION

Michael C. Creamer [ISB No. 4030]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
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Fax: (208) 388-1300
www.givenspursley.com

Attorneys for Janicek Properties LLC

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

In Re SRBA

Case No. 39576

Subcase No. 63-27475

**STIPULATION TO VACATE AND
RESET TRIAL DATE AND
SUGGESTED BRIEFING
SCHEDULE**

The parties to the above-captioned subcase, Janicek Properties, LLC, by and through its counsel Givens Pursley LLP, Nampa & Meridian Irrigation District through its counsel Ringert Clark Chartered, and the United States of America, through its counsel the United States Department of Justice, hereby stipulate to vacate the trial currently set for April 21-22, 2008, and to reset the trial to May 21, 2008.

In addition, the parties stipulate to vacate the hearing on the motion for summary judgment filed by Janicek Properties, LLC, currently set for March 18, 2008, and to reset the hearing to April 16, 2008. Furthermore, the parties agree to the following dates for the remainder of the summary judgment briefing schedule if it meets with the Court's satisfaction:

**STIPULATION TO VACATE AND RESET TRIAL DATE
AND SUGGESTED BRIEFING SCHEDULE**

DOCLINTS1964 P:\MSRP Vacate Reset Trial Date and Brief Schedule.DOC

Page 1 of 3

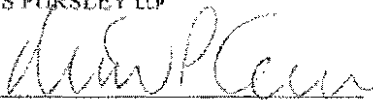
Response Briefs filed and served by March 14, 2008; Reply Briefs filed and served by March 28, 2008.

A proposed order approving this Stipulation is included with this Stipulation for the Court's consideration.

DATED this 29th day of February, 2008.

GIVENS PURSLEY LLP

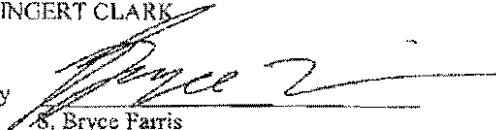
By



Michael P. Lawrence
Attorney for Janicek Properties, LLC

RINGERT CLARK

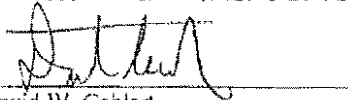
By



S. Bryce Farris
Attorney for Nampa & Meridian Irrigation
District

UNITED STATES DEPARTMENT OF JUSTICE

By



David W. Gehlert
Attorney for United States of America

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th of February, 2008, the foregoing was filed, served, or copied as follows:

ORIGINAL FILED

Fifth Judicial District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

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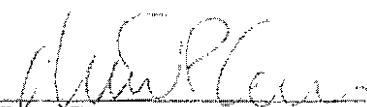
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Boise, ID 83711-4449

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c/o US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724

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Michael P. Lawrence
Attorney for Janicek Properties LLC

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

In Re SRBA

Case No. 39576

Subcase No. 63-27475

**ORDER APPROVING
STIPULATION TO VACATE AND
RESET TRIAL DATE AND
SUGGESTED BRIEFING
SCHEDULE**

Having reviewed the *Stipulation to Vacate and Reset Trial Date and Suggested Briefing Schedule* submitted by the parties to the above-captioned subcase, IT IS HEREBY ORDERED THAT:

A hearing on the Motion for Summary Judgment filed by Janicek Properties, LLC, shall be heard on April 16, 2008 at _____m, at the Idaho Supreme Court Building, 451 West State Street, Boise, Idaho, in the lower level conference room. The summary judgment briefing schedule set forth in the *Motion* is hereby adopted.

The deadline for completion of all discovery, meaning that all discovery is served and response is complete, including the taking of depositions of lay and expert witnesses, all interrogatories, requests for production / inspections and admissions, is set for April 21, 2008. Motions to compel should be filed accordingly so as to accommodate this deadline.

The pre-trial conference will be scheduled for _____, 2008 at _____m, at the Snake River Basin Adjudication Courthouse, 253 – 3rd Avenue North, Twin Falls, Idaho. Parties may participate by telephone by dialing the number 1-225-383-1099 and when prompted entering the code 675342. If you have any difficulty connecting to this call, call the SRBA Court

**ORDER APPROVING STIPULATION TO VACATE AND RESET
TRIAL DATE AND SUGGESTED BRIEFING SCHEDULE**

\\SCL\CLIENTS\95471\1\Order Approve Stip and Brief Sched.DOC

Page 1 of 3

immediately at 208-736-3011. Counsel will exchange trial witness lists, trial exhibit lists and trial exhibits on or before this date.

The trial in subcase number 63-27475 will be held on May 21, 2008, beginning at 9:00 a.m, at the Idaho Supreme Court Building, 451 West State Street, Boise, Idaho, in the lower level conference room.

DATED this _____ day of _____, 2008.

Theodore R. Booth
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER APPROVING STIPULATION TO VACATE AND RESET TRIAL DATE AND SUGGESTED BRIFING SCHEDULE** was mailed on _____, 2008, with sufficient first-class postage to the following:

Janicek Properties, LLC
c/o Michael P. Lawrence
Givens Pursley
601 W. Bannock St.
Boise, ID 83702

USDI Bureau of Reclamation
c/o David W. Gehlert
US Department of Justice, Natural Resources
Environment & Natural Resources
1961 Stout Street – 8th Floor
Denver, CO 80294

Nampa & Meridian Irrigation District
c/o S. Bryce Farris
Ringert Clark
P.O. Box 2773
Boise, ID 83701-2773

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

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098

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c/o US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724

Clerk of the SRBA Court



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Patrick J. Miller
Judson B. Montgomery
Deborah E. Nelson

W. Hugh O'Riordan LL.M.
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J. Will Vann
Conley E. Ward
Robert B. White
Tara R. Yost

RETIRED
Kenneth L. Pursley
Raymond D. Givens
James A. McClure

*Licensed in Illinois

February 20, 2008

Fifth Judicial District Court
Twin Falls County Courthouse
P.O. Box 126
Twin Falls, ID 83303-0126

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098

Nampa and Meridian
Ringert Clark
c/o Daniel V. Steenson & S. Bryce Farris
P.O. Box 2773
Boise, ID 83701-2773

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US Department of Justice, Natural Resources
Environment & Natural Resources
1961 Stout Street – 8th Floor
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P.O. Box 44449
Boise, ID 83711-4449

USDI Bureau of Reclamation
c/o US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724

Re: SRBA Subcase 63-27475
Our Client: Janicek Properties LLC

On behalf of Michael Lawrence, I am enclosing Amended Certificates for the following documents: Motion for Summary Judgment, Notice of Hearing, Memorandum in Support of Motion for Summary Judgment and Response to NMID's First Set of Discovery Requests to Claimant.

Would you kindly replace or attach the Amended Certificate of Services to the appropriate documents sent to you yesterday, February 19, 2008. Should you have any concerns, please feel free to contact us.

Sincerely,

Lori Anderson
Assistant to Michael P. Lawrence

Enclosures

LA S:\CLIENTS\9347\LA to Sys List Encl Amended CoCa.DOC

Michael C. Creamer [ISB No. 4030]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
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Attorneys for Janicek Properties, LLC

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DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 39576

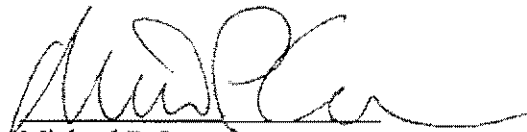
Subcase: 63-27475

**NOTICE OF SERVICE OF RESPONSE TO
NAMPA & MERIDIAN IRRIGATION
DISTRICT'S FIRST SET OF DISCOVERY
REQUESTS TO CLAIMANT**

Janicek Properties, LLC ("Claimant"), through its counsel Givens Pursley LLP, hereby gives notice to all parties and counsel of record that on February 19, 2008, Claimant served upon Nampa & Meridian Irrigation District its Response to Nampa Meridian Irrigation District's First Set of Discovery Requests.

Dated this 20th day of February, 2008.

GIVENS PURSLEY LLP


Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February 2008, the foregoing was filed, served, or copied as follows:

Clerk of District Court
Snake River Basin Adjudication
253 3rd Ave. N.
P.O. Box 2707
Twin Falls, ID 83303-2707

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Nampa and Meridian
Represented by:
S. Bryce Farris & Daniel V. Steenson
455 S. Third Street
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Boise, ID 83701-2773
Fax: 208-342-4657

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Chief of Natural Resource Division
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Boise, ID 83711-4449

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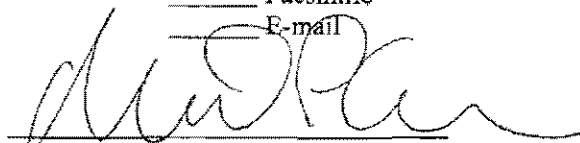
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U.S. Department of Justice, Natural Resources Section
Environment & Natural Resource Division
1961 Stout Street – 8th Floor
Denver, CO 80294

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Michael P. Lawrence

Michael C. Creamer [ISB No. 4030]
Michael P. Lawrence [ISB No. 7288]
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www.givenspursley.com

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DEPARTMENT OF
WATER RESOURCES

Attorneys for Janicek Properties, LLC

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

In Re SRBA

Case No. 39576

Subcase No. 63-27475

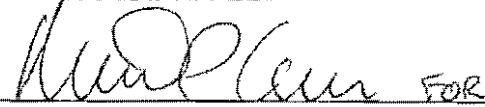
**MOTION FOR SUMMARY
JUDGMENT**

Janicek Properties, LLC, claimant in the above-captioned subcase, pursuant to Idaho Rule of Civil Procedure 56, moves for summary judgment dismissing the objection filed by Nampa & Meridian Irrigation District to the recommendation for water right number 63-27475.

This Motion is supported by the contemporaneously filed Memorandum in Support.

DATED this 21st day of February, 2008.

GIVENS PURSLEY LLP


Michael C. Creamer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th of February, 2008, the foregoing was filed,
served, or copied as follows:

ORIGINAL FILED

Fifth Judicial District Court
Twin Falls County Courthouse
P.O. Box 126
Twin Falls, ID 83303-0126

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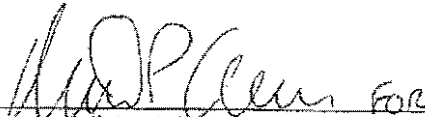
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Ringert Clark
c/o Daniel V. Steenson
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Boise, ID 83701-2773

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Michael C. Creamer

AMENDED CERTIFICATE OF SERVICE

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Boise, ID 83711-4449

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Environment & Natural Resources
1961 Stout Street – 8th Floor
Denver, CO 80294

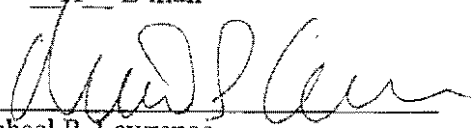
☐ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

USDI Bureau of Reclamation
c/o US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724

☒ U. S. Mail (2/20/08)
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

Nanipa and Meridian
Ringert Clark
c/o Daniel V. Steenson & S. Bryce Farris
P.O. Box 2773
Boise, ID 83701-2773

☐ U. S. Mail
☒ Hand Delivered (2/20/08)
☐ Overnight Mail
☐ Facsimile
☒ E-mail



Michael P. Lawrence

Michael C. Creamer [ISB No. 4030]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com

Attorneys for Janicek Properties, LLC

RECEIVED
FEB 21 2008
DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 39576

Subcase: 63-27475

**AFFIDAVIT OF
SCOTT N. KING**

STATE OF IDAHO)
) ss.
County of Ada)

I, SCOTT N. KING, having been duly sworn, do hereby depose and say as follows:

1. I am a Senior Project Engineer at SPF Water Engineering LLC. Since 1995, I have been licensed in Idaho as a Professional Engineer, License No. 7914. I have earned a B.S. in General Engineering from Idaho State University and a M.S. in Civil Engineering from University of Idaho. I have over 15 years of professional and academic experience in water resources engineering with SPF and with the Idaho Department of Water Resources. I specialize in water rights issues, water flow measurement, pumping system design, geographic information systems, and surface water models. Attached hereto as Exhibit A is a copy of my curriculum

AFFIDAVIT OF SCOTT N. KING - 1

S:\Projects\01001001\Projects\Janicek Properties_65340010\Twin Falls\Affidavit of S King for MSJ (ink strike).DOC

vitae. I have personal knowledge of the matters set forth herein and I could testify competently as to such matters.

2. Between November 20, 2007 and February 11, 2008, I investigated water flows in Purdam Gulch Creek in and around the point of diversion for water right number 63-27475. During this period I visited the point of diversion and the vicinity at least four times, the first time being November 20, 2007 and the last time being February 11, 2008. Steve Bennett, an employee of SPF acting under my direction, visited and photographed the site on December 18, 2007.

3. During each of my visits I witnessed water flowing in Purdam Gulch Creek upstream of, downstream of, and at the point of diversion for water right number 63-27475. I also observed a flume installed in Purdam Gulch Creek downstream of the point of diversion and a weir installed upstream of the point of diversion.

4. Based on my professional experience and observations of the flume and weir, I estimate the flow in Purdam Gulch Creek near the point of diversion was as high as 2.28 cfs on November 20, 2007, and as low as 1.34 cfs on January 29, 2008. These observations were made more than one month after the typical end of the Nampa and Meridian Irrigation District delivery season.

5. On February 11, 2008, I observed discharge at the flume of approximately 2.0 cfs. This was following a period of snowfall and subsequent snow melt. Flow in the stream on this date did not appear significantly more turbid than previous visits, likely indicating that snowmelt and surface runoff was not significantly contributing to the flow. I looked around to see if I could observe any direct runoff into the stream, and didn't see much if any near the point of diversion for water right 63-27475. Based on my professional experience and observations, I

believe the snow mostly melted into the soil and did not cause significant surface runoff directly into Purdam Gulch Creek.

6. Based on my professional experience and observations between November 20, 2007 and February 11, 2008, I believe a vast majority of the water in Purdam Gulch Creek at and around the point of diversion for water right number 63-27475 was the result of interception of shallow ground water, and that direct surface runoff or drainage contributed to a lesser degree. Direct surface runoff may contribute varying quantities at other times of the year or under other precipitation conditions.

7. Based on my professional experience and observations, I believe that there is water flowing in Purdam Gulch Creek year-round.

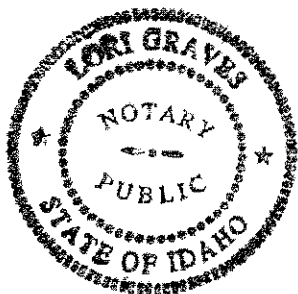
8. During my investigation, I observed that Purdam Gulch Creek has a definite channel, having a bed and sides or banks, and that it contains a stream of flowing water. Attached hereto as Exhibit B are true and correct copies of photographs of Purdam Gulch Creek that I took on November 20, 2007 near the point of diversion for water right number 63-27475 that show the definite channel, the bed and the banks, and the stream of water flowing in Purdam Gulch Creek.

9. Based on my experience and observations, I know that Purdam Gulch Creek flows into Mason Creek, and Mason Creek flows into the Boise River.

DATED this 19th day of February, 2008.

Scott N. King
Scott N. King

SUBSCRIBED AND SWORN to before me on this the 19th day of February, 2008.



Lori Graves
NOTARY PUBLIC FOR S P F WATER ENGINEERING
Residing at: BOISE
My commission expires: 6/18/2010

EXHIBIT A
CURRICULUM VITAE
SCOTT N. KING

Education

M.S., Civil Engineering
University of Idaho

B.S., General Engineering
Idaho State University

Professional Certification

Professional Engineer
Idaho No. 7914, 1995

Areas of Expertise

- Water rights investigations and analysis
- Water permit and transfer applications
- Water resource investigations
- Surface water modeling
- Flow measurement
- Pumping efficiency evaluations

Experience Summary

Mr. King has over 15 years of professional and academic experience in water resources engineering. He is currently a Senior Project Engineer with SPF Water Engineering, LLC and specializes in water right issues, water flow measurement, pumping system design, geographic information systems (GIS), and surface water models. Prior work includes 14 years experience in a broad variety of Idaho Department of Water Resources (IDWR) programs including water rights adjudication, water rights administration, safety of dams, and energy efficiency. He also has recent experience developing surface water models and providing consulting engineering services while employed at DHI, Inc, formerly known as the Danish Hydraulic Institute.

SPF Water Engineering, LLC – 2005 to present

Mr. King is currently a Senior Project Engineer with SPF Water Engineering, LLC. SPF was founded in March 2004 to provide hydrologic characterization, water resource development, and public water system design and regulatory compliance. Mr. King provides consulting services on water rights issues, surface water modeling, pump design, irrigation system evaluation, surface water hydrology, and river hydraulics. His recent project experience includes the following:

- Water right permit and transfer applications
- Water right investigations
- Water right acquisitions and sales
- Water right beneficial use field examinations
- SRBA claim preparation and support
- Stream flow measurement and monitoring
- Well design including designs to municipal public drinking water supply standards
- Well capacity determination
- Pressurized irrigation system design

DHI, INC – 2004 to 2005

Mr. King worked as a senior project engineer responsible for development of various surface water models. Project experience includes the following:

Modeling – MIKE 11. Developed hydrodynamic 1-D MIKE 11 model of the Little Claggett Creek storm water drainage system, a part of Marion County's East Salem Service District, Oregon. Produced flood maps for SCS Type 1A design storms and for the February 1996 flood event. This

model includes 8.5 km of stream in two branches, over 100 cross-sections extracted from a 2 ft vertical resolution DEM, and 23 culverts with corresponding broad-crested weirs representing roadways over culvert crossings. Inflow boundary conditions are represented by 21 catchments contributing point-source and distributed inflows simulated in MIKE 11's rainfall / runoff module.

Modeling – MIKE BASIN. Project lead on MIKE BASIN surface water distribution models developed for the Idaho Department of Water Resources. These models are used by IDWR for three primary purposes: flow enhancement tools to address flow-limited stream reaches; decision making tools to assist in selecting effective mitigation and restoration projects; and communication tools for educating decision makers and stimulating discussion among stakeholders. Developed systems include the Pahsimeroi River and East Fork Salmon River, and experiences with Lemhi River and Stanley Basin models. These models operate on a daily time step and represent the water distribution system within the basins including the stream networks, points of diversion, places of use, and locations of return flow. Time series information includes records of stream gaging, diversion measurements, precipitation, and evapotranspiration. Provided training to IDWR staff, contractors, and watermasters on the operation of MIKE BASIN through a series of hands-on sessions. Presented proposals to local waterusers and stakeholders for new model applications in Morgan Creek and Carmen Creek.

Modeling – Rainfall / Runoff. Developed lumped conceptual rain/snow/runoff models of the Stanley and East Fork Salmon River Basins for the Idaho Department of Water Resources using DHP's lumped conceptual rainfall/runoff module. The developed models are used to supply tributary inflow boundary conditions to the East Fork Salmon River and Stanley Basin MIKE BASIN models.

Developed rainfall/runoff models of 21 catchments supplying inflow boundary conditions for the Little Claggett Creek MIKE 11 model described above. Rainfall/runoff is simulated using DHP's URBAN module. Four storm events are modeled including the February 1996 observed event and SCS Type-1A 2-, 10-, and 50-year design storms.

Idaho Department of Water Resources – 1990 to 2004

During 14 years with the Idaho Department of Water Resources, Mr. King held four different positions and gained experience in a wide range of IDWR activities. These positions included Technical Engineer in the Adjudication Bureau, and Staff Engineer positions in the Water Distribution Section, in Western Region's Safety of Dams unit, and in the Energy Division. Relevant experience includes the following:

Program Management

Managed Western Region's Safety of Dams program. Inspected dams and made recommendations for maintenance and operation to improve safety and meet state standards. Issued storage certificates and authorizations to fill.

Lead technical consultant in statewide water measurement program. Defined water measurement standards and implemented a program for measuring and reporting ground-water withdrawals. Coordinated field work performed by department staff and various measuring districts. Inspected contractor projects for adequacy and compliance with department standards. Designed and managed water measurement databases.

Water Rights

Reviewed complex water right claims and prepared water right recommendations for the Director's Report to the Snake River Basin Adjudication court. Provided technical analysis and recommendations for nonstandard water right claims, such as claims for diversion rates exceeding the standard allocation, and for claims to the use of water outside of the standard seasons of use.

Provided training and direction to new employees, water districts, water measurement districts, groundwater districts, and private consultants on water rights, water measurement programs, and adjudication procedures.

Worked with water users and their legal representatives on various water right enforcement issues, including excessive and illegal water diversions.

Experienced with all aspects of IDWR regional office operations including water rights, transfers, well drilling, adjudication, water district operation, violations, enforcement, and customer complaints.

Irrigation and Pumping Systems

Performed pumping system evaluations including determinations of municipal, industrial, and agricultural pumping plant efficiencies and recommended measures for improved efficiency and reduced operating costs. Provided recommendations and designs for conversions to low-pressure irrigation systems for reduced operating costs and improved yields.

Technical Expert to Snake River Basin Adjudication (SRBA) Court

Provided technical engineering support to department staff in the ongoing SRBA.

Designated as department expert to the SRBA court regarding irrigation requirements, evapotranspiration, and crop water requirements, and how this information is utilized for preparing recommendations.

Public Relations

Presentations at public meetings to explain laws and regulations relating to water measurement and water appropriation.

Provided conflict resolution support for several water related disputes.

Trained IDWR employees, state Watermasters and Hydrographers,

contractors, and consultants on water measurement standards, equipment, practices, and procedures through regular training sessions and individual assistance.

Guest lecturer in 1996 and 1998 for College of Southern Idaho's Water Measurement course, and in 1998 for Boise State University's Water Measurement lab.

Presented *Selection and Installation of Pipe Flow Water Measurement Devices* at the 1997 Idaho Irrigation Equipment Show and Exhibition, Shilo Inn, Idaho Falls, January 8-9.

Technical

Developed and proposed to department administration and to the general public technically sound methods of using power records for estimation of pumped water diversions.

Determined acceptability and provided professional opinions for numerous non-standard water measurement methods and devices proposed to IDWR by engineering consultants and water users.

Determined conveyance capacity of pumps, diversions, pipelines, open channels, turbines, etc.

Led IDWR efforts to utilize global positioning systems (GPS). Developed standards for use, trained staff and consultants, and integrated GPS data collection into GIS work.

Report Development

Authored various reports including annual reports of ground water diversions, reports to individual water users, flowmeter accuracy reports, and various other reports relating to water measurement.

Co-author of *Eastern Snake Plain Aquifer Water Measurement Program, A Summary of Measurement Activity & Results from Basin 36 Project Area, 1995-1996 and a Review of Program Expansion in 1997*, IDWR, May 1998.

University of Idaho – 1999 to 2002

Masters of Science in Civil Engineering Thesis: The Effective Discharge Concept in Gravel Bed Stream Restoration: The Twelve Mile Reach of the Salmon River at Challis, Idaho.

Determined channel effective discharge based on sediment transport measurements and flow records. Compared effective discharge to bankfull discharge and stated implications of findings in regards to channel restoration. Completed hydraulic, hydrologic, and geomorphologic characteristics of the study reach. Presented findings and recommendations to technical groups and local property owners.

Developed hydrodynamic pseudo 2-D MIKE 11 model of the Twelve Mile Reach, Salmon River, near Challis, ID. Produced animated flood maps of

primary flooding events from 1974 (100-yr), 1996, and 1997. This model includes 27-km of mainstem river including braided sections and split flows. Over-bank discharge into Hannah Slough and across One-Mile Island is represented by link-channels. The model includes 68 surveyed cross-sections and utilizes a 2-ft interval contour map for flood mapping.

EXHIBIT B
PHOTOGRAPHS OF PURDAM GULCH CREEK
NEAR THE POINT OF DIVERSION FOR
WATER RIGHT NUMBER 63-27475

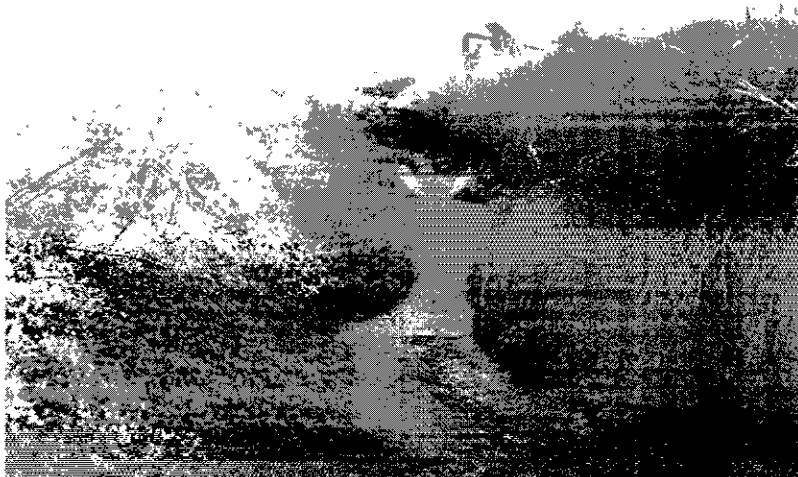


Photograph 3. Gage in feet and set on 45° sidewall. Weir head (in feet) is $0.707 \times$ Gage Reading. Average gage reading was approximately 1.12 ft. Flume tables indicate 2.3 cfs at this stage.



Photograph 4: 6-inch deep V-notch weir cut into a 7-ft Cipoletti Weir. Based on "sticking the weir" with a steel carpenter's tape to measure water surface elevation, the right corner of the crest is approximately $\frac{1}{4}$ -inch lower than the left corner. Recommend decreasing staff gage reading by 0.01 ft.

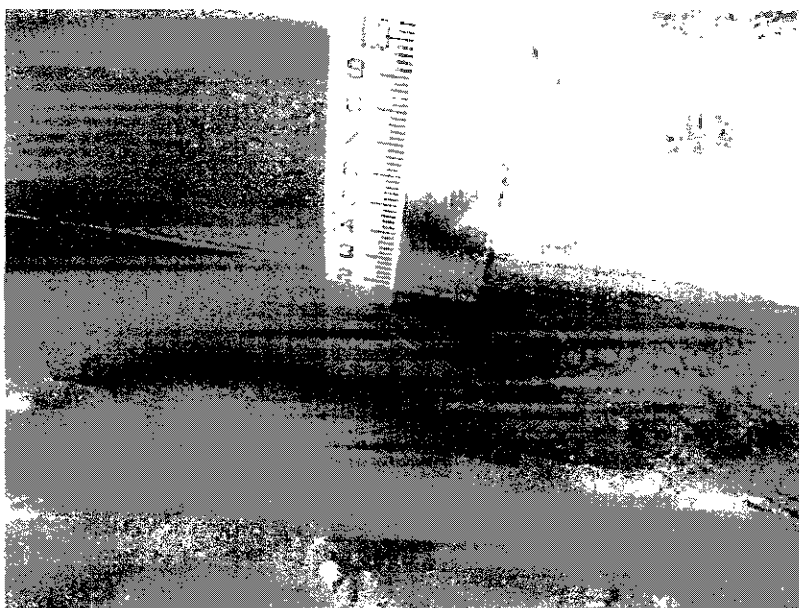
Photographs obtained November 20, 2007, afternoon.



Photograph 1: Water Right No. 63-27475 point of diversion from Purdam Gulch Creek in background with Trapezoidal Flume in mid-photo.



Photograph 2: Trapezoidal flume appears to be Plasti-Fab model 12" x 45" SRCRC.



Photograph 5: Staff gage reading indicates 0.17 ft of head over Cipoletti Weir Crest. Approximate discharge at this stage is 2.2 cfs.

Michael C. Creamer [ISB No. 4030]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com

Attorneys for Janicek Properties, LLC

RECEIVED
FEB 21 2008
DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 39576

Subcase: 63-27475

**AFFIDAVIT OF
BRADLEY J. JANICEK**

STATE OF IDAHO)
) ss.
County of Ada)

I, BRADLEY J. JANICEK, having been duly sworn, do hereby depose and say as follows:

1. I am an owner and a member of Janicek Properties, LLC, the claimant in the above-referenced subcase. I have personal knowledge of the matters set forth herein and, if needed, I could testify competently as to such matters.

2. Janicek Properties, LLC, owns the parcel of real property consisting of approximately 80 acres and particularly described as S1/2 of the NE1/4 of Section 15, T3N, R1W, B.M., Ada County, Idaho (the "Property"). On July 3, 1996, I purchased the Property (with LouAnn Janicek); a true and correct copy of that deed is attached hereto is as Exhibit A.

Thereafter, on September 28, 2001, we transferred the Property to Janicek Properties, LLC. Attached hereto as Exhibit B is a true and correct copy of the deed vesting fee simple title in the Property in Janicek Properties, LLC.

3. Attached hereto as Exhibit C is a true and correct copy of the title insurance policy issued to me and LouAnn Janicek when we acquired the Property on July 3, 1996. Since that time, neither Brad and LouAnn Janicek nor Janicek Properties, LLC, has granted or agreed to grant to Nampa & Meridian Irrigation District or the U.S. Bureau of Reclamation, either orally or in writing, any rights in this property, including any rights in Purdam Gulch Creek.

4. Since 1976 and prior to my purchase of the Property in 1996, I leased the Property each year. Since 1976, I have farmed the Property each year, except during 2006 and 2007 when I leased the Property to another farmer.

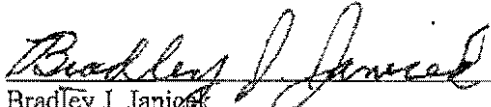
5. Since 1976, I have pumped water from Purdam Gulch Creek and have applied it to crops grown on the Property. My use of the water pumped from Purdam Gulch Creek has begun as early in the season as March and has continued as late as November.

6. Until Nampa & Meridian Irrigation District's objection to water right 63-27475 in the Snake River Basin Adjudication, the irrigation district never communicated to me that it asserted any interest in the waters of Purdam Gulch Creek or had any objection to my diversion and use of water from Purdam Gulch Creek, and I am not aware of any such communications to my predecessors. In addition, at no time has the irrigation district complained that my diversions or diversion works in Purdam Gulch Creek interfered with their operations or their use of the Creek.

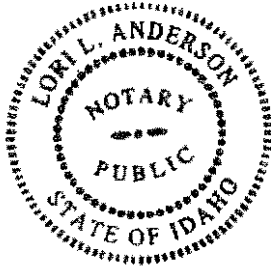
7. Since 1976, I have observed Purdam Gulch Creek at many different times of the year, including during the non-irrigation season, and I have never seen it run dry.

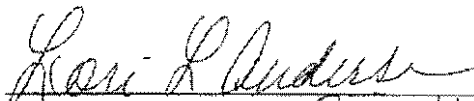
8. When I purchased the Property in 1996, I understood that the Property had been irrigated with water pumped from Purdam Gulch Creek since 1943.

DATED this 19th day of February, 2008.


Bradley J. Janicek

SUBSCRIBED AND SWORN to before me on this the 19th day of February, 2008.




NOTARY PUBLIC FOR Boise, Idaho
Residing at: Boise, Idaho
My commission expires: Aug. 23, 2013

96055892



A Pioneer Company

PIONEER TITLE COMPANY
OF ADA COUNTY

8151 W. Rifleman Ave / Boise, Idaho 83704 /

ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID
PIONEER TITLE CO.

96 JUL 3 PM 3 58

FEE 37.750
RECORDED AT THE REQUEST OF

P-149250 KC/LP

WARRANTY DEED
(INDIVIDUAL)

2012900840

FOR VALUE RECEIVED RICHARD G. DAVIS, WHO ACQUIRED TITLE AS RICHARD DAVIS AND E.
JOANNE DAVIS, HUSBAND AND WIFEGrantor s. do hereby grant, bargain, sell and convey unto BRADLEY J. JANICEK AND LOU ANN
JANICEK, HUSBAND AND WIFEthe Grantee s., whose current address is: 5606 NORTH TEN MILE ROAD, MERIDIAN, ID 83647
the following described real property in ADA County, State of Idaho, more particularly described as
follows, to-wit:
THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 3 NORTH, RANGE 1
WEST, BOISE MERIDIAN, ADA COUNTY, IDAHO

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and Grantee heirs
and assigns forever. And the said Grantor s. do hereby covenant to and with the said Grantee s. the Grantor s. are the
owner s in fee simple of said premises; that said premises are free from all encumbrances, EXCEPT those to which this
conveyance is expressly made subject and those made, suffered or done by the Grantee s and subject to reservations,
restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments,
(includes irrigation and utility assessments, (if any) for the current year, which are not yet due and payable, and that Grantor s
will warrant and defend the same from all lawful claims whatsoever.

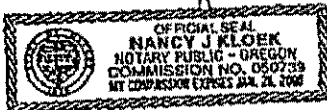
Dated: July 01, 1996

Richard G. Davis

E. Joanne Davis

STATE OF Oregon, County of Jackson, ss.

On this 2nd day of July, in the year of 1996, before me Nancy Klock
personally appeared Richard G. and E. Joanne Davis, a notary public, per-
known or identified to me to be the person s whose names subscribed to the within instrument, and
acknowledged to me that they executed the same.



Notary Public: Nancy J. Klock
Residing at: Meridian, Oregon
My Commission Expires: Jan. 21, 2000

EXHIBIT

A

COPY

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

RECORDED - REQUEST OF

GRANT DEED

DEPT

2001 SP 28 AM 10:55

101100063

FOR VALUE RECEIVED, BRADLEY J. JANICEK and LOUANN JANICEK, as Grantor, do hereby grant, bargain, sell and convey unto JANICEK PROPERTIES, L.L.C., an Idaho limited liability company, as Grantee, whose current address 1284 S. Gosling Way, Eagle, Idaho, 83616, the following described premises in Ada County, Idaho, to-wit:

SE 1/2 NE 1/4, Section 15, 3N, 1W of the Boise Meridian,
Ada County, Idaho.

TO HAVE AND TO HOLD The said premises, with their appurtenances, unto the said Grantee, and said Grantee's heirs and assigns, forever. This Grant is subject to all encumbrances made or suffered by the Grantor, reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that Grantor(s) will warrant and defend the same from all lawful claims whatsoever.

DATED This 28 day of September, 2001.

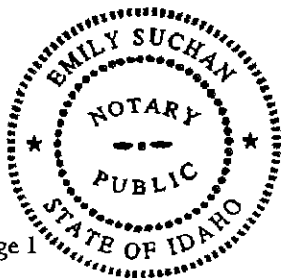
Bradley J. Janicek
Bradley J. Janicek

LouAnn Janicek
LouAnn Janicek

STATE OF IDAHO)
 : ss.
County of Ada)

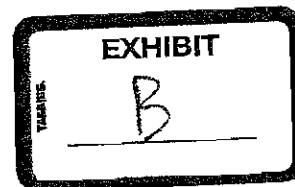
On this 28 day of September, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared Bradley J. Janicek, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Emily Suchan
Notary Public for Idaho
Residing at Meridian, ID
My comm. exp.: 08/26/06

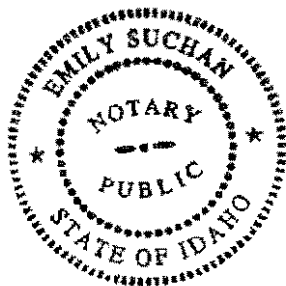
GRANT DEED - Page 1



STATE OF IDAHO)
 : ss.
County of Ada)

On this 28 day of September, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared LouAnn Janicek, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Emily Suchan
Notary Public for Idaho
Residing at Mendota, ID
My comm. exp.: 08/25/06

Owner's Policy

American Land Title Association Owner's Policy 10-17-92



Policy Number **SV 2640392**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS,

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Minnesota corporation, herein called the Company,

insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, the said Old Republic National Title Insurance Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers as of the date shown in Schedule A, the policy to be valid when countersigned by an authorized officer or agent of the Company.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including, but not limited to, building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or creating subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (i) to timely record the instrument of transfer; or
 - (ii) of such recitation to impart notice to a purchaser for value or a judgment or lien creditor.

Issued through the Office of:

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

A Stock Company

480 Second Avenue South, Minneapolis, Minnesota 55401

(612) 371-1111

Authorized Signatory

ORT Form 402 - NTA Owner's Policy 10-17-92

By

Attest

President

EXHIBIT

C

CONDITIONS AND STIPULATIONS

1. Definition of Terms.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions from Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. Continuation of Insurance After Conveyance of Title.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. Notice of Claim to be Given by Insured Claimant.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. Defense and Prosecution of Actions; Duty of Insured Claimant to Cooperate.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim adverse to the title

or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. Proof of Loss or Damage.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of

(Continued on inside back cover.)

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the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. Options to Pay or Otherwise Settle Claims; Termination of Liability.

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

7. Determination, Extent of Liability and Coinsurance.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. Apportionment.

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. Limitation of Liability.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. Reduction of Insurance; Reduction or Termination of Liability.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. Liability Non-cumulative.

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. Payment of Loss.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. Subrogation Upon Payment or Settlement.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and

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(Continued from inside cover.)

remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-Insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. Arbitration.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located

permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules. A copy of the Rules may be obtained from the Company upon request.

15. Liability Limited to this Policy; Policy Entire Contract.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or Validating Officer or Authorized Signatory of the Company.

16. Severability.

In the event any provision of the policy is held invalid or unenforceable under the applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and affect.

17. Notices, Where Sent.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to its Home Office, 400 Second Avenue South, Minneapolis, Minnesota 55401, (612) 371-1111.

Agent# State Cty.	Prop Tran	Reissue Amt.	Re. Tran	Simultaneous Issue#
A11005 11 001	1 010	\$		MM 2209261
				MM 2209262

OWNERS

SCHEDULE A

<u>OFFICE FILE #</u>	<u>POLICY NUMBER</u>	<u>DATE OF POLICY</u>	<u>AMT. OF INSURANCE</u>	<u>TOTAL PREMIUM</u>
P149260	SV 2840392	JULY 3, 1996 AS OF 3:59 PM	\$295,000.00	\$1140.00

1. Name of Insured:

BRADLEY J. JANICEK AND LOU ANN JANICEK

2. The estate or interest in the land which is covered by this policy is:

FEE SIMPLE

3. Title to the estate or interest in the land is vested in:

BRADLEY J. JANICEK AND LOU ANN JANICEK, HUSBAND AND WIFE

4. The land herein described is encumbered by the following mortgage or Trust Deed, and assignments:

A MORTGAGE TO SECURE AN INDEBTEDNESS OF \$ 162,723.00, AND ANY OTHER AMOUNTS AS THEREIN PROVIDED, PAYABLE UNDER THE TERMS, CONDITIONS, PROVISIONS AND STIPULATIONS THEREOF.

DATED: JULY 1, 1996

MORTGAGOR: BRADLEY J. JANICEK AND LOU ANN JANICEK

MORTGAGEE: WEST ONE BANK, IDAHO

RECORDED: JULY 3, 1996

INSTRUMENT NO.: 96055893

A MORTGAGE TO SECURE AN INDEBTEDNESS OF \$ 25,250.00, AND ANY OTHER AMOUNTS AS THEREIN PROVIDED, PAYABLE UNDER THE TERMS, CONDITIONS, PROVISIONS AND STIPULATIONS THEREOF.

DATED: JULY 1, 1996

MORTGAGOR: BRADLEY J. JANICEK AND LOUANN JANICEK, HUSBAND AND WIFE

MORTGAGEE: RICHARD G. DAVIS AND E. JOANNE DAVIS, HUSBAND AND WIFE

RECORDED: JULY 3, 1996

INSTRUMENT NO.: 96055894

and the mortgages or trust deeds, if any, shown in Schedule B hereof.

5. The land referred to in the Policy is described as follows:

THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 3 NORTH, RANGE 1 WEST, BOISE MERIDIAN, ADA COUNTY, IDAHO.

OWNERS
SCHEDULE B

Policy Number: P149250 SV 2640392

Owners

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

General Exceptions:

- (1) Rights or claims of parties in possession not shown by the public records.
- (2) Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey or inspection of the premises including, but not limited to, insufficient or impaired access or matters contradictory to any survey plat shown by the public records.
- (3) Easements, or claims of easements, not shown by the public records.
- (4) Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
- (5) (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.
- (6) Taxes or special assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments, on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

Special Exceptions: The mortgage, if any, referred to in Item 4 of Schedule A.

1. GENERAL TAXES FOR THE YEAR 1996, WHICH ARE LIENS, ARE NOT YET DUE AND PAYABLE.
2. ANY, RIGHT OR INTEREST IN ANY MINERAL, MINERAL RIGHTS, OR RELATED MATTERS, INCLUDING BUT NOT LIMITED TO OIL, GAS, COAL, AND OTHER HYDROCARBONS.
3. AN EASEMENT CONTAINING CERTAIN TERMS, CONDITIONS AND PROVISIONS AFFECTING A PORTION OF SAID PREMISES AND FOR THE PURPOSES STATED HEREIN.
FOR: POWER LINE EASEMENT
IN FAVOR OF: IDAHO POWER COMPANY
RECORDED: DECEMBER 23, 1974
INSTRUMENT NO.: 909785
AFFECTS: BEGINNING AT THE EAST QUARTER CORNER OF SECTION 15, TOWNSHIP 3 NORTH, RANGE 1 WEST, BOISE MERIDIAN; THENCE
WEST ALONG NORTH SIDE OF HALF SECTION LINE A DISTANCE 600 FEET; THENCE
NORTH 30 FEET; THENCE
EAST TO COUNTY ROAD PROPERTY LINE
4. RIGHTS OR CLAIMS TO RIGHTS OF WAY FOR DITCHES, CANALS, LATERALS OR SLOUGHS AS THE SAME MAY EXIST ON, OVER OR ACROSS SAID PREMISES.

CONTINUED

5. RIGHTS OF THE PUBLIC TO PORTIONS OF SAID PREMISES, IF ANY, WHICH MAY LIE WITHIN THE RIGHT OF WAY FOR TEN MILE RD.
AS DISCLOSED BY VARIOUS INSTRUMENTS OF RECORD.
6. UNRECORDED LEASEHOLDS, IF ANY, RIGHTS OF PARTIES IN POSSESSION OTHER THAN THE VESTES HEREIN, RIGHTS OF SECURED PARTIES UNDER FINANCING STATEMENTS AS TO PERSONAL PROPERTY LOCATED ON THE PREMISES HEREIN AND THE RIGHTS OF TENANTS TO REMOVE TRADE FIXTURES.

END OF EXCEPTIONS

NOTE: THERE IS NO NOTICE OF RECORD AND THEREFORE NO SEARCH HAS BEEN MADE FOR ANY UNPAID ASSESSMENTS, CHARGES OR FEES FOR SEWER, WATER, GARBAGE, IRRIGATION AND OTHER POSSIBLE UTILITY SERVICES.

RECEIVED

FEB 21 2008

DEPARTMENT OF
WATER RESOURCES

Michael C. Creamer [ISB No. 4030]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com

Attorneys for Janicek Properties, LLC

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

In Re SRBA

Case No. 39576

Subcase: 63-27475

**AFFIDAVIT OF
MICHAEL P. LAWRENCE**

STATE OF IDAHO)
) ss.
County of Ada)

I, MICHAEL P. LAWRENCE, having been duly sworn, do hereby depose and say as follows:

1. I am an attorney at the law firm Givens Pursley LLP. This law firm represents Janicek Properties, LLC ("Janicek"), in the above-captioned matter. I have personal knowledge of the matters set forth herein and, if needed, I could testify competently as to such matters.

2. Attached hereto as Exhibit A is a true and correct copy of the abstract of patent for the SE 1/2 of the NE 1/4 of Section 15, T3N, R1W, B.M., Ada County, Idaho, which is the property owned by Janicek Properties, LLC, on which water right 63-27475 is used for irrigation.

3. Attached hereto as Exhibit B is a true and correct copy of a quitclaim deed from the U.S. Bureau of Reclamation ("BOR") to Nampa & Meridian Irrigation District ("NMID"), as provided by BOR in response to Janicek's discovery requests.

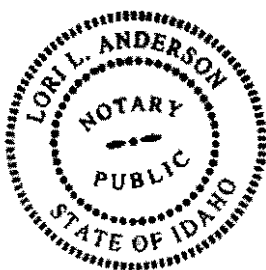
4. Attached hereto as Exhibit C is a true and correct copy of a contract made between BOR and NMID dated June 1, 1915 ("1915 Contract"), as provided by NMID in response to Janicek's discovery requests, showing, on page 1 of the Estimate of Cost for the Nampa-Meridian Drainage System, that Purdam Gulch was a "natural drainage course" that BOR "straightened and deepened."

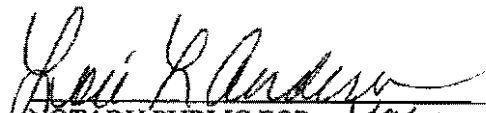
5. Attached hereto as Exhibit D is a true and correct copy of an excerpt from the 2006 Water District 63 Watermaster's Report obtained from the Water District 63 Watermaster, showing that all water rights on the Boise River between the Notus Bridge and Snake River are satisfied with return flows.

DATED this 19th day of February, 2008.


Michael P. Lawrence

SUBSCRIBED AND SWORN to before me on this the 19th day of February, 2008.




NOTARY PUBLIC FOR Idaho
Residing at: Boise Idaho
My commission expires: Aug 23, 2013

United States Patent

To -
John F. Stanton

Instrument Numbered 377

The United States of America

Timber culture certificate No. 42

Application 266

To all to whom these presents shall come, Greeting.

Whereas There has been deposited in the General Land Office of the United States a certificate of the Register of the Land Office at Boise, Idaho, whereby it appeared that, pursuant to the Acts of Congress approved March 3, 1890, March 13, 1894, and June 14, 1898 "to Encourage the Growth of Timber on the Western Prairies" the claim of John F. Stanton has been established and duly consummated, in conformity to law, for the South Half of the North East quarter, the North West quarter of the North East quarter and the North East quarter of the North West quarter of Section fifteen in Township three North of Range one West of Boise Meridian in Idaho - containing one hundred and sixty acres according to the official plat of the survey of the said land, returned to the General Land Office by the Surveyor General:

Now know ye, That there is, therefore, granted by the United States unto the said John F. Stanton the tract of land above described; To have and to hold the said tract of land, with the appurtenances thereof unto the said John F. Stanton and to his heirs and assigns forever; Subject to any vested and accrued water rights for mining, agricultural manufacturing, or other purposes; and right to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted - as provided by law

EXHIBIT

A

In testimony whereof, I, Grover Cleveland, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the eighth day of May, in the year of our Lord one thousand eight hundred and ninety six, and of the Independence of the United States the one hundred and twentieth.

By the President: Grover Cleveland

By M. McKean Secretary

L. L. Lamar - Recorder of the General Land Office

Recorded, Vol. 36- Page 96

Recorded at the request of Mr. Brew + Mr. H. at 2:50 o'clock
A.M. April 21st 1908 Ex 1-

J. P. Deady Recorder
By J. P. Deady Deputy

Nampa & Meridian Irrigation District

1503 FIRST STREET SOUTH

NAMPA, IDAHO 83651-4395

FAX # 208-463-0092

18 July 2001

Jerrold D. Gregg, Area Manager
Snake River Area Office
Bureau of Reclamation
214 Broadway Avenue
Boise, ID 83702-7298

Phones: Area Code 208

OFFICE: Nampa 466-7861

SHOP: Nampa 466-0663

RE: Quitclaim Deed from United States of America acting by and through the Bureau of Reclamation, the Department of the Interior to Nampa & Meridian Irrigation District in Recognition of Public Law 106-466, 114 Stat. 2024 - Conveyance of Facilities

Dear Jerry:

Enclosed you will find a certified true and correct copy of the above referenced quitclaim deed recorded at both Canyon and Ada Counties on Wednesday, 18 July 2001.

Throughout the title transfer process and the challenges it has created, I have come to appreciate an old saying.

Goals are like the stars; they are always there. Adversity is like the clouds; it is temporary and will move on. Keep your eyes on the stars.

I believe the stars we focused on led us to the accomplishment of Title Transfer.

Sincerely,



Daren R. Coon, Secretary/Treasurer and Secretary of the Board of Directors
NAMPA & MERIDIAN IRRIGATION DISTRICT

DRC/smc

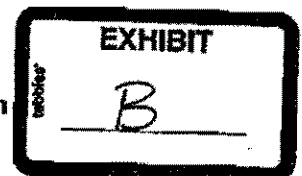
pc: File
Henry Weick, President and Director
Leonard Aschenbrenner, Vice-President and Director
Ralph Wissel, Director
John Anderson - Water Superintendent
William Ringert - District's Attorney
Daniel Steenson - District's Attorney
Alan Jensen - Consultant
Joseph Findaro - Legislative Consultant
John W. Keys, III - Commissioner of the United States Bureau of Reclamation

enc. A certified true and correct copy of the Quitclaim Deed

APPROXIMATE IRRIGABLE ACRES

RIVER FLOW RIGHTS - 23,000

BOISE PROJECT RIGHTS - 40,000



ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

2001 JUL 18 PM 4:22

RECORDED - REQUEST OF

FEE 60.00

101071951

REQUEST Nampa & Meridian 7/1/01
TYPE DEED PER 60.00

CANYON COUNTY RECORDER
G. NOEL JAMES
JAMES

01 JUL 18 PM 3 31

RECORDED

200120526

Please return a certified copy
of recorded document to:
U.S. Bureau of Reclamation
214 Broadway Avenue
Boise, ID 83702-7298

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Boise Project, Idaho
Arrowrock Division

QUITCLAIM DEED

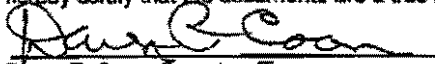
WHEREAS, The Nampa and Meridian Conveyance Act of November 7, 2000 (Public Law 106-466, 114 Stat. 2024), hereinafter referred to as the Act, particularly "Section 2, Conveyance of Facilities," provides for the conveyance to the Nampa & Meridian Irrigation District of "all right, title, and interest of the United States in and to any portion of the canals, laterals, drains, and any other portion of the water distribution and drainage system that is operated or maintained by the District for delivery of water to and drainage of water from lands within the boundaries of the District"; and,

WHEREAS, Section 4 of the Act provides that "No water rights shall be transferred, modified, or otherwise affected by the conveyance of facilities and interests to the Nampa and Meridian Irrigation District" and that the "conveyance shall not affect or abrogate any provision of any contract executed by the United States or State law regarding any irrigation district's right to use water developed in the facilities conveyed"; and,

WHEREAS, The water distribution system (aka "Ridenbaugh Canal system") and the drainage system operated and maintained by Nampa & Meridian Irrigation District consists of canals, laterals, sub-laterals, ditches and drains that are listed alphabetically in Exhibit No. 1, attached hereto and by this reference made a part hereof, and are generally depicted on the map attached hereto as Exhibit No. 2 and by this reference made a part hereof (the parties acknowledge that, due to the large size and scope of Nampa & Meridian Irrigation District's water distribution and drainage systems, these Exhibits are not intended as conclusive representations of those systems, and that certain canals, laterals, sub-laterals, ditches and drains in those systems may not be identified in Exhibit Nos. 1 and 2); and,

18 July 2001

I, Daren R. Coon, the Secretary/Treasurer, for the Nampa & Meridian Irrigation District, have reviewed the foregoing documents and do hereby certify that the documents are a true and correct copy of the records maintained by the Nampa & Meridian Irrigation District.


Daren R. Coon, Secretary/Treasurer
Nampa & Meridian Irrigation District

WHEREAS, The boundaries of Nampa & Meridian Irrigation District are described in the Order for the Organization of the Nampa & Meridian Irrigation District entered by the Board of Ada County Commissioners on February 15, 1904, as subsequently amended by such annexations and exclusions as have been recorded in Ada and Canyon Counties, Idaho.

NOW THEREFORE, THE UNITED STATES OF AMERICA, hereinafter **GRANTOR**, acting by and through the Bureau of Reclamation, Department of the Interior, pursuant to the provisions of the Nampa and Meridian Conveyance Act of November 7, 2000 (Public Law 106-466, 114 Stat. 2024), particularly "Section 2, Conveyance of Facilities," and in consideration of mutual benefits, does hereby **REMISE, RELEASE, ASSIGN, AND FOREVER QUITCLAIM** to **NAMPA & MERIDIAN IRRIGATION DISTRICT**, an irrigation district duly organized under the laws of the State of Idaho, at 1503 First Street South, Nampa, Idaho 83651- 4395, hereinafter **GRANTEE**, all of its right, title, interest, and estate, without warranties, in and to the following described facilities and interests in real property, situated in the Counties of Ada and Canyon, State of Idaho, to wit:

all and singular its canals, laterals, sub-laterals, ditches, drains, and portions thereof, and all appurtenances and improvements including, without limitation, all dams, checks, headgates, pipelines, flumes, siphons, valves, spillways, weirs, access roads, service roads and other structures (collectively "facilities"), together with all its fee title, rights-of-way, easements, licenses, permits or other forms of authorization, which Grantor owns, holds or claims as part of the water distribution and drainage systems that are operated or maintained by Grantee, more particularly described as follows:

1. All portions of the Ridenbaugh Canal system that were constructed or installed by the United States as enlargements or extensions of the system pursuant to a contract made between the Grantee and the Grantor under date of April 1, 1909 (the "1909 Contract");
2. All drains and drain segments constructed by the United States for the Grantee pursuant to a contract made between the District and the United States under date of June 1, 1915 (the "1915 Contract");
3. All extensions or enlargements of laterals in the Ridenbaugh Canal system constructed or installed pursuant to contracts made subsequently to the 1909 Contract or drains and drain segments constructed for the District pursuant to contracts made subsequently to the 1915 Contract;
4. All interests in real property described in the Parcel, Right-of-Way, and Easement List, attached hereto as Exhibit No. 3 and by this reference made a part hereof (the parties acknowledge that Grantor identified the instruments listed in

Exhibit No. 3 after a search and review of Grantor's records, but that there may be additional instruments which were not identified through Grantor's records search);

5. All rights-of-way and easements reserved by the Act of August 30, 1890 (26 Stat. 391) and amendments thereof and supplemental thereto, and previously exercised by the United States for said facilities; and,

6. All fee title, rights-of-way and easements previously obtained or established by the United States by any other means for said facilities.

EXCEPTING THEREFROM: (1) any federal facilities, rights-of-way, and easements not a part of Grantee's water distribution and drainage systems; (2) those rights, if any, that were reserved in the original patents for real property within the District other than those particularly described in "5" or "6" immediately above; and (3) those rights necessary to meet Grantor's obligations under currently existing irrigation district contracts and water supply contracts with third parties and to comply with Section 4 of the Act.

SUBJECT TO: valid existing rights including, but not limited to, rights-of-way of record or in use for roads and highways, utilities, and railroads.

ALSO SUBJECT TO: permits, licenses, leases, rights-of-use, or rights-of-way of record which run with the land and are outstanding between the Grantor and third parties on, over, or across said real property interests or facilities. Benefits, payments, and responsibilities of Grantor arising after the date of this deed under such existing third party agreements shall inure to the benefit of and be binding upon Grantee to the extent such are not *ultra vires*, that is, beyond the scope of Grantee's legal authority.

This conveyance shall not affect any rights to the use of water developed in the facilities conveyed. Grantor shall have no right, title, interest or claim to Grantee's water rights apportioned by Grantee to any fee title lands conveyed hereunder.

If any further specific conveyances should be necessary or advisable hereafter, because of the discovery of additional currently existing facilities operated or maintained by the Grantee as part of Grantee's water distribution and drainage systems, located in Ada and Canyon Counties, Idaho, not described and conveyed herein, or to more specifically describe the premises, then Grantor and Grantee shall accomplish such conveyances or correction deeds on the same terms and conditions set forth hereinabove.

If this Deed shall fail in any respect to convey good and valid title to any of the facilities or interests in real property intended to be conveyed herein, the Grantee reserves and retains any and all rights and claims to said facilities and interests in real property it established independent of the execution of this Deed, including, but not limited to, any rights held or established by adverse possession, prescription or under Idaho Code §§ 42-1102 and 42-1204. This reservation

shall in no way support a claim of estoppel or waiver by the Grantor or any third party as to the validity, force and effect of this Deed and the transfer of the Grantor's right, title and interest described in this Deed to the Grantee.

Grantee accepts these facilities, premises and appurtenances "as is," and expressly waives, and releases Grantor from, all claims, demands, obligations and liabilities relating to or arising from Grantee's operation of the facilities, including without limitation, such claims, demands, obligations and liabilities under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. Grantee also agrees to reimburse, defend, and indemnify Grantor for all claims, demands, obligations and liabilities relating to or arising from Grantee's operation of the water distribution and drainage systems.

IN WITNESS WHEREOF, the GRANTOR, through its duly appointed officer, has executed this Deed the 13th day of July, 2001.

UNITED STATES OF AMERICA

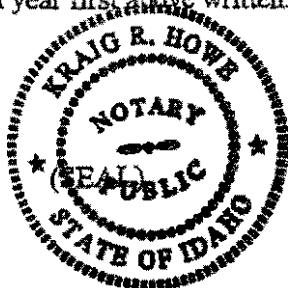
By Kenneth R. Pedde
Acting Regional Director
Bureau of Reclamation
Pacific Northwest Region
1150 North Curtis Road, Suite 100
Boise, Idaho 83706-1234

ACKNOWLEDGMENT OF THE UNITED STATES

STATE OF IDAHO)
 : §
County of Ada)

On this 13th day of July, 2001, personally appeared before me Kenneth R. Pedde known to me to be the official of the **UNITED STATES OF AMERICA**, that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the United States, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

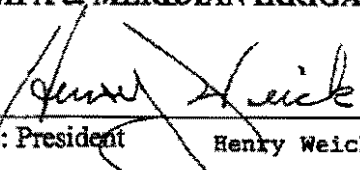



Notary Public in and for the
State of Idaho
Residing at: Boise
My commission expires: 12/21/2001

ACCEPTANCE OF GRANTEE

The parties hereto intend for the above Quitclaim Deed to satisfy the terms of Public Law 106-466. The foregoing conveyance is hereby accepted by Grantee. Grantee further agrees, by this acceptance, to the sufficiency of the conveyance and to comply with the terms and covenants of the within and foregoing Quitclaim Deed. Grantee further agrees by this acceptance to assume and be bound by all the obligations, conditions, covenants, and agreements therein contained.

NAMPA & MERIDIAN IRRIGATION DISTRICT

By: 
Title: President Henry Weick

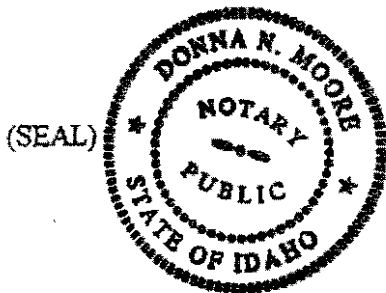


ACKNOWLEDGMENT

STATE OF IDAHO)
 : §
County of Canyon)

On this 17th day of July, 2001, personally appeared before me
Henry Wick and Doreen R. Coon, know to me to be the officials of the NAMP &
MERIDIAN IRRIGATION DISTRICT, organized and operating under the laws of the State of
Idaho, that executed the within and foregoing instrument and acknowledged said instrument to be
the free and voluntary act and deed of said District, for the uses and purposes therein mentioned,
and on oath stated that s/he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day
and year first above written.



Donna N. Moore
Notary Public in and for the
State of Idaho
Residing at: Caldwell, Idaho
My commission expires: 11/04/2006

**Canals, Laterals, Sub-Laterals, Ditches and Drains in
Nampa & Meridian Irrigation District's Water Distribution and Drainage Systems**

This exhibit contains two alphabetical lists of canals, laterals, sub-laterals, ditches and drains (collectively "ditches") in Nampa & Meridian Irrigation District's water distribution and drainage systems.

The first list identifies the ditches according to the recorded surveys in which they are described. The survey recorded February 25, 1972, records of Ada County, Idaho, Instrument No. 797771, is referred to as Survey 1. Likewise, the survey recorded March 4, 1976, records of Ada County, Idaho, Instrument No. 7608075, is referred to as Survey 2, the survey recorded October 18, 1983, records of Canyon County, Idaho, Instrument No. 989070, is referred to as Survey 3 - East Half, and the survey recorded March 7, 1985, records of Canyon County, Idaho, Instrument No. 8505634, is referred to as Survey 3 - West Half.

Facilities identified in Survey 1 or in Survey 2 have the head end (begin) in Ada County, Idaho, and those identified in Survey 3 - East Half or in Survey 3 - West Half have the head end (begin) in Canyon County, Idaho.

The second list is a list of laterals, stubs and drains that were not identified either in Survey No. 1, No. 2, No. 3 - East Half, or No. 3 - West Half.

**SURVEY NO. 1 - RECORDED FEBRUARY 25, 1972
INSTRUMENT NO. 797771, ADA COUNTY, IDAHO
CANALS, LATERALS, AND DITCHES**

NAME

Ash Lateral
Barker Lateral
Brose Lateral
Cloverdale Lateral
Collis Lateral
Cook Lateral
Crawford Lateral
Cruzen Lateral
Eichelberger Lateral
Eight Mile Creek
Eight Mile Lateral
Electric Light Switch
Farmers Lateral
Fitzpatrick Lateral
Five Mile Creek
Gruber Lateral
Hunter Lateral
Huntington Lateral
Lindsey Lateral
Milk Lateral
Nine Mile Creek
North Slough (renamed Eggers Lateral)
Ridenbaugh Canal
Rust Lateral
Snyder Lateral
South Slough (renamed Finch Lateral)
South Slough Lateral (renamed Finch Lateral)
Stokesberry Lateral
Tuttle Lateral
Wilson Lateral

SURVEY NO. 1 - DRAINS

NAME

Chaffin Drain

Eight Mile Drain

Evans Drain

Welch Drain

**SURVEY NO. 2 - RECORDED MARCH 4, 1976
INSTRUMENT NO. 7608075, ADA COUNTY, IDAHO
CANALS, LATERALS, AND DITCHES**

NAME

Andrews Lateral
Creason Feeder
Creason Lateral
Dewey Lateral
Duval Lateral
Eight Mile Lateral
Fieselmann Lateral
Five Mile Creek
Fogarty Lateral
Huff Lateral
Hunter Lateral
Jones Lateral
Kennedy Lateral
Kennedy Waste Way
Langdon Lateral
Low Line Feeder
Marvin Lateral
Mason Creek
Nampa Feeder
Niday Lateral
Nine Mile Creek
Noble Lateral
North Nampa Lateral
Onweiler Lateral
Powell Lateral
Ridenbaugh Canal
Ridenbaugh High Line Canal
Ridge Lateral
Rutledge Lateral
Ryberg Lateral
Safford Lateral
Safford Waste Way
Schott Lateral
South Jones Lateral
South Nampa Lateral (renamed Finch Lateral)
South Slough (renamed Finch Lateral)

SURVEY NO. 2 - DRAINS

NAME

Adkins Drain
Amity Drain
Amity Drain Spur No. 1
Amity Drain Spur No. 2
Bastian Drain
Belknap Drain
Belknap Stub Drain
Bray Drain
Bray Stub Drain
Burke Drain
Cairns Drain
Edger Drain (subsequently added and recorded as Instrument #8367342)
Ellis Drain
Ellis Stub Drain
Evans Drain
Five Mile Stub Drain
Flack Drain
Gail Drain
Hardin Drain
Hroza Drain
Huskey Drain
Jackson Drain
Jackson Stub Drain
Kasel Drain
Kasel Stub Drain
Kellogg Drain
Marvin Drain (subsequently added and recorded as Instrument #8367725)
McFadden Drain
McFadden Drain Spur
Murphy Drain
Niday Drain
North Gate Drain
Odel Drain
Perkins Drain
Perkins Stub Drain
Purdam Drain
Purdam Stub Drain
Purdam Stub #1 (subsequently added and recorded as Instrument #8367341)
Rachel Drain (subsequently added and recorded as Instrument #8367341)

Rosenlof Drain
Snyder Drain
South Slough Stub
Taylor Drain
Ten Mile Stub Drain
Tobias Drain
Williams Drain

**SURVEY NO. 3 - EAST HALF - RECORDED OCTOBER 18, 1983
INSTRUMENT NO. 989070, CANYON COUNTY, IDAHO
CANALS, LATERALS, AND DITCHES**

NAME

Andrews Lateral
Bray Lateral
Burke Lateral
Conley Lateral
Dewey Lateral
Dewey Waste Way
Duval Lateral
Egbert Lateral
Fieselmann Lateral
Fogarty Lateral
Herron Lateral
Hocktitler Lateral
Huff Lateral
Jones Lateral
Kennedy Lateral
Kurtz Lateral
Kurtz Waste Way
Langdon Lateral
Mason Creek
Melleck Lateral
Nampa Feeder
North Nampa Lateral
Partridge Lateral
Partridge Sub Lateral
Powell Lateral
Power Lateral
Rand Lateral
Ridenbaugh Canal
Ridenbaugh Highline Canal (renamed Burke)
Ridge Lateral
Ryberg Lateral
Safford Lateral
Savage Lateral
Schott Lateral
South Nampa Lateral (renamed Finch Lateral)

SURVEY NO. 3 - EAST HALF - DRAINS

NAME

Aaron Drain
Amity Drain
Belknap Drain
Belknap Stub Drain
Blickenstaff Drain
Blickenstaff Stub Drain
Boal's Drain
Brandt Drain
Buffington Drain
Burrie Drain
Deal Drain
East Power Line Drain
Elijah Drain
Huskey Drain
Lake Drain
Mason Creek Drain
Niday Drain
North Dobson Drain
Perkins Drain
Perkins Stub Drain
Rachel Drain
Ramsey Drain
Randolf Drain
South Dobson Drain
12th Avenue Drain
Tiegs Drain
West Bray Drain
Williams Drain
Wilson Stub #1

**SURVEY NO. 3 - WEST HALF - RECORDED MARCH 7, 1985
INSTRUMENT NO. 8505634, CANYON COUNTY, IDAHO
CANALS, LATERALS, AND DITCHES**

NAME

Aller Lateral
Bray Lateral
Deer Flat Nampa Edwards (renamed Edwards)
Deer Flat Nampa / Edwards Waste Way
Fox Lateral
Gordon Lateral
Herron Lateral
Lone Star Lateral
Noble Lateral (renamed Fisher Lateral)
Peters Lateral
Pleasants Lateral
Rost Lateral
Sherry Lateral
Sherry Waste Way

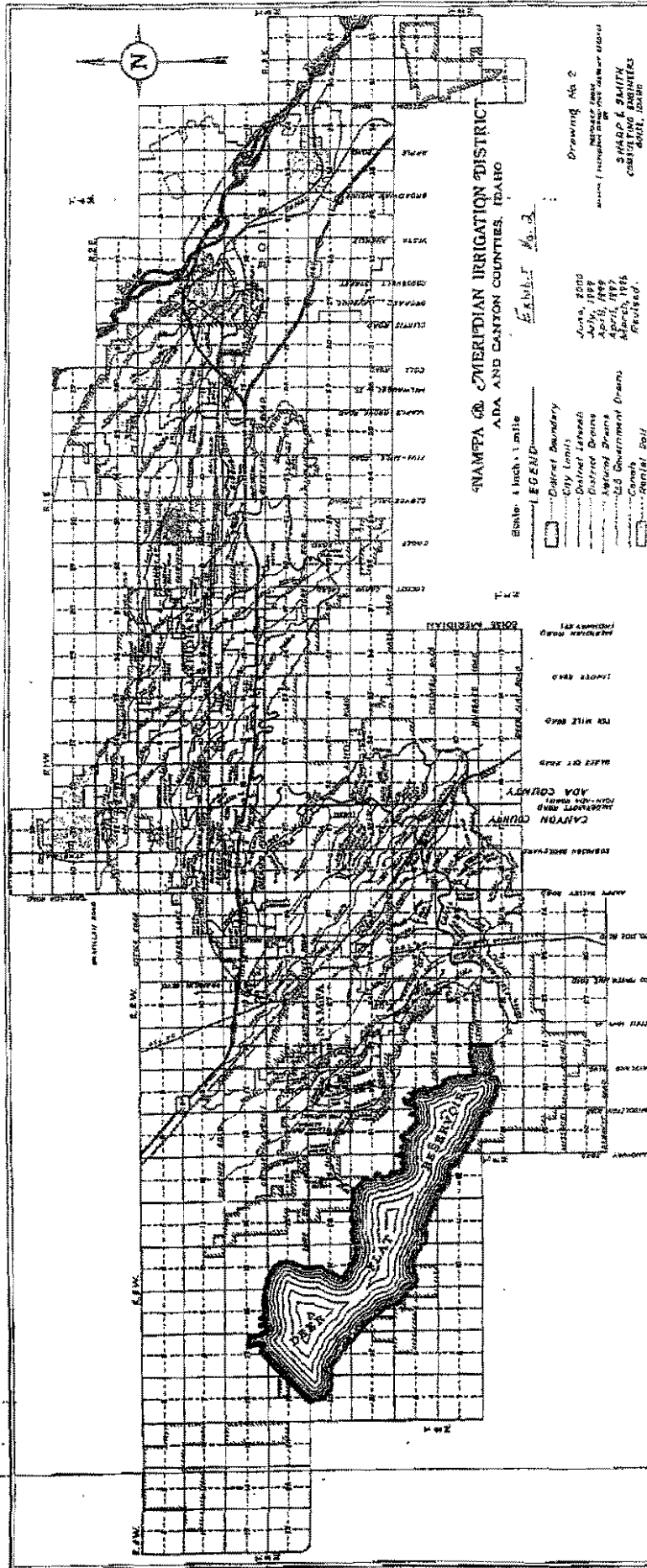
SURVEY NO. 3 - WEST HALF - DRAINS

NAME

Jonah Drain
Joseph Drain
Lake Drain

LATERALS AND DRAINS NOT LISTED WITHIN SURVEY 1, 2, OR 3

Belknap Spur Lateral
Cairns Lateral
Eagle Lateral
Elgato Drain
Herron Feeder
Highline Lateral
Lundstrum Drain
Mason Drain
Orr Drain
Perkins Lateral
Rawson Feeder
Ridenbaugh Drain
Rosen Drain
Sargent Drain
South Slough Drain
Ulrich Drain
Von Lateral
Wilson Drain
Young Lateral



**Parcels, Rights-of-Way, and Easements
Recorded Instruments
Ada County Instrument Number or Book & Page**

Bk 118 Pg 446	Bk 118 Pg 284	Bk 122 Pg 188	61530
Bk 125 Pg 241	Bk 121 Pg 119	Bk 118 Pg 169	61529
Bk 118 Pg 298	Bk 119 Pg 307	Bk 118 Pg 338	64659
Bk 7 Pg 331 (Book of Contracts)	Bk 118 Pg 171	Bk 121 Pg 539	Bk 87 Pg 60
Bk 121 Pg 23	Bk 122 Pg 88	Bk 121 Pg 537	Bk 125 Pg 102
Bk 122 Pg 178	Bk 124 Pg 207	Bk 82 Pg 90	Bk 122 Pg 190
Bk 82 Pg 280	Bk 118 Pg 296	Bk 88 Pg 207	Bk 122 Pg 181
Bk 118 Pg 456	Bk 125 Pg 173	Bk 52 Pg 135 (Book of Mortgages)	Bk 125 Pg 240
Bk 56 Pg 179	Bk 121 Pg 348	Bk 91 Pg 212	Bk 119 Pg 296
Bk 126 Pg 140	Bk 120 Pg 192	Bk 85 Pg 223	Bk 120 Pg 113
54860	Bk 120 Pg 219	Bk 86 Pg 6	Bk 124 Pg 332
Bk 118 Pg 358	Bk 125 Pg 238	Bk 86 Pg 7	Bk 125 Pg 301
Bk 120 Pg 304	Bk 120 Pg 49	Bk 73 Pg 580	Bk 90 Pg 163
Bk 120 Pg 245	Bk 124 Pg 205	Bk 83 Pg 318	
Bk 120 Pg 257	7727480	Bk 95 Pg 14	
Bk 127 Pg 280	Bk 79 Pg 586	Bk 106 Pg 216	
Bk 122 Pg 122	Bk 79 Pg 582	Bk 88 Pg 7	
Bk 126 Pg 58	Bk 79 Pg 579	Bk 88 Pg 8	
Bk 124 Pg 97	Bk 79 Pg 583	Bk 86 Pg 295	
Bk 124 Pg 134	Bk 79 Pg 581	Bk 88 Pg 9	
Bk 124 Pg 95	9259521	Bk 86 Pg 310	
Bk 125 Pg 98	Bk 126 Pg 66	Bk 120 Pg 305	
Bk 124 Pg 92	9156146	Bk 87 - 272 - 73	
Bk 82 Pg 281	9150547	Bk 106 Pg 221	
Bk 118 Pg 248	29927	Bk 88 Pg 16	
Bk 124 Pg 132	Bk 120 Pg 320	63021	
Bk 5 Pg 323 (Book of Contracts)	Bk 120 Pg 319	Bk 90 Pg 268	

Canyon County Instrument Number or Book & Page

Bk 74 Pg 592	62862
Bk 59 Pg 125	66079
Bk 74 Pg 563	60931
Bk 64 Pg 568	62302
Bk 76 Pg 30	62300
Bk 76 Pg 27	71395
Bk 37 Pg 176	32148
Bk 125 Pg 271	35266
Bk 64 Pg 282	39435
Bk 64 Pg 569	39148
Bk 53 Pg 623	474630
Bk 53 Pg 624	63022
Bk 53 Pg 622	61528
Bk 64 Pg 565	61532
Bk 64 Pg 531	
Bk 64 Pg 563	
Bk 87 Pg 9	
Bk 74 Pg 457	
Bk 55 Pg 130	
Bk 91 Pg 449	
Bk 91 Pg 428	
Bk 91 Pg 429	

Unrecorded	Grantor/ Party	Instrument/ Contract Type	Grantee/ Party	Date	County	Comment
	Floyd Cairns	Field Contract	USA	11-Apr-17		Five Mile Drain/ Confirms 1890 Canal Act ROW
	Nan Lewis	Field Contract	USA	15-Mar-17		Five Mile Drain & Creason Lateral
	Swan Ringwood	Quitclaim Deed	USA	1916		Per Bureau of Reclamation 5-Jul-16 (date)
	Settlers Irrigation District	Contract	USA	6-Apr-17	Ada	Five Mile Drain
	Fennie Jones	Field Contract	USA	5-Dec-16		Nine Mile Drain/ Confirms 1890 Canal Act ROW
	E.C. Pfaffle	Field Contract	USA	5-Aug-16		Ten Mile Drain/ Confirms 1890 Canal Act ROW
	Margaret Patterson	Field Contract	USA	28-Jun-17		Sky Pilot Drain/ Confirms 1890 Canal Act ROW
	Robert Noble	Quitclaim Deed	USA	13-Dec-16	Canyon	Kennedy Lateral
	Eugene Bedal	Field Contract	USA	7-Aug-16		Purdum Drain/ Confirms 1890 Canal Act ROW
	L.W. Corwin	Field Contract	USA	27-Feb-17		Ten Mile Drain/ Confirms 1890 Canal Act ROW
	John E. Waugh	Field Contract	USA	6-Dec-16		Purdum Drain/ Confirms 1890 Canal Act ROW
	Eugene McCoy	Quitclaim Deed	USA	20-Sep-16	Ada	Per B of R 09/20/16 (date)
	J.H. Newcomer	Field Contract	USA	20-Dec-16		Nine Mile Drain/ Confirms 1890 Canal Act ROW
	Homer Tolleth	Warranty Deed	USA	1916	Ada	Per B of R 01/01/16 (date)
	Wm. J. Wrey	Field Contract	USA	8-Feb-17		Nine Mile Drain/ Confirms 1890 Canal Act ROW
	T. M. Hashbarger	Field Contract	USA	3-Jul-17		Ten Mile Drain/ Confirms 1890 Canal Act ROW
	R. H. Horton	Field Contract	USA	13-Dec-16		Ten Mile Drain/ Confirms 1890 Canal Act ROW
	Ohio King	Field Contract	USA	20-Dec-16		Ten Mile Drain/ Confirms 1890 Canal Act ROW
	George Deck	Field Contract	USA	24-Dec-09	Ada	Kennedy Lateral/ Confirms 1890 Canal Act ROW
	S.W. Shook	Field Contract	USA	21-Oct-09	Ada	Kennedy Lateral/ Confirms 1890 Canal Act ROW
	Emaline Stalker	Field Contract	USA	6-Dec-16		Ten Mile Drain/ Confirms 1890 Canal Act ROW
	W.M. L. Thurman	Field Contract	USA	18-Jan-17		Ten Mile Drain/ Confirms 1890 Canal Act ROW
	C. L. Lockwood	Field Contract	USA	26-Jun-17		Ten Mile Drain/ Confirms 1890 Canal Act ROW
	Chas H. Rex	Field Contract	USA	25-Apr-17		Ten Mile Drain/ Confirms 1890 Canal Act ROW
	Idaho Land Developers Inc	Contract	USA	27-Apr-17		Ten Mile Feeder Canal
	Homer H. Grimm	Bargain & Sale Deed	USA	5-Nov-10	Ada	Ash Lateral
	Frank Martin	Warranty Deed	USA	6-Jun-11	Ada	Ash Lateral
	Frank Martin	Bargain & Sale Deed	USA	5-Nov-10	Ada	Ash Lateral
	A. R. Estes	Field Contract	USA	28-Jun-17		Five Mile Drain/ Confirms 1890 Canal Act ROW
	Elizabeth J. Griffith	Field Contract	USA	28-Jun-17		Five Mile Drain/ Confirms 1890 Canal Act ROW
	J. H. Marcum	Field Contract	USA	26-Jun-17		Five Mile Drain/ Confirms 1890 Canal Act ROW
	E. C. Pfaffle	Field Contract	USA	16-Jan-17		Ten Mile Drain/ Confirms 1890 Canal Act ROW
	E. C. Pfaffle	Field Contract	USA	5-Aug-16		Confirms 1890 Canal Act ROW
	Elmer E. Sims	Field Contract	USA	16-Jan-17		Ten Mile Drain/ Confirms 1890 Canal Act ROW
	Elmer E. Sims	Field Contract	USA	16-Jul-17		Ten Mile Drain/ Confirms 1890 Canal Act ROW
	Hans J. Roach	Field Contract	USA	31-Jan-17		Sky Pilot Drain/ Confirms 1890 Canal Act ROW
	S. H. Sample	Field Contract	USA	17-Jan-17		Sky Pilot Drain/ Confirms 1890 Canal Act ROW
	Frank A. Nourse	Easement Deed	USA	1916	Ada	Five Mile Drain
	George H. Vaughan	Contract	USA	25-Jan-16	Ada	Ten Mile Drain
	William Sang	Warranty Deed	USA	1910	Canyon	Per B of R 01/01/1910 (date) Shot Lateral
	Harlan Van Hess	Contract	USA	13-Jan-71	Ada	Ten Mile Drain (120- 60/60)
	S. C. Tefft	Quitclaim Deed	USA		Canyon	Joseph Drain (100- 50/50)
	C. W. Kempthorne	Contract	USA	1-Oct-08	Canyon	Deer Flat Nampa Canal
	W. A. Hoebler	Contract	USA	30-Sep-08		Deer Flat Nampa Canal
	William O. Shively	Contract	USA	16-Nov-08		Deer Flat Nampa Canal
	Clifford Fife et al	Warranty Deed	USA	1911	Ada	Per B of R 1/1/11 (date) Ash Lateral
	Dean Perkins	Quitclaim Deed	USA	24-Sep-10	Ada	Ash Lateral
	Earle F. Cranston et al	Contract	USA	29-Sep-59		Ash Lateral
	Andrew Rvett	Field Contract	USA	27-Jul-16		Aaron Drain/ Confirms 1890 Canal Act ROW
	Fred B. Anson	Field Contract	USA	23-Jun-16		Wilson Drain/ Confirms 1890 Canal Act ROW
	H. H. Day	Field Contract	USA	23-Jun-16		Wilson Drain/ Confirms 1890 Canal Act ROW
	John Pipher	Field Contract	USA	26-Jul-16		Wilson Drain/ Confirms 1890 Canal Act ROW
	E.C. Pfaffle	Contract	USA	20-Jan-17		Confirms 1890 Canal Act ROW
	E.C. Pfaffle	Contract	USA	8-Aug-16		Confirms 1890 Canal Act ROW
	Elmer E. Sims	Contract	USA	16-Jan-17		Confirms 1890 Canal Act ROW
	D.W. Cole	Contract	USA	16-Jul-17		Confirms 1890 Canal Act ROW
	D.W. Cole	Contract	USA	16-Jan-17		Confirms 1890 Canal Act ROW
	Harlan Van Hees	Contract	USA	13-Jan-71		Confirms 1890 Canal Act ROW
	Hans J Roach	Contract	USA	24-Feb-17		Confirms 1890 Canal Act ROW
	S. H. Sample	Contract	USA	20-Jan-17		Confirms 1890 Canal Act ROW
	William A. Powell	Contract	USA	16-Dec-17	Ada	Per B of R 12/16/17 (date)
	Joseph A. Miller	Deed	USA	29-Mar-16		Confirms 1890 Canal Act ROW
	Robert Noble	Quitclaim Deed	USA	8-Oct-15		Confirms 1890 Canal Act ROW
	H.F. Lamphere	Quitclaim Deed	USA	1914	Canyon	Confirms 1890 Canal Act ROW
	F.A. Fox	Contract	USA	15-Sep-08	Canyon	Confirms 1890 Canal Act ROW
	TCI Cablevision of Treasure Valley	Contract	USA	2-Feb-98		Confirms 1890 Canal Act ROW
	MacGregor Triangle Company	Contract	USA	24-Mar-61		Confirms 1890 Canal Act ROW
	L.L. Folsom	Warranty Deed	USA	1910	Ada	Confirms 1890 Canal Act ROW
	Thomas Wilson	Warranty Deed	USA	1910	Ada	Confirms 1890 Canal Act ROW
	Thomas J. Davis	Warranty Deed	USA	6-Feb-12	Ada	Confirms 1890 Canal Act ROW
	Crossing Of Mason Creek w/ Bridge	Easement	USA	2-Mar-89		Confirms 1890 Canal Act ROW
	L. L. Folsom	Warranty Deed	USA	1910	Ada	Confirms 1890 Canal Act ROW
	John Gray	Warranty Deed	USA	5-May-10	Ada	Confirms 1890 Canal Act ROW
	E.C. Pfaffle	Contract	USA	3-Aug-16		Confirms 1890 Canal Act ROW
	John Waugh	Contract	USA	16-Dec-16		Confirms 1890 Canal Act ROW
	John S. Jellison	Agreement	USA	19-Jul-09		Confirms 1890 Canal Act ROW

Draft of July 24, 1914

THIS AGREEMENT made this 1st day of June, 1915,
between the UNITED STATES OF AMERICA, acting for this purpose
by the Secretary of the Interior, under the provisions of the
Act of Congress of June 17, 1902 (32 Stat. 388) known as the
Reclamation Act, and acts amendatory thereto or supplementary
thereto, and the Act of Congress of February 21, 1911, (36 Stat. L.
925), the party of the First Part, hereinafter called the United
States, and the WAMPA & MERIDIAN IRRIGATION DISTRICT, an Irrigation
District organized under the laws of the State of Idaho, and
located in Canyon and Ada Counties, Idaho, acting for the purposes
of this contract under authority of Title 14 of the Idaho Revised
Codes, including Sections 2396, 2397, and 2398, the party of the
second part, hereinafter called the District-

WITNESSETH - That,

WHEREAS, the District includes within its boundaries
about Twenty-four Thousand Five Hundred Fifty-seven (24,557)
acres of irrigated land, Twenty-two thousand six hundred twelve
(22,612) acres of which are entitled to receive water from the
District; the remainder being irrigated with water from the
Sabularo and New York Canals; and whereas, the District owns
and controls that certain canal known as the Hidenbaugh Canal
through which water is supplied from Boise River to the lands

EXHIBIT

C

of the District for irrigation and domestic purposes, and whereas, the natural flow of Boise River which the District is entitled to divert under its priorities and appropriations, is insufficient during the latter part of said irrigation season to furnish a complete water supply for the lands of the District, and the District desires to secure a certain amount of stored water in order to furnish its land owners and water users a more complete water supply during the low water periods of the irrigation season, and

WHEREAS, the ground water table is rising in the District and in places is already close to the surface, so that a large part of the lands of the District are likely to become permanently ruined and incapable of producing crops, or bearing any share of the expense of the District, unless a drainage system is promptly provided; and whereas, it is believed that such a drainage system will reclaim considerable areas which cannot now be cultivated successfully on account of such seepage conditions, and will check the spread of such seepage conditions, and save other large areas which are now threatened with destruction from the same cause; and

WHEREAS, the United States is now constructing, under the provisions of the Reclamation Act, that certain irrigation project known as the "Boise Project," including the Arrowrock and Deer Flat storage reservoirs, and a portion of the lands of the

District have been subscribed to said project by the individual owners of such lands; and

WHEREAS, it is believed that under existing conditions the only way in which the additional water supply and drainage system required by the District can be secured promptly and at a cost which the land owners of the District can afford to pay, is by means of a contract between the District and the United States, under the provisions of the Acts of Congress of June 17, 1902 (32 Stat. 388) and February 21, 1911 (36 Stat. L., 925) and Title 14 of the Idaho Revised Codes.

NOW, THEREFORE, it is hereby agreed:-

1. That as a part of the general drainage system of its Boise Project, the United States will construct for theampa & Meridian Irrigation District, a drainage system to a total cost of Five Hundred Fifty-seven Thousand Dollars, (\$557,000). The location of the drains, to be constructed, is shown on the map attached hereto and marked Exhibit "A", it being understood that in general drains numbered "one" on the said map will be constructed first, drains numbered "two" will be constructed next, drains numbered "three" will be constructed last, so far as said limit of expenditure will allow such work to go, such drainage system to have sufficient capacity in its main drains to carry the seepage water flowing into the District from the lands lying above the

District and drainage into it, as well as that originating in the District itself, the Supervising Engineer in charge of such construction shall have the right to make changes in the alignment of the drains shown on the attached map, and in grades and cross-sections, where such changes shall be found in his judgment to be necessary or desirable to increase the efficiency or economy of the system. It is understood that in case any part of the work shown on the said map shall prove unnecessary for the benefit of District lands, such part may be omitted by mutual consent of the parties hereto. It is fully understood that the United States is to expend only Five Hundred Fifty-seven Thousand Dollars (\$557,000), including cost of preliminary work in drainage construction for the District, under this contract, and to stop when such limit of expenditure has been reached. It is not expected that the lands of the District can be completely drained at this cost nor a drainage system extended to each farm unit, but that only a number of principal drains will be constructed with which individual and community farm drains can be connected.

2. That for the purposes of this contract, irrigable lands in the District which are now entitled to $5/8$ of a miner's inch of water or more per acre, out of the present water rights of the District, or of the Settlers' District or through ownership of stock in the New York Canal Company,

are considered as old water right lands and referred to herein under that name; irrigable lands in the District which have no water right from the District or the Settlers' District, and have not been irrigated through ownership of stock in the New York Canal Company, are considered as project lands and referred to herein under that name, and irrigable tracts of land in the District which are entitled to some water from the present water rights of the District, or of the Settlers' District or through ownership of stock in the New York Canal Company, but less than $5/8$ of an inch per acre, shall be considered as old water right lands to the extent of the number of acres for which the water right of such tract will provide $5/8$ of an inch per acre, and project lands as to the remainder thereof.

3. That the District will pay to the United States for that portion of the above described drainage work in the District, equitably chargeable to the old water right lands in the District, the sum of Two Hundred Sixty-six Thousand Dollars (\$266,000), in the same number of annual installments not less than ten (10) and same percentage of the total in each annual installment as is fixed by the Secretary of the Interior for the lands of the Boise Project in his Public Notice announcing the construction charge for the Boise Project, the first installment to be due and payable one (1) year after the day on which said Public Notice for the Boise

Project is issued by the Secretary of the Interior, and one installment on the same day of each year thereafter until all installments are paid, and will use the taxing power of the District and all the powers and resources of the District to collect said sums of money and pay the same to the United States when due. The benefits of the expenditures of said sum of Two Hundred Sixty-six Thousand Dollars (\$266,000) for drainage shall be apportioned among the old water right lands of the District. No portion of said sum of Two Hundred Sixty-six Thousand Dollars (\$266,000) shall be apportioned to the project lands in the District but the balance of the said sum to be expended on drainage works in the District as provided in paragraph 1 hereof shall be charged to the general expense of the Boise Project and the project lands in the District shall pay the construction, operation and maintenance charges provided in paragraphs 11 and 12 hereof.

4. That after the construction thereof, the District will maintain said drainage system in good serviceable condition, at its own expense, and shall charge the cost thereof to the old water right lands in the District in the proportion which the amount of construction cost chargeable to the old water right lands in the District, to-wit, Two Hundred Sixty-six Thousand Dollars (\$266,000), bears to the total construction cost, to-wit, Five Hundred Fifty-seven Thousand

Dollars (\$557,000), and will charge the balance to the United States. In case the District shall fail or neglect to maintain said drainage system in good serviceable condition, the United States may maintain or repair the same and charge the cost thereof to the District, which cost the District will promptly pay.

5. The right to water developed in the drainage system herein provided for shall belong to the Boise Project and the old water right lands of the District, and be divided between said Boise Project and said old water right lands of the District in the same proportion as the cost of the drainage system herein provided, and the drains to be constructed under this contract shall be subject to use by the lands of the Boise Project whether outside or inside the District, as well as the old water right lands of the District.

6. That the District will pay to the United States the sum of Twenty-four Thousand Eight Hundred Forty Dollars for storage capacity in Arrowrock Reservoir- a reservoir to be constructed by the United States on Boise River in Boise and Blaine Counties, Idaho, and to have a capacity of between 200,000 and 250,000 acre feet and the United States will provide for the District that portion of the total storage capacity of Arrowrock Reservoir which Twenty-four Thousand Eight Hundred Forty Dollars

is of the total cost of said reservoir, and will deliver at the downstream end of the outlets of the Arrowrock Reservoir, for the District each year after the completion of said reservoir, the same proportion of the stored water available from said reservoir at such times after three (3) days notice from the District to the United States officer in charge, and in such quantities as the District may direct not in excess of the District's proportionate part of the available outlet capacity. The total cost of said reservoir will be determined and stated by the Secretary of the Interior in his Public Notice of the charges to be made for the Boise Project, and to include all cost and expenses of whatsoever nature or kind for the purpose of, growing out of, in connection with, or resulting from the construction of said reservoir including engineering expenses and overhead charges, and such interest, if any, as may be payable on account of advances under the provisions of the Act of Congress of June 25, 1910 (36 Stat. L. 835), or other legislation by Congress.

7. The said sum of Twenty-Four Thousand Eight Hundred Forty Dollars shall be paid by the District to the United States in the same number of annual installments not less than ten (10) and same percentage of the total in each annual installment as is fixed by the Secretary of the Interior for the lands of the Boise Project in his Public Notice announcing the construction

charge for the Boise Project, the first installment to be due and payable one (1) year after the day on which said Public Notice for the Boise Project is issued by the Secretary of the Interior and one installment on the same day of each year thereafter until all installments are paid; and the District will use the taxing power of the District, and all the powers and resources of the District to collect said sums of money, and pay the same to the United States when due, and will also pay each year its proportionate share of the cost of operation and maintenance of said reservoir and delivery of water therefrom, as announced by the Secretary of the Interior.

8. No interest will be charged on any of the said installments for drainage work, or stored water, or money to be paid to the United States for operation and maintenance, on account of the drainage works or stored water, until due; but any part thereof which may remain unpaid after the same is due shall bear interest from maturity until paid at ten per cent (10%) per annum, and the United States shall not be obliged to deliver or turn out for the District any stored water while the District is in default on any of the payments herein provided to be made by the District to the United States.

9. The District agrees to distribute the amount of

water delivered to it by the United States under this act in full compliance with the provisions of said Reclamation Act of June 17, 1902, and the rules and regulations thereunder, and to use and distribute the same only upon the lands within the District, and in compliance with the provisions of Section 2 of the Act of Congress of February 21, 1911 (36 Stat. L. 925) known as the Warren Act.

10. The stored water from Arrowrock Reservoir hereinabove agreed to be purchased by the District, shall be diverted from Boise River through the canal system of the District and delivered to old water right lands in the District to supplement the water supply of such lands at times when the natural flow of Boise River is insufficient, and the benefits and cost of such stored water shall be apportioned to such lands; Provided, however, that no portion of said stored water is to be delivered, and no part of the cost thereof apportioned to those old water right lands of the District to which the first priority right of the District has been allotted under the classification of lands as to priority, which has been made by the District, it being considered that the lands having the first priority right need no stored water.

11. For the project lands in the District, the United States will provide both storage capacity in the reservoirs

of the United States and carrying capacity in the United States Canal System of the Boise Project, and each year after the completion of the Arrowrock Reservoir, will deliver to the District for distribution to the project lands in the District lying under the canal system of the District, as nearly as practical, the same proportionate share per acre of the water actually available from said works of the United States, both flood water and stored water, as is provided for similar lands in the United States Boise Project, outside of the District except as otherwise provided in paragraph 12 hereof, but not more, however, than is needed for beneficial use on said land, and for the project lands in the District lying above the canal system of the District a similar water supply will be furnished directly by the United States through the laterals and canals of the United States. The water supply for the project lands in the District shall be carried through the Main Canal of the United States Boise Project, and that portion for the project lands lying under the canal of the District delivered to the District at convenient points in the District where laterals or distributing canals from the Canal System of the United States reach or cross the canal of the District, and will there be received by the District and distributed by the District to the project lands in the District entitled to the use thereof; under the provisions of a certain contract for the distribution

of water, between the parties hereto, dated April 1, 1909, it being understood that the said certain contract shall remain in effect until such time as a new contract shall be mutually agreed upon by the parties hereto, providing for a different method of distribution of water and division of the cost of distribution.

12. The District will promptly apportion to the project lands in the District a total of Three Million Three Hundred four thousand five hundred (\$3,304,500) Dollars, being a charge of Seventy-five (\$75.00) Dollars per acre as the benefits under this contract to said lands; provided, however, that if the building charge per acre announced by the Secretary of the Interior in his Public Notice for similar lands of the Boise Project, is less than Seventy-five (\$75.00) Dollars per acre, then the assessment of benefits against the project lands in the District shall be reduced to the same amount per acre as is announced by the Secretary of the Interior for the similar lands of the Boise Project, and the District will collect the sums so apportioned to such project lands in the District and pay the same to the United States in the same number of annual installments not less than Ten (10) and same schedule of graduated payments as is fixed by the Secretary of the Interior in his Public Notices for similar lands of the Boise Project outside of the District. Provided, that should the construction charge per acre announced by the Secretary of the Interior, for the Boise

Project for a full water right, be in excess of Seventy-five Dollars (\$75.00) per acre of irrigable land, the benefits to be assessed to the project lands in the District under this contract and collected by the District under this contract for the said project lands for the payment to the United States of the construction charge, shall nevertheless be only Seventy-five Dollars (\$75.00) per acre, and the number of installments and the percentage of the total payable in each annual installment shall be the same number and percentage as for the lands of the Boise Project outside the District, but in that event, the amount of both stored water and flood water furnished for such project lands in the District by the United States shall be the same proportion of the amount furnished per acre to the lands of the Boise Project outside of the District as Seventy-five Dollars (\$75.00) per acre is to the charge announced for the Boise Project lands outside of the District; Provided, that in that event, the owners of project lands in the District, individually or the District on behalf of all the project land owners in the District, may, or they, or it so elect, by supplemental contract with the United States, secure from the United States works additional water sufficient to make their water rights equal in amount per acre to the rights furnished by the United States to similar project lands

outside of the District, by payment of the difference between Seventy-Five (\$75.00) Dollars per acre and the charge announced by the Secretary of the Interior in his Public Notice for the lands of the Boise Project outside the District, but the amount to be apportioned to the project lands in the District under this present contract shall not be in excess of Seventy-Five (\$75.00) Dollars per acre. The installments of the charges apportioned to the project lands in the District shall be due and payable from the District to the United States on the same dates as fixed by the Secretary of the Interior in his Public Notice for the payment of the charges for the lands of the Boise Project outside of the District. The District will be reimbursed by the United States for the cost of distributing the water to said project lands in the District by the payment to the District of the pro-rata share of the cost of operation and maintenance provided in the contract of April 1, 1909, between the District and the United States, until the expiration of said contract as provided in paragraph 11 hereof and thereafter under the new contract provided to be made in paragraph 11 hereof. The project lands in the District shall pay the same operation and maintenance charge per acre as announced by the Secretary of the Interior for similar lands of the Boise Project and the same shall be collected by the District for the United States and paid over by the District

to the United States, and upon notice from the officer of the United States in charge of the Boise Project, the District will withhold the delivery of water from such project lands in the District as are in default in the payment of said operation and maintenance charge.

13. It is fully understood that the old water right lands of the District shall not in any event be liable for any part of the charges herein agreed to be apportioned to and collected from the project lands, nor the project lands for any portion of the charges herein agreed to be apportioned to or collected from the old water right lands in the District, and the United States agrees to waive the right to hold either of said two classes of land for any part of the charges herein agreed to be apportioned to and paid by the other, but will look to the old water right lands for the old water right land charges and the project lands for the project land charges.

14. No interest will be charged on any of said installments for water to be supplied to said project lands in the District until due, but any part thereof which may remain unpaid after the same is due, shall bear interest from maturity until paid at ten (10%) per cent per annum, and the United States shall not be obliged to deliver or turn out for the District any water for such project lands in the District as

are in default on any of the payments herein provided to be made, Provided, the project lands in the District shall be subject to the same provisions as to residence, cultivation and limit of area as the lands of the Boise Project outside of the District.

15. The United States will assent to the release by the Payette-Boise Water Users' Association of such lands in the District as have been subscribed under stock subscription and contract to the said association, and have therefore become subject to the lien provided in such subscription and contract for the repayment of a proportionate part of the cost of the Payette-Boise Project from the lien and obligation of such stock subscription, and also release and cancel the contract under date of October 12, 1906, between the Nampa & Meridian Irrigation District and the Payette-Boise Water Users' Association, providing for a credit to the subscribed lands of the District for existing works, as regards both the old water right lands and the project lands.

16. The Payette-Boise Water Users' Association agrees to join in the release of said stock subscription contracts and liens upon conditions above stated, and its name is subscribed hereto in evidence thereof.

17. Where any appropriations of water have been made and water rights acquired by parties other than the District

out of any of the draws, sloughs or natural channels of the Nampa & Meridian Irrigation District, and such rights are interfered with by the deepening of such channels and the construction of the said drainage system in the District, it is understood that the money herein provided for the construction of drainage works shall be available for the satisfaction of any just claims for damages and of judgments, liabilities or obligations on account of, growing out of, or resulting from the interference with any such rights by the deepening of such channels and construction of such drainage system, and that the United States may pay such claims, judgments liabilities and obligations out of said money. Any lateral construction which may be agreed upon between the District and the United States as being necessary to replace the rights of flow through natural drainage lines, may be built by the United States as a part of the drainage system herein contemplated.

IN WITNESS WHEREOF, the parties hereto have caused their names and seals to be attached the day and year first above written, the Nampa & Meridian Irrigation District, and the Payette-Boise Water Users' Association, acting in pursuance of resolutions of their Board of Directors, of which

Certified copies are hereto attached and made a part hereof.

NAMPA & MERIDIAN IRRIGATION DISTRICT

By H. E. Carpenter
President

(SEAL)

ATTEST:

G. A. Remington
Secretary

PAISTER-SOLUS WATER USERS' ASSOCIATION,

By J. W. Spratt

(SEAL)

ATTEST:

W. L. Girard,
Secretary

Andrius A. Jones
1st Asst. SECRETARY OF THE INTERIOR, for
and on behalf of the United
States.

Sgd. Dec. 13, 1915

Nampa-Meridian Drainage System

Est. of Mar. 24, 1914

ESTIMATE OF COST

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The drainage ditches proposed for construction are listed below, together with their cost, size, yardage, and other information. All the ditches in the Nampa-Meridian District will discharge into drainage ditches now under construction in the Pioneer-Irrigation District below the Phyllis Canal, with the exception of the Five Mile Creek Drainage System, and the Ten Mile Drainage System.

The proposed ditches will follow the natural drainage courses as closely as feasible, and these channels will be straightened and deepened.

Five Mile Creek	Wilson Slough
Furdam Gulch	Elijah Slough

These drains together with their branches:

Ten Mile Creek	Orr Slough
Nine Mile Creek	Joseph Slough
Sky Pilot Slough	Aaron Slough

compose the entire drainage system.

WORK WITHIN WAPPA-MERIDIAN DISTRICT

Five Mile Creek Drainage System

Name	Est.	Dis-charge	Base Width	Water Surface	Water Depth	Area Drained Acres	Cubic Yds
Five Mile	62-90	12'	13.6-16.6	1.2-2.2	37,165	0	358,920
Nine " Cr.	9	5'	7.1-7.7	7-.9	3,150		134,725
Elly Pilot	21 &	5'	6.8	.6	1,175		59,420
Total							553,065
			Add 20%				110,611
Total for System							663,676

Ten Mile Creek Drainage System

Ten Mile Cr.	34	6'	9.4-10.5	1.1-1.6	8,710		389,950
			Add 20%				77,980
Total for System							467,930

Furber Gulch Drainage System

Furber Gulch	20-25	5'	8. - 9.3	1.0-1.5	11,195		120,020
			Add 20%				24,004
Total For System							144,024

Wilson Creek Drainage System

Wilson Sl.	13-27	5'	9.8-11.	1.2-1.5	10,530		154,336
Orr Slough	5.1	5'	7.0-7.4	0.5-0.6	1,530		53,390
Total:							207,726
			Add 20%				41,544
Total for System							249,270

Elizah Slough Drainage System

Elizah sl.	23-23	5'	9.8-11	1.2-1.5	13,040		123,450
Joseph "	1.5	5'	7.	0.5	960		95,180
Aaron "	4.0	5'	7.	0.5	1,140		79,080
			Add 20%				297,890
							59,578
Total for System							357,468

Changes in Lateral System made necessary by dry

South Lateral (To carry Five Mile Creek Water)	13,260 Cu. Y.
Settlers Canal Reconstruction	5,665 " "
Small miscellaneous lateral construction	5,814 " "

WORK OUTSIDE NARPA-MERIDIAN DISTRICT

Five and Ten Mile Drainage System

Name	Est. : :Dis- : :charge : :Sec. ft.	Base : :Width : :	Water : :Depth : : in ft. :	Area : :Drained : : Acres :	Cubic Yds.
Five Mile Cr. :	28-133 :	14-10 :	120.6-16.6 :	31,300 :	217,995
Ten Mile " :	29-34 :	6 :	110.2-10.4 :	10,115 :	125,025
Total :	:	:	:	:	343,020
			Add 20% :		38,604
Total for System :					381,624

ESTIMATED COST OF DRAINAGE SYSTEM

Work Within Narpa-Meridian District.

Five Mile Creek Drainage System.....	655,578	cu. yds.
Ten Mile Creek Drainage System	467,940	"
Furdam Gulch Drainage System	144,224	"
	1,275,642	cu. yds.
Wilson Slough Drainage System	249,270	cu. yds.
Sligh Slough Drainage System	352,458	"
	606,738	cu. yds.
Changes in Canal and Lateral System	28,317	"
Total to be excavated within Narpa-Meridian Dist.	1,910,697	cu. yds.
1,275,642 cu. yds. at 20¢	\$255,128.40	
606,738 " " " 18¢	109,212.84	
28,317 " " " 30¢	8,495.10	
Right of Way	25,595.30	
Canal Crossings & Misch. Struct.	30,882.00	
Bridges	40,611.00	
Total	449,925.70	
Add 15% for Engineering & Incidentals	70,488.95	
Total Joint Work within District	\$540,413.25	

ESTIMATED COST OF WORK OUTSIDE OF HANPA-MERIDIAN DISTRICT
 Required to furnish an outlet for District drainage water and
 to serve as local drains for lands in Pioneer Irrigation Dist.)

Five Mile & Ten Mile Drainage System

Total Excavation.....	411,624 Cu. yd.
411,624 Cu. yds. at 20¢.....	\$82,324.80
Right of Way.....	580.00
Canal Crossings & M. & L. Structures....	3,180.00
Bridges.....	5,150.00
Total.....	\$91,814.80
15% for Engineering & Incidentals.....	13,772.20
Estimated Total Cost.....	\$105,587.00

These drains if made deep as contemplated in above estimate will drain certain lands in the Pioneer District and for that reason it is assumed that arrangements can be perfected to have the Pioneer District pay for one-half the cost of these drains but not to exceed \$50,000.00 leaving a balance estimated at \$55,587.00 to be paid jointly by the United States and the Hampa-Meridian District, which amount is figured to be ample for the construction of shallow drains in the event the Pioneer District prefers not to make such arrangements.

SUMMARY OF ESTIMATES

Total Cost Work Within Hampa-	
Meridian District	\$540,415.25
Total Cost Work Outside Hampa-	
Meridian District	105,587.00
Total Cost of Proposed Work	\$646,002.25
Estimated Share Assumed by Pioneer District	50,000.00
" " " " Hampa-Meridian	
District and United States	\$596,002.25

ESTIMATE OF COST GROUPED ON IMPORTANCE OF WORK

No. 1 DRAINAGE DITCHES

<u>Name</u>	<u>Stations</u>	<u>Length in Miles</u>	<u>Earthwork</u>	<u>Cost</u>
Five Mile Creek	74 to 356	5.34	261,594	66,595.17
Five Mile Creek	356 to 720	6.89	335,616	110,946.44
Ten Mile Creek	00 to 215	4.07	150,030	38,992.91
Ten Mile Creek	215 to 760	10.33	467,943	134,248.70
Nine Mile Creek	00 to 192	3.64	161,670	48,799.16
Wilson Slough	350 to 550	3.79	185,203	43,618.91
Elizah Slough	300 to 494	3.68	148,385	41,015.61
Orr Slough	00 to 80	<u>1.51</u>	<u>64,068</u>	<u>15,752.9</u>
Total No. 1 Drains		39.25	1,774,506	499,968.91

No. 2 DRAINAGE DITCHES

Furman Gulch	220 to 422	3.64	144,024	42,495.
Joseph Slough	00 to 153	2.90	114,392	27,933.
Five Mile Creek	720 to 890	<u>2.00</u>	<u>25,088</u>	<u>36,572.</u>
Total No. 2 Drains		8.62	353,304	107,001.

No. 3 DRAINAGE DITCHES

Aaron Slough	00 to 80	1.51	94,397	20,984.
Sky Pilot Slough	00 to 120	<u>2.27</u>	<u>73,204</u>	<u>18,051.</u>
Total No. 3 Drains		3.78	166,201	39,035.

Summary of Groups According to Importance

Total Cost of No. 1 Drainage System.....	\$499,968.91
Total Cost of No. 2 Drainage System.....	<u>107,001.48</u>
Total Cost No. and No. 2 Drains.....	606,970.39
Total Cost No. 3 Drainage System.....	<u>19,035.32</u> <u>39,035.32</u>
Total Estimate	646,005.71

DISTRIBUTION OF COST

	Paid by Kampa-Meridian District and United States	Assumed Amt to be paid by Pioneer District	Total Cost
Estimated cost within Kampa- Meridian District - No. 1 & No. 2 Drains	501,383.00		501,383
Estimated cost outside of Kampa-Meridian District	55,587.00	50,000.00	105,587
	556,970.00 or say 557,000.00	50,000.00	606,970
to be paid by Government	<u>251,000.00</u>		
To be paid by Kampa-Meridian District	256,000.00		

REPORT ON
CANAL DELIVERIES FROM
BOISE RIVER
AND
DIFFERENT FEATURES AFFECTING THESE
DELIVERIES FOR THE IRRIGATION SEASON
OF 2006
(DATA FOR THIS REPORT GATHERED BY THE
WRITER WHILE ACTING IN THE CAPACITY OF
WATERMASTER OF THE BOISE RIVER.)
(COOPERATIVE DATA ALSO FURNISHED BY
THE UNITED STATES BUREAU OF RECLAMATION.)
BY
LEE SISCO
WATERMASTER, BOISE RIVER



CLASSIFICATION OF RIVER

The Boise River naturally divides itself into three separate and distinct parts. Section 1 includes the part of the river which lies between the Government Diversion Dam and the Caldwell Highline Canal about a mile below the town of Star. Section 2 includes that section which lies between the Caldwell Highline Canal and the Notus Bridge. Section 3 includes that part of the river between the Notus Bridge and the Snake River.

Section 1

This section is under complete regulation by the watermaster. All water is measured and divided according to the decrees and licenses, which are set by the courts and state law.

Section 2

All water in this section is measured, but operation is more liberal than in Section 1, due to the return flow, so regulation is somewhat relaxed with very little storage water required.

Section 3

This section of the river is operated without any regulation what so ever, but it is measured and recorded the same as Sections 1 and 2. The return flow to Section 3 was sufficient to take care of all rights in this section during most of the season, and therefore no regulations were required. In fact, during all the years on record on the distribution of the waters of the Boise River, beginning with 1914, there has been only one year -1931- during which it was necessary to regulate diversions from this section of the river, and during that year it was not necessary to run water past the Notus Bridge to supply the rights below.

DRAINAGE

As mentioned in the Classification of River section the lower portion of the Boise River diverters depend exclusively upon drainage water to satisfy their water needs. Also, the upper diverters utilize drainage water, but not to the extent the lower users do. From Diversion Dam down stream, there are three active Drainage Districts, No. 2, No. 3 and No. 4. These three Drainage Districts have various court orders dividing up the drainage water (see Chart #6 for the apportioning of this water).

D.D. #2 embraces an area of 29,000 acres situated on the north side of the Boise River, between the City of Boise and the canyon near Caldwell. The major drains that make up D.D. #2 are the Eagle, Hartley, North Middleton, South Middleton Drains and both Hartley Gulch and Willow Creek. Three other drains, that divert into canals within the district, are the Long and Star Feeders, plus the Watts Check.

D.D. #3 is frequently referred to as the "South Boise Drainage District", and is located in the South Boise area. This district, comprising an area of 4,200 acres, has four drainage canals, all emptying into the Boise River. The three major ones in this district are the Ridenbaugh, Booth and Myers Drains.

D.D. #4 is known as the "Thurman Drain", it drains an area of about 2,500 acres and is situated south of the Boise River and opposite the town of Eagle. The District has one drain, the Thurman.

These three Drainage Districts by no means represent the entire Boise River drainage systems. There are several

major drains and many small unmeasured drains that contribute to the return flow supply. See the appendix for the drain discharges that the Boise River Watermaster monitors.

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RECEIVED

FEB 21 2008

DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 39576

Subcase: 63-27475

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Janicek Properties LLC ("Janicek"), the claimant in subcase number 63-27475, through its counsel, Givens Pursley LLP, files this Memorandum in Support of Motion for Summary Judgment.

INTRODUCTION

Since 1951, Janicek and its predecessors in interest have diverted and beneficially used at least 1.4 cubic feet per second ("cfs") of the waters of Purdam Gulch Creek to irrigate 70 to 80 acres of farm land in west Ada County. Janicek's predecessor filed a claim in the Snake River Basin Adjudication ("SRBA") for this water right (identified as water right number 63-27475). The Idaho Department of Water Resources ("IDWR") investigated the claim and recommended

that the Court decree Janicek a water right for 1.4 cfs to irrigate 70 acres with the source of water being Purdam Gulch Creek.¹

Nampa & Meridian Irrigation District ("NMID") objected to IDWR's recommendation, asserting that it owns Purdam Gulch Creek (and, apparently, all of the water flowing in it because NMID alleges the water is "waste water"). NMID also asserts that recommended water right 63-27475 should not exist. Specifically, NMID stated:

The claimed water right is within the boundaries of Nampa & Meridian Irrigation District ("NMID") and the source of said claim is a drain which was constructed or enlarged by or for NMID. Said drain is owned, operated, maintained and controlled by NMID and the water within said drain is seepage or waste water that has been developed, captured and/or controlled by NMID. Therefore, said water is not subject to appropriation, would amount to an impermissible trespass, and this claimed water right should not exist.

The U.S. Bureau of Reclamation ("BOR") filed a response to NMID's objection, also asserting that the water right should not exist.

NMID and BOR, however, cannot show that Janicek is not entitled to have this Court issue a partial decree for water right number 63-27475 as recommended by IDWR. They cannot show that IDWR incorrectly recommended any element of the water right. In addition, they cannot show that NMID "owns" Purdam Gulch Creek or the water flowing in it. Accordingly, this Court should grant Janicek's motion for summary judgment and order that Janicek is entitled to water right number 63-27475 as recommended by IDWR.

STANDARD OF REVIEW ON SUMMARY JUDGMENT

A motion for summary judgment shall be rendered if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. I.R.C.P.

56(c); *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990). All controverted facts

¹ Although not relevant here because Janicek has not objected to IDWR's recommendation, the claim was for 1.6 cfs of water to irrigate 80 acres with a priority date of June 20, 1943.

are liberally construed in favor of the non-moving party. *Tusch Enterprises v. Coffin*, 113 Idaho 37, 740 P.2d 1022 (1987). The burden at all times is upon the moving party to prove the absence of a genuine issue of material fact. *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 452 P.2d 362 (1969). A mere scintilla of evidence is not enough to create a genuine issue. *R.G. Nelson, A.I.A. v. Steer*, 118 Idaho 409, 797 P.2d 117 (1990).

DISCUSSION

I. Claim 63-27475 Represents a Valid Water Right.

Recommended water right number 63-27475 represents a valid appropriation of water under Idaho's constitution and statutes. Article XV, Section 3, of the Idaho Constitution states that "[t]he right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied." Idaho Code § 42-101 states that "[a]ll 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 declared to be the property of the state . . . and the right to the use of any of the waters of the state for useful or beneficial purposes is recognized and confirmed." Idaho Code § 42-103 confirms "the right to use the unappropriated waters of rivers, streams, lakes, springs and of subterranean waters or other sources within this state" through appropriation using the application, permit and license procedures.

Prior to 1971, a surface water right, such as the claimed right at issue here, could be appropriated simply by the act of diverting the water to a beneficial use (i.e. the "constitutional method"). *Fremont-Madison Irr. Dist. and Mitigation Group v. Idaho Ground Water Appropriators, Inc.*, 129 Idaho 454, 456, 926 P.2d 1301, 1303 (1996).²

² Since 1971, "[t]he right to the use of the unappropriated waters of rivers, streams, lakes, springs, and of subterranean waters or other sources within this state shall be acquired only by appropriation under the [water code's] application, permit and license procedure." I.C. § 42-103.

NMID and BOR do not—and cannot—dispute that: 1) approximately twenty years before the application/permit/license requirements of I.C. § 42-103 came into effect, Janicek's predecessors diverted at least 1.4 cfs of the waters of Purdam Gulch Creek for irrigation; 2) Janicek has continuously diverted water from Purdam Gulch Creek for irrigation (*See* Affidavit of B. Janicek, ¶ 5.); 3) Janicek has not abandoned its use of the water; and 4) no party is claiming to have adversely possessed Janicek's right to use the water.

IDWR's recommendation is entirely consistent with the above facts and constitutes prima facie evidence of the elements of water right 63-27475. I.C. § 42-1411(4); *McCray v. Rosenkrance*, 135 Idaho 509, 513, 20 P.3d 693, 697 (2001). "Any party filing an objection to any portion of the director's report shall have the burden of going forward with the evidence to rebut the director's report as to all issues raised by the objection." I.C. § 42-1411(5). NMID and BOR cannot meet this burden as to any of the recommended elements of water right 63-27475; therefore, this Court should issue a partial decree for the water right as recommended.

II. As a Matter of Law, NMID's Reasons Supporting its Objection are Without Merit.

Rather than attacking any particular element of IDWR's recommendation, NMID asserts that water right number 63-27475 should not exist at all. In its objection, NMID asserts that it "owns" Purdam Gulch Creek, that all of the waters in Purdam Gulch Creek are "seepage or waste water," that it has developed, captured and controls, and as a consequence, Janicek's appropriation is illegal and an "impermissible trespass." The undisputed facts do not support these allegations in the first instance. Further, notions of "capture" and "control" are not the basis for establishing a water right, but rather it is diversion and beneficial use, which NMID cannot establish with respect to the waters of Purdam Gulch Creek.

A. NMID does not “own” Purdam Gulch Creek.

NMID asserts that Purdam Gulch Creek is a “drain which was constructed or enlarged by or for NMID” and that “[s]aid drain is owned, operated, maintained and controlled by NMID.” Janicek does not dispute that BOR has altered Purdam Gulch Creek from its original state to facilitate drainage of irrigated lands within NMID’s boundaries, and that NMID has assumed the responsibility for ongoing work to maintain Purdam Gulch Creek’s drainage capabilities. Janicek, however, owns the relevant reach of Purdam Gulch Creek and, as a matter of law, modifications BOR and NMID may have made to Purdam Gulch Creek to improve drainage from adjacent lands do not vest ownership of Purdam Gulch Creek—a natural watercourse—in NMID.

(1) Janicek owns the relevant reach of Purdam Gulch Creek.

Purdam Gulch Creek crosses Janicek’s property diagonally, roughly from the southeast corner to the northwest corner. By a recorded warranty deed, Janicek acquired the entirety of the SE 1/2 of the NE 1/4 of Section 15, T3N, R1W, B.M., through which Purdam Gulch Creek runs. A copy of the deed is attached as Exhibit B to the Affidavit of Bradley J. Janicek. Janicek acquired this property from Brad and LouAnn Janicek,³ who had acquired the property in 1996. *See* Affidavit of Bradley J. Janicek, Exhibit A. When Brad and LouAnn Janicek acquired the property in 1996, they obtained title insurance on the property. The title insurance, among other things, insures that they obtained fee title to the property, subject only to the exceptions contained in the relevant schedules. A copy of the Janiceks’ title insurance policy is attached as Exhibit C to the Affidavit of Bradley J. Janicek. The title policy confirms that when Bradley and LouAnn acquired the property, no recorded instruments existed when the Janiceks acquired the property that granted or asserted any ownership interest in the property other than for a single

³ Brad and LouAnn Janicek are the owners and members of Janicek Properties, LLC.

utility easement (which does not belong to NMID or BOR). Since the title insurance policy was issued, neither Brad and LouAnn Janicek nor Janicek Properties, LLC, has granted or agreed to grant to NMID or BOR, either orally or in writing, any rights in this property, including rights in Purdam Gulch Creek. See Affidavit of Bradley J. Janicek, ¶ 3. Janicek thus holds title to the bed and banks of the reach of Purdam Gulch Creek that crosses its property.⁴

(2) NMID, at most, holds an easement in Purdam Gulch Creek.

Neither NMID nor BOR have identified any agreement or other document given by any owner in the chain of title for Janicek's property that purports to grant either of them any interest in Mr. Janicek's property, let alone ownership of the bed and banks of Purdam Gulch Creek. The patent to the property, issued by the United States in 1903 granted the original settler fee title subject only to a reservation of a right-of-way for ditches and canals constructed by the United States. See abstract of patent, attached as Exhibit A to Affidavit of Michael Lawrence. To the extent the United States has exercised its right under this reservation by deepening and channelizing Purdam Gulch Creek through Mr. Janicek's property, or elsewhere, to induce drainage from adjacent lands, it has perfected only a right-of-way for carrying away drainage water, and nothing more.

NMID holds up a *quit claim* deed from the United States as the source of its alleged title to Purdam Gulch Creek, but at best, the United States only held (and could only convey) a right-of-way for drainage across the Janicek Property. The 2001 quitclaim deed from the United States to NMID conveyed without any warranty of title or otherwise, whatever interest it might

⁴ The title policy contains standard exceptions for easements or claims of easements not shown by public records, matters that would be disclosed by an examination of the premises, reservations in patents and water rights. This would include a statutory easement or right-of-way such as is recognized by Idaho Code § 42-1102 for the delivery of irrigation water (as opposed to drainage) that may have existed at the time Janicek acquired title, and the reservation by the United States in the original patent of a right-of-way for ditches and canals constructed by the United States. But an easement or right-of-way in Purdam Gulch Creek across the Janicek property for whatever purposes, is, however, far different from the outright ownership of Purdam Gulch Creek that NMID claims here.

have had in ditches, canals and other facilities that the United States originally constructed within the NMID boundaries, including whatever interest it may have had in a right-of-way for drainage coincident with the course of Purdam Gulch Creek. *See* Quitclaim Deed, attached as Exhibit B to Affidavit of Michael Lawrence. Warranty or not, the United States could convey no more than it held. At most then, NMID could have acquired only a right-of way through Mr. Janicek's property coincident with the course of Purdam Gulch Creek for carrying away drainage water. That is a far cry from ownership of the Creek itself. The BOR's quitclaim deed to NMID expressly also does not convey any water or water rights to NMID.

(3) Purdam Gulch Creek is and was a natural watercourse containing public waters.

The Idaho Supreme Court has defined a natural watercourse as:

[A] stream of water flowing in a definite channel, having a bed and sides or banks, and discharging itself into some other stream or body of water. The flow of water need not be constant, but must be more than mere surface drainage occasioned by extraordinary causes; there must be substantial indications of the existence of a stream, which is ordinarily a moving body of water.

Burgess v. Salmon River Canal Co., 119 Idaho 299, 305, 805 P.2d 1223, 1229 (2001); *Loosli v. Heseman*, 66 Idaho 469, 481, 162 P.2d 393, 398 (1945). All evidence shows that Purdam Gulch Creek meets this definition—that is, it contains a year-round stream of water flowing in a definite channel having a bed and banks that eventually discharges into another body of water (i.e. Mason Creek, and then the Boise River). *See* Aff. of S. King, ¶¶ 2-9, Exhibit B. As a natural watercourse, its waters are subject to appropriation by the public as a matter of constitutional and statutory right. *See supra discussion*, Section I.

It must be undisputed that Purdam Gulch Creek was a natural watercourse prior to its being deepened and straightened by BOR or NMID to facilitate drainage. As shown on page 1 of the Estimate of Cost for the Nampa-Meridian Drainage System attached to the 1915 Contract

between BOR and NMID provided by BOR in response to Janicek's discovery requests, Purdam Gulch was a "natural drainage course" that BOR agreed would be "straightened and deepened" to become formal parts of the irrigation district's drainage system. *See* Aff. of Michael Lawrence, Exhibit C.

There also is no dispute that the BOR actually deepened and straightened Purdam Gulch Creek to facilitate drainage of lands waterlogged by inefficient irrigation practices. But those actions do not change its character as a natural watercourse. Simply put, a natural watercourse does not lose its identity merely because man has manipulated it. *See Burgess*, 119 Idaho 299, 305, 805 P.2d 1223, 1229 (finding that, although a large dam and other works altered the flow of Salmon Falls Creek, the creek still met the criteria for a natural water course); *see also Hutchinson v. Watson Slough Ditch Co.*, 101 P. 1059, 1060 (1909) (affirming trial court's finding that Watson Slough remained a natural water course existed and exists even though an appropriator "made some slight improvements in the way of lowering the bed of the channel and removing sand and gravel bars, and also constructed a small wing dam in the Snake river in order to divert a larger volume of water into Watson slough than had formerly been flowing through that channel").

No other rule is workable. The only logical extension of NMID's position is that no water rights can be perfected within its boundaries because once waste water, seepage, incidental recharge and return flows from its irrigation reach a natural stream that has been modified in any way, that stream becomes a control device that it owns, together with the water in it. That presumably includes Indian Creek (which, until recently, was confined in a tunnel under the City of Caldwell), the Boise River (which has been substantially dammed, dredged, channelized and manipulated from its headwaters to its confluence with the Snake River by BOR and numerous irrigation entities), or the Snake River (which has been dammed, channelized, dredged, operated

and maintained at various points throughout their length to accommodate irrigation, drainage, hydropower, navigation and salmon flow augmentation) as streams that are no longer natural watercourses from which the public may appropriate water, as guaranteed by the Idaho Constitution.⁵

B. NMID does not “own” the water in Purdam Gulch Creek.

As mentioned above, IDWR’s recommendation names Purdam Gulch Creek as the source of water right number 63-27475, and makes no reference to the presence of “waste water.” Nevertheless, NMID asserts in its objection that the water within Purdam Gulch Creek “is seepage or waste water that has been developed, captured and/or controlled by NMID” and that this somehow makes the water “not subject to appropriation.” Much of the water in Purdam Gulch Creek may derive from seepage or return flows from irrigation deliveries, but NMID’s contention that it “owns” such waters has no basis in prior appropriation law.

(1) One can obtain a water right in “waste water.”

As an initial matter, even if one concedes that Purdam Gulch Creek is a “drain” containing “waste water” that derives solely from irrigation of lands within the NMID boundaries (which Janicek does not concede), Idaho law still allows one to establish a water right in waste water, including waste water in drains. Idaho Code Section 42-107 expressly extends the laws governing water right appropriations to manmade ditches “constructed for the purpose of utilizing seepage, waste or spring water of the state.” *See Colthrop v. Mtn. Home Irr. Dist.*, 66

⁵ Among water users, delivery organizations and administrators in Boise Valley, it is well-known that the irrigation developments and manipulation of watercourses under the Boise Project have resulted in the situation where the natural flow water rights perfected with points of diversion from the lower Boise River are satisfied almost exclusively with return flows (i.e., water accruing to the Boise River through direct drain water discharges, seepage from irrigation canals and laterals and return flows resulting from incidental recharge of the shallow aquifer due to irrigation. *See* Water District 63 Watermaster’s Report excerpt attached as Exhibit D to Affidavit of Michael Lawrence. Under NMID’s and BOR’s view, like Purdam Gulch Creek, the natural streams that carry some of these return flows and indeed the Boise River itself together with all the water that accrues to them are owned by either the BOR or the irrigation entity whose irrigation deliveries generated them, and all the claimed appropriations from these sources would be illegal trespass.

Idaho 173, 157 P.2d 1005 (1945), *quoting Sebern v. Moore*, 44 Idaho 410, 418, 258 P. 176, 178 (1927) (“surface waste and seepage water may be appropriated under the provisions of C.S., § 5562 [now Section 42-107], subject to the right of the owner to cease wasting it, or in good faith to change the place or manner of wasting it, or to recapture it, so long as he applies it to a beneficial use”). Clearly, Janicek can establish a water right that consists of waste or seepage waters under Idaho law.

(2) Purdam Gulch Creek’s waters have not been beneficially used by NMID.

Moreover, even if Purdam Gulch Creek is characterized as a “drain,” that contains waste, seepage, or return flows from irrigated lands within NMID’s boundaries, those waters are nevertheless public waters that are subject to appropriation, and are not “owned” by NMID or the BOR because they have not applied the water to beneficial use. *See J. WARNER MILLS, Mills’ Irrigation Manual for Lawyers, Irrigation Officers, Engineers and Water Users* at 102-03 (1907) (“A diversion of water for drainage, without any intention to apply it to a beneficial use, does not make an appropriation of such water.”); *see also id.* and CLESSON S. KINNEY, *A Treatise on the Law of Irrigation and Water Rights Vol. 2* at 1206 (2d ed., 1912) (“Water flowing in a drainage ditch without any intention to recapture it, is abandoned.”) *See also* 43 U.S.C. §§ 372 (the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure and the limit of the right).

Whatever modifications NMID and BOR made to Purdam Gulch Creek, those modifications were made to carry away excess water. The information provided to Janicek by the NMID and the BOR through discovery does not disclose any original intent to beneficially use any drainage water in Purdam Gulch Creek induced by the BOR’s deepening and

straightening efforts.⁶ See Exhibit C to Affidavit of Michael Lawrence (915 Contract). As a matter of law, because there was no intention apply water from Purdam Gulch Creek to beneficial use, NMID has no basis to claim any interest in those waters, let alone that it “owns” them.

Yet, it is apparent from NMID’s objection that it does believe it “owns” all water in Purdam Gulch Creek that can be attributed to irrigation of NMID lands, and that NMID can prevent others from appropriating that water, even though NMID does not put the water to beneficial use itself. NMID’s position that water accruing to natural streams (or drains) as surface waste, seepage or return flow incident to its irrigation deliveries is “private water,” or water under its “control,” or water that it “owns” is misplaced. This is incorrect because they have relinquished any claim to use this water once they have delivered it to their consumers without taking actions to save or recapture the water before it reaches the public water supply.

As then-Presiding SRBA Judge Burdick correctly held when the issue was presented to him in 2003:

The situation is different if after the original appropriator relinquishes control of the waste water and the water returns to, and is commingled with, a natural stream or aquifer prior to being appropriated by a third party. The water is then considered “return flow” and is subject to appropriation by third parties as part of that tributary body of water. In such a situation, third party junior appropriators relying on the return flow have rights which in effect place limitations on the original appropriator’s ability to alter the consumptive use of the original right. See *Crockett v. Jones*, 42 Idaho 652, 249 P. 483 (1926); *Beecher v. Cassia Creek Irr. Co.*, 66 Idaho 1, 154 P.2d 507 (1944) (establishing junior user’s right to existing conditions).

In re SRBA Case No. 39576, Order on Challenge at 16 (Apr. 25, 2003), *aff’d A&B Irrig. Dist. v. Aberdeen-Springfield Ground Water District et al*, 141 Idaho 746, 118 P.3d 78 (2005). In other

⁶ It is clear that recaptured water must be applied to beneficial use on the same lands to which the water was applied in its original application. See *U.S. v. Pioneer Irr. Dist.*, 157 P.3d 600, 608 (2007) (quoting I.C. § 42-915 for the proposition that a “water right shall forever remain a part of said tract of land”).

words, the “waste water” that NMID suggests it has “developed, captured and/or controlled” really is water that has become part of the public waters by virtue of having been commingled with waters of natural watercourses and the aquifer. As such, the waters are subject to appropriation by third parties such as Janicek.⁷

Accordingly, Janicek’s appropriation of the waters of Purdam Gulch Creek cannot be an “impermissible trespass” as alleged by NMID because NMID does not own Purdam Gulch Creek or its waters. As a matter of law, the NMID and BOR position must be rejected. If that position prevailed—if NMID “owns” the natural streams within its district boundaries and the waters in them, then what becomes of Janicek’s water right, must become of all the water rights developed in the natural streams, including the Boise River itself, within the extensive boundaries of the BOR’s Boise Project over the past 100 years. As discussed, Idaho’s constitution and laws vest the public with ownership of the state’s waters and provide for the public’s appropriation of such waters. NMID therefore has no basis for alleging that Janicek’s appropriation of water from Purdam Gulch Creek constitutes a trespass.

CONCLUSION

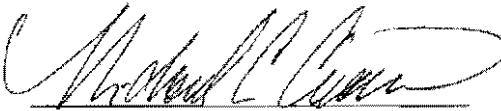
NMID and BOR cannot satisfy their burden of showing that IDWR’s recommendation for water right number 63-27475 was in error. The undisputed evidence shows that Janicek and its predecessors have diverted and put to beneficial use the water right described in IDWR’s recommendation since at least as early as 1951. The constitution and laws of the state of Idaho guarantee Janicek’s right to appropriate water from Purdam Gulch Creek. Accordingly, this Court should grant summary judgment in favor of Janicek and decree water right number 63-27475 as recommended by IDWR.

⁷ NMID, BOR or their consumers could undertake efforts to prevent seepage and other incidental return flows and Janicek could not complain. But Janicek still has a water right. If NMID or the BOR desire a water right from Purdam Gulch Creek they can make similar appropriations subject to Janicek’s prior right.

DATED this 18th day of February, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By 

Michael C. Creamer
Michael P. Lawrence

I HEREBY CERTIFY that on this 19th of February, 2008, the foregoing was filed,
served, or copied as follows:

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Michael C. Creamer

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, unless noted below, on this 19th of February, 2008, the foregoing was filed, served, or copied as follows:

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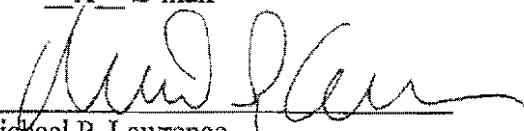
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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

Subcase No. 63-27475

NOTICE OF HEARING

Please take notice that a hearing on Janicek Properties, LLC's, Motion for Summary Judgment in the above-captioned subcase will be held on Tuesday, the 18th day of March, 2008 at 1:30 p.m., before Special Master Theodore R. Booth at the Idaho Supreme Court Building, 451 West State Street, Boise, Idaho.

DATED this 19th day of February, 2008.

GIVENS PURSLEY LLP


FOR
Michael C. Creamer

I HEREBY CERTIFY that on this 19th of February, 2008, the foregoing was filed,
served, or copied as follows:

ORIGINAL FILED

Fifth Judicial District Court
Twin Falls County Courthouse
P.O. Box 126
Twin Falls, ID 83303-0126

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SERVICE

Director of IDWR
P.O. Box 83720
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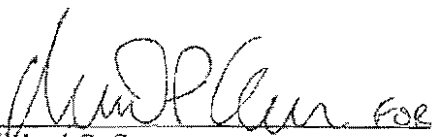
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USDI Bureau of Reclamation
c/o US Department of Justice
Environment & National Resources
550 West Fort Street, MSC 033
Boise, ID 83724

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Nampa and Meridian
Ringert Clark
c/o Daniel V. Steenson
P.O. Box 2773
Boise, ID 83701-2773

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Michael C. Creamer

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, unless noted below, on this 19th of February, 2008, the foregoing was filed, served, or copied as follows:

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

☒ U. S. Mail (2/20/08)
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

David W. Gehlert
US Department of Justice, Natural Resources
Environment & Natural Resources
1961 Stout Street – 8th Floor
Denver, CO 80294

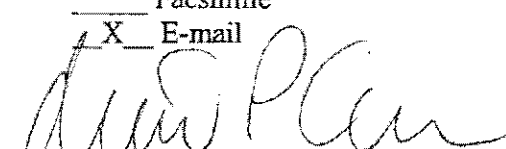
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Nampa and Meridian
Ringert Clark
c/o Daniel V. Steenson & S. Bryce Farris
P.O. Box 2773
Boise, ID 83701-2773

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☒ Hand Delivered (2/20/08)
☐ Overnight Mail
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Michael P. Lawrence

Michael C. Creamer [ISB No. 4030]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
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Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com

Attorneys for Janicek Properties, LLC

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

In Re SRBA

Case No. 39576

Subcase: 63-27475

**NOTICE OF SERVICE OF DISCLOSURE
OF EXPERT WITNESS STATEMENT**

Janicek Properties, LLC ("Claimant"), through its counsel Givens Pursley LLP, hereby gives notice to all parties and counsel of record that on February 8, 2008, Claimant served upon Nampa & Meridian Irrigation District and the United States Bureau of Reclamation a Disclosure of Expert Witness Statement for Claimant's expert witness Scott King.

Dated this 8th day of February, 2008.

GIVENS PURSLEY LLP



Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of February 2008, the foregoing was filed, served, or copied as follows:

Notice of Service of Disclosure of Expert Witness Statement

Clerk of District Court
Snake River Basin Adjudication
253 3rd Ave. N.
P.O. Box 2707
Twin Falls, ID 83303-2707

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☐ Facsimile
☐ E-mail

Disclosure of Expert Witness Statement and Notice of Service

Nampa and Meridian
Represented by:
S. Bryce Farris
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773
Fax: 208-342-4657

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☐ Hand Delivered
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Disclosure of Expert Witness Statement and Notice of Service

David W. Gehlert
U.S. Department of Justice, Natural Resources Section
Environment & Natural Resource Division
1961 Stout Street - 8th Floor
Denver, CO 80294

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Notice of Service of Disclosure of Expert Witness Statement

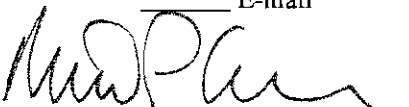
Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098
Fax: 208-287-6700

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Notice of Service of Disclosure of Expert Witness Statement

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

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Michael P. Lawrence

RECEIVED

FEB 11 2008

DEPARTMENT OF
WATER RESOURCES

S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third Street
P.O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Nampa & Meridian Irrigation District

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

In Re SRBA	)	
	)	Subcase No. 63-27475
	)	
Case No. 39576	)	NAMPA & MERIDIAN IRRIGATION
	)	DISTRICT'S AMENDED EXPERT
	)	WITNESS DISCLOSURE

Nampa & Meridian Irrigation District (hereinafter "NMID") by and through its attorneys of record, Ringert Clark Chartered, hereby discloses the following individuals who may be called to testify as expert witnesses at the trial for this matter:

1. John P. Anderson. Mr. Anderson is the Water Superintendent for NMID. Mr. Anderson is expected to testify as both a lay witness and an expert regarding operation and maintenance of the Purdam Drain, the delivery of irrigation water to the Claimant's property by NMID, the delivery of water from the Purdam Drain to landowners of NMID which are located downstream of Claimant's point of diversion, NMID's drainage system in general and specifically related to the Purdam Drain, the source of water in the Purdam Drain, as well as any other relevant facts concerning the Purdam Drain and Claimant's use of water from the

COPY

Purdam Drain. At this time, Mr. Anderson has not reviewed any specific materials other than his own personal knowledge and observations over his twenty plus years as NMID's superintendent. Mr. Anderson is not being paid for his testimony.

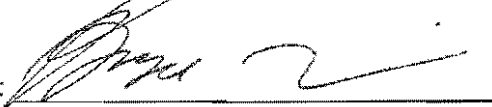
2. Daren Coon. Mr. Coon is the Secretary/Treasurer for NMID and is expected to testify as a lay witness and expert regarding the history of NMID and NMID's drainage system, including the construction of the Purdam Drain for NMID, specifically including the construction of the Purdam Drain at the location of Claimant's point of diversion, any transfers of title by the Bureau of Reclamation, as well as any other relevant facts concerning the Purdam Drain and Claimant's use of the water from the Purdam Drain. At this time, Mr. Coon has not reviewed any specific materials other than his own personal knowledge and observations over his twenty plus years with NMID. Mr. Coon is not being paid for his testimony.

3. Jerry Gregg - United States Bureau of Reclamation. Mr. Gregg is expected to testify regarding the history of NMID, the development of the Boise Project, including NMID's drainage systems. Mr. Gregg is further expected to testify regarding the construction of the drainage system for NMID, including the intent and purpose of the construction of the drainage system. The documents reviewed by Mr. Gregg may include those documents attached hereto which show that the Purdam Drain, at the location of Claimant's point of diversion, was constructed in approximately 1916. Mr. Gregg is not being paid by NMID for his testimony.

4. Robert D. Schmidt. Mr. Schmidt is a hydrologist. Attached hereto is copy of Mr. Schmidt's CV. Mr. Schmidt is expected to testify regarding the source of the water in the Purdam Drain, including the fact that the source of the water in the Purdam Drain is waste and/or seepage water derived from NMID. Attached hereto is a copy of Mr. Schmidt's report. Mr. Schmidt is not being paid by NMID for his testimony.

DATED this 8th day of February, 2008.

RINGERT CLARK CHARTERED

By: 

S. Bryce Farris
Attorney for Nampa & Meridian
Irrigation District

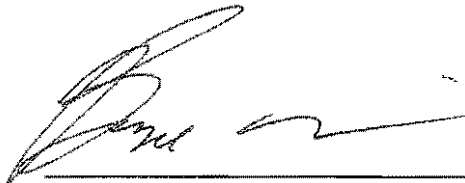
CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 2008, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

Janicek Properties, LLC
c/o Michael P. Lawrence
Givens Pursley, LLP
601 W. Bannock Street
P.O. Box 2720
Boise, ID 83701-2720

USDI Bureau of Reclamation
Represented by:
US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098



S. Bryce Farris

A N N U A L
P R O J E C T H I S T O R Y

of

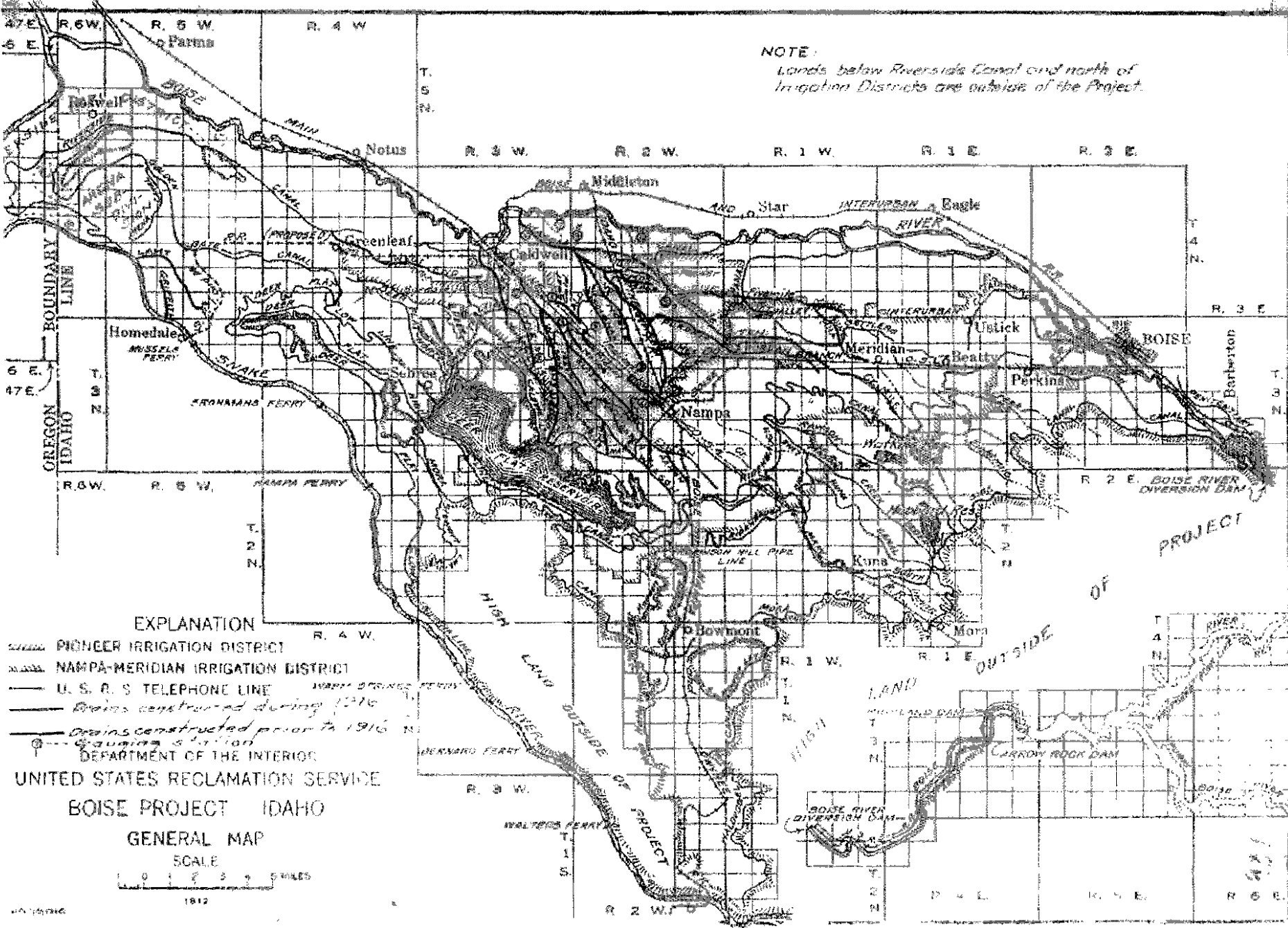
BOISE PROJECT

IDAHO

for

1916.

* * * *

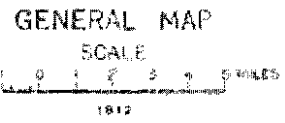


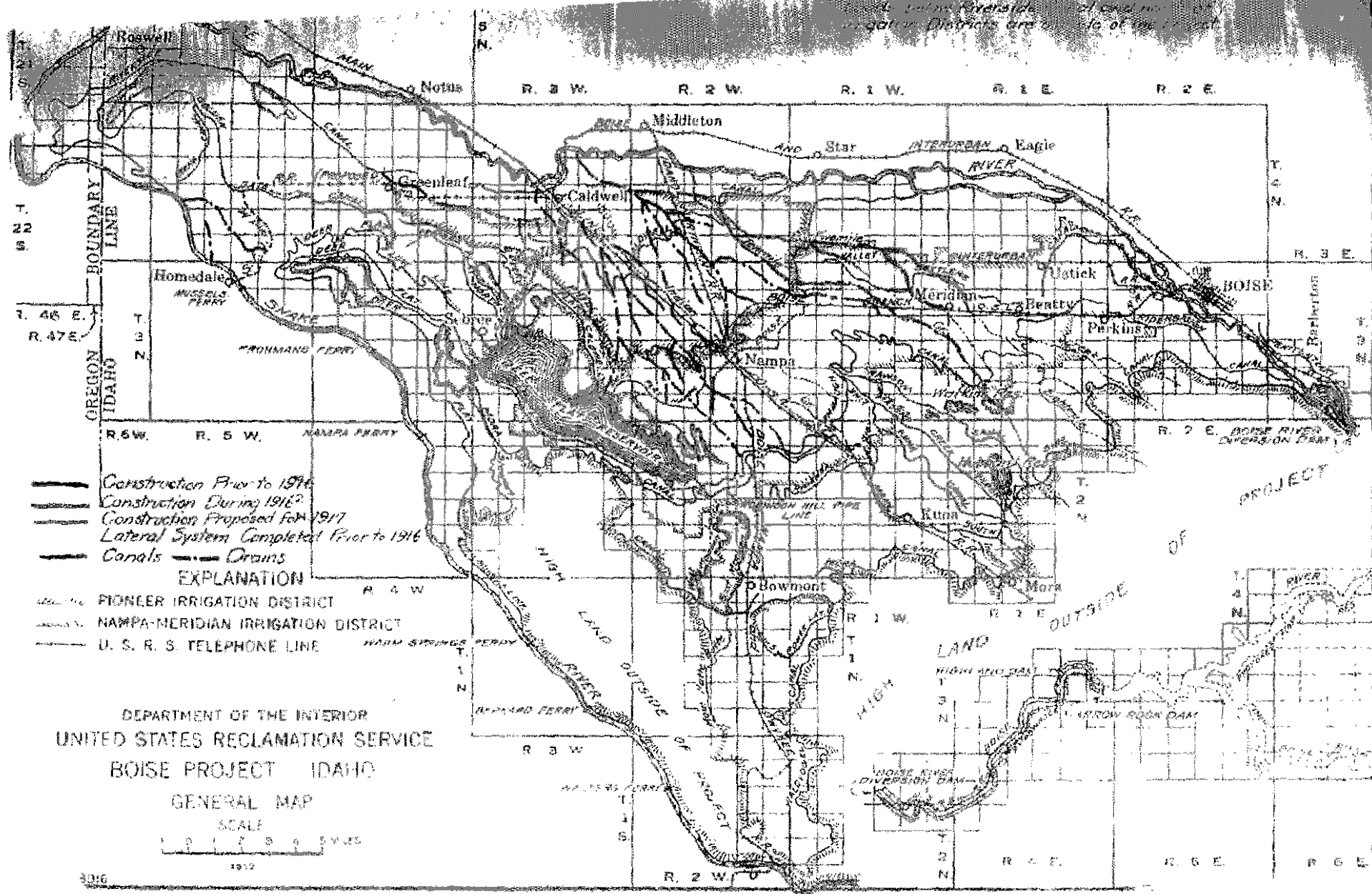
NOTE:
Lands below Riverside Canal and north of
Irrigation Districts are outside of the Project.

EXPLANATION

- PIIONEER IRRIGATION DISTRICT
- NAMPA-MERIDIAN IRRIGATION DISTRICT
- U. S. R. S. TELEPHONE LINE
- Canals constructed during 1916
- Canals constructed prior to 1916
- Gauging station

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE
BOISE PROJECT IDAHO





Below Jan 250 1917.

June 1917

EXCAVATION RECORD 1916.

Name of Drain	Section	Lin. Feet	Aver. Excavated	Miles	Cubic Yds.	Date	Comp
West End	5'-1½:1	26,095	11.8	4.94	257,689	Nov. 19 '15	Apr.
Parker	5'-1½:1	4,450	11.4	.84	36,552	Apr. 29 '16	May 1
Bardsley Gulch	5'-2:1	7,800	7.0	1.48	37,866	Mar. 30 '16	Apr.
Caldwell Feeder	6'-1½:1	4,771	6.4	.91	16,930	May 30 1916	June
Wilson	5'-1½:1	27,380	10.1	5.18	206,049	Jan. 3 1916	May 1
	4'-1:1				* 1,509		
Orr	5'-1½:1	7,940	10.7	1.50	66,928	Jan. 10 '16	Feb.
Joseph	5'-1½:1	6,100	10.7	1.16	51,343	Jan. 8 1916	Jan.
Elijah	5'-1½:1	26,225	10.7	4.97	219,225	Jan. 30 '16	June
	4'-1:1				* 876		
Aaron	5'-1½:1	7,100	10.6	1.35	58,807	Apr. 3 1916	Apr.
Purdum	5'-1½:1	19,820	10.7	3.75	167,020	June 26 '16	Sep.
Five Mile	5'-1½:1	8,395	11.0				
	10'-2:1	11,650	10.9				
	8'-2:1	39,947	10.6	11.34	670,947	Dec. 22 '15	not c
Ten Mile	6'-2:1	60,490	10.9	11.47	672,230	June 12 '16	"
Nine Mile	5'-1½:1	18,380	10.0	3.48	136,266	Oct. 10 '16	Dec.
Sky Pilot	5'-1½:1	9,530	9.3	1.80	62,613	Dec. 1 1916	not c
Totals		286,053		54.17	2,660,465		

* Excavation by hand - lava rock.

ANNUAL

PROJECT HISTORY

of

BOISE PROJECT

IDARO

for

1916

total expenditure on drainage construction of \$657,440, of which \$271,000 is to be paid by the United States on behalf of lands within the District which are watered by the Reclamation Service, and \$386,000 is to be paid by the Santa-Meridian Irrigation District in behalf of the lands watered by rights belonging to the District. Construction work was commenced under this contract on the cooperative work on the Five Mile Creek Drain, December 21st, and preparations were under way at the close of the year for beginning construction work on the other drains to the San Joaquin of Kings.

Features and Costs: For the purpose of proper cost-keeping records, the contract work is divided into: (a) Pioneer District drainages; (b) Cooperative drainages; (c) Santa-Meridian drainages; while the work on project lands proper is divided into: (d) First Basin drainages; (e) Drainage from Bear River Reservoir; (f) Miscellaneous drainages. Drainage work has been accomplished during the year on all the above features except drainages from the Bear River Reservoir. The total expenditure to December 31, 1914, on all the drainage features of the project is approximately \$353,000, of which amount, approximately \$100,000 was expended during the past year. This expenditure is divided among the above features about as follows:

Feature	Cost to date.	Cost for 1915
A . Pioneer	\$ 253,700	\$ 65,000
B . Coop.	1,700	1,700
C . Nampa-Meridian	19,500	3,800
D . . Fargo	36,200	20,200
E . . Deer Flat	31,100	----
F . . . Miscell.	3,500	200
Total.....	\$ 355,800	\$ 103,900

INVESTIGATION OF GROUND WATER CONDITIONS AND
LOCATION OF DRAINS.

The principal drainage studies conducted during the year were those in connection with the supplementary contract for drainage in the Pioneer Irrigation District. It has been apparent for some time that drainage was needed in several localities within this District which were unprovided for in the original contract with the United States. Perhaps the principal areas affected were the valleys of Five Mile Creek and its tributary Ten Mile Creek, which were investigated in a preliminary way in connection with an outlet for drainage in the Nampa-Meridian District in 1913 and 1914. The Indian Creek valley, between Nampa and Caldwell, was also showing seepage, and the settlers petitioned to have this area investigated and drained.

GROUND WATER INVESTIGATIONS, 1915.

TABLE NO. 1.

Name of Area.	Acres : surveyed	No. of : Test Holes	Seeped : Areas	Drains recommended.
Indian Creek Valley	2,000:	297	1,730 :	East Caldwell Midway - Nampa.
West end of P.I. Dist.	2,400:	150	400 :	West End & Parker.
Madden's Spur	1,400:	73	730 :	Madden's Spur
Grimes	480:	48	215 :	Grimes
Jonah *	360:	12	360 :	Jonah
Five & Ten Mile Creek**	3,320:	30	1,560 :	Five & Ten Mile (Preliminary work done 1914)
Miscellaneous	120:	20	60 :	
TOTAL - Pioneer Dist.	11,660:	674	5,015 :	
Nampa Sub-division***	8,400:	150	1,868 :	Wilson, Elijah, Joseph, Aaron & Orr.
TOTAL - Nampa-M. Dist.	8,400:	150	1,868 :	
Arena Sub-division		15	60 :	
GRAND TOTAL.....	20,060:	839	6,763 :	

* This drain constructed under original Pioneer Contract.

** Cost of this work divided between Pioneer Dist. & Nampa-Meridian Dist.

*** Preliminary work & estimates in this area made in 1913 & 1914.

TABLE NO. 1.

The data taken on the seepage flow in the drains and in Indian Creek indicates that about 68,000 acre feet of the drainage discharge and about 12,000 acre feet of the creek discharge was developed water within the District boundaries.

Considering that there is scarcely 30,000 acres tributary to these drains in the Pioneer District, that probably not over seventy per cent, or 21,000 acres are being cultivated, and that the gross amount of water diverted for this area was approximately 80,000 acre feet, it is immediately clear that much of the water discharged by the drains was water applied through irrigation on lands some-where in the District.

Curriculum Vita

Robert D. Schmidt

Education

B.S. Mathematics 1970, University of Minnesota

M.S. Geoengineering/Hydrology 1985, University of Minnesota

Work History

2007 Consulting Groundwater Hydrologist, Boise Idaho.

Develop a groundwater hydrologic model to estimate seepage rates from the proposed Black Rock reservoir near Hanford Washington, and potential impacts on the nearby nuclear reservation. Participate in a collaborative study with University of Idaho economists to develop coupled hydrologic and economic models for the Boise Valley. Use the models to quantify the value of hydrologic/economic externalities associated with canal seepage, drain returns and groundwater pumping in the Boise Project.

2000-2006 Hydrologist, Bureau of Reclamation, PN Regional Office.

Conduct a broad range of groundwater hydrologic investigations in Idaho and Oregon, mostly involving development and application of groundwater models. Develop a GIS water budget data base for the Lower Boise Valley. Project the impact of future Domestic, Commercial, Municipal and Industrial water use in the basin on groundwater resources. Develop analytic element groundwater models of the Boise Project, for use in evaluating hydrologic impacts of new groundwater withdrawals on Reclamation canals and reservoirs. Provide expert testimony with regard to hydrologic impacts of new groundwater withdrawals on Boise Project canals and drains.

Participate in informational exchanges with other state, federal, tribal, and university hydrologists regarding groundwater model development and application in Idaho and Oregon. Develop models of groundwater and stream interactions in the Bandon Cranberry Water Control District, for the Oregon Water Resource Dept. Develop flow and contaminant transport models for gasoline spill remediation in Payette Idaho and Garden Valley Idaho, for USEPA. Coordinate development and application of groundwater and river system models of the Umatilla basin in Eastern Oregon, to determine flow mitigation requirements for irrigation districts. Direct Reclamation activities related to monitor well construction and hydrologic data acquisition in the Eastern Snake Plain. Member of technical advisory committee for the University of Idaho, Eastern Snake Plain groundwater model enhancement project.

1998-2000 Hydrologist/Team Leader Managed Aquifer Recharge Program, Bureau of Reclamation and Idaho Dept of Water Resources.

Direct hydrologic investigations of managed aquifer recharge in the Eastern Snake Plain, in conjunction with the Idaho Department of Water Resources and the University of Idaho. Use hydrologic models to identify potential managed recharge sites and determine impacts on groundwater level and spring discharge. Evaluate impacts of managed aquifer recharge on Salmon flow augmentation, hydropower rights, rental pool water availability, winter water savings, instream habitat for fish and wildlife. Work with IDEQ and IDWR to establish groundwater monitoring requirements for pilot recharge projects.

1997-1998 Consulting Groundwater Hydrologist.

Develop groundwater hydrologic models for mine closure planning. (sub contractor to DB Stephens and Assoc.)

1995-1997 Hydrologist, Bureau of Reclamation, Denver Technical Support Center.

Perform hydrologic investigations in support of experimental in-situ copper leaching test at the Mineral

REPORT OF TRIP FOR 1940

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Park mine in northern Arizona. Conduct pumping tests and develop analytical and numerical groundwater models.

1992-1995 Supervisor, Hydrologic Applications Group, Twin Cities Minnesota Research Center, Bureau of Mines.

Directed multi-disciplinary group of scientists, engineers, and technicians in hydrologic studies related to mining and water resources.

1975- 1992 Hydrologist, Twin Cities Minnesota Research Center, Bureau of Mines.

Develop analytical and numerical models of groundwater flow and contaminant transport in connection with coal and hard rock mining activities. Develop new coal mine dewatering methods. Conduct aquifer tests and develop hydrologic data acquisition systems for aquifer testing. Prepare and publish investigative reports.

Selected Reports and Publications (1990- present)

Schmidt RD, J. Johnson, K. Didricksen, Modeling Groundwater Hydrologic Impacts of the Potential Black Rock Reservoir, USBR Technical Series TS-YSS-19, September 2007, 88 pp.

Schmidt RD, D. Dyke, Z. Cook, A Distributed Parameter Water Budget Data Base for Lower Boise Valley, A collaborative USBR/IDWR report , January 2007, 110pp.

Schmidt RD, Hydrologic Analysis of the Payette Gasoline Spill (USBR report for USEPA) August 2002, 32 pp.

Schmidt RD, Modeling Groundwater and Stream Interactions I the Bandon Cranberry Water Control District Bandon, Oregon, (USBR report for OWRD) July 2002, 74 pp.

Schmidt RD, and K Tarbet, Sand Hollow Groundwater Hydrologic Modeling Investigations, USBR report. March, 2002, 29 pp.

Idaho Dept of Water Resources Investigative Report, Feasibility of Large-Scale Managed Recharge of the Eastern Snake Plain Aquifer System, (coauthored with Paul Castelin, Jeffery Lefkoff, and Rex Harding), December, 1999, 233 pp.

Schmidt RD and D. Earley, New Facilities Investigations: Hydrologic Impact of In Situ Leaching at Cyprus Mineral Park Mine, Aquifer Protection Permit Application submitted to Arizona Dept. of Environmental Quality, July 1 1995.

Schmidt RD, Salovich M.J, Sodhi P, and J. Oswald, Reference Guide and User Manual for MFLOW, an Analytic Element Hydrology Model , USBM Open File Report ,1995.

Schmidt RD, Dahl L., Kim K., Paillet, F. and D. Earley, Hydrologic Characterization of a Chalcocite Copper Ore Deposit for In Situ Leach Mining, SME/AIME Annual Meeting, Denver, Co. preprint 95-252, March 6-9, 1995, 21 pp. (accepted by International Journal of Surface Mining, Reclamation, and Environment for publication in 1996)

Earley D., Schmidt RD, Y.C. Kim , Mitigation of Acid Rock Drainage through Application of In Situ Mining Technology to Fracture Hosted, Supergene Copper Sulfide Ore Deposits, Engineering Foundations Conf. on Technical Solutions for Pollution Prevention in the Mining and Mineral Processing Industries, Palm Coast Fl, Jan. 22-27, 1995.

Schmidt, RD, Earley D., and M. Friedel, Dynamic Influences on Hydraulic Conductivity during In Situ

Copper Leaching, in In situ Recovery of Minerals II Proceedings of Engineering Foundations Conf. on in situ recovery of minerals, ed. S Swan and K. Coyne p 259-287, 1994.

Friedel M. , Schmidt RD, Jones P., and Y.C Kim, Geostatistical Analysis of Dynamic Transmissivity Conditions during In situ Copper Leaching, Proceedings: APCOM 92, 23rd International Symposium Computer Applications in the Mineral Industries, Tucson Az., April 7-11, 1992, pp 49-59.

Schmidt RD, Factors Affecting Residential Water Well Yield in Vicinity of Underground Coal Mines, Proceedings; 3rd Workshop on Surface Subsidence Due to Underground Mining, Morgantown W. Va., June 1-4, 1992, p 244-252.

Schmidt, RD and M. Friedel, Application of Computers in the Analysis of In Situ Leach Mining Hydrology, Proceedings: Indo-American Seminar on Computers in the Mineral Industry - Current State of the Art and Emerging Needs, Dhanbad, India, Nov 10-13, 1991, 21 pp..

Friedel M. and RD Schmidt, Effect of an Unsaturated Setting on the Hydrology of In Situ Copper Leaching Proceedings of SME annual meeting Denver Colo. 91-192 Feb. 25-28, 1991, 12 pp

Kim Y.C., Zhao, Y., Schmidt, RD and K. Behnke, Determination of dynamic permeability changes during In situ Leaching at Cyprus Casa Grande Operation ,Proceedings of SME annual meeting Denver Colo. Feb. 25-28, 91-144,1991,m 16 pp.

Schmidt RD, Behnke, K., and M.. Friedel, Hydrologic Considerations of Underground In Situ Copper Leaching, Proceedings of SME annual meeting, Feb 26-Mar 1, 1990, 12 pp.

Level, E., Murphy, B., Schmidt, RD and M. Salovich, A Hydrologic Data Acquisition System for In Situ Leaching. Proceedings of GEOTECH 90 Oct. 7-9, Dallas, Tx. 1990, 21 pp.

Summary of Purdam Drain Hydrologic Investigations
RD Schmidt
2/8/08

Purdam Model Development and Calibration

A calibrated subsurface flow model (referred to as the Purdam model) was used to determine the effects of irrigation activity within the Boise Project (canal seepage and on-farm infiltration) on aquifer head conditions and subsurface flow into the constructed portion of the Purdam drain, up-gradient from the 63-27475 claimed point of diversion (referred to as the POD).

The Purdam model represents unconfined subsurface flow in a portion of the Boise Valley that includes the Amity Terrace, the Sunrise Terrace and the Whitney Terrace gravel deposits, and the underlying Ten Mile Gravels (Othberg, 1994), (Squires and Wood, 2001). The portion of the Boise Valley represented in the Purdam model is shown in figure 1. The boundaries of the model are aligned with surface water flow features. On the east and west sides, the model boundaries are Ten Mile Creek and Mason Creek. On the north and south sides, the boundaries are the Boise River and the New York canal.

As a result of stratigraphic layers which dip to the northwest, and northwest-southeast trending fault structures which parallel the creek boundaries of the model, subsurface flow in the Purdam model area is generally to the northwest, toward the Boise River (IWRRI, 2004). Consequently almost all of the hydrologic influences affecting Purdam drain return flow originate within the model area.

The Purdam model was developed using the analytic element method (Strack, 1989, Haitjema, 1995) and a groundwater modeling software package developed for the USEPA called GFLOW (GFLOW, 2007). Surficial hydrologic features in the model area including canals, drains, creeks and rivers are all represented in GFLOW as head-specified line source-sink elements. Head conditions for most canals and drains are derived from a digital elevation map (DEM) based on highly accurate LIDAR (Light Detection and Ranging) data (LIDAR, 2007). Figure 2 shows the extent of LIDAR elevation data in the model area. LIDAR data is available for the most important part of the model area including the Purdam drain, the Ridenbaugh Canal, the Kennedy Lateral, and Ten Mile Creek. (A USGS 10 meter DEM is used in areas where LIDAR data is not available.)

On-farm infiltration and precipitation in the model area are represented in GFLOW by spatially-distributed aquifer recharge. Aquifer recharge rates are derived from Boise Valley agricultural water budget data (USBR and IDWR, 2007).

Figure 3 shows the distribution of rivers, canals, creeks, drains, and wasteways represented in GFLOW by line source-sink elements. Figure 3 also shows the boundaries of the terrace gravel deposits which are represented in GFLOW by inhomogeneities in base elevation and aquifer transmissivity, and the locations of observation wells used to

calibrate the model. Observed head conditions within the model area range from 2648 feet near the New York canal to 2430 feet near the Boise River.

The Purdam drain model is calibrated (with respect to hydraulic conductivity and canal bed conductance) using both head and flow data. Fifty-five USGS observation wells located within the model area are used for head calibration. Seepage measurements from two canals near the Purdam Drain, the Ridenbaugh and the Kennedy lateral, are used for flow calibration.

The Purdam model simulates water table elevations and the subsurface component of drain return during the peak of the irrigation season. The observations of groundwater levels used in calibration are from different years, but are all representative of head conditions in shallow gravel layers during July and August.

Model calibration results are shown in figure 4. The absolute difference between modeled and observed water table elevations within the model area is about 10.8 feet, or about 5 percent of the total 218 foot range in head conditions. While the absolute difference between modeled and observed heads gives some indication of the uncertainty in model predictions, a large part of the difference can be traced to uncertainty in the calibration targets themselves (which are from different years). Uncertainty in model predictions of actual head conditions is estimated to be less than half that shown in figure 4.

Uncertainty exists in model predictions of subsurface drain return because of the uncertainty associated with canal and drain conductance properties and canal seepage rates. Uncertainty in drain return is estimated to be about 20 percent of the predicted rate.

Purdam Model Application and Results

The calibrated Purdam model is used initially to simulate water table elevations and drain returns that accompany the present level of Boise Project irrigation activity, specifically canal seepage and on-farm infiltration. Figure 5 is a head contour map generated by the calibrated model, showing irrigation season water table elevations in the vicinity of the Purdam drain. (Portions of the Ridenbaugh Canal, Kennedy Lateral and Ten Mile Creek are also shown.) Arrows indicate the direction of subsurface flow on the Sunrise Terrace.

As noted on figure 5, the surface elevation of the drain at the POD location is 2562 feet. The modeled water table elevation in the underlying terrace gravels at this same location is slightly higher, 2564.9 feet. The upward hydraulic gradient indicates that water in the subsurface is being discharged to the drain at this location. The model indicates that an upward hydraulic gradient exists at almost all locations along the Purdam drain upstream from the POD. The model prediction of total subsurface discharge to the Purdam drain upstream of the POD location is 5.1 cfs.

In the second application, the calibrated Purdam model is used to simulate Purdam drain water table elevations and drain returns in the absence of Boise Project irrigation activity (canal seepage and on-farm infiltration). The second application is intended to simulate pre-development conditions, in which aquifer recharge comes only from (average annual) precipitation.

Figure 6 is a head contour map generated by the pre-development model showing water table elevations in the vicinity of the Purdam drain. As noted, the pre-development head condition at the POD location is 2548.4 feet, which is 13.6 feet below the bottom elevation of the drain. Everywhere upstream of the POD the water table surface is also below the bottom of the drain. The model clearly indicates that under pre-development conditions, subsurface return flow at the POD location in the Purdam drain (if the drain had existed at that time) would have been zero.

Two additional model runs with varying canal seepage and on-farm infiltration conditions in the Nampa-Meridian Irrigation District (NMID) were also made. The first of these simulates lining the Ridenbaugh canal with an impermeable liner. The second simulates the elimination of irrigation activity on just the NMID portion of the Boise Project. Lining the Ridenbaugh canal reduced canal seepage by 42 cfs, which in turn reduced the head at the Purdam drain POD by 0.5 feet (from 2565 feet to 2564.5 feet), drain flow declined by 1.5 cfs (from 5.1 cfs to 3.6 cfs). Eliminating all canal seepage and on-farm infiltration in the NMID portion of the Boise Project reduced the head at the POD by 2.2 feet (from 2564.9 feet to 2562.7 feet), drain flow declined by 4.8 cfs (from 5.1 cfs to 0.3 cfs).

Model Results in relation to Purdam Drain Flow Measurements and Observation Well Hydrographs

A weir and a flume were installed by Reclamation in the Purdam drain in early October 2007. The weir was located about 300 feet upstream of the POD pump and the flume was located about 100 feet downstream. Reclamation monitoring of flow in the Purdam drain began on October 11, 2007 and continued until January 31, 2008 (Table 1).

Even though the irrigation season was over before monitoring began, the calibrated model estimates of flow in the Purdam drain at the POD are comparable to flow measurements made in early October. Early October flow measurements ranged from 3.0 to 3.8 cfs, (see Table 1) as compared to the calibrated model estimate of 5.1 cfs. While the October measurements are slightly lower than model predictions, it is likely that subsurface return flow to the drain would have been somewhat higher in July and August during the irrigation season.

Table 1 also shows a generally declining flow rate in the Purdam drain between October and January. (The decline is punctuated by short term increases due to precipitation events.) Although flow in the drain is not expected to drop to zero over the course of a single winter, it is expected that it would drop to zero eventually. Were it not for the start

of irrigation activity each April, it is expected that the water table beneath the Purdam drain would eventually return to the level indicated by the pre-development model.

Figures 7, 8 and 9 are hydrographs showing seasonal variations in depth to water in three USGS observation wells located in T03N R1W Sec 14, 15 and 16; on the Whitney, Sunrise and Amity Terraces, respectively. The section 14 observation well is located about a mile east of the Purdam drain POD. The section 15 well is about a half mile south, close to the Ridenbaugh canal; and the section 16 well is about a mile to the northwest of the POD. The hydrographs all show similar seasonal trends in depth to water. Water levels rise throughout the irrigation season and decline during winter months. Between the end of one irrigation season and the start of another, the water table surface typically declines four to six feet, but the decline can be as much as nine feet.

The pre-development model, which predicts that in the permanent absence of all irrigation activity in the Boise Project, the water table beneath the Purdam drain would decline by approximately 16.5 feet (or about 13.7 feet below the bottom of the current Purdam drain) is entirely consistent with the water table response observed in these wells during a six month absence of irrigation activity. It is estimated that in the absence of all irrigation activity it would take three to five years for the water table on the Sunrise Terrace to return to its pre-development level.

Conclusions based on Purdam Model results

The Purdam drain model results demonstrate that canal seepage and on-farm infiltration from Boise Project lands are responsible for essentially all of the subsurface return flow occurring in the Purdam drain at the location of the POD, and that the vast majority of the subsurface return at this location comes from canal seepage and on-farm infiltration on the surrounding NMID irrigated lands.

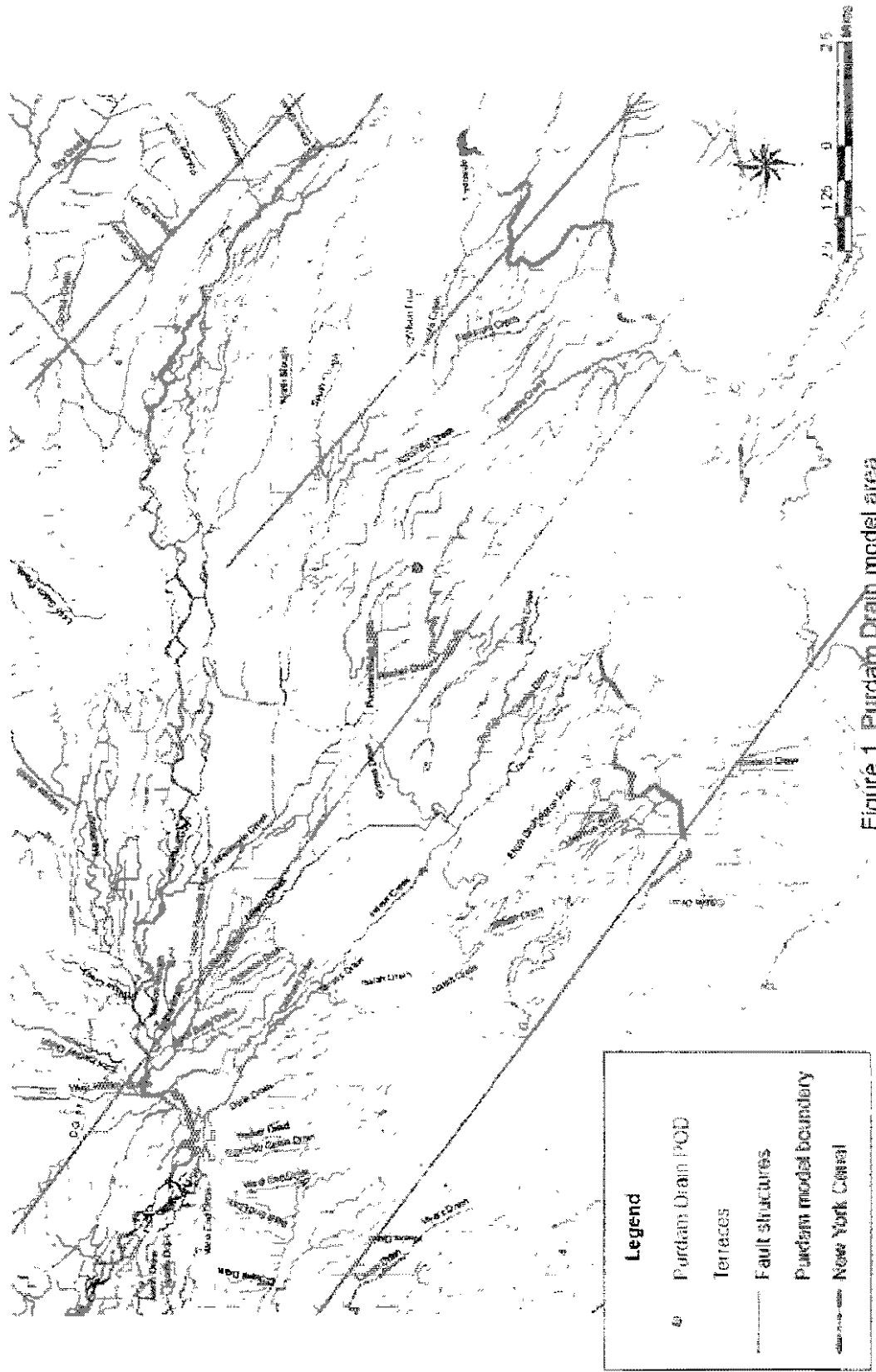


Figure 1. Purdam Drain model area

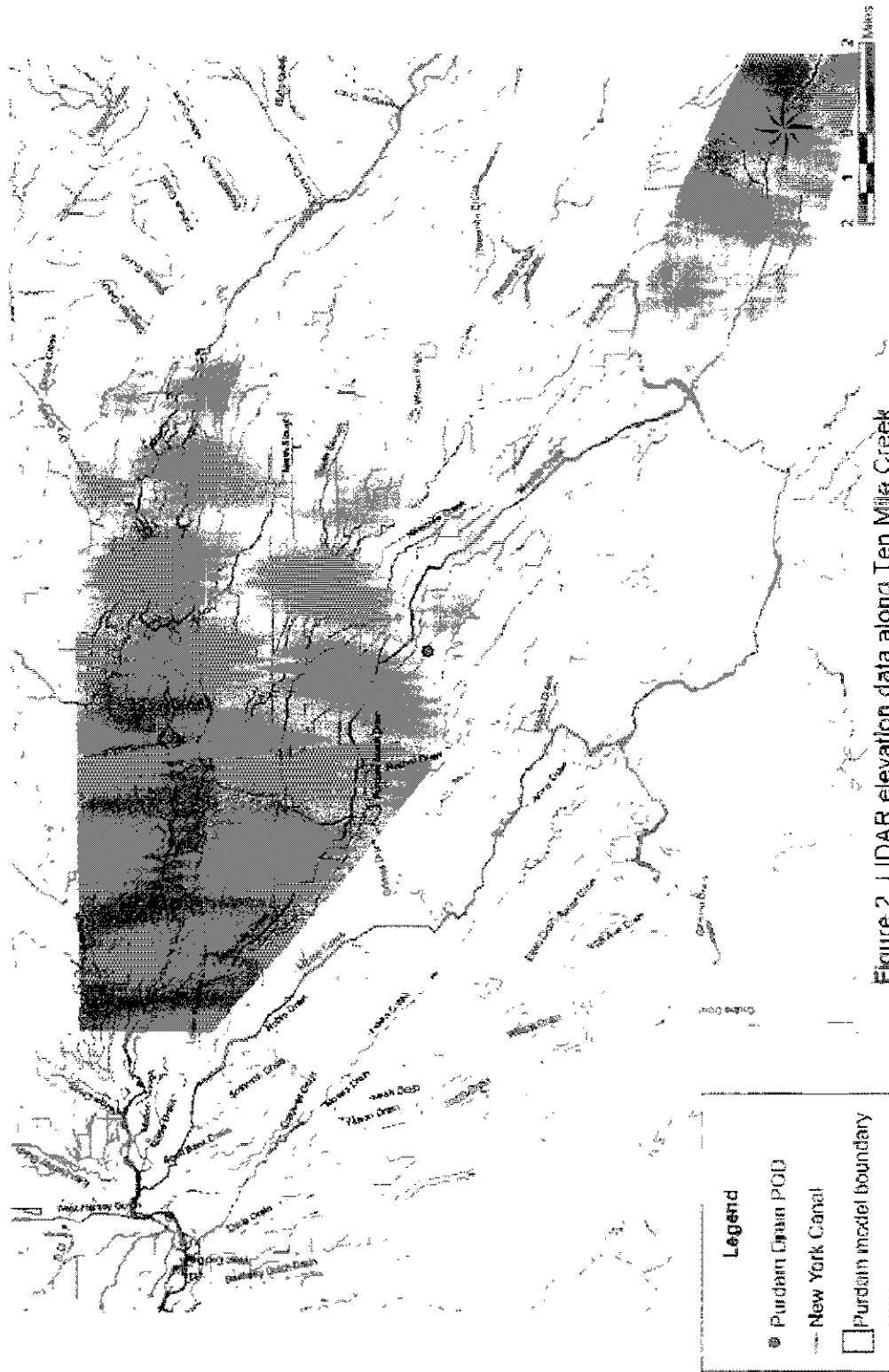


Figure 2. LIDAR elevation data along Ten Mile Creek

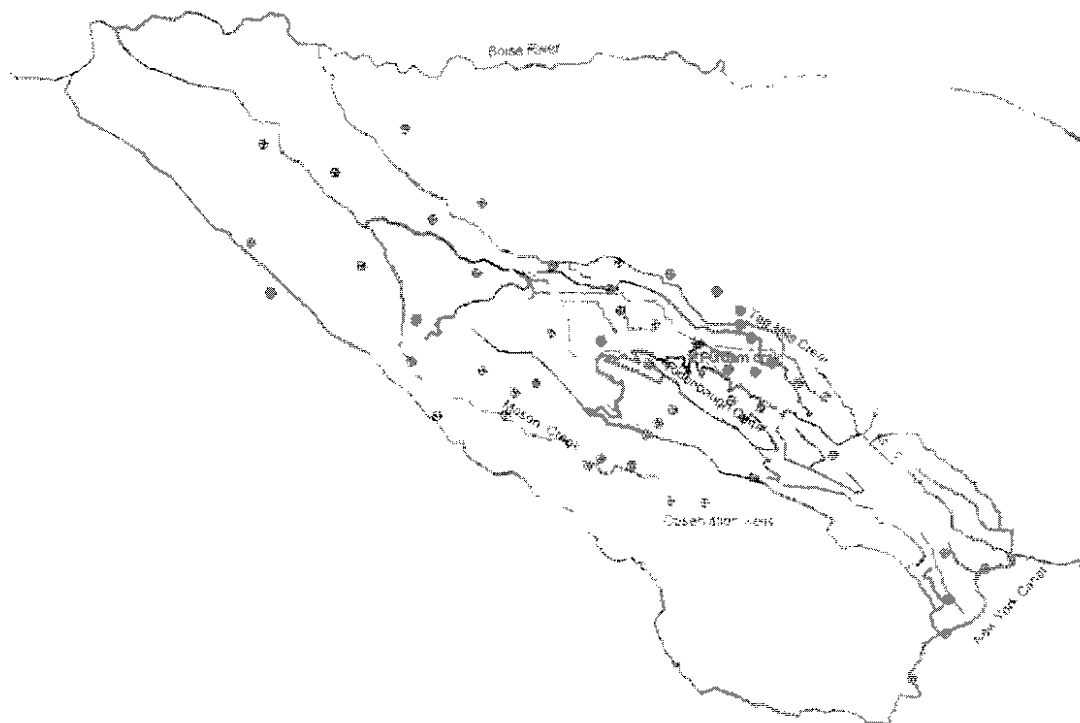


Figure 3. GFlow model representation of canals, rivers, creeks and drains as boundary conditions in the Purdam model

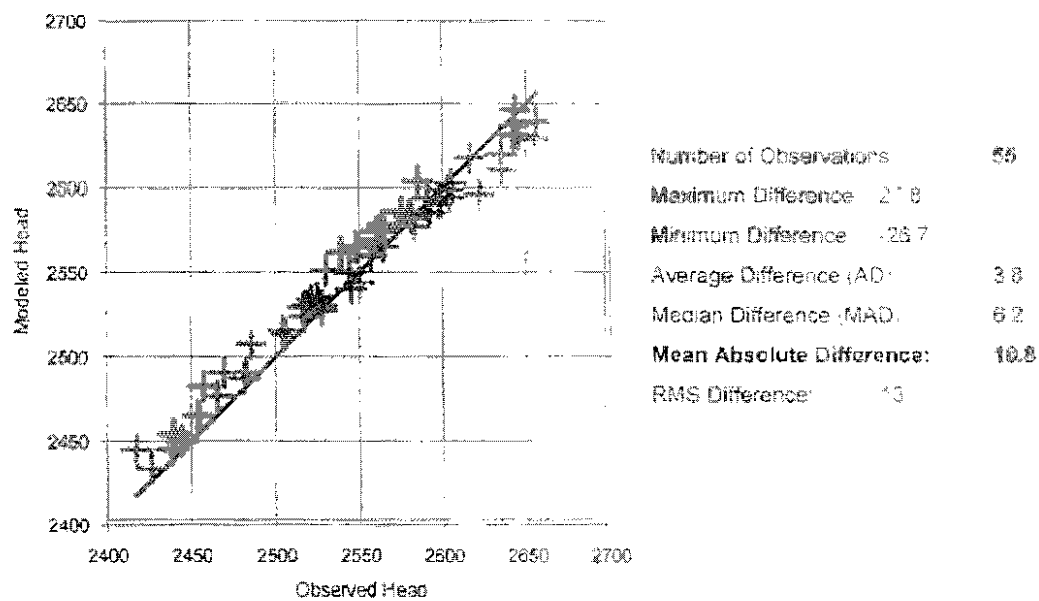


Figure 4. Observed and modeled water table elevations in the calibrated model

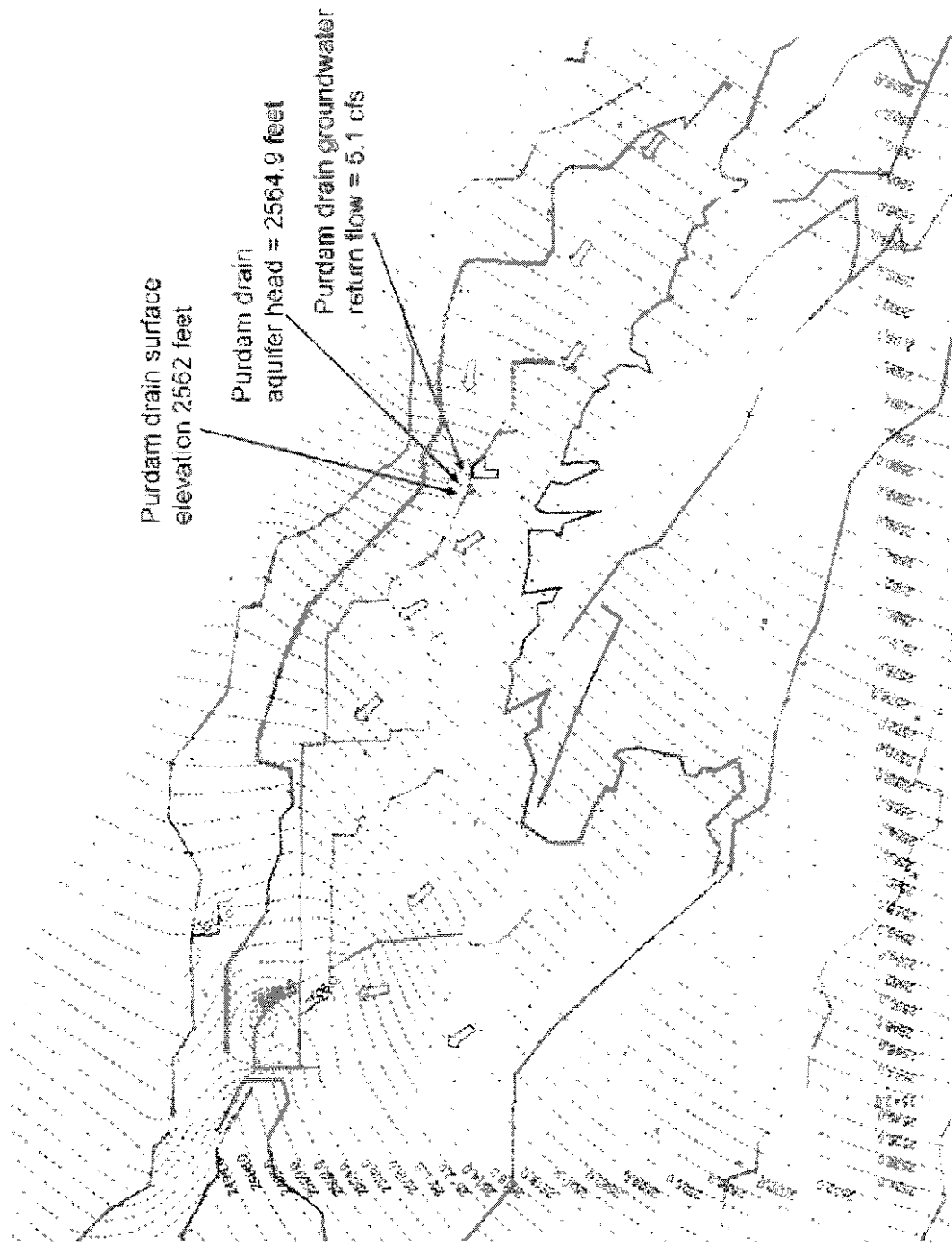


Figure 5. Modeled irrigation season water table elevations in the area of the Purdam drain

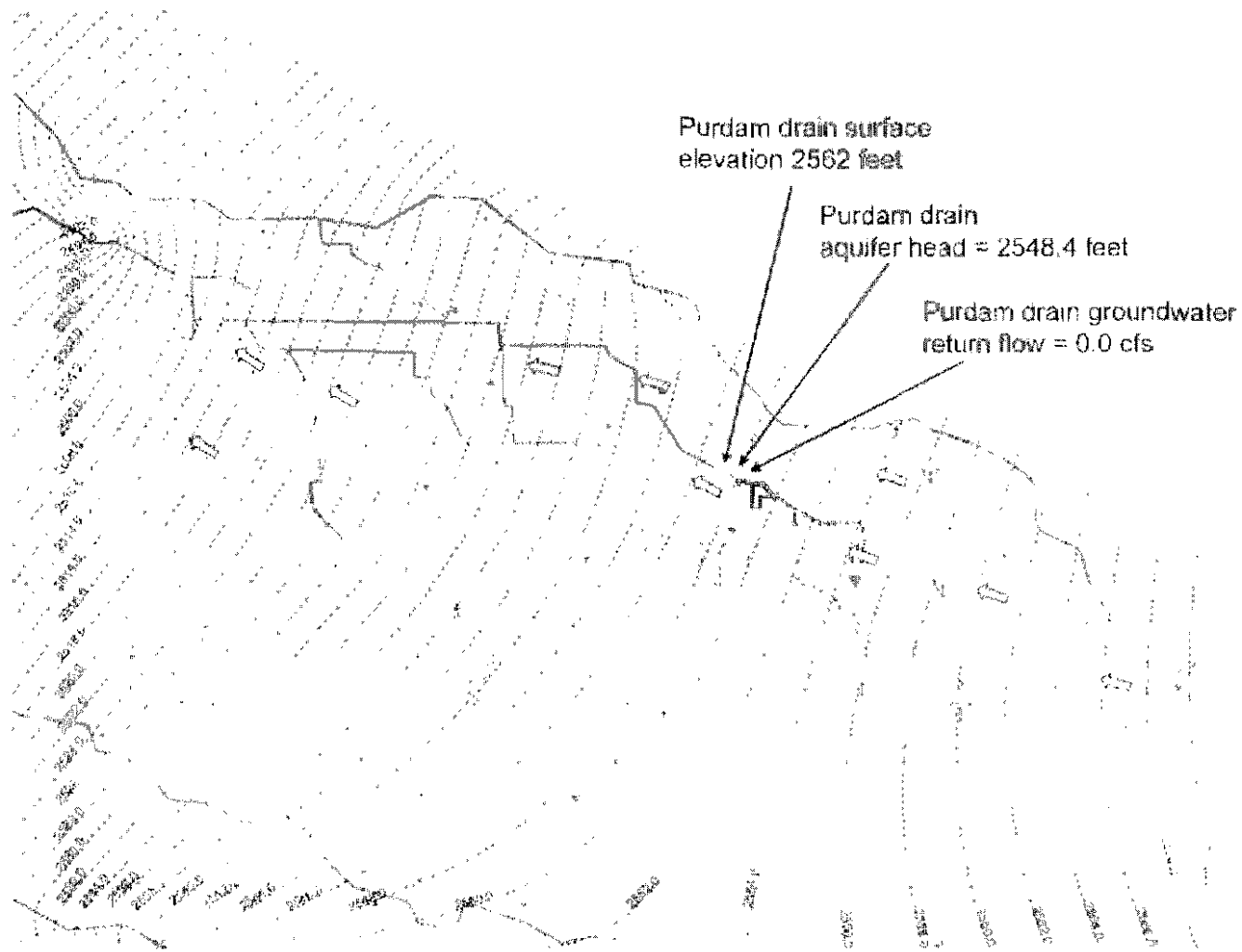


Figure 6. Modeled water table elevations near Purdam drain absent all irrigation activity, precipitation only.

Table 1 Purdam Drain - Weir & Flume Flow Measurements

Date	U/S Weir Readings			D/S Flume Readings		
	Raw Field (Vertical)	Flow (gpm)	Flow (cfs)	Raw Field (Slope)	Flow (gpm)	Flow (cfs)
10/11/2007	0.24	1,443.7	3.2	1.300	1,444.7	3.2
10/12/2007	0.24	1,443.7	3.2	1.325	1,509.2	3.4
10/15/2007	0.27	1,684.0	3.8	1.400	1,713.0	3.8
10/19/2007	0.23	1,365.8	3.0	1.275	1,381.9	3.1
10/22/2007	0.23	1,366.8	3.0	1.300	1,444.7	3.2
10/25/2007	0.24	1,443.7	3.2	1.300	1,444.7	3.2
10/26/2007	0.235	1,405.0	3.1	1.300	1,444.7	3.2
10/29/2007	0.16	877.0	2.0	1.175	1,147.4	2.6
10/30/2007	0.19	1,076.0	2.4	1.150	1,092.9	2.4
11/2/2007	0.18	1,007.8	2.2	1.150	1,092.9	2.4
11/5/2007	0.18	1,007.8	2.2	1.150	1,092.9	2.4
11/7/2007	0.15	814.5	1.8	1.030	853.2	1.9
11/9/2007	0.14	754.1	1.7	1.050	890.7	2.0
11/9/2007	0.14	754.1	1.7	1.050	890.7	2.0
11/13/2007	0.145	784.0	1.7	1.025	844.0	1.9
11/14/2007	0.145	784.0	1.7	1.030	853.2	1.9
11/16/2007	0.175	974.4	2.2	1.035	862.5	1.9
11/19/2007	0.14	754.1	1.7	1.040	871.8	1.9
11/21/2007	0.17	941.4	2.1	1.130	1,050.4	2.3
11/23/2007	0.14	754.1	1.7	1.050	890.7	2.0
11/26/2007	0.14	754.1	1.7	1.050	890.7	2.0
11/27/2007	0.15	814.5	1.8	1.075	938.9	2.1
11/29/2007	0.145	784.0	1.7	1.075	938.9	2.1
12/3/2007	0.14	754.1	1.7	1.050	890.7	2.0
12/5/2007	0.14	754.1	1.7	1.055	900.2	2.0
12/7/2007	0.14	754.1	1.7	1.075	938.9	2.1
12/10/2007	0.135	724.7	1.6	1.042	875.6	2.0
12/13/2007	0.13	695.8	1.6	1.040	871.8	1.9
12/14/2007	0.13	695.8	1.6	1.040	871.8	1.9
12/17/2007	0.13	695.8	1.6	1.045	881.2	2.0
12/18/2007	0.14	754.1	1.7	1.050	890.7	2.0
12/21/2007	0.13	695.8	1.6	1.050	890.7	2.0
1/2/2008	0.13	695.8	1.6	1.050	890.7	2.0
1/3/2008	0.125	667.5	1.5	1.060	909.7	2.0
1/7/2008	0.125	667.5	1.5	1.030	853.2	1.9
1/10/2008	0.12	639.7	1.4	1.030	853.2	1.9
1/14/2008	0.12	639.7	1.4	1.030	853.2	1.9
1/18/2008	0.12	639.7	1.4	1.040	871.8	1.9
1/22/2008	0.11	585.9	1.3	1.030	853.2	1.9
1/25/2008	0.12	639.7	1.4	1.030	853.2	1.9
1/28/2008	0.11	585.9	1.3	1.025	844.0	1.9
1/31/2008	0.11	585.9	1.3	1.030	853.2	1.9

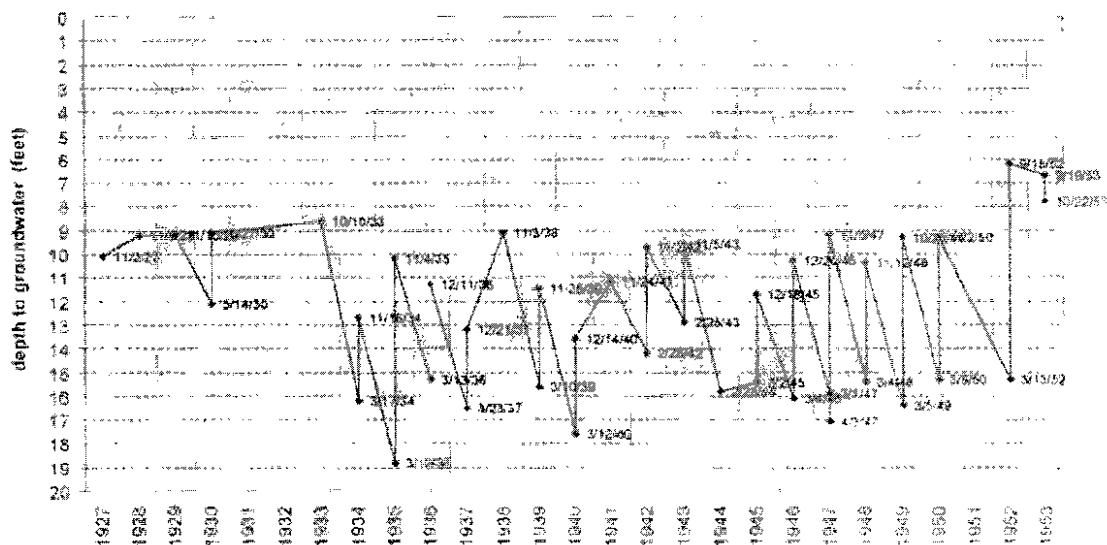


Figure 7. USGS observation well hydrograph, 03N 1W Sec 14.

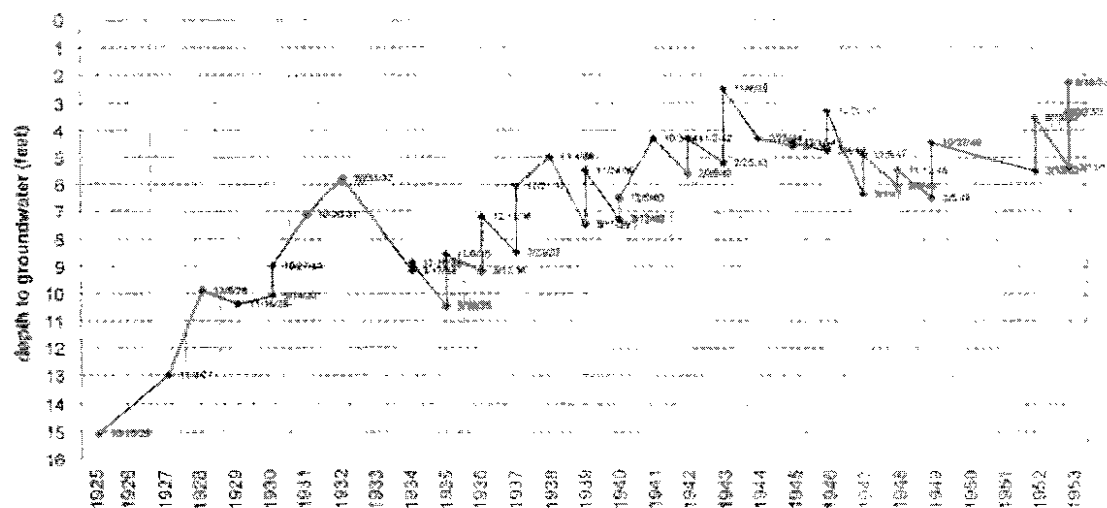


Figure 8. USGS observation well hydrograph, 03N 01W Sec 15.

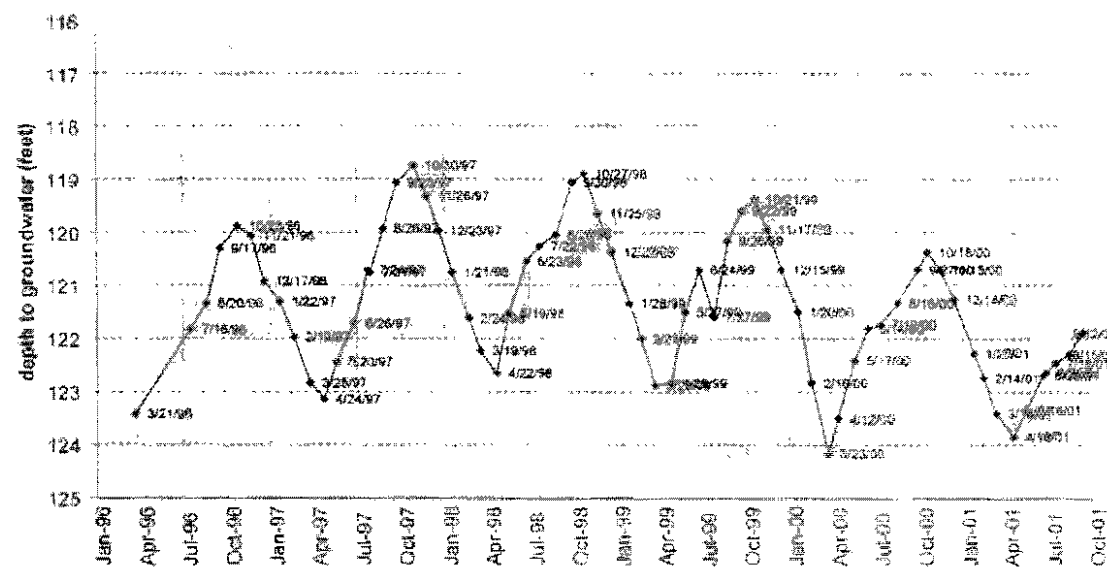


Figure 9. USGS observation well hydrograph, 03N 01W Sec 16.

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Attorneys for Nampa & Meridian Irrigation District

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

In Re SRBA	)	
	)	Subcase No. 63-27475
	)	
Case No. 39576	)	NAMPA & MERIDIAN IRRIGATION
	)	DISTRICT'S FIRST SET OF DISCOVERY
	)	REQUESTS TO CLAIMANT
_____	)	

INTRODUCTION

This document contains the interrogatories, requests for admissions, and requests for production being submitted to the claimant for the above-referenced water right, Janicek Properties, LLC (hereinafter "Claimant"). These interrogatories, requests for admissions, and requests for production are made pursuant to and are governed by Rules 26, 33, 34 and 36 of the Idaho Rules of Civil Procedure.

GENERAL INSTRUCTIONS

1. Unless otherwise indicated, these interrogatories, requests for admissions, and requests for production refer to water right no. 63-27475.

2. These interrogatories, requests for admission, and requests for production are deemed continuing in nature, and your responses are to be supplemented as additional information and

knowledge becomes available or known to you as provided in Rule 26(e) of the Idaho Rules of Civil Procedure.

3. Any reference herein to an individual, partnership, corporation, or other entity, shall include the present and past agents, employees, representatives, and assigns of that individual or entity.

4. If you withhold any information, in whole or in part, which is called for in and interrogatory or request for production on the ground that it is subject to attorney-client privilege or other privilege, identify each person or entity having knowledge of the bases for each claim of privilege or other objection.

5. If, for reasons other than alleged privilege, you do not provide a complete response to any interrogatory or request for production, state with respect to such interrogatory or request for production that a complete response is not provided and state the reason for the incomplete response.

6. Serve the original written answers to these interrogatories, request for admission, and responses to request with a copy of the notice of service on S. Bryce Farris, Ringert Clark Chartered, P.O. Box 2773, Boise, Idaho 83701.

INSTRUCTIONS FOR INTERROGATORIES

1. Provide answers to these interrogatories within thirty (30) days of service by fully setting forth each interrogatory followed by an answer or objection to each interrogatory under oath in accordance with I.R.C.P. 33.

INSTRUCTIONS FOR ADMISSIONS

1. Provide answers to these request for admission within thirty (30) days of service by fully setting orth each request for admission followed by an answer or objection to each request for

NAMPA & MERIDIAN IRRIGATION DISTRICT'S FIRST SET OF DISCOVERY REQUESTS TO CLAIMANT - Page 2

admission under oath in accordance with I.R.C.P. 36.

INSTRUCTIONS FOR REQUEST FOR PRODUCTION

1. If you will make the original copies of the requested documents available at a subsequent time requested by NMID, upon reasonable notice, then the requests for production of documents may be satisfied by mailing a true, correct, and legible copy of each and every requested document to S. Bryce Farris, Ringert Clark Chartered, P.O. Box 2773, Boise, ID 83701 within the prescribed time.

2. Each document requested to be produced shall be provided in a manner which preserves its sequential relationship with other documents being produced and shall include the file folder and folder tabs associated with its file location. If the file location is not apparent on the folder and tabs, the document shall be accompanied by information indicating from where the file was taken and such additional information as is necessary to enable NMID to determine the document's original pre-production location.

3. You are requested to provide a response within thirty (30) days of service in accordance with I.R.C.P. 34.

Definitions:

In answering these interrogatories and requests for production, all terms used retain their normal meaning. The following terms, in addition to their commonly understood definitions, shall have the following meanings:

- A. The term "NMID" refers to the Nampa & Meridian Irrigation District.
- B. The term "you" or the "claimant" refers to the claimant for water right no. 63-27475, including, but not limited to, Janicek Properties, LLC, its members, agents, representatives,

consultants, experts, attorneys or predecessors in interest.

C. The term “document” shall be defined in the broadest possible manner and shall, at a minimum, mean any original or copy of words or information, whether produced in original or copying form by printing, typing, recording, retrieval from electronic storage, manual reproduction, or other process regardless of the form. The term “document” includes, but is not limited to, writings, agreements, communication, correspondence, electronic mail messages, reports, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, diaries, records, maps, charts, plans, drawings, sketches, photographs, graphs, notes, summaries or records of meetings,, conferences or congressional hearings, summaries or reports of investigations or negotiations, opinions or reports of consultants, drafts of any document, phono-records, printouts from electronic storage or other data compilations from which information can be obtained or translated, if necessary, by the respondent through detection devices into reasonably usable form, marginal comments appearing on any document and all other writing.

D. The term “identify” means:

(1) as to documents, give the date of each such document, the addresser’s name, position, and address, the addressee’s name, position and address, any file, index or other identification number, title and general character of the document, and specify the name, address and position of the person or persons having custody and control thereof. Alternatively, the document may be appended to your answer.

(2) as to a person, or entity, give the full name, business address and telephone number,

home address and telephone number, the person's current employment, position and duties, and the person's educational background.

- (3) as to conversations, including telephone communications, or meetings give:
 - a. the date, place and time such communication occurred;
 - b. the identify of each and every person between whom the communication was transmitted, who was present or who participated in the conversation, and any other person(s) who have knowledge of such communication;
 - c. the place at which such communication occurred, or in the case of telephone conversations, the location of each party; and
 - d. a detailed statement of the substance of what was discussed or what actions were taken.
- (4) as to administrative, judicial, or congressional proceedings, give:
 - a. the caption of the proceeding;
 - b. the administrative or judicial tribunal or the name of the congressional committee or subcommittee, including the business address and phone number; and
 - c. the date(s) a witness provided testimony.

E. The term "relied," when used in a request for all documents relied upon in the preparation of an answer or response, refers not only to documents containing information supporting the answer or response, but also documents reviewed, obtained, or prepared by the Claimant or its employees, agents or contractors in the course of preparing its answer or response.

**INTERROGATORIES, REQUESTS FOR ADMISSION, AND
REQUESTS FOR PRODUCTION**

REQUEST FOR ADMISSION NO. 1: Please admit that land or property which is served by water right no. 63-27475 is also served by NMID.

INTERROGATORY NO. 1: If you deny, in whole or in part, Request for Admission No. 1, then describe in detail the factual and legal basis for your denial.

REQUEST FOR PRODUCTION NO. 1: If you deny, in whole or in part, Request for Admission No. 1, please produce a true and correct copy of any documents which support your denial.

REQUEST FOR ADMISSION NO. 2: Please admit that the land or property which is served by water right no. 63-27475 was within the boundaries of NMID and served by NMID prior to any application for permit being filed for water right no. 63-27475.

INTERROGATORY NO. 2: If you deny, in whole or in part, Request for Admission No. 2, then describe in detail the factual and legal basis for your denial.

REQUEST FOR PRODUCTION NO. 2: If you deny, in whole or in part, Request for Admission No. 2, please produce a true and correct copy of any documents which support your denial.

REQUEST FOR ADMISSION NO. 3: Please admit that water right no. 63-27475 is a supplemental water right that is supplemental to the water rights delivered by NMID.

INTERROGATORY NO. 3: If you deny, in whole or in part, Request for Admission No. 3, then describe in detail the factual and legal basis for your denial.

REQUEST FOR PRODUCTION NO. 3: If you deny, in whole or in part, Request for

Admission No. 3, please produce a true and correct copy of any documents which support your denial.

REQUEST FOR ADMISSION NO. 4: Please admit that the “Purdam Gulch Creek” listed in water right no. 63-27475 is operated and maintained by NMID.

INTERROGATORY NO. 4: If you deny, in whole or in part, Request for Admission No. 4, then describe in detail the factual and legal basis for your denial.

REQUEST FOR PRODUCTION NO. 4: If you deny, in whole or in part, Request for Admission No. 4, please produce a true and correct copy of any documents which support your denial.

REQUEST FOR ADMISSION NO. 5: Please admit that the “Purdam Gulch Creek” listed in water right no. 63-27475 is owned by NMID.

INTERROGATORY NO. 5: If you deny, in whole or in part, Request for Admission No. 5, then describe in detail the factual and legal basis for your denial.

REQUEST FOR PRODUCTION NO. 5: If you deny, in whole or in part, Request for Admission No. 5, please produce a true and correct copy of any documents which support your denial.

REQUEST FOR ADMISSION NO. 6: Please admit that the “Purdam Gulch Creek” listed in water right no. 63-27475 was owned, operated and maintained by NMID prior to, during and after your application for permit for water right no. 63-27475.

INTERROGATORY NO. 6: If you deny, in whole or in part, Request for Admission No. 6, then describe in detail the factual and legal basis for your denial.

REQUEST FOR PRODUCTION NO. 6: If you deny, in whole or in part, Request for Admission No. 6, please produce a true and correct copy of any documents which support your denial.

REQUEST FOR ADMISSION NO. 7: Please admit that NMID owns and easement and/or right-of-way to operate and maintain the “Purdam Gulch Creek” listed in water right no. 63-27475.

INTERROGATORY NO. 7: If you deny, in whole or in part, Request for Admission No. 7, then describe in detail the factual and legal basis for your denial.

REQUEST FOR PRODUCTION NO. 7: If you deny, in whole or in part, Request for Admission No. 7, please produce a true and correct copy of any documents which support your denial.

INTERROGATORY NO. 8: Set forth and describe the beneficial use of water right no. 63-27475, including the period of year it has been used.

REQUEST FOR PRODUCTION NO. 8: Produce all documents that evidence the beneficial use of water right no. 63-27475, including, but not limited to, the period of use for said water right and the flow records and power records for said water right.

INTERROGATORY NO. 9: Set forth and describe what you believe is the source of water right no. 63-27475, including, but not limited to, what you believe is the source of the water in the “Purdam Gulch Creek” and to what extent, if any, you believe the source is not waste, seepage and/or return flows attributable to NMID’s irrigation water.

REQUEST FOR ADMISSION NO. 8: Please admit that the source of water right no. 63-27475 is waste water, seepage and/or return flows attributable to NMID’s irrigation water.

INTERROGATORY NO. 10: If you deny, in whole or in part, Request for Admission No. 8, then describe in detail the factual and legal basis for your denial.

REQUEST FOR PRODUCTION NO. 9: If you deny, in whole or in part, Request for Admission No. 8, please produce a true and correct copy of any documents which supports your denial.

REQUEST FOR ADMISSION NO. 9: Please admit that the source of water right no. 63-27475 is, at least in part, NMID's waste water, seepage and/or return flows attributable to NMID's irrigation water.

INTERROGATORY NO. 11: If you deny, in whole or in part, Request for Admission No. 9, then describe in detail the factual and legal basis for your denial.

REQUEST FOR PRODUCTION NO. 10: If you deny, in whole or in part, Request for Admission No. 9, please produce a true and correct copy of any documents which supports your denial.

INTERROGATORY NO. 12: Please identify each and every person whom you expect to call as a fact witness in the trial of this matter and state the substance of the facts upon which the person is expected to testify.

INTERROGATORY NO. 13: Please identify each and every person whom you know has knowledge about water right no. 63-27475.

INTERROGATORY NO. 14: Please identify each and every person whom you expect to call as an expert witness in this matter. For each such person identify, please state the subject matter on which the expert is expected to testify, the substance of the opinions to which the expert is

expected to testify, and the underlying facts and data upon which the expert opinions are based.

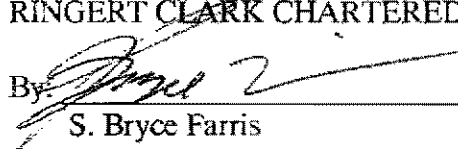
REQUEST FOR PRODUCTION NO. 11: Produce every document or tangible item that you intend to offer as an exhibit in the trial of this matter.

REQUEST FOR PRODUCTION NO. 12: For each person identified in your response to Interrogatory no. 14, please produce: (1) a curriculum vitae or resume, including a list of publications authored by that person, if any, as well as any other information which would demonstrate the person's knowledge or qualifications to state the facts or express the opinions to which the person is expected to testify; and (2) all documents containing or evidencing the underlying facts or data described in your response to Interrogatory No. 14.

INTERROGATORY NO. 15: Identify all persons who assisted in the preparation of the responses to these Interrogatories, Request for Admission and Requests for Production.

DATED this 17th day of January, 2008.

RINGERT CLARK CHARTERED

By: 

S. Bryce Farris
Attorney for Nampa & Meridian
Irrigation District

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January, 2008, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

Michael P. Lawrence
Givens Pursley, LLP
601 W. Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720

USDI Bureau of Reclamation
Represented by:
US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098



S. Bryce Farris

FAX

TO: '12082876700@venali.net'

FROM: Lori Anderson

FAX: 12082876700

DATE: Thu, 10 Jan 2008 17:25:06 -0700

RE: Notice of Service

MESSAGE

Attached is Janicek Properties LLC's Notice of Service of discovery for your records. Should you have difficulty receiving this document, please contact me.

Lori Anderson
Assistant to Jeffrey C. Fereday,
Deborah E. Nelson & Michael P. Lawrence
Givens Pursley, LLP
601 W. Bannock St.
Boise, ID 83702
Direct Dial: (208) 388-1234
Facsimile: (208) 388-1300
www.givenspursley.com

CONFIDENTIALITY NOTICE: This e-mail contains confidential information that is protected by the attorney-client and/or work product privilege. It is intended only for the use of the individual(s) named as recipients. If you are not the intended recipient of this e-mail, please notify the sender, and please do not deliver, distribute or copy this e-mail, or disclose its contents or take any action in reliance on the information it contains.

Michael C. Creamer [ISB No. 4030]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com

Attorneys for Janicek Properties, LLC

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

In Re SRBA

Case No. 39576

Subcase: 63-27475

NOTICE OF SERVICE

Janicek Properties, LLC ("Claimant"), through its counsel Givens Pursley LLP, and pursuant to Rules 33(a)(5) and 34(d) and 36(c) of the Idaho Rules of Civil Procedure, hereby gives notice to all parties and counsel of record that Janicek Properties, LLC's First Set of Interrogatories, Requests for Admission, and Requests for Production to Nampa & Meridian Irrigation District were served upon Nampa & Meridian Irrigation District.

Dated this 10th day of January, 2008.

GIVENS PURSLEY LLP



Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of January 2008, the foregoing was filed, served, or copied as follows:

Notice of Service of Discovery Document

Clerk of District Court
Snake River Basin Adjudication
253 3rd Ave. N.
P.O. Box 2707
Twin Falls, ID 83303-2707

☐ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile
☐ E-mail

Requests and Notice of Service of Discovery Document

Nampa and Meridian
Represented by:
S. Bryce Farris
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773
Fax: 208-342-4657

☐ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile
☐ E-mail

Notice of Service of Discovery Document

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724
Fax: 208-387-0842

☐ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile
☐ E-mail

Notice of Service of Discovery Document

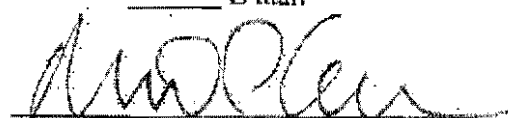
Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098
Fax: 208-287-6700

☐ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile
☐ E-mail

Notice of Service of Discovery Document

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

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail


Michael P. Lawrence

RECEIVED

OCT 2 2007

DEPARTMENT OF
WATER RESOURCES

2007 OCT 20 10:10 AM
TWIN FALLS COUNTY
FILED

2007 OCT 20 PM 3 12

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

In Re SRBA) Subcase 63-27475
Case No. 39576) ORDER GRANTING MOTION FOR
CONTINUANCE OF TRIAL DATE;
AMENDED TRIAL SCHEDULING
ORDER

On October 15, 2007, the Nampa & Meridian Irrigation District, through its attorney Bryce Farris, filed a *Motion for Continuance of Trial Date*. The matter was heard on October 23, 2007. Based upon the comments of the participants at the hearing, and good cause appearing, the motion is **granted**. The following dates shall govern the conduct of this subcase through trial:

February 8, 2008	5:00 PM	Disclosure of Expert Witnesses Statements. As to any expert witnesses expected to testify at trial, and heretofore disclosed pursuant to the prior <i>Trial Scheduling Order</i> , such expert(s) shall prepare a statement setting forth the matters outlined in I.R.C.P. 26(b)(4), and such statement shall be disclosed to the other parties no later than this deadline.
March 18, 2008	5:00 PM	Hearing on Motion for Summary Judgment. Motions for summary judgment shall be filed, noticed for hearing, and actually heard by this deadline. The filing and service of the motion, affidavits, and briefing shall be conducted in compliance with I.R.C.P. 56(c). In connection with the filing of a motion for summary judgment, the movant should contact the clerk of the court for a hearing time and location.
March 21, 2008	5:00 PM	Discovery Served and Responses Completed. Deadline for completion of all discovery, meaning that all discovery is served and response is complete,

including the taking of depositions of lay and expert witnesses, all interrogatories, request for production / inspections and admissions. Motions to compel should be filed accordingly so as to accommodate this deadline.

- April 8, 2008 10:30 AM Final Pre-Trial Conference.** Pursuant to I.R.C.P. 16, a final pre-trial conference will be held at the Snake River Basin Adjudication Courthouse, 253 3rd Avenue North, Twin Falls, Idaho. Parties may participate by telephone by dialing 225-383-1099 and when prompted entering the code 675342.
- April 21-22, 2008 9:00 AM Trial.** The trial be held at the Idaho Supreme Court Building, 451 West State Street, Boise, Idaho, in the lower-level conference room.

Dated October 23, 2007

A handwritten signature in black ink, appearing to read 'Theodore R. Booth', with a long horizontal line extending to the right.

THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION FOR CONTINUANCE OF TRIAL DATE AND AMENDED TRIAL SCHEDULING ORDER was mailed on October 23, 2007, with sufficient first-class postage to the following:

JANICEK PROPERTIES LLC

Represented by:
MICHAEL P LAWRENCE
PO BOX 2720
BOISE, ID 83701
Phone: 208-388-1200

NAMPA AND MERIDIAN

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

USDI BUREAU OF RECLAMATION

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

DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098

SRBA

SUBCASE SUMMARY REPORT 63-27475

Return to SRBA Home Page

SRBA
08-08-2007

SUBCASE SUMMARY REPORT

HTML12

SUBCASE: 63-27475 FILE#: 01333
CLAIMANT: JANICEK PROPERTIES LLC
1284 S GOSLING WAY

EAGLE ID 83616
STATUS: TRIAL SET SPECIAL MASTER: BOOTH, THEODORE R.
WATER SOURCE: PURDAM GULCH CREEK TRIBUTARY: MASON CREEK
ISSUES: NAME AND ADDRESS DESCRIPTION
SOURCE OF WATER
QUANTITY OF WATER USED
PRIORITY DATE
POINT(S) OF DIVERSION DESCRIPTION
PURPOSE OF USE DESCRIPTION
PERIOD OF YEAR WHEN WATER IS USED
PLACE OF USE OR IRRIGATED ACRES IN EACH 40 A.
0

**** PARTIES INVOLVED ****

JANICEK PROPERTIES LLC C ATTY: JULIE K. FISCHER
NAMPA AND MERIDIAN O ATTY: S. BRYCE FARRIS
USDI BUREAU OF RECLAMATION R ATTY: US DEPARTMENT OF JUSTICE

(new attorney)
8/28
MICHAEL
LAWRENCE

**** ROA ENTRIES ****

04-21-2006	OBJ 01 F/B NAMPA AND MERIDIAN	RB	06-23-2006 0001
06-23-2006	RESPONSE TO OBJ 0001 F/B USDI BUREAU OF RECLA		0001
09-11-2006	NOTICE SETTING INITIAL HEARING	1S	12-05-2006 0130
12-05-2006	INITIAL HEARING HELD	HH	12-05-2006 0130
12-05-2006	MINUTES FILED		
12-05-2006	ORDER SETTING STATUS CONFERENCE	US	03-13-2007 1030
12-26-2006	NOTICE OF APPEARANCE OF COUNSEL		
03-13-2007	STATUS CONFERENCE HELD	UH	03-13-2007 1030
03-13-2007	MINUTES		
03-13-2007	TRIAL SCHEDULING ORDER	TV	12-04-2007 0900
	SUPPLEMENTAL SCHEDULING CONFERENCE	SS	05-29-2007 0900
05-29-2007	SUPPLEMENTAL SCHEDULING CONFERENCE HELD	SH	05-29-2007 0900
05-29-2007	MINUTES		
05-30-2007	TRIAL SCHEDULING ORDER	TS	01-17-2008 0900
	SETTLEMENT CONFERENCE (PARTIES & IDWR)	ZZ	08-15-2007 1000
	DEADLINE FOR MOTION FOR 706 REPORT	ZZ	08-28-2007 0130
	STATUS CONFERENCE	US	08-28-2007 0130
	DISCLOSURE OF EXPERT WITNESSES BY CLAIMANT	ZZ	10-01-2007 0500
	DISCLOSURE OF EXPERT WITNESSES BY	ZZ	10-15-2007 0500
	OBJECTOR AND/RESPONDENT		
	SUMMARY JUDGMENT COMPLETED	ZZ	11-01-2007 0500

located

DISCOVERY SERVED AND RESPONSES COMPLETED	ZZ	11-30-2007 0500
PRE-TRIAL MEMORANDUM DUE	ZZ	12-14-2007 0500
FINAL PRETRIAL CONFERENCE	PS	12-17-2007 1030
TRIAL - 1/17/2008 -- BOISE, IDAHO		

[Return to SRBA Home Page](#)

Walker, Kay

From: Shurte, Jan
Sent: Tuesday, May 29, 2007 10:54 AM
To: Spencer, Nick; Harvey, Becky
Cc: Walker, Kay
Subject: RE: 63-27475 (Janicek Properties)

It's a done deal - Western's conference room is booked. What I might do is have Kay sit in on this one (she took over Kimberly's) and I'll be there too. It will give her a chance to see what these are like and learn about the wastewater situations -- although this is a tough one. With both of us there it will help. Thanks, Jan

-----Original Message-----

From: Spencer, Nick
Sent: Tuesday, May 29, 2007 9:53 AM
To: Shurte, Jan
Cc: Harvey, Becky
Subject: 63-27475 (Janicek Properties)

Hi Jan. We just had a scheduling conference in the Janicek Properties subcase this morning. Bryce Farris and Julie Fischer were supposed to have met to discuss settlement, but since they have not yet done so, the Special Master scheduled an informal settlement conference for Wednesday, August 15th, at 10:00 a.m. The parties want us to be there. The Special Master asked if it could be held in the conference room at Western, since that is convenient for everybody. Is the conference room open then? If so, could you book it from 10:00 to 1:00? The issue in this subcase is waste water, but, since the right has a 1951 priority date, a remark will not resolve the objection. Nampa-Meridian wants the claim disallowed in its entirety. Anyway, this was Kimberly's case, so I guess it's yours now. Let me know if the conference room and you will be available on August 15th. Thanks. NBS

Julie Klein Fischer
WHITE PETERSON, P.A.
5700 East Franklin Road, Suite 200
Nampa, Idaho 83687-7901
Telephone: (208) 466-9272
Facsimile: (208) 466-4405
ISB Nos. 4601, 5850, 6559
jkf@whitepeterson.com

Attorneys for Janicek Properties LLC

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

In Re SRBA	)	A. Subcase No. 63-27475
	)	
Case No. 39576	)	NOTICE OF SUBSTITUTION OF
	)	COUNSEL

TO THE ABOVE-ENTITLED COURT AND TO COUNSEL OF RECORD:

YOU, AND EACH OF YOU, ARE HEREBY NOTIFIED that Julie Klein Fischer, of the law firm of White Peterson, P.A., hereby withdraws, pursuant to I.R.C.P. 11(b)(1), as attorney for Janicek Properties, LLC in the above-entitled action and that Michael Lawrence, of the firm Givens Pursley, is hereby substituted as attorney for Janicek Properties, LLC,

DATED this 27 day of August, 2007.

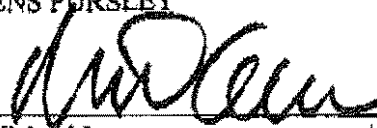
WHITE PETERSON, P.A.

By 

Julie Klein Fischer
Withdrawing Attorneys

DATED this 27th day of August, 2007.

GIVENS PURSLEY

By: 

Michael Lawrence
New Attorney

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 27 day of August, 2007, a true and correct copy of the above and foregoing document was served upon the following by:

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

X

US Mail
Overnight Mail
Hand Delivery
Facsimile

USDI Bureau of Reclamation
c/o US Department of Justice
Environment & National Resources
550 West Fort Street, MSC 033
Boise, ID 83724

X

MM

US Mail
Overnight Mail
Hand Delivery
Facsimile

Nampa and Meridian
Ringert Clark
c/o Daniel V. Steenson
P.O. Box 2773
Boise, ID 83701-2773

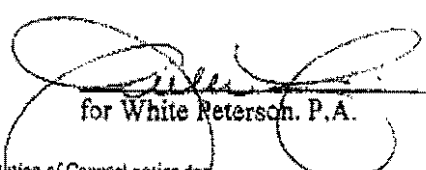
X

US Mail
Overnight Mail
Hand Delivery
Facsimile ☐

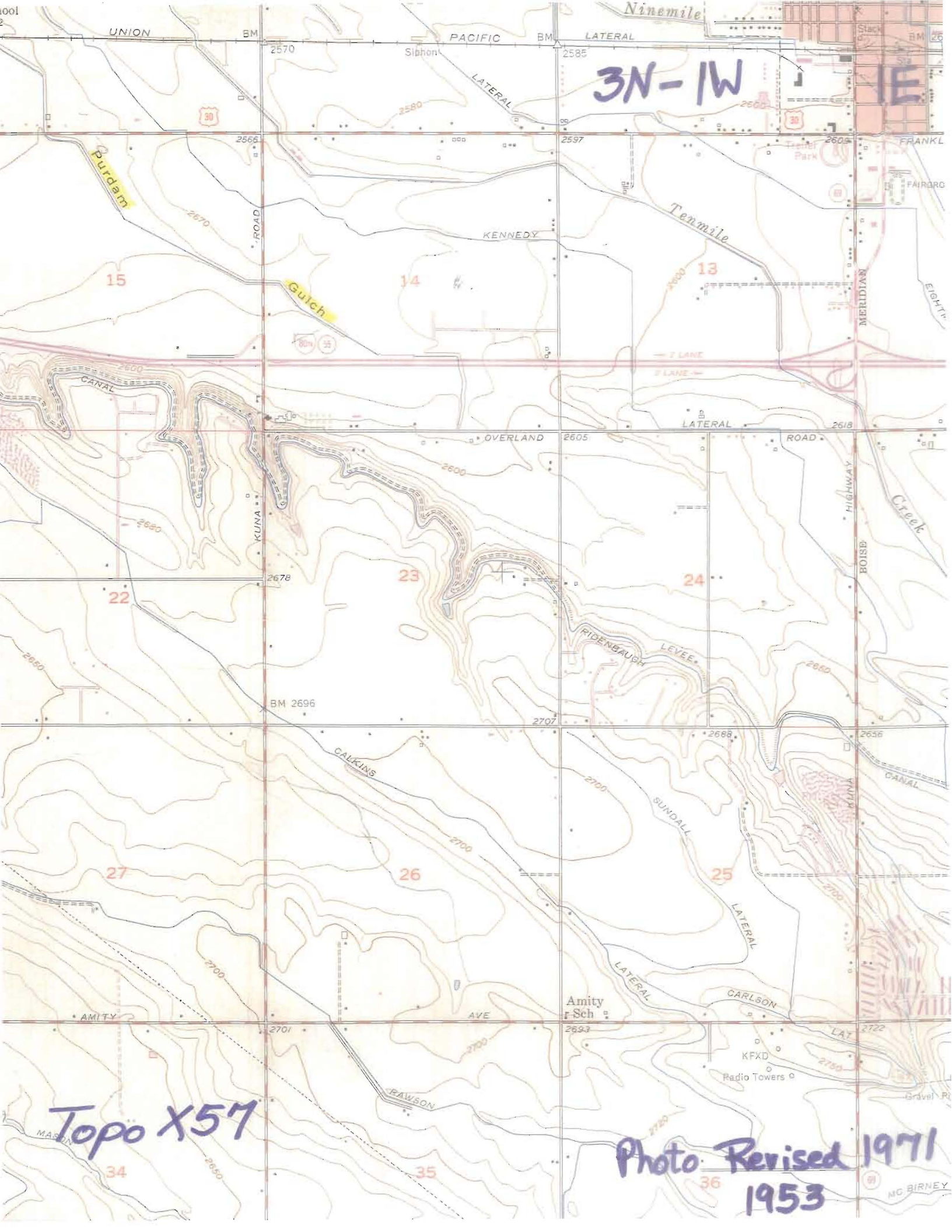
Michael Lawrence
Givens Pursley
P.O. Box 2720
Boise, ID 83701

X

US Mail
Overnight Mail
Hand Delivery
Facsimile: 388-1300


for White Peterson, P.A.

cg\W\Work\J\Janiack, Brad 20275\Water Right\Substitution of Counsel.notice.doc



3N-1W

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1953

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

In Re SRBA)

A. Subcase 63-27475

(Insert water right number
from the Objection Form)

Case No. 39576)

**STANDARD FORM 2
RESPONSE TO OBJECTION**

Please **print or type** the following information:

B. NAME AND ADDRESS OF PERSON RESPONDING

Name: E. Gail McGarry
United States of America acting through the Department of Interior,
Bureau of Reclamation, Regional Director PN Code-3100
Address: 1150 N. Curtis Rd. Suite 100
Boise, ID 83706 -1234
Daytime Phone: (208) 378-5306

Name & Address of Attorney, if any:

David W. Gehlert (303) 844-1386 Trial Attorney,
Natural Resources Section
Environment and Natural Resource Division
U.S. Department of Justice
1961 Stout Street – 8th Floor
Denver, CO 80294

**C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO
WHICH YOU ARE RESPONDING**

Name: Nampa & Meridian Irrigation District
Address: c/o Daniel V. Steenson & S. Bryce Farris
Ringert Clark, Chtd
P. O. Box 2773
Boise, ID 83701

D. I am responding to the objections to the following elements. (Please check the appropriate box (es)).

1. ☒ Name and Address
2. ☒ Source
3. ☒ Quantity
4. ☒ Priority Date
5. ☒ Point(s) of Diversion
6. ☐ Instream Flow Description
7. ☒ Purpose(s) of Use
8. ☒ Period of Year
9. ☒ Place of Use
10. Recommendation:
 - ☒ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

E. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

Jerrold D. Gregg, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

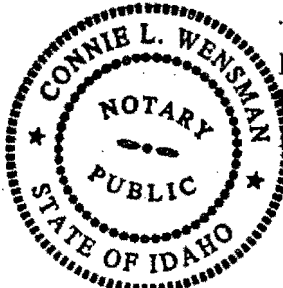
That I am the party/claimant filing this response as defined by I.C. §§ 42-1401A (1) and (6) or that I am the attorney for the party/claimant responding and that I have read this response, know its contents and believe that the statements are true to the best of my knowledge.

[Signature]
(Signature of person filing response)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: 6/23/06

Connie L. Wensman



Notary Public for: Idaho
Residing at: Meredon
My Commission Expires: 10/06/10

INSTRUCTIONS FOR MAILING

You must mail the response, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

F. CERTIFICATE OF MAILING

I certify that on 6-23, 2006, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Janicek Properties LLC
Address: 1284 S. Gosling Way
Eagle, ID 83616

3. One copy to the party who filed the objection at the following address:

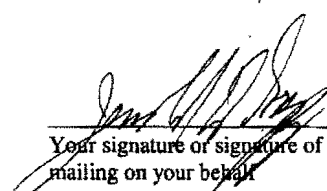
Name: Nampa & Meridian Irrigation District
Address: c/o Daniel V. Steenson & S. Bryce Farris
Ringert Clark, Chtd
P. O. Box 2773
Boise, ID 83701

4. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 4449
Boise, ID 83711-4449


Your signature or signature of attorney
mailing on your behalf

RECEIVED

APR 21 2006

DEPARTMENT OF
WATER RESOURCES

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

A. Subcase 63-27475

(Insert water right no.)

**STANDARD FORM 1
OBJECTION**

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: NAMPA & MERIDIAN IRRIGATION DISTRICT

Address: 1503 First Street South
Nampa, Idaho 83651

Daytime Phone: 208-466-7861

Name & Address of Attorney, if any:

Daniel V. Steenson

S. Bryce Farris

Ringert Clark Chartered

P.O. Box 2773

Boise, ID 83701

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

Name: Janicek Properties LLC

Address: 1284 S Gosling Way
Eagle, Idaho 83616

**SCANNED
OCT 03 2006**

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

1. ☒ **Name and Address**
Should be: Disallowed. See below.

2. ☒ **Source**
Should be: Disallowed. See below.

3. ☒ **Quantity**
Should be: Disallowed. See below.

4. ☒ **Priority Date**
Should be: Disallowed. See below.

5. ☒ **Point(s) of Diversion**
Should be: Disallowed. See below.

6. ☐ **Instream Flow Description**
Should be: N/A

7. ☒ **Purpose(s) of Use**
Should be: Disallowed. See below.

8. ☒ **Period of Year**
Should be: Disallowed. See below.

9. ☒ **Place of Use**
Should be: Disallowed. See below.

10. ☒ **I object because:**

☒ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION (S): This claimed water right is within the boundaries of Nampa & Meridian Irrigation District ("NMID") and the source of said claim is a drain which was constructed or enlarged by or for NMID. Said drain is owned, operated, maintained and controlled by NMID and the water within said drain is seepage or waste water that has been developed, captured and/or controlled by NMID. Therefore, said water is not subject to appropriation, would amount to an impermissible trespass, and this claimed water right should not exist.

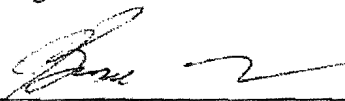
F.

VERIFICATION (must be completed)

State of Idaho)
) ss.
County of Ada)

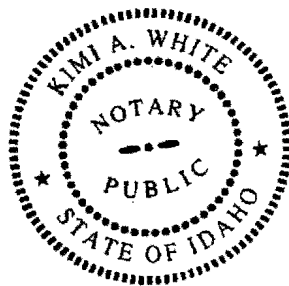
S. Bryce Farris, duly sworn, upon oath, deposes and says:

~~That I am the party/claimant filing this objection, as defined by I. C. §§ 42-1401A (1) and (6) or that~~
I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



S. Bryce Farris

Subscribed and sworn to before me on: April 20, 2020





Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 01/01/10

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on April 20th, 2006, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the Claimant of the water right at the following address:

Name: Janicek Properties, LLC

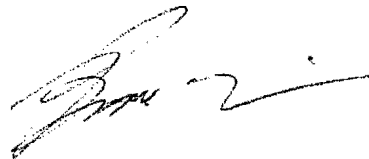
Address: 1284 S. Gosling Way
Eagle, Idaho 83616

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

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



Signature of Objector or attorney
mailing on Objector's behalf

04/26/2005

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

RIGHT NUMBER: 63-27475

NAME AND ADDRESS: JANICEK PROPERTIES LLC
1284 S GOSLING WAY
EAGLE ID 83616

SOURCE: PURDAM GULCH CREEK TRIBUTARY: MASON CREEK

QUANTITY: 1.400 CFS

PRIORITY DATE: 03/01/1951

POINT OF DIVERSION:
T03N R01W S15 SESENE Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/01 11/15	1.400 CFS

PLACE OF USE: IRRIGATION Within ADA County

T03N R01W S15	SWNE	34.0	T03N R01W S15	SENE	36.0
---------------	------	------	---------------	------	------

70 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.

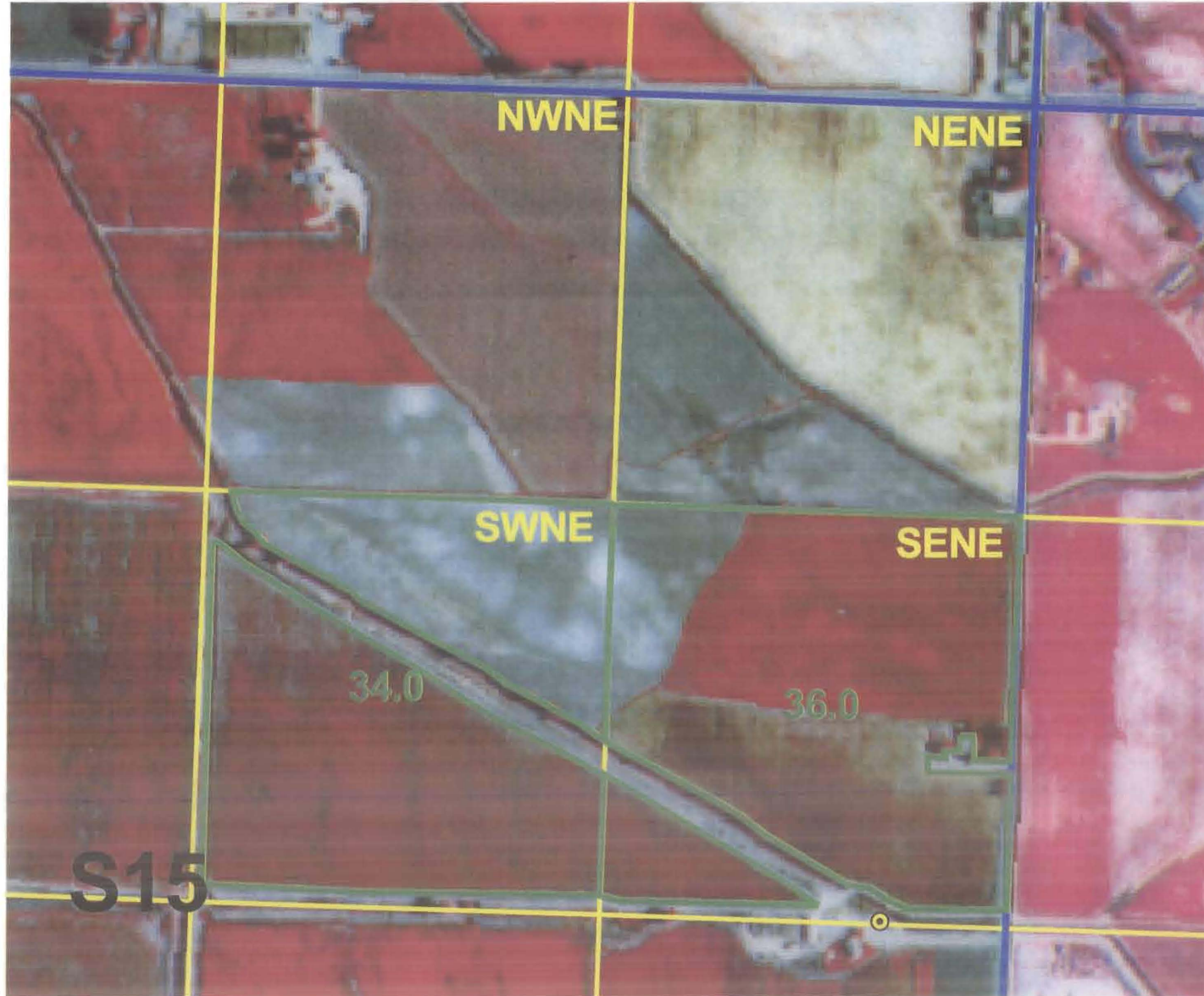
EXPLANATORY MATERIAL: Beneficial Use

Use of this right is combined with water from Nampa Meridian Irrigation District.

Idaho Department of Water Resources

**T03N, R01W,
S15**

Claim No: 63-27475
Prepared By: Kimberly Brown
Date: January 7, 2005



-  Place of Use
-  Section Lines
-  1/4 1/4

 Point of Diversion

Acres Irrigated = 70.0



1987 NAPP

0.04 0 0.04 0.08 Miles



IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-27475

WATER RIGHT NUMBER: 63-27475 ✓

Owner Type Name and Address

Original Owner GEORGE B DAVIS ✓

3440 DAVIS LN

MERIDIAN, ID 83642

Current Owner ✓ JANICEK PROPERTIES LLC ✓

1284 S GOSLING WAY

EAGLE, ID 83616

Priority Date: ~~06/20/1943~~ ✓ 3/01/1951

Basis: Beneficial Use ✓

Status: Active

Source

PURDAM GULCH CREEK ✓

Tributary

MASON CREEK ✓

Beneficial Use

IRRIGATION ✓

From To

3/15 to 11/15 ✓

Diversion Rate1.4 ~~1.600~~ CFS ✓Annual VolumeTotal Diversion: ~~1.600~~ CFS ✓

1.4

Location of Point(s) of Diversion

PURDAM GULCH CREEK

SE1/4SE1/4NE1/4 ✓

Sec. 15, Twp 03N, Rge 01W, B.M. ✓

ADA County ✓

Place of Use

IRRIGATION ✓

Twp	Rge	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
✓ 03N	01W	15																	✓

Total Acres: ~~60~~ ✓

70.0

Conditions of Approval:

34 AC 36 AC

Remarks:

- General Ownership changed by DB 4/16/2004

ADD W - Use combined with Nampa-Meridian Irr. District water.

Comments:Dates and Other Information:

Parcel No: S1215131760.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-27475

Claim Received Date: 6/18/1992

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

State or Federal: S

Owner Name Connector:

Water District Number:

Generic Max Rate Per Acre:

Generic Max Volume Per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Carey Act Number:

Mitigation Plan: False

Combined Use Limits:Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
----------------	---------------------------	-----------------	---------------------------	-----------------	---------------

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
----------------	------------------------	-----------------	-----------------

(in office review)

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION FIELD REPORT**

Prior to Field Exam

- ☒ Copy of Claim, claim has been signed, sealed, and dated by notary?
☒ Check fees paid \$90.00 (\$50.00 flat fee + \$80.00 = \$130.00, assuming that w.r. district paid some of fees.)
☐ Well logs (if needed)
☒ Copy of topo or NAPP
☒ Check of Govt. Lots, if needed, Govt. Plat/Tax lot information
☒ Check POD & POU overlap, see below – include overlapping right for exam
☒ Evidence of Priority – if none, talk with claimant

CLAIMANT INFORMATION – verify contact information is completeClaim No(s) A63-27475Owner: Janicek Properties, LLC Phone No. (208) 880-0328Current Address: 1284 S. Gosling Way, Eagle 83616

Property Address: ☒ No change NAME IS THE SAME
☐ NEW OWNER
 625 S. Ten Mile Rd. ☐ No change Address
 Meridian ☐ NEW ADDRESS
 83642 ☐ How long owned property?

Accompanied by: N/A**PRIORITY DATE**

- ☐ No change – Complete evidence submitted or not necessary
☐ Incomplete – Claimant should be asked when water was first used and submit proof of date.
☒ Priority date is acceptable/within mandatory filing dates?

Priority date, per claimant, is: 6/20/1943

(If priority date, based on your exam, seems questionable, explain below.)

The Affidavit, submitted by Jerry Taylor on 4/8/04, goes back to 1951. Therefore, I am recommending 3/1/1951 as the priority date.

Source: Purdum Gulch Creek Tributary to Mason Creek

- ☒ No Change – SAME SOURCE
☐ Source found is different than claimed:

POINT OF DIVERSION

- ☒ No change
☐ POD found is different than claimed:
☐ If different, when did POD change?

DIVERSION AND DELIVERY SYSTEM

Points of Diversion:

ID #	Govt Lot #	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks GPS ID

Description of diverting works

See Adjudication Field Report (6/15/04).

OVERLAP REVIEW

Other water rights with the same point of diversion: None

Does overlap add acres or uses to existing system, increase rate of flow or volume, or other? Explain:

WATER USES

- ☐ No change
☐ Different Uses

Use Irrigation From 3/1 To 11/15 Amount 1.4 CFS AFA
Use From To Amount CFS AFA
Use From To Amount CFS AFA

Season of use is 3/1 to 11/15.

70 AC
.02 cfs/acre
1.4 cfs

~~70 AC x 4.5 cfs/acre = 315.0 cfs of minimum~~
TOTAL VOLUME - Groundwater only

- ☒ Incomplete on claim, the total is, Amount CFS AFA
☒ Changes found, the new total is, Amount 1.4 CFS AFA
☐ More than 1" per Acre? Yes (claimant must complete excess flow sheet)

of minimum
surface water -
volume N/A

NON-IRRIGATION USES:

- ☐ No change
☐ Changes Exam found: Domestic # of homes Stock #
Types Additional comments:

None

PLACE OF USE:

- ☐ No Change
☒ Changes shown below:

Parcel No: 81215131760.

Place of Use			NE				NW				SW				SE				Totals
TWP	RGE	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
5N	11W	15			34	36													70

Overlap with other water rights: None

Does overlap increase rate of flow, volume, additional acres, different source for same acres? Explain:

Delivery System Narrative: See Adjudication Field Report (6/15/04).

Well or Diversion Identification No	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge size
GPS ID A-0002477					
2303436					
1380277					

GPS -

FLOW MEASUREMENTS:

Attach appropriate documents

NARRATIVE/REMARKS/COMMENTS

(OVER)

Use combined with Nampa-Meridian Irrigation District
water.

Parcel No: S1215131760.

AFTER EXAM THE FILE SHOULD CONTAIN:

- ☒ Completed claim checklist
- ☒ Photographs of POD's and POU
- ☒ GPS readings
- ☒ Completed map and or GIS layout showing POD's and POU

DATE EXAM CONDUCTED: 1.7.05 (in office review)

FIELD EXAMINER: Kimberly Brown

overlay review -

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM POD REVIEW REPORT
ADJUDICATION CLAIM NUMBER: 63-27475

01/07/2005

1

Water Right #	Type	Twp	Rge	Sec	QQ	Q	Lot	Source	Name
63-27475	Claim	03N	01W	15	SE	NE		PURDAM GULCH CREEK MASON CREEK	JANICEK PROPERTIES LLC

no overlap

overlap review -

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM POU REVIEW REPORT
ADJUDICATION CLAIM NUMBER: 63-27475

01/07/2005

1

Right #	Type	Twp	Rge	Sec	QQ	Q	Lot	Purpose of Use	Acres/Total	Name
27475	Claim	03N	01W	15	SW	NE		IRRIGATION	40/80	JANICEK PROPERTIES LLC
27475	Claim	03N	01W	15	SE	NE		IRRIGATION	40/80	JANICEK PROPERTIES LLC

no overlap

30

2546

2569

rdam

ROAD

Gulch

14

PIT

CORNAL

N. KUNA

23

2656

22

BM 2658

BLACK

1981 Orthophotograph

334-2348

2190

Idaho 8370

DEPARTMENT OF WATER

State of Idaho

#63-27475

26

SECTION I - FARM FIELD REPORT (NOTE: Grey Shaded Area to be Filled In by Reporter ONLY.)

SECTION II • OPERATOR'S CERTIFICATION

OPERATOR'S SIGNATURE

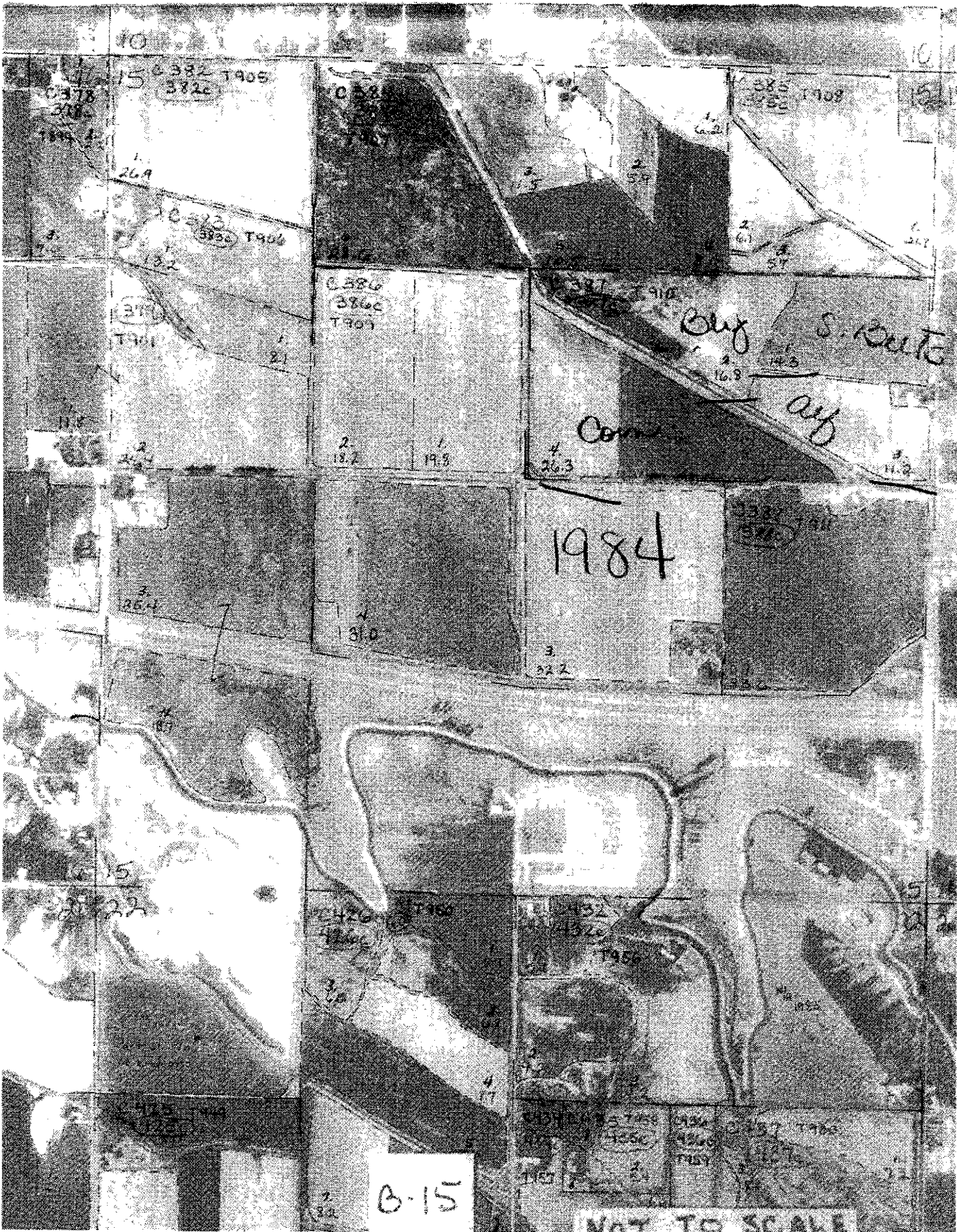
OPERATOR'S SIGNATURE
Brad Janicek

DATE _____

2-27-85

OPERATOR'S SIGNATURE

DATE _____



1984

Buy

S. Route

Comp

arb

B-15

NOT TO SCALE

NOTICE OF DETERMINED ACREAGE

FARM NO. 387
NAME AND ADDRESS
C Brad Janicek
6905 W. Ustick
Meridian, ID 83642

Ada Co. ASCS
5330 Morris Hill
Boise, ID 83706

NAME AND
ADDRESS OF
COUNTY ASCS
OFFICE

1984 3-1-85
CROP YEAR DATE OF MAILING

G.B. Davis - OW

1. Program Crops					2. Quota Crops				
CROP AND PERMITTED (Optional)		REPORTED ACREAGE	DETER- MINED ACREAGE	DIFFER- ENCE	CROP	ACREAGE ALLOT.	REPORTED ACREAGE	DETER- MINED ACREAGE	EXCESS ACREAGE
A		B	C	D	E	F	G	H	I
Wheat					ELS Cotton				
Barley		16.8	16.8	-	Tobacco (Flue Cured)				
Oats					Tobacco ()				
Corn		26.3	26.3	-	Tobacco ()				
Grain Sorghum					Tobacco ()				
Wheat Alf.		11.2	11.2	-	Peanuts (For Nuts)				DIFF.
Wheat Sugar Beets		14.3	14.3	-	Peanuts ()				
Designated Cons. Use									

IMPORTANT NOTICE - Read Carefully

- This notice of determined acreage shall constitute notice to all persons who as landlord, tenant, or sharecropper are interested in the crops on this farm.
- If you believe any acreage determined for this farm is not correct, you may have such acreage redetermined by filing a request for redetermination at the County ASCS Office within 15 days from the date of this notice, and making a cash deposit to cover the cost of redetermination. (Your deposit will be refunded if a significant error in the initial acreage determination is found.)
- For tobacco farms except Flue-Cured and Burley. If you wish to adjust the acreage to the extent indicated in column 2I, your intention to do so must be made known to the County Office within 15 days from the date of this notice. Also, your cash deposit to cover the cost of a farm visit must be made before any marketing.

6. REMARKS

Late filed report of acreage ground checked 3-1-85, acreages verified 2-27-85 with aerial flown 7-84.
Acreages verified as reported and will be used for history purposes.
Notice of Yields and Acreage Bases indicates applicable 1985 acreage bases.

NAME & ADDRESS

PROGRAM YEAR

SERIAL NO.

37

77 69

515 2 4.50

-15

1000

PHOTOZONES

U.S. DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service

MEASUREMENT SERVICE RECORD

NAME AND ADDRESS OF PERSON TO CONTACT

TELEPHONE NO.

FARM LOCATION

SECTION I - SERVICE REQUEST AND COST

1. KIND OF SERVICE REQUEST	2. PROGRAM CROP OR LAND USE	3. NO ACRES	4. NO PLOTS	5. COST	6. BASIC FARM RATE
Stake and Reference ☐					\$
Measurement after Planting ☐					\$
Remeasurement ☐					\$
OTHER (Specify)					\$
Verification					\$

8. PERSON MAKING REQUEST: I hereby agree to pay the cost of the service as requested.

SIGNATURE OF PERSON MAKING REQUEST

DATE _____

9. CASH RECEIPT

10. DEDUCTION FROM PROGRAM PAYMENT (MS Only)

PAYMENT RECEIVED FOR SERVICES REQUESTED

CK OR MO ☐ CASH ☐

SIGNATURE OF COUNTY OFFICE EMPLOYEE

DATE _____

I request that full payment in the amount indicated be deducted from the first wheat, feed grain or cotton payment due me.

MEASUREMENT SERVICE
CHARGE

SIGNATURE OF PERSON MAKING REQUEST

DATE _____

11. FOR REMEASUREMENT ONLY

12. SPECIAL INSTRUCTIONS TO REPORTER

REFUND FOR (Crop or service)

No Refund ☐

AMOUNT	CHECK NO.	DATE	APPROVAL	REPORTER NAME	DATE ISSUED	DATE RETURNED
--------	-----------	------	----------	---------------	-------------	---------------

SECTION II - RECORD OF MEASUREMENT SERVICE PERFORMED

TRACT NO.	FIELD NO.	CROP OR LAND USE	ACRES DETERMINED			Brly	Corn	S Beets	Alf		
			GROSS	DEDUCTIONS	NET						
13	14	15	16	17	18	19	20	21	22	23	24
T910	2	Barley/grn	16.8		16.8	16.8					
	4	Corn/grn	26.3		26.3		26.3				
	1	Sugar Beets	14.3		14.3			14.3			
	3	Alf.	11.2		11.2				11.2		
TOTALS			68.6		68.6	16.8	26.3	14.3	11.2		

REPORTER: All required determinations for this farm visit have been made in accordance with applicable procedures.

REPORTER

DATE _____

3-1-85

FOR COUNTY OFFICE USE





CONVERSATION MEMORANDUM

RE: Snake River Basin Adjudication Water Right No. A63-27475

January 14, 2005

Mr. Janicek called in response to the letter I sent him on January 7th. He is currently having the ASCS look in their archives for a crop report. According to Mr. Janicek, the parcel of land in question is "really gravelly" and often "set aside." As a result, it lays fallow every few years because it is so gravelly. However, Mr. Janicek believes it was watered in the 5-year period before 1987. He said he will write an affidavit and attach any documents the ASCS finds in order to provide evidence of this parcel's use.

Kimberly Brown
Senior Water Resource Agent
Western Region



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

January 7, 2005

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

JANICEK PROPERTIES LLC
1284 S GOSLING WAY
EAGLE ID 83616

RE: Snake River Basin Claim No: A63-27475

Mr. Janicek,

Since I received the evidence for your priority date and the field investigation for this claim has been completed, I was recently able to begin reviewing your claim.

During my review, it came to my attention that there appears to be a prolonged period of nonuse associated with the plot of land depicted on the attached 1987 aerial photograph; more specifically, the land outlined in green. I have also attached aerial photos from 1994, 2000, and 2003 that show the particular plot of land in question.

In order for me to recommend the acres outlined in green on the 1987 aerial photograph (the other acres surrounding this plot to the east and the south are not in question), it is necessary that you submit information showing use of this plot of land for irrigation purposes within the five-year period preceeding 1987. My supervisor suggested that NRCS records would suffice, or you may have other information you believe is sufficient.

Please submit this information by January 25, 2004. If you have any questions, please contact me at 334-2190.

Respectfully Submitted,

A handwritten signature in cursive script that reads 'Kimberly Brown'.

Kimberly L. Brown
Water Resource Agent
Adjudication Bureau

Enclosure: Notice of Claim A63-05048

NWNE

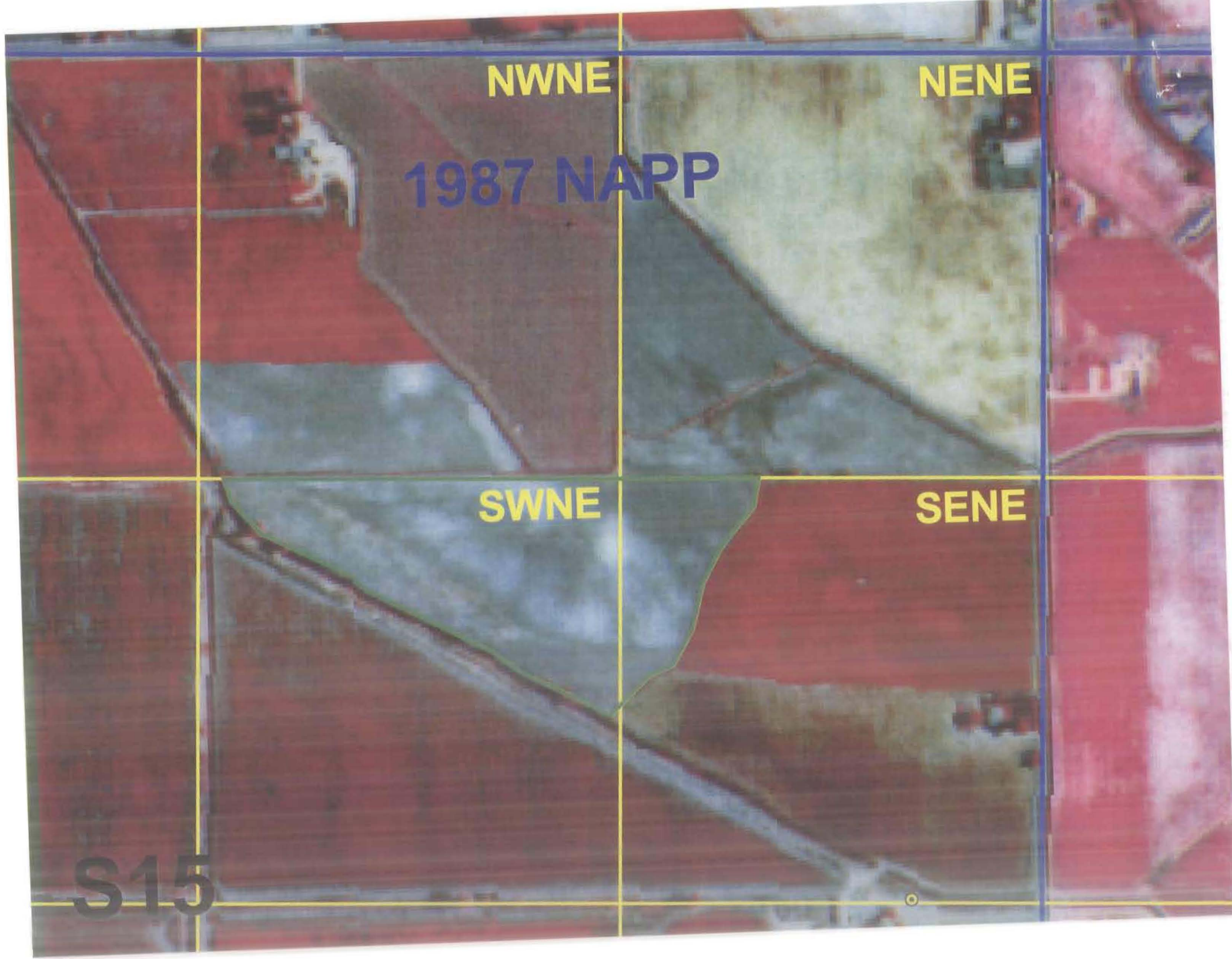
NENE

1987 NAPP

SWNE

SENE

S15



**Land Records**
[\[Previous Search\]](#) [\[New Search\]](#) [\[Print View\]](#)
Property Details for Parcel S1215131760

- [Main Page](#)
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General Information

Property Acres: 80.000
Zone Code: RUT
Primary Code Area: 242 Tax Districts
Group Type: SECT
Subdivision: 3N 1W 15
Section: 3N1W15

Property Description

S2NE4
 SEC 15 3N 1W


[Click to View Interactive Map](#)
Assessor Links

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- [Administration](#)
- [Information](#)
- [Appraisal](#)
- [Exemptions and Reductions](#)
- [Motor Vehicles](#)
- [Levy Rates](#)

Parcel Valuation Details

Assessment Roll	State Category Code	Acreage	Assessed Value	Valuation Method
Primary	10-IRRIGATED AG	73.000	\$68,700	INCOME
Primary	190-WASTE LAND	6.000	\$0	INCOME
Primary	100-HOMESITE ON AG	1.000	\$70,000	MARKET

Total Assessed Value: \$138,700

Parcel Valuation History

Assessed value for year 2004 \$138,700
 Assessed value for year 2003 \$215,200
 Assessed value for year 2002 \$209,400
 Assessed value for year 2001 \$208,300
 Assessed value for year 2000 \$183,000

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- [Treasurer](#)
- [Clerk/Auditor/Recorder](#)
- [Development Services](#)
- [Human Resources](#)

Property Characteristics
 Agriculture
 Land

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Land Records

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Agricultural

Land

Land Characteristics 1 for Parcel "S1215131760"

Residential Acres:	1.000
Commercial Acres:	0.000
Other Acres:	0.000
MLS Area:	1030 - NW Meridian
Street:	None
Utility:	Not Available
Water Source:	Not Available
Sewer:	Not Available
Sidewalks:	N
Curb-Gutters:	N
Topography:	Not Available
View:	Not Available
Water Influence:	None
Water Frontage Feet:	0
Corner:	N

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Agricultural

Land

Agriculture Characteristics 1 for Parcel "S1215131760"**Irrigated Acres:**

Capability Class 1:	0.0
Capability Class 2:	58.0
Capability Class 3:	0.0
Capability Class 4:	15.0

= 73 AC

Non-Irrigated Acres:

Capability Class 1:	0.0
Capability Class 2:	0.0
Capability Class 3:	0.0
Capability Class 4:	0.0

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- [Assessor Main Page](#)
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- [Motor Vehicles](#)
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Waste Acres:

Capability Class 8:	0.0
---------------------	-----

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Field Exam Date 6/15/04

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION FIELD REPORT

RECEIVED

JUL 13 2004

WATER RESOURCES
WESTERN REGION

Prior to Field Exam

- ☐ Copy of Claim, claim has been signed, sealed, and dated by notary?
- ☐ Check fees paid
- ☐ Well logs (if needed)
- ☐ Copy of topo or NAPP
- ☐ Check of Govt. Lots, if needed, Govt. Plat/Tax lot information
- ☐ Check POD & POU overlap, see below – include overlapping right for exam
- ☐ Evidence of Priority – if none, talk with claimant

CLAIMANT INFORMATION – verify contact information is complete

Claim No(s) 63-27475

Owner: BRAD JANICEK Phone No. _____

Current Address: 4325 W. CHINDEN, MERIDIAN ID 83642

- ☐ No change NAME IS THE SAME
- ☒ NEW OWNER BRAD JANICEK
- ☐ No change Address
- ☒ NEW ADDRESS _____
- ☐ How long owned property? _____

Accompanied by: BRAD

PRIORITY DATE

- ☒ No change – Complete evidence submitted or not necessary
- ☐ Incomplete – Claimant should be asked when water was first used and submit proof of date.
- ☐ Priority date is acceptable/within mandatory filing dates?

Priority date, per claimant, is: _____

(If priority date, based on your exam, seems questionable, explain below.)

Source: PURDAM GULCH CREEK Tributary to _____

- ☒ No Change – SAME SOURCE
- ☐ Source found is different than claimed: _____

POINT OF DIVERSION

- ☒ No change
- ☐ POD found is different than claimed: _____
- ☐ If different, when did POD change? _____

SITE TAG = A0002477

GPS = 2303436 #35
1380277

DIVERSION AND DELIVERY SYSTEM

Points of Diversion:

ID #	Govt Lot #	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks GPS ID
		SE	SE	NE	15	3N	1W	ADA	GPS + NAPE PHOTO

Description of diverting works

A PARMA WATERLIFTER INSTALLED IN A 36" VERTICAL C.M.P. STRUCTURE WHICH IS PLACED ALONG THE SIDE OF PURDAM GULCH CR. (SEE PHOTOS) PUMPS WATER INTO A CONCRETE LINED HEAD DITCH -

OVERLAP REVIEW

Other water rights with the same point of diversion: NAMPA-MERIDIAN I.D.

Does overlap add acres or uses to existing system, increase rate of flow or volume, or other? Explain:

WATER USES

☒ No change

☐ Different Uses

Use IRRIGATION From 3/15 To 11/15 Amount 1.6 CFS 4.5 AFA

Use _____ From _____ To _____ Amount _____ CFS _____ AFA

Use _____ From _____ To _____ Amount _____ CFS _____ AFA

TOTAL VOLUME - Groundwater only

☐ Incomplete on claim, the total is, Amount _____ CFS _____ AFA

☐ Changes found, the new total is, Amount _____ CFS _____ AFA

☐ More than 1" per Acre? Yes _____ (claimant must complete excess flow sheet)

NON-IRRIGATION USES:

☐ No change

☐ Changes Exam found: Domestic # of homes _____ Stock # _____

Types _____ Additional comments: _____

PLACE OF USE:

☐ No Change

☒ Changes shown below:

Place of Use			NE				NW				SW				SE				Totals
TWP	RGE	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	1W	15			37.6	37.6													75.2

Overlap with other water rights: _____

Does overlap increase rate of flow, volume, additional acres, different source for same acres? Explain: _____

Delivery System Narrative: PURDAM GULCH CREEK CARRIES WASTEWATER FROM FARMS ABOVE THIS FARM. I ALSO IS DELIVERY DITCH FOR SOME OF NAMPA-MERIDIAN I.D. LIVE WATER INCLUDING SOME FOR BRAD. BRAD PUMPS THIS CO-MINGLED WATER INTO A CONCRETE DITCH WHICH RUNS WEST ALONG THE SOUTH SIDE OF THE BORG. HE SAYS HE CAN ALSO PUMP WATER FROM THIS PUMP TO THE NORTH EAST CORNER OF BRAD. VIA A PORTABLE PIPELINE. NAMPA-MERIDIAN. HE CAN ALSO GET IRRIG WATER AT THE N.E. CORNER.

Well or Diversion Identification No GPS ID	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge size
A0002477	MAGNATEK	7.5	325GRSE	PARMA	8.01"
				WATERLIFTER	

FLOW MEASUREMENTS: HP=7.5
LIFT=10.5'
EFF=40%
$$GPM = \frac{(7.5)(40)(3960)}{10.5'} = 1131 GPM$$

$$4488 \text{ GPM/CFS} = \underline{\underline{2.52 \text{ CFS}}}$$

Attach appropriate documents

NARRATIVE/REMARKS/COMMENTS

I CALLED BRAD ON 5/26/04 - NO ANSWER - LEFT MESSAGE TO CALL. BRAD CALLED ON 5/29/04 AND I DISCUSSED WITH HIM THE VARIOUS ELEMENTS OF THE WATER RIGHTS. THEY PUMP WATER FROM THE PURDAM GULCH CREEK, LOCATION IS AS SHOWN ON THE AERIAL PHOTO. THE WATER GOES INTO A CONCRETE LINED DITCH ALONG THE SOUTH SIDE OF FARM (SEE AERIAL PHOTO). THE CONCRETE DITCH IS A 14" DITCH @ 3" FREE BOARD THE CAPACITY IS 2.5 CFS @ 0.0017% SLOPE THEY CAN ALSO PUMP WATER FROM THE PUMP TO THE N.E. CORNER USING PORTABLE ALUMINUM PIPE. THEY HAVE USED A GATED PIPE ALONG THE NORTHSIDE OF FARM TO IRRIGATE THE AREA NORTH OF PURDAM GULCH CREEK. THIS YEAR (2004) EVERYTHING NORTH OF PURDAM GULCH CREEK IS IN FALLOW. THE NAMPA-MERIDIAN HEADGATE AT THE N.E. CORNER IS OPERABLE.

ACTUAL FIELD EXAMINATION WAS CONDUCTED ON 6/15/04
WRITE-UP + ADDITIONAL DATE 6/21/04, 7/9/04

AFTER EXAM THE FILE SHOULD CONTAIN:

- ☐ Completed claim checklist
- ☐ Photographs of POD's and POU
- ☐ GPS readings
- ☐ Completed map and or GIS layout showing POD's and POU

DATE EXAM CONDUCTED: 5/29/04, 6/15/04, 7/9/04

FIELD EXAMINER: Burke H. Scholten

Idaho Department of Water Resources

1987 Napp Photo

Claim Number: 63-27475

Legal: T3N, R1W, S15

Reviewed By:

-  Point of Diversion
-  Place of Use
-  Section Lines
-  Quarter Quarter Lines

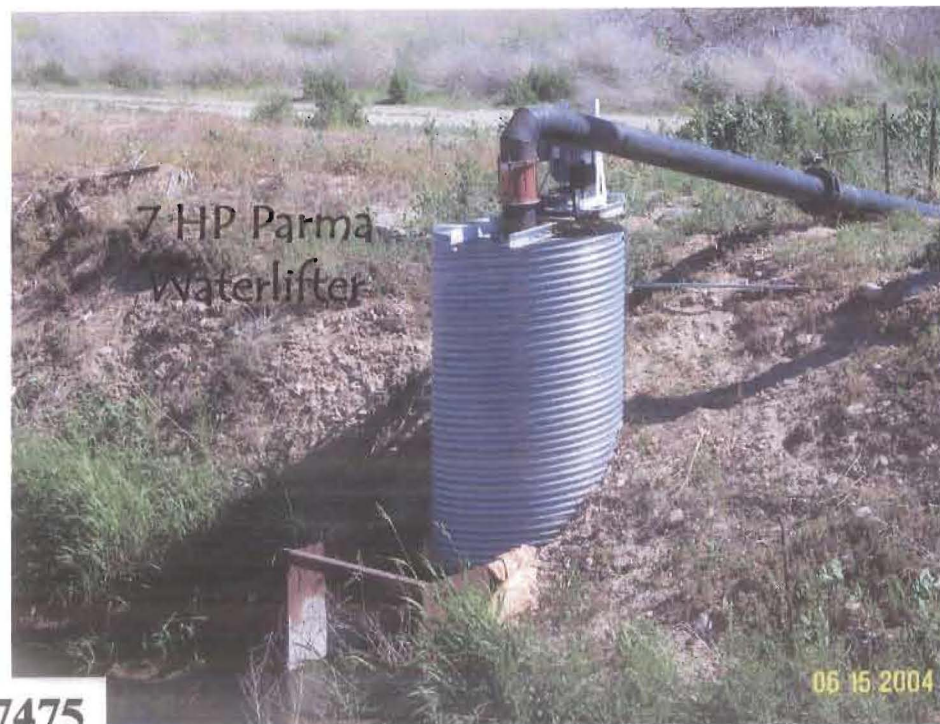
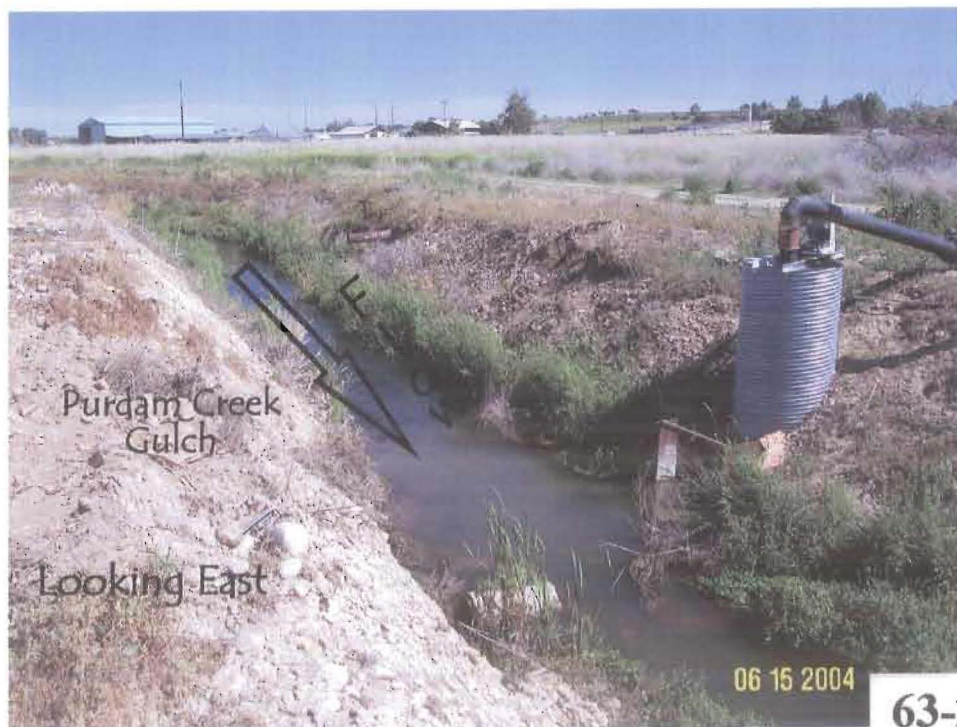


0 0.25 0.5 Miles



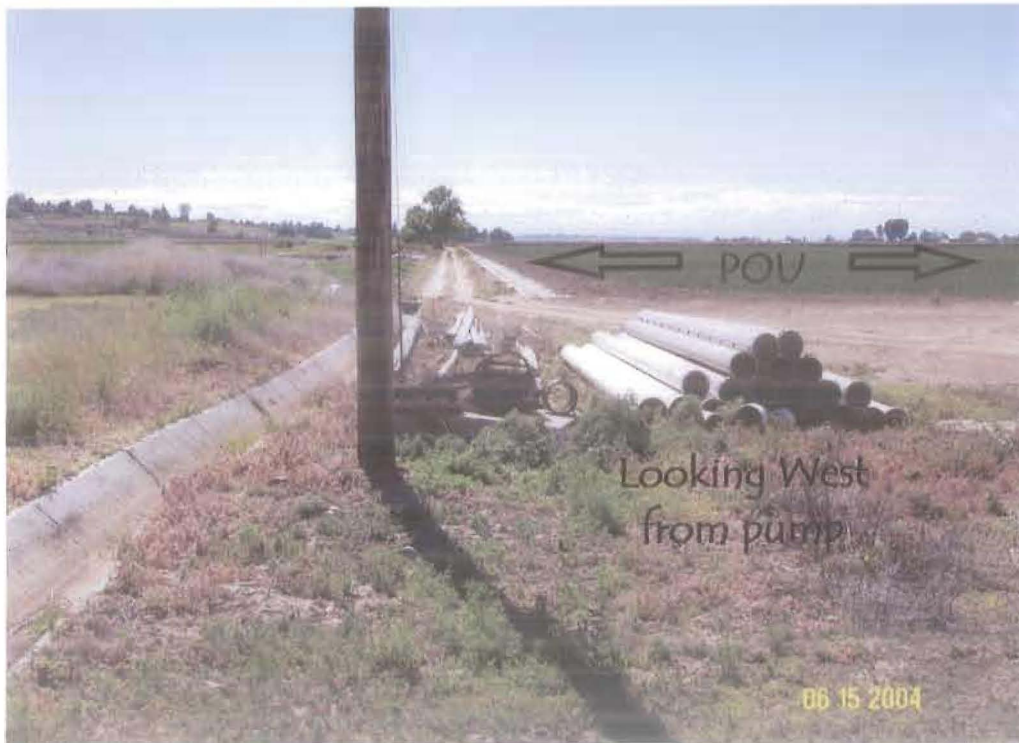
Janicek

1 1/2" | 1320
880' | 14





63-27475



HYDRAULICS: Capacity of Concrete Lined Canals - Normal Flow

$b = 1.0$
 $n = 0.014$
 $z = 1.0$

UNSTABLE ZONE $0.7 S_c < S_o < 1.3 S_c$

$$\text{Freeboard} = 0.2 H_e + 0.25 d_c \left[1 - 11.1 \left(\frac{S_o}{S_c} - 1 \right)^2 \right]$$

UNIFORM FLOW $V = \frac{1.486}{n} r^{2/3} S^{1/2}$

Freeboard = 0.2 H_e

V = mean velocity ft./sec.

r = hydraulic radius ft.

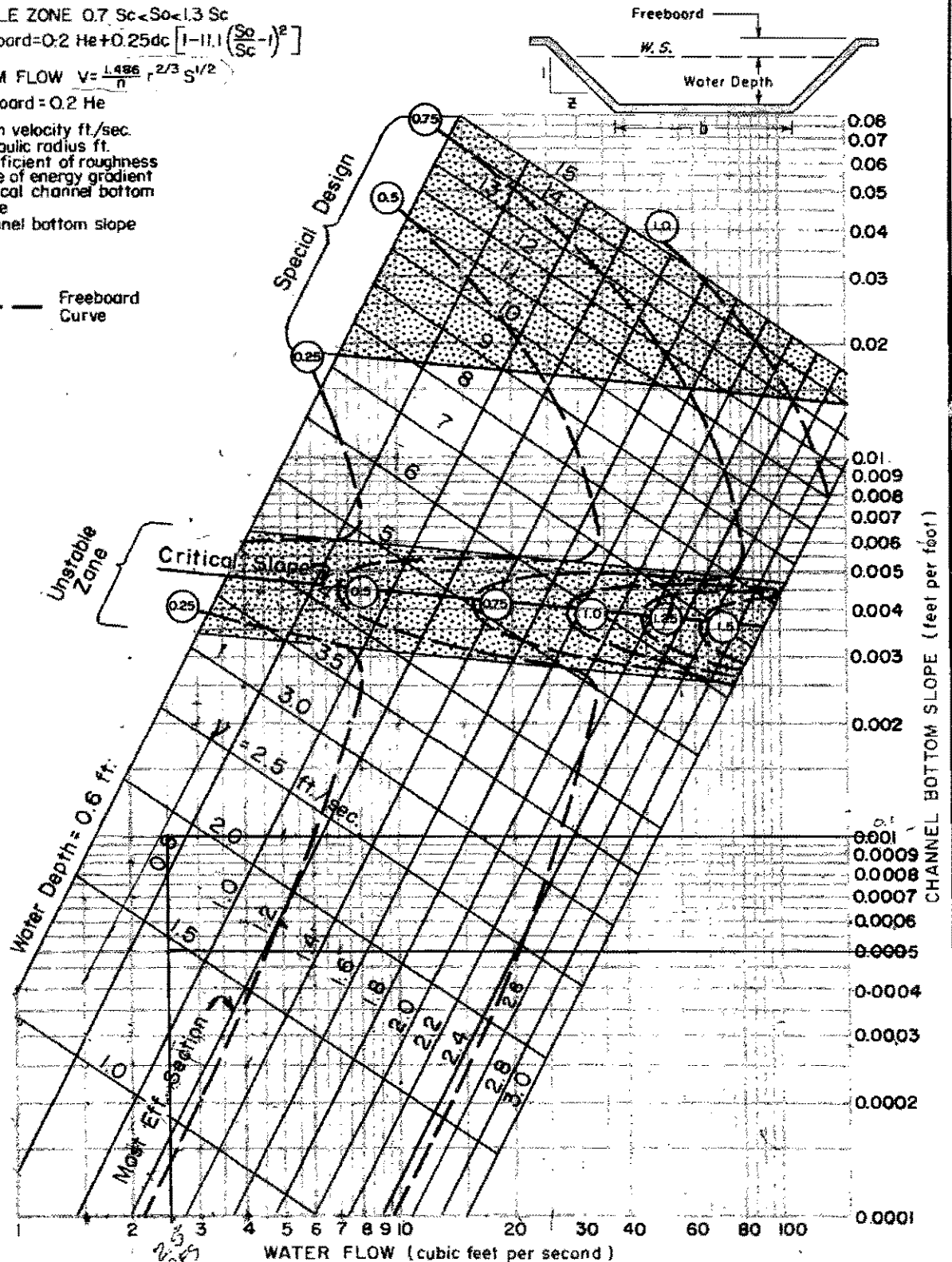
n = coefficient of roughness

S = slope of energy gradient

S_c = critical channel bottom slope

S_o = channel bottom slope

0.25 — — — Freeboard Curve



REFERENCE:

U. S. DEPARTMENT of AGRICULTURE
SOIL CONSERVATION SERVICE
 ENGINEERING and WATERSHED PLANNING UNIT
 PORTLAND, OREGON

Sheet 3 of 9
 Date: November, 1956

Drawing No. 7-L-20151

REVISED 5-'81

63-27475

gave Change^{4.16}
in Ownership &
Address forms
to Denise 4.16.14

Current owner is: Brad Janicek

~~XXXXXXXX~~

888-5565

cell # 880-0328

CALLS
5120
1750
311
110514
110514

I believe^(not sure) the location of the property is:
625 S. Ten Mile Rd, Meridian

* Verify that system has a capacity of ^{2.5%} 1.6 cfs.

- Verify source - Pordam Gulch creek. OK

- GPS & verify location of POD on enclosed
aerial photo. OK

- Is right supplemented with irrigation district water?
from Nampa-Meridian Irr. District? Yes
any others? NO

Bruck's notes

OVER →



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

FAX COVER SHEET

DATE: July 7, 2004 FROM: Himberly Brown
TO: Kristin Bjorkeman
RE: Claim # A63-27475 Janicek

Kristin, if you want to receive all correspondence
for this water right, please file a Notice of

TOTAL PAGES SENT: _____ + cover sheet Appearance with our dept.

INTERNET SEARCH OF IDWR INFORMATION: WELL LOGS, WATER RIGHTS, SNAKE RIVER BASIN ADJUDICATION ETC.

You can search for IDWR records on the Internet at www.idwr.state.id.us

Look for "Top Picks" on the home page.

For Water Right &/or Adjudication information, click "Adjudication & Water Rights Search (text based)" for best results. The best starting point in your search is to use the "Where" tab under that site and enter the township, range, section (and maybe $\frac{1}{4}$ or $\frac{1}{4}$ of the section) for the property in question. Be sure to choose "Point of Diversion" or "Place of Use" depending on the information you need ("both" means diversion and use are within identical search parameters, not that either are within the parameters). It is better to do a broader search first instead of a narrow search. A narrow search would include a street address or person's name, for example, and might miss the information you are seeking.

For Well Log information, click "Well Construction Info Search." Again, use a broader search at first such as township, range and section. Results will list information about the $\frac{1}{4}$ $\frac{1}{4}$ location in a section. You can narrow your search after seeing the initial results. Many well logs have been scanned and are available on the Internet.

Forms, Rules and Statutes can be found under "Top Picks."

Whatever you are searching for, try a broad search first and narrow the search as needed. If you cannot find any information or have trouble interpreting the information, contact the IDWR staff person on duty each day. This person is called the "office day" person and is available to provide general assistance. Call the office day person at 208-334-2190 between the hours of 8 and 5 Monday through Friday.

Your cooperation in using the Internet is appreciated. Your help in asking for the "office day" person for general help instead of a particular IDWR staff member helps us improve our efficiency and provide better, more cost effective service to the public. Thank you.



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 16, 2004

JANICEK PROPERTIES LLC
1284 S GOSLING WAY
EAGLE ID 83616

Re: Notice of Claim to a Water Right No. 63-27475

Dear Claimant(s):

Enclosed is a copy of the above referenced claim(s), which reflect the change in ownership of the land and appurtenant water rights, covered under the original filing.

Please note that the enclosed Notice of Claim to a Water Right is not a final determination of your water right. This claim was filed during claims taking in the Snake River Basin Adjudication (SRBA) and has not yet been verified by this Department. Water rights are established and maintained by beneficial use of water for the uses designated on this claim form dating back to the priority date listed. This claim will be investigated, verified and recommended to the SRBA Court for court decree sometime in the near future. You will be notified prior to the beginning of any verification of this water right.

Thank you for your patience and cooperation, as we have had several water right changes to process. If you have any questions concerning the enclosed claim, please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Denise Buffington".

Denise Buffington
Office Specialist 1
Adjudication Section
Western Region Office

DB: db

Enclosure

WILLIAM R. SNYDER & ASSOCIATES, P.A.

ATTORNEYS AND COUNSELORS

KRISTIN E. BJORKMAN
MARK D. PERISON*
WILLIAM R. SNYDER

*Admitted in Idaho
and California

520 WEST FRANKLIN STREET, UPPER LEVEL
BOISE, IDAHO 83702

(208) 336-9080 – TELEPHONE
(208) 343-4539 – FACSIMILE

MAILING ADDRESS:
POST OFFICE BOX 2338
BOISE, IDAHO 83701-2338

www.wrslegal.com

April 15, 2004

Kimberly Brown
Idaho Dept. of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

RECEIVED

APR 16 2004

WATER RESOURCES
WESTERN REGION

Re: Water Right #A63-27475

Dear Ms. Brown:

This letter will confirm our discussions on April 14, 2004. My understanding is that some evidence is needed to show vested title in Janicek Properties, LLC in order for the water right to be placed in the name of Janicek Properties, LLC.

I am enclosing copies of the (1) Grant Deed by Grantors Bradley J. Janicek and LouAnn Janicek to Grantee Janicek Properties, LLC, (2) Commitment for Title Insurance where title is vested in Richard Davis, as his separate estate, (3) Agreement for Purchase/Sale of Real Property between Richard G. Davis and E. Joanne Davis and Bradley J. Janicek and LouAnn Janicek, and (4) Deed of Distribution by Personal Representative, wherein the Grantor, George B. Davis as Personal Representative of the Estate of Doris N. Davis distributed the Property to Grantee George B. Davis. This information should aid you in placing the water right in the name of Janicek Properties, LLC.

Further, it is my understanding that if the information provided in this packet does not suffice as complete evidence of either (1) the claimed water right priority date by Mr. Janicek or (2) the current ownership of the Property, that someone from your department will contact me. I also understand that there is no deadline for turning in the information regarding the priority date of the water right or current ownership of the Property. However, if you request additional information, I will obtain the information and send it to you as soon as possible after your request.

Please ensure that these are placed in the appropriate file to support the Janicek water right claim.

Thank you for your courtesy and assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristin E. Bjorkman". The signature is fluid and cursive, with the first name "Kristin" and last name "Bjorkman" clearly distinguishable.

Kristin E. Bjorkman

KEB
encl:

COPY

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

Wm. J. Markis
RECORDED - REQUEST OF

GRANT DEED

DEPUTY

2001 SP 28 AM 10:55

101100063

FOR VALUE RECEIVED, BRADLEY J. JANICEK and LOUANN JANICEK, as Grantor, do hereby grant, bargain, sell and convey unto JANICEK PROPERTIES, L.L.C., an Idaho limited liability company, as Grantee, whose current address 1284 S. Gosling Way, Eagle, Idaho, 83616, the following described premises in Ada County, Idaho, to-wit:

SE 1/2 NE 1/4, Section 15, 3N, 1W of the Boise Meridian,
Ada County, Idaho.

TO HAVE AND TO HOLD The said premises, with their appurtenances, unto the said Grantee, and said Grantee's heirs and assigns, forever. This Grant is subject to all encumbrances made or suffered by the Grantor, reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that Grantor(s) will warrant and defend the same from all lawful claims whatsoever.

DATED This 28 day of September, 2001.

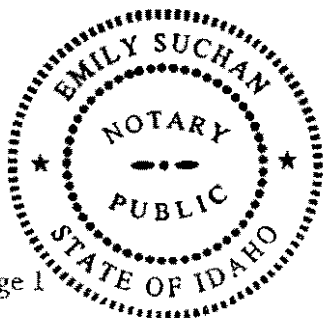
Bradley J. Janicek
Bradley J. Janicek

LouAnn Janicek
LouAnn Janicek

STATE OF IDAHO)
 : ss.
County of Ada)

On this 28 day of September, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared Bradley J. Janicek, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

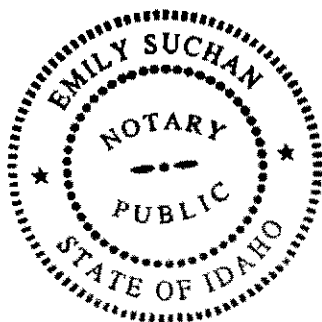


Emily Suchan
Notary Public for Idaho
Residing at Meridian, ID
My comm. exp.: 08/25/06

STATE OF IDAHO)
 : ss.
County of Ada)

On this 28 day of September, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared LouAnn Janicek, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Emily Suchan
Notary Public for Idaho
Residing at Meridian, ID
My comm. exp.: 08/25/06

COMMITMENT FOR TITLE INSURANCE
PIONEER TITLE COMPANY OF ADA COUNTY (208)373-3700
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
SCHEDULE A

RECEIVED

APR 16 2004

WATER RESOURCES
WESTERN REGION

File Number: P149250

1. Effective Date: JUNE 7, 1996 as of 7:30 A.M.

PIONEER TITLE COMPANY
8151 W. RIFLEMAN
ATTN: KATHY COONTZ (373-3619)

WEST ONE BANK
607 E. CLEVELAND BLVD; CALDWELL
ATTN: JOHN DERGIN (455-3624/(F)454-1587)

PIONEER 1031 COMPANY
8151 W. RIFLEMAN
ATTN: ROB ONNEN

TITLE INQUIRIES SHOULD BE DIRECTED TO:
JOHN POOLE
SR. TITLE OFFICER (PHONE 373-3660)
8151 W. RIFLEMAN
BOISE, ID 83704

2. Policy or Policies to be issued:

A. ☒ ALTA Owner's Policy, (4-6-90) ☒ Standard Coverage ☐ Extended coverage

Amount \$295,000.00
Premium \$1140.00

Proposed Insured: BRADLEY J. JANICEK AND LOU ANN JANICEK

B. ☒ ALTA Loan Policy, (4-6-90) ☐ Standard Coverage ☒ Extended coverage

Amount \$163,000.00
Premium \$263.20

END 8.1 \$10.00
END 100/116 \$25.00

Proposed Insured: WEST ONE BANK, IDAHO

3. The estate or interest in the land described or referred to in this Commitment and covered herein is:

FEE SIMPLE

4. Title to the fee simple estate or interest in said land is at the effective date hereof vested in:

RICHARD DAVIS, AS HIS SEPARATE ESTATE

5. The land referred to in this Commitment is described as follows:

THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 3 NORTH,
RANGE 1 WEST, BOISE MERIDIAN, ADA COUNTY, IDAHO.

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B - SECTION I

File Number: P149250

REQUIREMENTS

The following are the requirements to be complied with:

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to wit:

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B - SECTION 2

File Number: P149250

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

- A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records, or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
- B. General Exceptions:
- (1) Rights or claims of parties in possession not shown by the public records.
 - (2) Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey or inspection of the premises including, but not limited to, insufficient or impaired access or matters contradictory to any survey plat shown by the public records.
 - (3) Easements, or claims of easements, not shown by the public records.
 - (4) Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
 - (5) (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
 - (6) Taxes or special assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

*PARAGRAPHS 1,2,3,4,5 AND 6 WILL NOT APPEAR AS PRINTED EXCEPTIONS ON EXTENDED COVERAGE POLICIES, EXCEPT AS TO SUCH PARTS THEREOF, WHICH MAY BE TYPED AS A SPECIAL EXCEPTION IN SCHEDULE B-SECTION 2.

- C. Special Exceptions:
1. GENERAL TAXES FOR THE YEAR 1996, WHICH ARE LIENS, ARE NOT YET DUE AND PAYABLE.
 2. ANY, RIGHT OR INTEREST IN ANY MINERAL, MINERAL RIGHTS, OR RELATED MATTERS, INCLUDING BUT NOT LIMITED TO OIL, GAS, COAL, AND OTHER HYDROCARBONS.

CONTINUED

3. AN EASEMENT CONTAINING CERTAIN TERMS, CONDITIONS AND PROVISIONS AFFECTING A PORTION OF SAID PREMISES AND FOR THE PURPOSES STATED HEREIN.
FOR: POWER LINE EASEMENT
IN FAVOR OF: IDAHO POWER COMPANY
RECORDED: DECEMBER 23, 1974
INSTRUMENT NO.: 909785
AFFECTS: BEGINNING AT THE EAST QUARTER CORNER OF SECTION 15, TOWNSHIP 3 NORTH, RANGE 1 WEST, BOISE MERIDIAN; THENCE
WEST ALONG NORTH SIDE OF HALF SECTION LINE A DISTANCE 500 FEET; THENCE
NORTH 30 FEET; THENCE
EAST TO COUNTY ROAD PROPERTY LINE
4. RIGHTS OR CLAIMS TO RIGHTS OF WAY FOR DITCHES, CANALS, LATERALS OR SLOUGHS AS THE SAME MAY EXIST ON, OVER OR ACROSS SAID PREMISES.
5. RIGHTS OF THE PUBLIC TO PORTIONS OF SAID PREMISES, IF ANY, WHICH MAY LIE WITHIN THE RIGHT OF WAY FOR TEN MILE RD.
AS DISCLOSED BY VARIOUS INSTRUMENTS OF RECORD.
6. UNRECORDED LEASEHOLDS, IF ANY, RIGHTS OF PARTIES IN POSSESSION OTHER THAN THE VESTES HEREIN, RIGHTS OF SECURED PARTIES UNDER FINANCING STATEMENTS AS TO PERSONAL PROPERTY LOCATED ON THE PREMISES HEREIN AND THE RIGHTS OF TENANTS TO REMOVE TRADE FIXTURES.
7. JUDGMENT FOR THE AMOUNT HEREIN STATED AND OTHER AMOUNTS DUE.
CREDITOR: ACTION COLLECTION SERVICE, INC., AN IDAHO CORPORATION
DEBTOR: RICHARD C. DAVIS
AMOUNT: \$394.76
CASE NO.: CVOC9504606M
RECORDED: OCTOBER 6, 1995
INSTRUMENT NO.: 95073430
ATTORNEY FOR CREDITOR: PETER D. SHEARER
THE LIEN OF SAID JUDGMENT DEPENDS UPON THE IDENTITY OF THE JUDGMENT DEBTOR WITH: RICHARD DAVIS
N/A
8. IF THE PERSON MENTIONED IN SCHEDULE A, PARAGRAPH 4, IS PRESENTLY MARRIED, THE SPOUSE MUST EXECUTE ANY CONVEYANCE OR ENCUMBRANCE OF THE SUBJECT PROPERTY PURSUANT TO REQUIREMENTS OF CHAPTER 10, TITLE 55, IDAHO CODE, RELATING TO HOMESTEADS
OR WE MUST BE FURNISHED SATISFACTORY PROOF THAT:
A. THE SUBJECT PROPERTY IS NOT VESTEE'S OR THEIR SPOUSE'S PRINCIPAL RESIDENCE
OR
B. PROOF THAT THE VESTED OWNER IS NOT MARRIED
9. POSSIBLE MATTERS RELATING TO GENERAL EXCEPTIONS PARAGRAPHS 1 THRU 6, HEREIN IN CONNECTION WITH ANY EXTENDED COVERAGE POLICY SHOWN IN SCHEDULE A TO BE ISSUED. ADVERSE MATTERS IF ANY, WILL BE SHOWN IN A SUPPLEMENTAL REPORT TO THIS COMMITMENT, OR ON AN UPDATED COMMITMENT, AND WILL BE SHOWN AS SPECIAL EXCEPTIONS IN ANY POLICY TO BE ISSUED UNLESS CLEARED TO THE SATISFACTION OF THE COMPANY.

END OF EXCEPTIONS

CONTINUED

NOTE: IT APPEARS THAT THE LEGAL DESCRIPTION OF THE PROPERTY DESCRIBES MORE THAN 20 ACRES. IF A DEED OF TRUST IS ANTICIPATED TO BE USED TO SECURE THE FORTHCOMING DEBT, WE RECOMMEND THAT YOU CONSULT WITH YOUR ATTORNEY AND IN PARTICULAR, WITH REFERENCE TO SECTION 45-1502 OF THE IDAHO CODE WHICH PROVIDES IN PART THAT A DEED OF TRUST MAY BE USED TO SECURE A DEBT IN REAL PROPERTY "NOT EXCEEDING TWENTY (20) ACRES."

NOTE: FOR REFERENCE PURPOSES ONLY.
THE ADDRESS OF THE PROPERTY IS:
625 TEN MILE RD.
MERIDIAN, ID 83642

NOTE: GENERAL TAXES FOR THE YEAR 1995, WHICH WERE LIENS, IN THE ORIGINAL SUM OF \$1693.92, ARE PAID. PARCEL NO. 242S1215131760

NOTE: THE ABOVE AMOUNT OF TAXES DOES NOT REFLECT A HOME OWNERS EXEMPTION. ANY NEW BUYER MUST APPLY TO THE COUNTY ASSESSOR'S OFFICE FOR SAID EXEMPTION.

NOTE: THERE IS NO NOTICE OF RECORD AND THEREFORE NO SEARCH HAS BEEN MADE FOR ANY UNPAID ASSESSMENTS, CHARGES OR FEES FOR SEWER, WATER, GARBAGE, IRRIGATION AND OTHER POSSIBLE UTILITY SERVICES.

NOTE: IF THE PROPOSED INSURED UNDER THE POLICY TO ISSUE HAS ANY QUESTIONS CONCERNING THE COVERAGE OR EXCLUSIONS FROM COVERAGE, THE COMPANY WILL BE PLEASED TO PROVIDE AN EXPLANATION.

NOTE: PURSUANT TO THE STATE OF IDAHO INSURANCE REGULATIONS, A CANCELLATION FEE IS TO BE CHARGED ON ALL CANCELLED ORDERS. UNLESS OTHERWISE ADVISED, ORDERS WILL BE CONSIDERED CANCELLED SIX MONTHS AFTER THE EFFECTIVE DATE ON THE COMMITMENT. THE AMOUNT OF THE FEE ASSESSED SHALL BE IN ACCORDANCE WITH OUR RATE FILING WITH THE IDAHO DEPARTMENT OF INSURANCE.

FAXED
11:26 AM
LF 06-26-96

AGREEMENT FOR PURCHASE/SALE OF REAL PROPERTY

THIS AGREEMENT is made and entered into this 25th day of March, 1996, and is by and between Richard G. Davis and E. Joanne Davis, husband and wife, hereinafter referred to as "Seller", and Brad J. Janicek and LouAnn Janicek, husband and wife, hereinafter referred to as "Buyer".

WITNESSETH:

In consideration of the earnest money paid by buyer to Seller, and the mutual benefits to be received by each party, the parties agree as follows:

1. Description of property: Seller agrees to sell all of his right, title, and interest in and to that certain parcel of real property described below to Buyer, and Buyer agrees to purchase said real property from Seller. That property is legally known as:

SE 1/2 NE 1/4, Section 15, 3N, 1W of the Boise Meridian, Ada County, Idaho;

Which shall include all outbuildings, residences, ditches and ditch rights, water rights, subsurface rights, all appurtenances and attachments, which are all jointly hereinafter referred to as "the premises".

2. Purchase price: Buyer agrees to pay to Seller the total sum of Two hundred ninety-five thousand two-hundred fifty dollars (\$295,250.00), to be paid as follows:

(a) The cash down payment of two hundred seventy thousand dollars (\$270,000) (which includes the three thousand dollars (\$3,000.00) earnest money paid by Buyer to Seller at the execution of this Agreement); and

(b) The sum of Twenty five thousand two hundred fifty dollars (\$25,250.00) payable by a mortgage note to Seller secured by a second mortgage on the premises. Said note shall bear interest at the rate of 7% per annum, and shall be amortized over a period of five years, and shall be payable in equal annual installments of principal and accrued interest. The maker shall have the unrestricted right of prepayment.

3. Buyer's contingencies. Buyer's agreement to purchase the premises from Seller is contingent upon the following events:

(a) That Buyer shall obtain acceptable financing to complete the purchase.

(b) Seller shall be able to deliver good and merchantable title to the premises and that title is free and clear of all liens and encumbrances other than 1996 accruing property taxes.

4. Closing: The parties shall make good faith efforts to close this sale on or before July 1, 1996. The closing agent shall be Pioneer Title company, and the parties agree to divide the closing costs as follows:

(a) Seller alone shall pay the cost of a policy of title insurance, insuring good title to Buyer, for the total amount of the purchase price.

(b) Buyer alone shall pay all points, fees, or costs required by lender as Buyer's cost incurred in Buyer's obtaining financing, except the cost of any environmental survey required, which shall be split.

(c) All other costs, including, but not limited to, recording fees and fees of the closing agent, shall be borne equally between Seller and Buyer.

5. Taxes, assessments, and insurance: The closing agent shall pro-rate the real property taxes and pertinent assessments for water for 1996, according to 1995 assessments, to and through the date of closing. All real property taxes and assessments owing, including any penalties and interest, through the year ending 1995 shall be paid by Seller, and may be deducted by the closing agent from Seller's net proceeds. It is understood that Buyer will obtain their own policy of hazard insurance and assume all risk of loss from the date of closing forward. Closing agent shall make all other adjustments commonly made by closing agents.

6. Condition and possession: The sale of this property is "as is" and is without warranty except as to title and environment quality. Seller warrants that there are no charges or costs against the property arising from public services such as sewer, water, electrical, or otherwise, or if such charges exist that Seller will pay them through the closing agent through the date of Buyer's possession.

Seller agrees that Buyer shall have possession of the premises at the date of closing.

7. Earnest money: As consideration for this Agreement, Buyer hereby delivers to Seller the sum of three thousand dollars (\$3,000.00) earnest money. In the event that Buyer fails to close and consummate the sale according to the terms of this Agreement, then fifteen hundred (\$1500.00) of the total earnest money shall be retained by Seller, not as a forfeiture but to defray the costs and expenses Seller has incurred and the balance returned to the Buyer. In the event of a failed contingency or a failure by Seller to otherwise perform, then Seller shall return all earnest money to Buyer upon demand.

8. Title and title insurance: At closing Seller shall execute and deliver to Buyer a warranty deed conveying good and merchantable title to Buyer, which shall be subject only to a first mortgage in favor of Buyer's lender, and 1996 taxes and Seller's second mortgage. Seller shall purchase for Buyer an owners' policy of title insurance, which policy shall insure good and merchantable title as required by this Agreement.

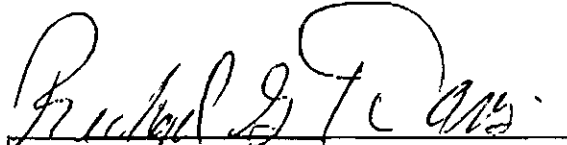
9. Default or breach: In the event either party to this Agreement shall breach any covenant or warranty or shall be in default of a obligation to the other, that party shall pay, in addition to damages or other loss occasioned by said breach or default, reasonable attorney fees to the non-defaulting party.

10. Entire agreement: This document shall contain the entire agreement of the parties. All conversations, oral representations, or statements shall have no further force and effect. Any modification or change to this Agreement shall be valid only if it is memorialized in writing and signed by both parties hereto. This Agreement shall not be recorded, and shall survive the closing documents only as to those matters not addressed in any closing document.

Seller further understands that the attorney who has drawn this Agreement has acted as the attorney for Buyer alone, and in the event Seller has any questions concerning the meaning of any of the terms of this Agreement, he is advised to retain independent counsel. The execution of this Agreement by Seller indicates his understanding and acceptance of all terms and conditions.

IN WITNESS WHEREOF the parties hereto have executed this Agreement this day and year first above written.

Seller:


Richard G. Davis

Buyer:


Brad J. Janicek


E. Joanne Davis


LouAnn Janicek

STATE OF OREGON)
) ss.
County of Jackson)

On this 3rd day of ^{April}~~March~~, 1996, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard G. Davis, known to me to be the person who executed the within and foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

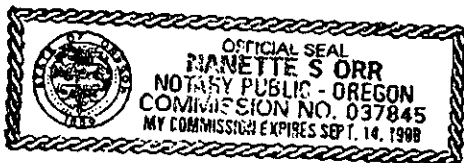


Nanette Orr
Notary Public for Oregon
Residing at: 4000 S Pacific Hwy Medford 97501
My Comm. Exp.: Sept. 14, 1998

STATE OF OREGON)
) ss.
County of Jackson)

On this 3rd day of ^{April}~~March~~, 1996, before me, the undersigned, a Notary Public in and for said Sate, personally appeared E. Joanne Davis, known to me to be the person who executed the within and foregoing instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



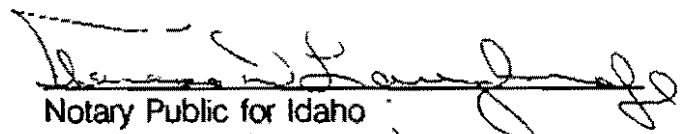
Nanette Orr
Notary Public for Oregon
Residing at: 4000 S Pacific Hwy Medford OR
My Comm. Exp.: September 14, 1998

STATE OF IDAHO)
) ss.
County of Ada)

On this 26th day of March, 1996, before me, the undersigned, a Notary Public in and for said State, personally appeared Brad J. Janicek, known to me to be the person who executed the within and foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

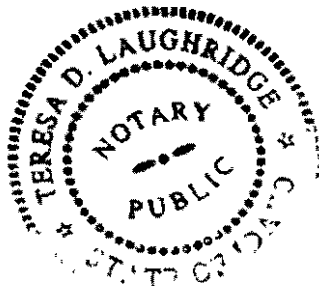


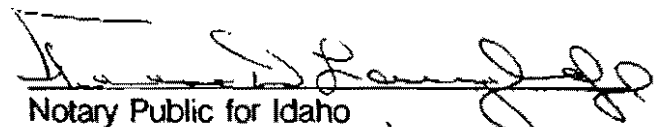

Notary Public for Idaho
Residing at: Meridian
My Comm. Exp.: 8-17-2000

STATE OF IDAHO)
) ss.
County of Ada)

On this 26th day of March, 1996, before me, the undersigned a Notary Public in and for said State, personally appeared LouAnn Janicek, known to me to be the person who executed the within and foregoing instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.




Notary Public for Idaho
Residing at: Meridian
My Comm. Exp.: 8-17-2000

DEED OF DISTRIBUTION
BY PERSONAL REPRESENTATIVE

THIS DEED, Made by George B. Davis, as Personal Representative of the Estate of Doris N. Davis, deceased, Grantor, to George B. Davis, Grantee, whose address is 3440 Davis Drive, Meridian, ID 83642.

WHEREAS, Grantor is the qualified Personal Representative of said estate, filed as Case Number 3P-13221, in the District Court of the Fourth Judicial District for the State of Idaho in Ada County, Idaho; and

WHEREAS, Grantee is entitled to distribution of the real property hereinafter described;

THEREFORE, for valuable consideration received, Grantor conveys and releases to Grantee all of the decedent's right, title and interest in and to the following described real property in Ada County, Idaho:

Lots 1 to 11 inclusive, and Lot 12 except the west 10 feet thereof, Block 3, Williams Addition to Meridian, Ada County, Idaho.

ALSO

Lots 28, 29 and 30, Block 1, Meridian Bowers Addition, Ada County, Idaho.

ALSO

The South Half of the Northeast Quarter of Section 15, Township 3 North, Range 1 West, B.M., Ada County, Idaho.

ALSO

An irregular tract in the Southeast Quarter of the Southeast Quarter (SE1/4 SE1/4) of Section Fifteen (15), Township Three (3) North of Range One (1) West, Boise Meridian, described as follows:

From the quarter section corner between Sections Fifteen (15) and Twenty-two (22), Township Three (3) North of Range One (1) West, B.M., East along the section line 1655.6 feet; thence North 27°55' East 292.6 feet, to the real place of beginning; thence North 27°39' East 195 feet to an iron pin; thence South 60°16' East 150.1 feet to an iron pin; thence South 34°27' West 206 feet to an iron pin; thence North

55°31' West 126.5 feet to the real place of beginning,
and subject to road and ditch right of way.

ALSO

Lot 2, Block 1, George Davis Subdivision, Ada County,
Idaho;

together with all and singular the tenements,
hereditaments and appurtenances thereunto belonging or
in anywise appertaining;

subject to all easements and rights of way of record or
appearing on the land.

DATED this 21st day of December, 1990.

George B. Davis
George B. Davis
Personal Representative of the Estate
of Doris N. Davis

STATE OF IDAHO)
) ss.
County of Ada)

On this 11th day of January, 1991, before me, the
undersigned, a Notary Public in and for said State, personally
appeared George B. Davis, known to me to be the person whose name
is subscribed to the within instrument as the Personal
Representative of the Estate of Doris N. Davis, and acknowledged
to me that he executed the same as such Personal Representative.

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

9101776

Cheryl L. Brewer
Notary Public for Idaho
Residing at Boise, Idaho
Commission Expires: 9/27/1992

Cosmo Humphrey,
Greener & Welsh

NOTARY PUBLIC

BY R. Wade
600

4-13-04

Kimberly —

Brad Janicek will be back
Wed's at noon to talk more
w/ you.

His attorney will have the
evidence of priority to
you tomorrow also. The
extension deadline dates were
1-day different. The 2
weeks would have been up today
or tomorrow - depending on
which letter she used....
I told her tomorrow would
be fine.

CONVERSATION MEMORANDUM

RE: Snake River Basin Adjudication Water Right No. A63-27475

March 2, 2004

While reviewing Claim No. A63-04655, I spoke with E. Marks and he mentioned that George Davis passed away approximately 15 years ago. Since I have not received any evidence of priority from Mr. Davis and the 2002 Tax Lot information states that Janicek Properties LLC is the current owner of the land associated with this right, I sent a *Change in Ownership* form and *Evidence of Priority* letter to Janicek Properties at 1284 S. Gosling Way, Eagle.

March 15, 2004

Brad Janicek received the form and letter sent to him on 3/2/04. He stated that he is the current owner. I explained the need to submit evidence of priority and file the Change in Ownership form.

March 29, 2004

Kristin Bjorkman, Mr. Janicek's attorney, called regarding evidence of priority. I explained the need for evidence. Since Mr. Janicek purchased this land in 1996 and did not have personal knowledge going back to the claimed priority date of 1943, Ms. Bjorkman requested an extension of two weeks to submit evidence. (I mentioned to Ms. Bjorkman that she should submit a *Notice of Appearance* with the department.)

April 14, 2004

Mr. Janicek hand delivered three affidavits as evidence of priority. While he was in the office, I also showed him Ms. Water's shapefile and he verified the outlined POU and location of the POD.

Kimberly Brown
Senior Water Resource Agent
Western Region

Idaho Department of Water Resources

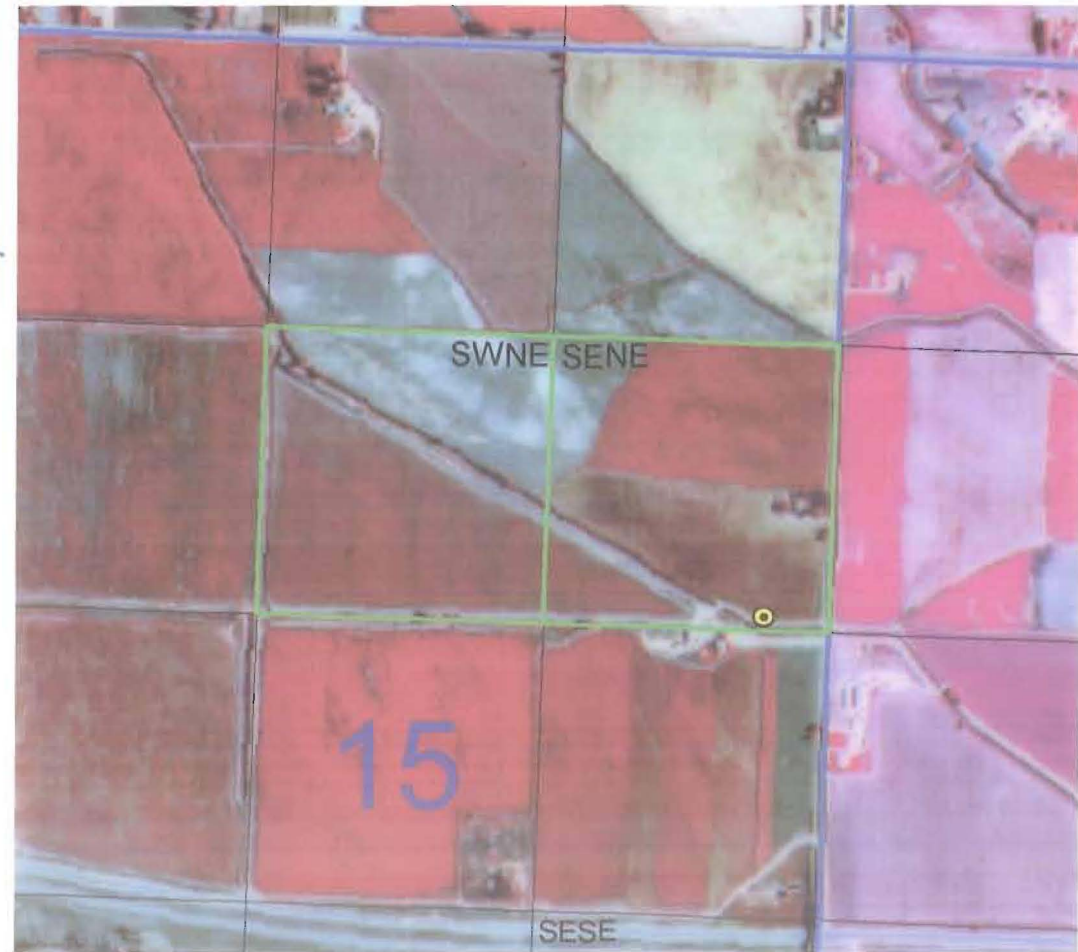
1987 Napp Photo

Claim Number: 63-27475

Legal: T3N, R1W, S15

Reviewed By: *Karan Waters,*
IDWR contractor

-  Point of Diversion
-  Place of Use
-  Section Lines
-  Quarter Quarter Lines



0 0.25 0.5 Miles



4.13.04

*According to Janicek, (in office)
this is correct -
both POP & POU. -KLB*

WILLIAM R. SNYDER & ASSOCIATES, P.A.

ATTORNEYS AND COUNSELORS

MARK D. PERISON*
WILLIAM R. SNYDER

* Admitted in Idaho
and California

520 WEST FRANKLIN STREET, UPPER LEVEL
BOISE, IDAHO 83702

(208) 336-9080 - TELEPHONE
(208) 343-4539 - FACSIMILE

MAILING ADDRESS
POST OFFICE BOX 2336
BOISE, IDAHO 83701-2336

www.wrslegal.com

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APR 14 2004

**WATER RESOURCES
WESTERN REGION**

April 13, 2004

VIA HAND DELIVERY

Kimberly Brown
Idaho Dept. of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

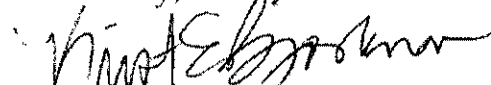
Re: Water Right #A63-27475

Dear Ms. Brown:

I am enclosing the original statements of (1) Brad Janicek, (2) Ronald D. Parks, and (3) Jerry Taylor, each of which is to support Water Right #A63-27475, as regards S½ NE ¼, Section 15, T3N, R1W of the Boise Meridian, Ada County, Idaho. Please ensure that these are placed in the appropriate file to support the Janicek water right claim.

Thank you for your courtesy and assistance in this matter.

Sincerely,


Kristin E. Bjorkman

KEB/es

encl:

WATER RIGHT #A63-27475

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APR 14 2004

WATER RESOURCES
WESTERN REGION

1. My name is Jerry Taylor. I am 61 years of age and I have knowledge of the historical source of water upon the property I know as the "Davis Farm," which is more particularly described S $\frac{1}{2}$ NE $\frac{1}{4}$, Section 15, 3N, 1W of the Boise Meridian, Ada County, Idaho.

2. My father, Clyde Taylor, leased and farmed property adjacent to the Davis Farm from approximately 1947 through 1999. He is now deceased.

3. As a young boy, I fished and played in and around the drain ditch on the Davis Farm and observed that water was being pumped from that drain ditch and used for irrigation purposes on the crops growing on the Davis Farm.

4. I made these observations as far back as 1951 and have observed the continued use of the source of irrigation water from the drain ditch on the Davis Farm to crops growing on the Davis Farm.

Jerry Taylor 4-8-04
Jerry Taylor

RECEIVED

APR 14 2004

WATER RESOURCES
WESTERN REGION

WATER RIGHT # A63-27475

1. My name is Ronald D. Parks. I am 58 years of age and have knowledge of the historical source of water upon the property I know as the "Davis Farm," which is more particularly described as S $\frac{1}{2}$ NE $\frac{1}{4}$, Section 15, 3N, 1W of the Boise Meridian, Ada County, Idaho.

2. My father, Robert C. Parks, leased and farmed the Davis Farm from the owner, George Davis, from about 1956 to 1960. My father is now deceased.

3. During this period of time, I observed my father lift water out of the drain ditch on the Davis Farm and use the water to irrigate crops that my father grew on the Davis Farm.

4. I made these observations as far back as 1956.

Dated this 8 day of April, 2004.



Ronald D. Parks

WATER RIGHT # A63-27475

RECEIVED

APR 14 2004

WATER RESOURCES
WESTERN REGION

1. My name is Brad J. Janicek and I reside at 4325 W. Chinden, Meridian, Idaho 83642. I make this statement to aid the Department of Water Resources to determine the extent of a water right and the priority date of that water right as identified in this statement and more particularly in Paragraph 2, which is know as #A63-27475.

2. Janicek Properties, LLC, an Idaho limited liability company, is the vested owner of a parcel of real property described as S ½ NE ¼, Section 15, 3N, R 1W, Boise Meridian, Ada County, Idaho, (The "Property"). I am an owner and member of Janicek Properties, LLC. The Property has appurtenant water rights as described in this statement. The Property is sometimes referred to as the "Davis Farm" because it was owned for many years by the George Davis family.

3. I purchased the Property (with LouAnn Janicek) on July 3, 1996 and thereafter we transferred it to Janicek Properties, LLC on September 28, 2001.

4. As an owner of the Property from July 3, 1996 to the date of this statement, I have used water collected in a drain ditch on the Property, by pumping water out of the drain ditch and applying it to crops growing on the Property from March 15 to November 15 of each year. The source of that water is and has been Purdam Gulch Creek.

5. When I first purchased the Property, I was advised that the water right described in Paragraph 4 was appurtenant to the Property.

6. Prior to my purchase of the Property, I leased the Property from the George Davis family from 1976 to July 2, 1996. During that time I made the same beneficial use of the water as I described in Paragraph 4 above.

7. While I leased the Property from the Davis family, I was advised by George Davis that the Davis family had made the same beneficial use of the water right that I described in Paragraph 4 above since the Davis family's ownership, which I believe to be from 1943 forward.

8. I have also contacted other persons with knowledge of the beneficial use of this water right as described by Paragraph 4 above and obtained their statements, which should supplement my statement.

Dated this 14th day of April, 2004.


Brad Janicek

WILLIAM R. SNYDER & ASSOC.

A Professional Association

520 West Franklin Street

Post Office Box 2338

Boise, Idaho 83701-2338

(208) 336-9080

FACSIMILE COVER SHEET - FOR IMMEDIATE DELIVERY

TO: Kimberly Brown, Idaho Department of Water Resources
Destination Fax Number: (208) 334-2348

FROM: Kristin E. Bjorkman
Sender's Fax Number: (208) 343-4539

RE: Water Right #A63-27475 (Brad Janicek)

DATE: March 29, 2004 (12:07PM).

This transmittal consists of this cover sheet plus 1 page.

Hard copy will not be sent.

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE AT THE FOLLOWING NUMBER: (208) 336-9080.

THE PAGES COMPRISING THIS FACSIMILE TRANSMISSION CONTAIN CONFIDENTIAL INFORMATION FROM WILLIAM R. SNYDER & ASSOCIATES. THIS INFORMATION IS INTENDED SOLELY FOR USE BY THE INDIVIDUAL ENTITY NAMED AS THE RECIPIENT HEREOF. IF YOU ARE NOT THE INTENDED RECIPIENT, BE AWARE THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR USE OF THE CONTENTS OF THIS TRANSMISSION IS

WILLIAM R. SNYDER & ASSOCIATES, P.A.
ATTORNEYS AND COUNSELORS

WILLIAM R. SNYDER
MARK D. PERISON*

520 WEST FRANKLIN STREET, UPPER LEVEL

BOISE, IDAHO 83702
(208) 336-9080

*ADMITTED IN IDAHO
AND CALIFORNIA

MAILING ADDRESS

POST OFFICE BOX 2338
BOISE, IDAHO 83701-2338

FACSIMILE
(208) 343-4539
www.wrslegal.com

March 29, 2004

VIA FACSIMILE: 336-3558

Kimberly Brown
Idaho Department of Water Resources
(208) 334-2190
(208) 334-2348

Re: Water Right #A63-27475 (Brad Janicek)

Dear Ms. Brown:

This letter will confirm a 14-day extension from the original due date of March 31, 2004 on the evidence of priority regarding water right #A63-27475. Thank you.

Sincerely yours,



Kristin E. Bjorkman



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 2, 2004

JANICEK PROPERTIES LLC
1284 S. GOSLING WAY
EAGLE, ID 83616

RE: Snake River Basin Adjudication Water Right Number A63-27475

Dear Property Owner(s):

We have been advised you may be the new owner of the property with the water right referenced above. Enclosed is a profile report for your review.

Before we can modify our records to reflect your ownership of this water right, we need to have the enclosed Notice of Change of Water Right Ownership form completed. Please follow the instructions attached to the form and return it to this office with all of the required information.

If you have any questions regarding this letter, please feel free to me at 334-2190.

Sincerely,

A handwritten signature in cursive script that reads "Kimberly Brown". The signature is written in dark ink and is positioned above the typed name and title.

Kimberly Brown
Adjudication Section
Department of Water Resources
Western Region

Enclosures



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

March 2, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

JANICEK PROPERTIES LLC
1284 S. GOSLING WAY
EAGLE, ID 83616

RE: EVIDENCE OF PRIORITY

Snake River Basin Claim No(s): A63-27475

Dear Claimant(s),

In the past, George B. Davis submitted the above referenced claim(s) during the Snake River Basin Adjudication (SRBA) claims taking. Enclosed is a computer generated print-out of the claim(s) for your reference only, it is not necessary to return this print-out or re-file it. Mr. Davis indicated, when this claim was filed, that the water right(s) was based on either a "Statutory Claim" or "Beneficial Use" of the water. Water rights of this type are established by historical use of the water for a beneficial use purpose, dating back to the time the water was first used; this date being the "Priority Date" as shown on the enclosed print-out. Your claim(s) has not been confirmed by a previous filing with the Department of Water Resources since there is no decree, license, or permit on file to verify the use of this water. For this reason, the Department is required to gather evidence from claimants supporting the date of priority for claims based on historical beneficial use of water.

Enclosed is a pamphlet entitled "**Evidence of Priority**" which describes why evidence of the priority date is necessary, along with examples of types of evidence that can be submitted to fulfill this requirement. While I encourage you to read the entire pamphlet, I direct your attention to the two sections entitled "**What Kind of Evidence is Required**" and "**Some Examples of Documents Which May Be Evidence of the Priority Date.**"

If no evidence of your priority date is submitted, or we do not hear from you within the time limit below, your priority date, as claimed, may not be recommended to the SRBA court for decree. This could jeopardize your water use under this right(s) if water availability problems arise in the future.

The required evidence supporting the priority date(s) requested needs to be submitted by March 30, 2004. Please let me know if you may not be able to submit proof of priority or have any questions not covered by this letter and the enclosed pamphlet, by the date indicated above.



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN
February 10, 2004

GEORGE B DAVIS
3340 DAVIS LANE
MERIDIAN ID 83642

Re: SRBA Claim A63-27475

Dear Claimant(s):

I am the Deputy Attorney General assigned to represent the Idaho Department of Water Resources in Basin 63 in the Snake River Basin Adjudication.

The Department of Water Resources has previously contacted you regarding information on the priority date for the above SRBA claim. In order to make a positive recommendation of this water right, each element of the water right must be proven.

The Department plans to issue its Preliminary Recommendations on this water right later this year. If the Department does not receive all the necessary evidence for this claim, it will have no option but to recommend to the SRBA Court that this water right be disallowed, meaning that the water right will not be valid.

Please contact Kimberly Brown at the Western Regional Office for the Idaho Department of Water Resources at (208) 334-2190. **If she does not hear from you by March 12, 2004, then your water right will be recommended as disallowed.**

Very truly yours,

A handwritten signature in black ink that reads "Nick Spencer".

NICHOLAS B. SPENCER
Deputy Attorney General
Idaho Department of Water Resources

NBS/pm

cc: Kimberly Brown

OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO
700 W. JEFFERSON STREET, RM. 210
P.O. BOX 83720
BOISE, IDAHO 83720-0010

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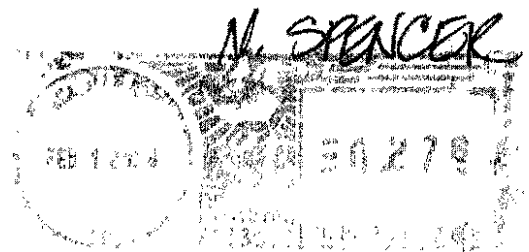
MAR 01 2004

WATER RESOURCES
WESTERN REGION

GEORGE B DAVIS
3340 DAVIS LANE
MERIDIAN ID 83642

A63-27475

LAAGTMS-5336/0010



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FEB 18 2004

Department of Water Resources

NSN

3N 1W



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

August 26, 2003

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

GEORGE B. DAVIS
3440 DAVIS LANE
MERIDIAN, ID 83642

RE: EVIDENCE OF PRIORITY

Snake River Basin Claim No(s): A63-27475

Dear Claimant(s),

In the past, you submitted the above referenced claim(s) during the Snake River Basin Adjudication (SRBA) claims taking. Enclosed is a computer generated print-out of the claim(s) for your reference only, it is not necessary to return this print-out or re-file it. You indicated, when this claim was filed, that the water right(s) was based on either a "Statutory Claim" or "Beneficial Use" of the water. Water rights of this type are established by historical use of the water for a beneficial use purpose, dating back to the time the water was first used; this date being the "Priority Date" as shown on the enclosed print-out. Your claim(s) has not been confirmed by a previous filing with the Department of Water Resources since there is no decree, license, or permit on file to verify the use of this water. For this reason, the Department is required to gather evidence from claimants supporting the date of priority for claims based on historical beneficial use of water.

Enclosed is a pamphlet entitled "**Evidence of Priority**" which describes why evidence of the priority date is necessary, along with examples of types of evidence that can be submitted to fulfill this requirement. While I encourage you to read the entire pamphlet, I direct your attention to the two sections entitled "**What Kind of Evidence is Required**" and "**Some Examples of Documents Which May Be Evidence of the Priority Date.**"

If no evidence of your priority date is submitted, or we do not hear from you within the time limit below, your priority date, as claimed, may not be recommended to the SRBA court for decree. This could jeopardize your water use under this right(s) if water availability problems arise in the future.

The required evidence supporting the priority date(s) requested needs to be submitted by September 23, 2003. Please let me know if you may not be able to submit proof of priority or have any questions not covered by this letter and the enclosed pamphlet, by the date indicated above.



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

In addition, since it is our goal to decree the historical water rights within the Snake River Basin as accurately as possible, field exams are now being conducted by Department water resource agents to verify claims in this area. Please contact the Western Region office as soon as possible to set up a field exam

Respectfully Submitted,

A handwritten signature in cursive script that reads "Kimberly L. Brown".

Kimberly L. Brown
Water Resource Agent
Adjudication Bureau

Enclosure: "Evidence of Priority" pamphlet
Notice of Claim A63-27475

NOTE: If you no longer own the property upon which this claim was filed, please contact this office immediately. Idaho State law requires that the Department be notified of a change of owner or address on a water right.