

RECEIVED

JUN 07 2007

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: A78-04002A
Date Received: 7/12/1988
Receipt No: M000353
Received By: GA

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CHARLES R. SPENCE 208-628-3688
Address: HC 75 ELK LAKE ROAD
NEW MEADOWS, ID 83654
OR
Name: MICHAEL GIZINSKI 208-628-3688
Address: HC 75 BOX 3588
NEW MEADOWS, ID 83654
OR
Name: SHERRIL GIZINSKI 208-628-3688
Address: HC BOX 3588
NEW MEADOWS, ID 83654
OR
Name: ELGIE BROTHERS 208-628-3638
Address: HC 75 ELK LAKE ROAD
NEW MEADOWS, ID 83654
OR
Name: BARBARA SPENCE 208-628-3688
Address: HC 75 ELK LAKE ROAD
NEW MEADOWS, ID 83654

2. Date of Priority: JUN 01, 1898

3. Source: BIG ELK CREEK Trib. to: LITTLE SALMON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
22N	01E	23	NE	SE	SW		IDAHO

5. Description of diverting works:
CONCRET HEADGATE DIVERTS WATER INTO A DITCH

A78-04002A

Page 1

Date: 07/12/88

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MAY 29 2007

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DEPARTMENT OF
WATER RESOURCES

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/15	10/15	0.280		
DOMESTIC	01/01	12/31	0.080		
STOCKWATER	01/01	12/31	0.020		

7. Total Quantity Appropriated is:

0.380 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:

THREE DOMESTIC HOUSEHOLDS, 30 HEAD OF HORSES

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
22N	01E	23	SW	SW		IRR	5.0
			SW	SW		DOMEST	1.0
			SW	SW		STOCK	
			SW	SW		DOMEST	1.0
						Section Acres	7.0
		26	NW	NW		IRR	9.0
			NW	NW		DOMEST	1.0
			NW	NW		STOCK	
						Section Acres	10.0
						Total Acres	17.0

11. Place of use in counties: IDAHO

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

13. Other Water Rights Used:

NONE

14. Remarks:

15. Basis of Claim: STATUTORY CLAIM

SCANNED

MAY 29 2007

MICROFILMED

OCT 05 1992

RECEIVED

JUN 07 2007

DEPARTMENT OF
WATER RESOURCES

16. Signature(s)

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

Number of attachments: 2

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): X Sherry Gijnski Date: X 7/12/88
Date:

State of Idaho)
County of Idaho) SS.

Subscribed and sworn (or affirmed) before me this 12 day

of July 19 88

John Paul Carlson
Notary Public

Seal

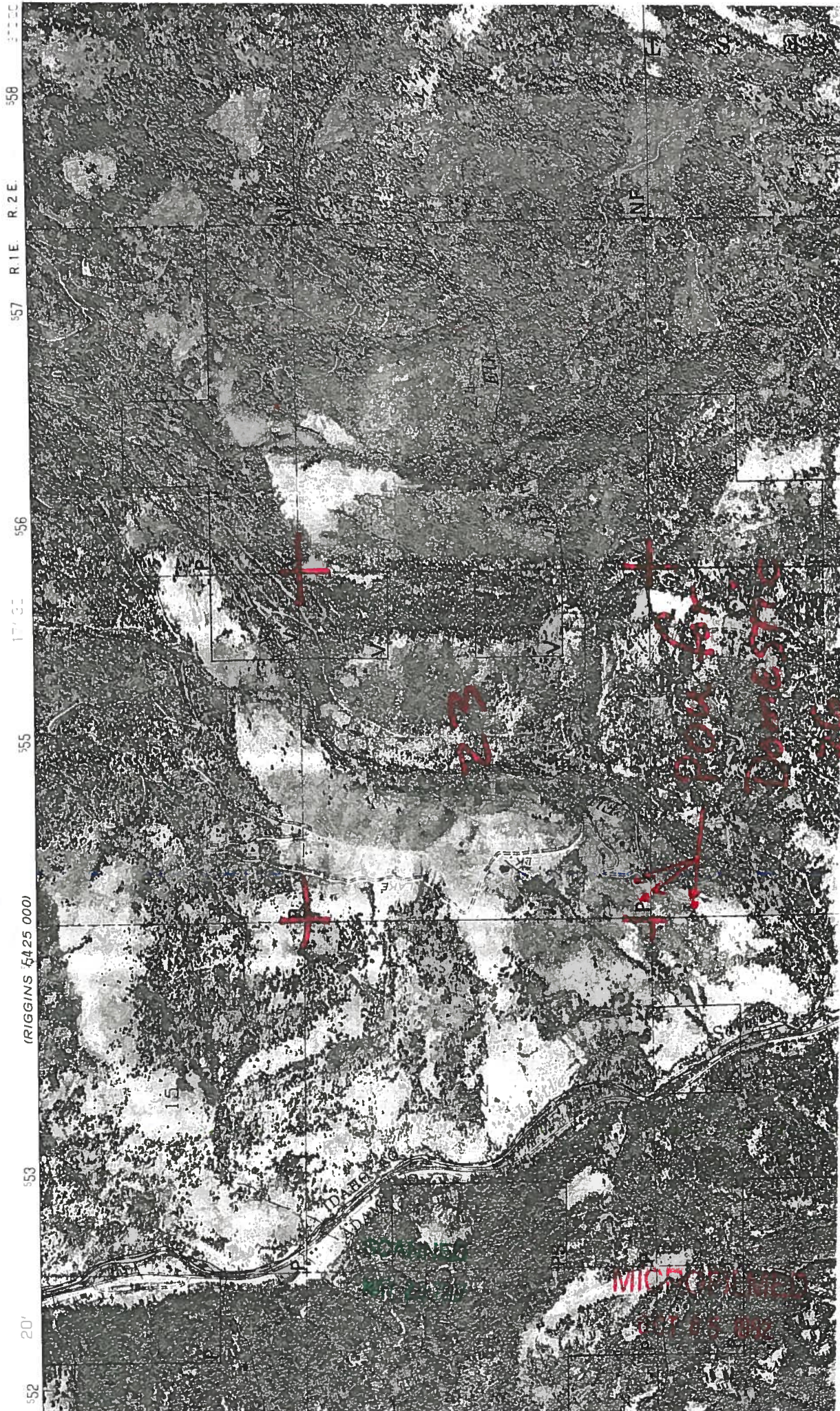
Residing at Boise ID

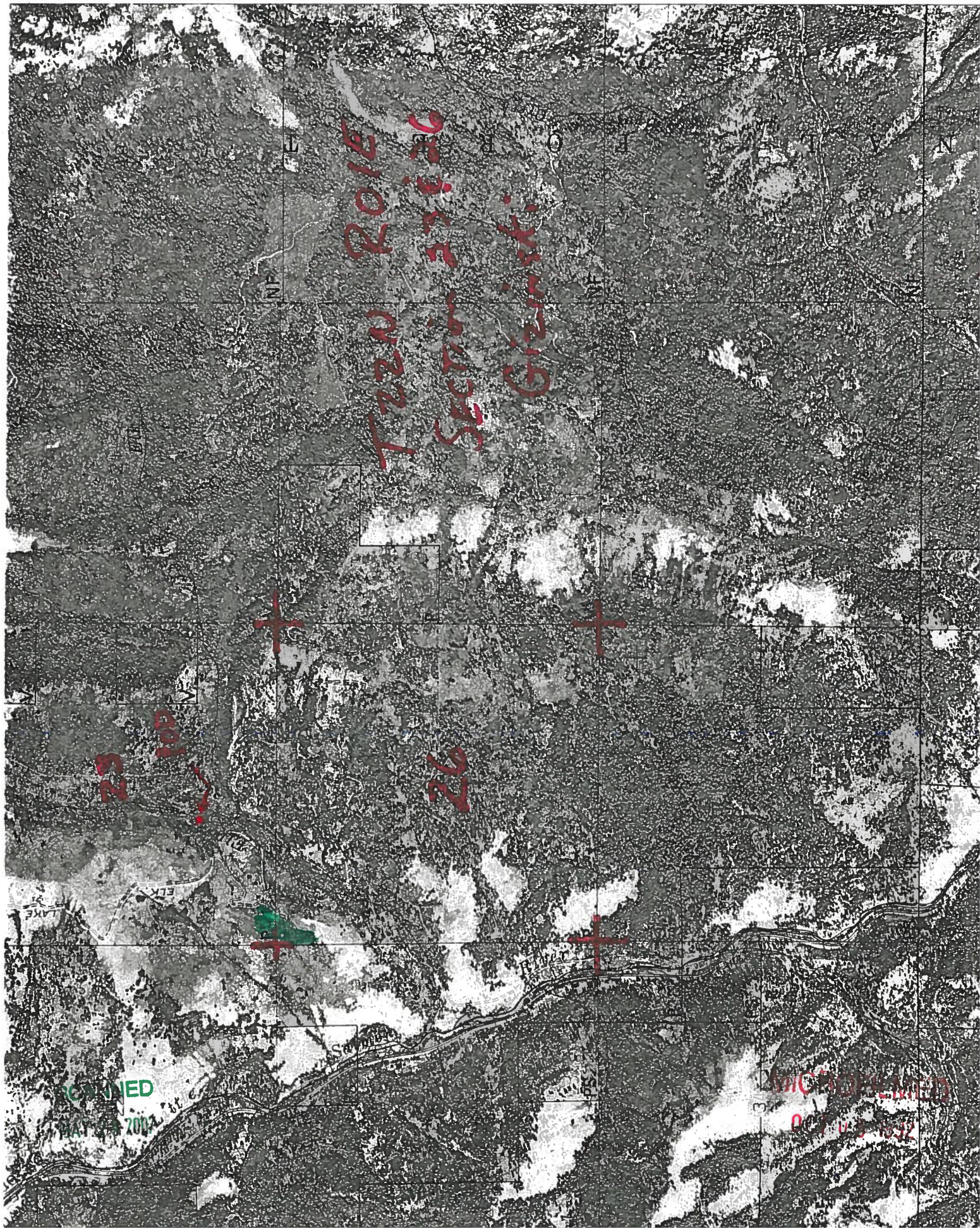
My Commission Expires 6/2/94

T22N R01E
Sections 23 & 26

SCANNED
MAY 29 2007

INDIAN MOUNTAIN ORTHO
IDAHO





09

000 000

08

07

12 30

06

05

T. 22 N

T. 21 N

T22N 201E
Section 33 & 36
Gizinsk

23

100

26

SCANNED
MAY 24 2012

UNCLASSIFIED
OCT 03 2012

JULY, 1983

SRBA CLAIMS RECEIVING CHECKLIST

CLAIMANT'S NAME Spence, Charles R or Gizinski, MichaelCLAIM IDENT. NO. A78-04002ADATE RECEIVED 07/12/88CK # 1224AMOUNT \$ 67.00

	YES	NO
1. Is the name and address complete with zip code?	☒	☐
2. Is priority date entered?	☒	☐
Is the water use exempt from the Permit requirements, or if it is not exempt, has a Permit been approved or a License issued? A Permit is required for groundwater developed after March 25, 1963 (except single family domestic and stockwater wells using less than 13,000 gpd). A Permit is required for surface water developed after May 20, 1971 (except for instream stockwater).		
3. (a) Is a source entered?	☒	☐
(b) Is a tributary to entered? (if required)	☒	☐
4. Is the legal description of the p.d. complete?	☒	☐
5. Is there a description of the diverting works?	☒	☐
6. Are the water uses appropriate for the form? The short form limited domestic and stockwater. 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. Is the consumptive use correct?	☒	☒
If required is a consumptive use entered?	☒	☒
9. Are the non-irrigation uses listed properly short form, and more than one domestic use ship must be stated. If not under single o must file a separate claim.	☒	☐
10. Is (are) the place(s) of use entered?	☒	☐
11. Is (are) the county(ies) entered?	☒	☐
12. Is the ownership of p.u. checked?	☒	☐
13. Are other water rights listed or "none" checked?	☒	☐
14. If required, are remarks correct? (If the place of use, authority for filing the claim, the remarks.)	☒	☐
15. Is the basis of the claim checked?	☒	☐
16. Is the claim signed by the claimant? Is the signature appropriate? (If an individual is the claimant, has that individual signed the claim, or if an organization is the claimant, is the organization signature block complete?)	☒	☐
Has the claim been signed, sealed, and dated by a notary?	☒	☐
Is the fee enclosed correct?	☒	☐
Should this claim be receipted and data entered?	☒	☐
If this claim is based on an existing water right, has the identification number been entered?	☒	☐

NOTE: THERE
ARE AFFIDAVITS
FOR EVID. OF
PRIORITY IN
THE STATE
OFFICE FILE
FOR 78-04002

Claim checked by: LW

Comments: This claim no. should be A78-04002 B. MICROFILMED
should be in the name of I. Derry

OCT 05 1992

Identification No. _____

Claim No. 78-4002

Map No. _____

**STATE OF IDAHO
DEPARTMENT OF RECLAMATION**

CLAIM TO A WATER RIGHT

Established by Diversion and Application to Beneficial Use

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

(Please refer to the instructions on the back of this form)

1. Name of claimant Irvin M. Derry
post office address Rt. #1, New Meadows, Idaho.
2. The point of diversion is in NE 1/4 of S1/4 Section 23 Township 22N
Range 1 and W1/4 of NW Sec. 26
E. B.M. located on (big) Elk Creek
(name of source)
tributary to Little Salmon River in Idaho County.

3. Dates of priority claimed: list the priority for each separate quantity that you claim. Priority dates should be based upon the earliest diversion of the water which has resulted in continued beneficial use since that time. If there has been an interval of five years or greater when the water was not beneficially used for the same purpose as originally appropriated, the priority that you claim should date from the time that the water was again beneficially applied following the period of non-use.

a. Date of priority claimed: The attached affidavits confirm the fact that water from Elk Creek was used for irrigation, stock, and domestic needs, continually for past twenty-five (25) years.

6-22 amount: 1 c.f.s. or 7 acre feet
amount: _____ c.f.s. or _____ acre feet
Total claimed _____ c.f.s. or _____ acre feet.

- b. Explain the purpose for which the water has been used and the time during the year when you have used the right claimed:

use irrigation period of use from April 1 to Nov. 1 (both dates inclusive)
use Stock period of use from Jan. 1 to Jan. 1 (both dates inclusive)
use Domestic period of use from Jan. 1 to Jan. 1 (both dates inclusive)
use _____ period of use from _____ to _____ (both dates inclusive).

4. Description of diverting works:

a. Surface water diversion dam and/or headgate: material is composed of Lumber Headgate; length is 6 feet; height is 2 feet; width at bottom is 3 feet; width at top is 3 feet; explain any increase in diversion capacity since structure was first built, giving dates and estimated capacities if known Ditches enlarged and repaired 1964

b. Underground water diverting works: is well flowing or pumped _____; depth of well is _____ feet; diameter of well is _____ inches; type of pump is _____; capacity of pump is _____ g.p.m.; name and address of well driller is _____

78-4002
10-4002
11-4002

attach well logs if available; has there been any change in pump or motor since well was first completed
; if so, give dates and explain

following figures are estimated, however they are close.

c. Conveying works: length of ditch to place of use is 1400 feet; width of ditch at top is 3 to 5 feet;
width of bottom of ditch is 2 to 4 feet; depth of water is 1/2 to 1 feet; grade of ditch per 1000
feet is 7 feet; material through which ditch passes is very rocky ground;
maximum length of pipe line to first place of use is _____ feet; diameter of pipe line is _____ inches;
type of pipe _____ grade of pipe per 1000 feet is _____

Please explain any changes or increase in size of conveying system since water was first appropriated, giving date and dimensions if possible

d. If water is stored: name of reservoir _____

total capacity of reservoir is _____ acre feet; active capacity of reservoir is _____ acre feet;

year construction commenced _____; year completed _____; date first used _____

period of storage is from _____ to _____; is reservoir drained each year _____;

is reservoir on or off stream _____ explain _____

feeder canal is used give maximum carrying capacity _____ c.f.s.; if reservoir is off stream, describe location of reservoir by 40-acre subdivisions _____

has there been any enlargement of the reservoir since it was first built _____; if so, give dates and describe _____

Handwritten notes and diagram:

UPPER DITCH
Irrigated Pasture
Lower Ditch
Irrigated Pasture
Estimated: 35000 acres to 40000 acres irrigated.
Little 5 mgon Rivers
Long 6 mgon

following figures are estimated, however they are close.

Please explain any changes or increase in size of conveying system since water was first appropriated, giving date and dimensions if possible.

If feeder canal is used give maximum carrying capacity _____ c.f.s. if reservoir is off stream, describe location of reservoir by 40-acre subdivisions _____

has there been any enlargement of the reservoir since it was first built _____, if so, give dates and describe _____

[illegible]

Explain any significant increase in area irrigated since first use, give dates and acreages if known _____

attach well logs if available; has there been any change in pump or motor since well was first completed _____; if so, give dates and explain _____

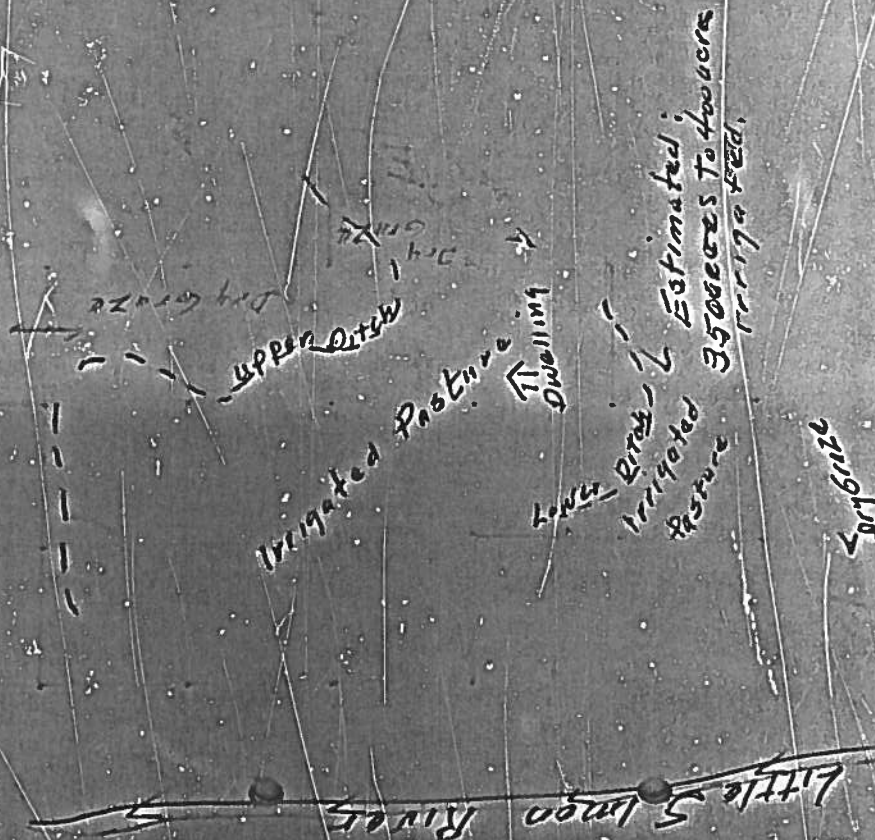
following figures are estimated, however they are close.

- c. Conveying works: length of ditch to place of use is 1400 feet; width of ditch at top is 3 to 5 feet; width of bottom of ditch is 2 to 4 feet; depth of water is 1/2 to 1 feet; grade of ditch per 1000 feet is 2 feet; material through which ditch passes is very rocky ground; maximum length of pipe line to first place of use is _____ feet; diameter of pipe line is _____ inches; type of pipe _____; grade of pipe per 1000 feet is _____.
- Please explain any changes or increase in size of conveying system since water was first appropriated, giving date and dimensions if possible _____

- d. If water is stored: name of reservoir _____; total capacity of reservoir is _____ acre feet; active capacity of reservoir is _____ acre feet; year construction commenced _____; year completed _____; date first used _____; period of storage is from _____ to _____; is reservoir drained each year _____; is reservoir on or off stream _____ explain _____

If feeder canal is used give maximum carrying capacity _____ c.f.s.; if reservoir is off stream, describe location of reservoir by 40-acre subdivisions _____

has there been any enlargement of the reservoir since it was first built _____; if so, give dates and describe _____



b. Do you get water through a ditch owned by several users? NO If yes, give the name of the ditch
The other users and their respective
interests in the ditch are (if known) _____

6. Where water is used for stock watering, give number of each kind of stock watered. Cattle number
months: from 210 to 350 winter months: from 50 to 100 around 6
head year around.

7. Where water is used for domestic or municipal purposes give number of families served
name of town supplied. Domestic use, one family only

8. Where water is used for other purposes not above enumerated, give the nature of use, the extent of use,
and any details regarding the initiation of the right or subsequent later expansion. Be as specific as possible,
giving dates and quantities.

9. Remarks: please explain any details of your claim which you feel need clarification or additional explanation

~~THIS CLAIM IS MADE TO CORRECT A MISTAKE~~

The "highest and best" use of this ranch is for pasture and we have been
running up to 300 head of cattle throughout spring, summer, and fall.

During the dry months of August, Sept. and Oct. there is not sufficient
water to do a thorough job of irrigating.

BE IT KNOWN that the undersigned hereby makes claim to a water right as described above together with
all attached information and certifies that all statements are true and accurate to the best of his knowledge.

22 45 69
(Date)

James M. Curry
(Signature of Claimant)

State of Idaho

County of Idaho ss.

On this 25 day of February 1969, personally appeared before me the signer(s) of the
above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Eldon H. Jones
Notary Public residing at Stemmed, Idaho

My commission expires 6/30/69

For Department Use Only

Received by Dick Date 4-4-69

Exception filed by: _____

Forwarded to
claimant by: _____

Date _____

Prelim. check by Dick Date 4-4-69

Fee received by ef Date 4-4-69 Fee \$ 10.00

Approved for publication by Dick Date 4-11-69

Published in Idaho Statesman Dates 4-17-69 to 4-24-69

Book # 2878

4-4-69

Department of Reclamation AFFIDAVIT OF PUBLICATION

CORRECTED NOTICE
NOTICE OF CLAIM TO A
WATER RIGHT
 No. 78-4002

Notice is hereby given that Irvin M. Derry, Rt. 1, New Meadows, Idaho has filed a claim to a water right established by diversion and application to beneficial use of 4 cubic feet per second of water from (big) Elk Creek tributary to Little Salmon River with points of diversion in NE1/4SW1/4 Sec. 22, T. 21N., R. 12E., S. 11M. in Idaho County; the water is claimed to be used from January 1 to December 31 for stockwater and domestic use and from April 1 to November 1 for irrigation with a priority of June 1904; the place of use is S1/2NE1/4 Sec. 22, T. 21N., R. 12E., S. 11M. NW1/4 Sec. 22, T. 21N., R. 12E., S. 11M. E1/2NE1/4 Sec. 22, T. 21N., R. 12E., S. 11M.

Any exception to this claim of water right may be filed with the Department of Reclamation.

R. KEITH HIGGINSON
 State Reclamation Engineer
 Published in the Idaho County Free Press, Grangeville, 1 on April 17 and April 24. A17-30

Gary D. Cash being first duly sworn, says he is the Office Manager of the IDAHO COUNTY FREE PRESS, a weekly newspaper which is published and issued weekly at Grangeville, Idaho County, State of Idaho, and which is of general circulation in said county and state; that the said notice, of which the one hereto attached is a true copy, was published in said paper for TWO weeks, being published TWO times, the first publication being on the 17th day of April, 1969 and the last publication on the 24th day of April, 1969 and that the said notice was published in the newspaper proper and not a supplement; that said newspaper has been continuously and uninterruptedly published in said county during a period of more than seventy-eight consecutive weeks prior to the first publication of said notice or advertisement.

Gary D. Cash

Subscribed and sworn to before me this 24th day of April, 1969.

Richard C. Hatch Notary Public
 for State of Idaho, residing at Grangeville, Idaho.

4002

AFFIDAVIT

sworn, says she is the
of the IDAHO COUNTY
is published and issued
State of Idaho, and which
and state; that the said
is a true copy, was published
being published to

on the 17th ... day
and the last publication

..... April

was published in the no
that said newspaper has
published in said county
eight consecutive weeks

notice or advertisement

CORRECTED NOTICE NOTICE OF CLAIM TO A WATER RIGHT No. 78-4002

Notice is hereby given that Irwin
M. Derry, Rt. 1, New Meadows,
Idaho has filed a claim to a water
right established by diversion and
application to beneficial use of 4
cubic feet per second of water from
(big) Elk Creek tributary to Little
Salmon River with points of diver-
sion in NE 1/4 SW 1/4 Sec. 23, NW 1/4
NW 1/4 Sec. 24, T. 34 N., R. 2 E., B.M.
in Idaho County; the water is claimed
to be used from January 1 to De-
cember 31 for stockwater and do-
mestic use and from April 1 to
November 1 for irrigation with a pri-
ority of June 1898; the place of use
is S 1/2 NE 1/4, SE 1/4 Sec. 24, W 1/2 NW 1/4,
W 1/2 SW 1/4 Sec. 22, NW 1/4 NW 1/4 Sec.
26, E 1/4 NE 1/4, NE 1/4 SE 1/4 Sec. 27, T.
21 N., R. 1 E., B.M.

Any exception to this claim of
water right may be filed with the
Department of Reclamation.

R. KEITH HIGGINSON

State Reclamation Engineer

Published in the Idaho County Free
Press, Grangeville, Idaho, on April
17 and April 24. A17-24

Subscribed and sworn

of

Richard

for State of

CONVERSATION MEMORANDUM

DATE 9-16-88

FILE A78-04002A

NAME OF PARTY Spence, Charles

EMPLOYEE L. Werner

RE: 78-04002? Bought from (Carol) J. Derry
2 ft. of diversion on Derry's right - OK
rentals? No, owned by family
members

MICROFILMED
OCT 05 1992

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: A78-04002A
Date Received: 7/12/1988
Receipt No: M000353
Received By: 

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

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Address:	HC 75 ELK LAKE ROAD	
	NEW MEADOWS, ID	83654
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Address:	HC 75 BOX 3588	
	NEW MEADOWS, ID	83654
OR		
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Address:	HC BOX 3588	
	NEW MEADOWS, ID	83654
OR		
Name:	ELGIE BROTHERS	208-628-3638
Address:	HC 75 ELK LAKE ROAD	
	NEW MEADOWS, ID	83654
OR		
Name:	BARBARA SPENCE	208-628-3688
Address:	HC 75 ELK LAKE ROAD	
	NEW MEADOWS, ID	83654

2. Date of Priority: JUN 01, 1898

3. Source: BIG ELK CREEK Trib. to: LITTLE SALMON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
22N	01E	23	NE	SE	SW		IDAHO

5. Description of diverting works:
CONCRET HEADGATE DIVERTS WATER INTO A DITCH

A78-04002A

Page 1

Date: 07/12/88

SCANNED

MAY 29 2007

MICROFILMED

OCT 05 1992

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/15	10/15	0.280		
DOMESTIC	01/01	12/31	0.080		
STOCKWATER	01/01	12/31	0.020		

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

A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

THREE DOMESTIC HOUSEHOLDS, 30 HEAD OF HORSES

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
22N	01E	23	SW	SW		IRR	5.0
			SW	SW		DOMEST	1.0
			SW	SW		STOCK	
			SW	SW		DOMEST	1.0
						Section Acres	7.0
		26	NW	NW		IRR	9.0
			NW	NW		DOMEST	1.0
			NW	NW		STOCK	
						Section Acres	10.0
						Total Acres	17.0

11. Place of use in counties: IDAHO

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

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: STATUTORY CLAIM

16. Signature(s)

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

Number of attachments: 2

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): X Shumf Gyniski Date: X 7/12/88

Date: _____

State of Idaho)
County of Idaho) SS.

Subscribed and sworn (or affirmed) before me this 12 day

of July 19 88

John A. Carlson
Notary Public

Seal

Residing at Bon + H

My Commission Expires 6/2/94

T22N R01E
Gizinski
Sections 23 & 26

SCANNED
MAY 29 2007

INDIAN MOUNTAIN ORTHO
IDAHO



12/04/2006

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

RIGHT NUMBER: 78-4002A

NAME AND ADDRESS: CHARLES R SPENCE
HC 75 BOX 3588 ELK LAKE RD
NEW MEADOWS ID 83654

SHERRIL GIZINSKI
HC 75 BOX 3588 ELK LAKE RD
NEW MEADOWS ID 83654

ELGIE BROTHERS
HC 75 BOX 3588 ELK LAKE RD
NEW MEADOWS ID 83654

BARBARA SPENCE
HC 75 BOX 3588 ELK LAKE RD
NEW MEADOWS ID 83654

MICHAEL GIZINSKI
HC 75 BOX 3588 ELK LAKE ROAD
NEW MEADOWS ID 83654

SOURCE: BIG ELK CREEK

TRIBUTARY: LITTLE SALMON RIVER

QUANTITY: 0.380 CFS

PRIORITY DATE: 12/19/1907

POINT OF DIVERSION:

T22N R01E S23 NESESW Within IDAHO County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 10/31	0.280 CFS
DOMESTIC	01/01 12/31	0.080 CFS
STOCKWATER	01/01 12/31	0.020 CFS

PLACE OF USE: IRRIGATION in IDAHO County

T22N R01E S23	SWSW	5.00	T22N R01E S26	NWNW	9.00
---------------	------	------	---------------	------	------

STOCKWATER in IDAHO County

T22N R01E S23	SWSW	T22N R01E S26	NWNW
---------------	------	---------------	------

DOMESTIC in IDAHO County

T22N R01E S23	SWSW	T22N R01E S26	NWNW
---------------	------	---------------	------

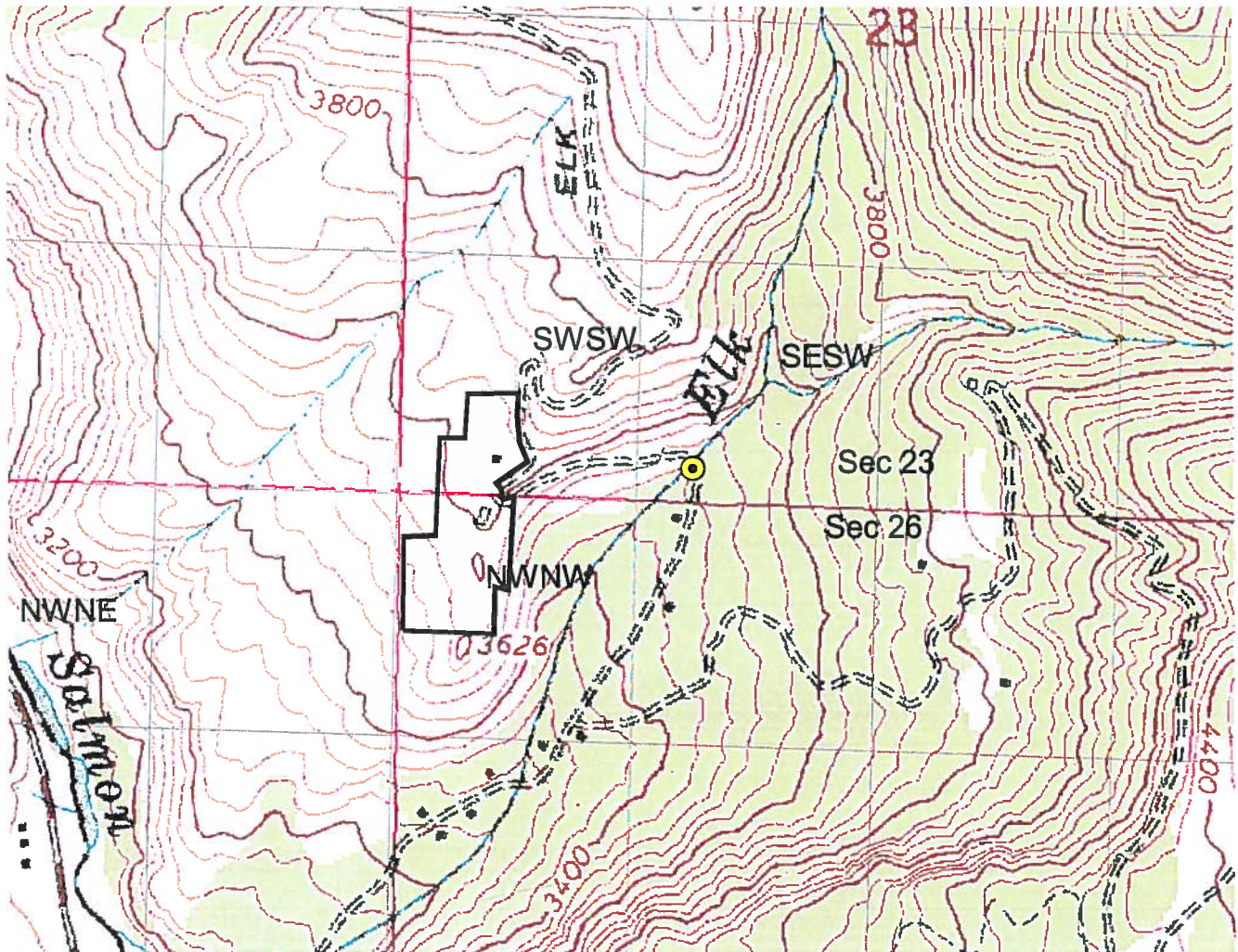
14 ACRES TOTAL

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

78-4002A



0 400 800 Feet



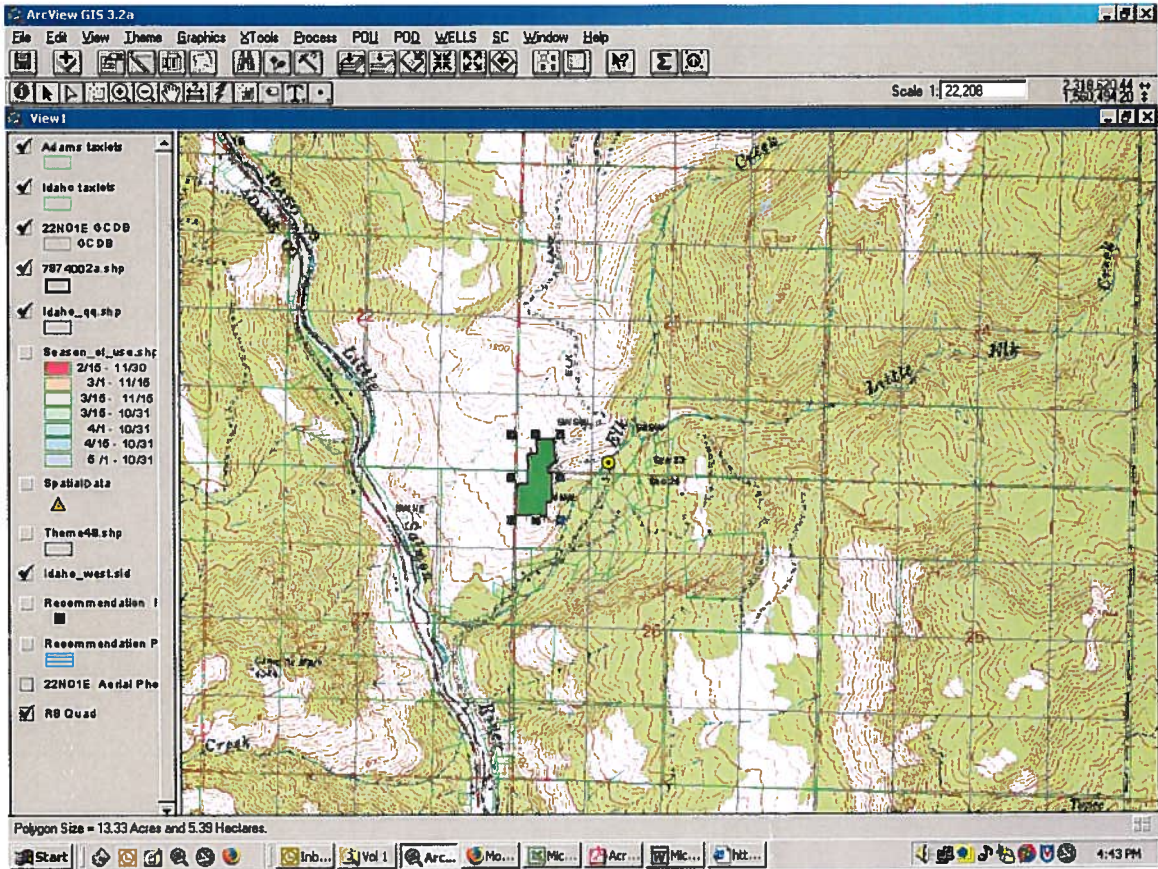
Sections 23 & 26
T22N R1E



● Point of Diversion

□ Place of Use

Map prepared on November 7, 2005
By Kenneth Knoblock
Idaho Department of Water Resources





ERO Resources Corp.
1106 N. Cole Rd. Suite C
Boise, ID 83704-8661
(208) 373-7983
Fax: 373-7985
Denver • Boise
www.eroresources.com
eroboise@eroresources.com

RECEIVED
DEC 23 2004
DEPARTMENT OF
WATER RESOURCES

December 21, 2004

Carter Fritschle
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

RE: Water Right No. 78-4002B

Dear Carter:

Some months back, you and I discussed the investigation of water right claims in the south fork of the Salmon River basin. As I indicated to you during our conversation I have been retained by Mr. J.W. Whitman to provide you with whatever information you need for your recommendation to the adjudication court with regard to water right no. 78-4002B. The primary reason that Mr. Whitman asked me to provide you this information is that he is at least in part an absentee landowner and it is difficult to predict when he will be on the property. The property is at a very long gated road, which demands that someone be at the site if an examination is necessary. However, as you and others in the Department have indicated, if sufficient information is available to you, you may find it unnecessary to conduct a field examination. Hopefully this information will be sufficient for you but if not please contact me and I will try to provide you with the additional information required.

I visited the Whitman property personally in August and September 2004. The first investigation was a reconnaissance survey of Mr. Whitman's ranch, his irrigation facilities, and the irrigated land. The second trip was on September 15, 2004 at which time I returned to the site equipped to take measurements of slope and ditch geometry as well as photographs of the ranch property and irrigated lands in an effort to determine present and historical ditch configurations and capacities. Ditch configuration measurements were taken with an engineering tape measure, and level and slope was determined using a standard surveyors level instrument which is able to be observed in one of the photographs provided as a part of this packet. Ditch capacities were calculated by Mr. Dave Shaw, Professional Engineer and Principal of ERO Resources Corp., using the Mannings formula for elliptical channels. Measurements were taken both in existing and historical ditches in an effort to determine minimum capacities. At the time of the measurements, significant rain had fallen and I was unable to reach the actual diversion point from Elk Lake Creek, which is shown on the enclosed portion of the topographic map. However, if in the future it is necessary to obtain an exact location of the points of diversion and you need photographs, I can obtain that later during the summer of 2005. I believe, however, the locations of the points of diversion as shown on the topographic map are accurate. During our discussion you indicated that you thought it would be relatively easy to determine the irrigated acreage using your satellite imagery database. Obviously that

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Consultants in
Natural Resources
and the Environment

arter Frischle
December 21, 2004

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would be much easier than field measurements and probably more accurate. Hopefully such measurements from imagery will be adequate.

Also during our discussion you provided me with some suggestions and the absolute need of some sort of evidence of priority. I have contacted the U.S. Department of Interior Bureau of Land Management (BLM) offices throughout this region as well as accessing the BLM database through the internet and have been in contact with the Idaho County Assessors Office. In all cases the individuals I spoke to clearly felt that since the land was developed under the Homestead Act that it had been cultivated and irrigated at least as of the date of entry since one requirement of the Homestead Act was that land had to be cultivated and improved. The Idaho County Assessors Office staff told me that they knew of no land in their area developed under the Homestead Act of 1862 that was not cultivated and used as farmland in its original development. Mr. Fred Price, water rights specialist for the BLM, provided me with information from the BLM records and indicated that with regard to this particular land that the initial patent, number 3575, was issued in 1907 pursuant to the Federal Act of April 21, 1820. That act did not have a farming requirement and was a purchase directly from the federal government. However, the other three patents, which cover most of the ranch land, were issued between 1910 and 1919 pursuant to the act of May 20, 1862. That act allows transfer of title from the federal government to an individual only if they meet the requirement in section 6 which is "that said entry is made for the purpose of actual settlement and cultivation." It seems to me based on the patents and the requirements of the Homestead Act at least, that a priority date of as early of 1904 (the date of entry) or somewhere between 1910 and 1919 is reasonable. However, I will keep looking for additional information regarding priority and if I find any new information it will be provided.

Carter, I have enclosed as much information as I can with regard to this water right, which I believe should provide you with the information that you need. However, if you do need additional materials I would appreciate it if you would call me directly and I will see what I can obtain. I will be in Cascade at home until the 2nd or 3rd of January at telephone number (208) 382-6611. After that you should be able to reach me at (208) 484-9339. It will be difficult to reach me by mail since between January 3rd and April 15th I will be traveling in warmer areas. Again, thank you for your assistance in this matter and I look forward to working with you in the future.

Sincerely yours,

Dictated and edited by Sherl Chapman
and mailed in his absence in order
to avoid delay.

Sherl L. Chapman

SLC:sw

Encl.

cc: J.W. Whitman

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United States Department of the Interior
BUREAU OF LAND MANAGEMENT

Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657

In Reply Refer To:
7250 (933b)

December 14, 2004

Mr. Cheryl Chapman
444 Hilltop Road
Cascade, Idaho 83611

Dear Mr. Chapman:

This letter is a follow up a conversation we had over the phone today concerning Patents issued by the U.S. for places of use (POUs) asserted under water right claim number 78-04002B. I was able to locate copies of four Patents (enclosed) associated with the claimed POUs, but none of the Patents were as old as the 1898 date of priority asserted in the water right claim.

The oldest Patent (3575) was issued 12-19-1907 pursuant to the Act of April 21, 1820. Cash Entries did not have a farming requirement. The applicant just bought the land on a first come first serve basis.

The other three Patents (461238, 425603, and 153577) were issued between 1910 and 1919 pursuant to the Act of May 20, 1862. This type of Homestead Entry had a requirement to prove residence upon the entry, or cultivation, or some physical improvements during a three to five year proof period.

I hope you find this information helpful. If there are any questions concerning this request, please contact me at the above address or call (208) 373-3831.

Sincerely,

Fred Price
Water Rights Specialist

Enclosures:

Cash Entry Patent 3575 issued 12-19-1907
Act of 04-21-1820

Homestead Entry Patent 461238 issued 03-04-1919
Homestead Entry Patent 425603 issued 08-14-1914
Homestead Entry Patent 153577 issued 09-22-1910
Act of 05-20-1862

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78-04002B, 06-01-1898 priority date claimed

T22N, R01E, S22, NESE, SESE

CE Pat 3575 issued **12-19-1907** to John H. Clay
pursuant to the Act of 04-21-1820, no homestead requirements, just buy it.

T22N, R01E, S23, NWSW, SWSW

HE Pat 461238 issued **03-04-1919** to Claude J. Hendricks
pursuant to the Act of 05-20-1862, 5 years to prove residence or cultivation.
HE Application B-06271 allowed 08-25-1909, proof filed 12-17-1914.

T22N, R01E, S26, NWNW

HE Pat 425603 issued **08-14-1914** to Rufus A. Hendricks
pursuant to the Act of 05-20-1862, 3 years to prove residence or cultivation.
HE Application B-06272 allowed 08-25-1909, proof filed 03-27-1914.

T22N, R01E, S27, NENE, SENE

HE Pat 153577 issued **09-22-1910** to Johnie H. Clay
pursuant to the Act of 05-20-1862, 3 to 5 years to prove residence or cultivation.
HE Application 085 proof filed 09-04-1908.

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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: A78-04002A
Date Received: 7/12/1988
Receipt No: M000353
Received By: 

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CHARLES R. SPENCE 208-628-3688
Address: HC 75 ELK LAKE ROAD
NEW MEADOWS, ID 83654

OR

Name: MICHAEL GIZINSKI 208-628-3688
Address: HC 75 BOX 3588
NEW MEADOWS, ID 83654

OR

Name: SHERRIL GIZINSKI 208-628-3688
Address: HC BOX 3588
NEW MEADOWS, ID 83654

OR

Name: ELGIE BROTHERS 208-628-3638
Address: HC 75 ELK LAKE ROAD
NEW MEADOWS, ID 83654

OR

Name: BARBARA SPENCE 208-628-3688
Address: HC 75 ELK LAKE ROAD
NEW MEADOWS, ID 83654

2. Date of Priority: JUN 01, 1898

3. Source: BIG ELK CREEK Trib. to: LITTLE SALMON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
22N	01E	23	NE	SE	SW		IDAHO

5. Description of diverting works:
CONCRET HEADGATE DIVERTS WATER INTO A DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/15	10/15	0.280		
DOMESTIC	01/01	12/31	0.080		
STOCKWATER	01/01	12/31	0.020		

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

A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
THREE DOMESTIC HOUSEHOLDS, 30 HEAD OF HORSES

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
22N	01E	23	SW	SW		IRR	5.0
			SW	SW		DOMEST	1.0
			SW	SW		STOCK	
			SW	SW		DOMEST	1.0
Section Acres						7.0	
		26	NW	NW		IRR	9.0
			NW	NW		DOMEST	1.0
			NW	NW		STOCK	
Section Acres						10.0	
Total Acres						17.0	

11. Place of use in counties: IDAHO

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

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: STATUTORY CLAIM

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: 2

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): X Sherry Gijnski Date: X 7/12/88

Date: _____

State of Idaho)
County of Idaho) SS.

Subscribed and sworn (or affirmed) before me this 12 day

of July 19 88

Seal

John Lee Carlson
Notary Public

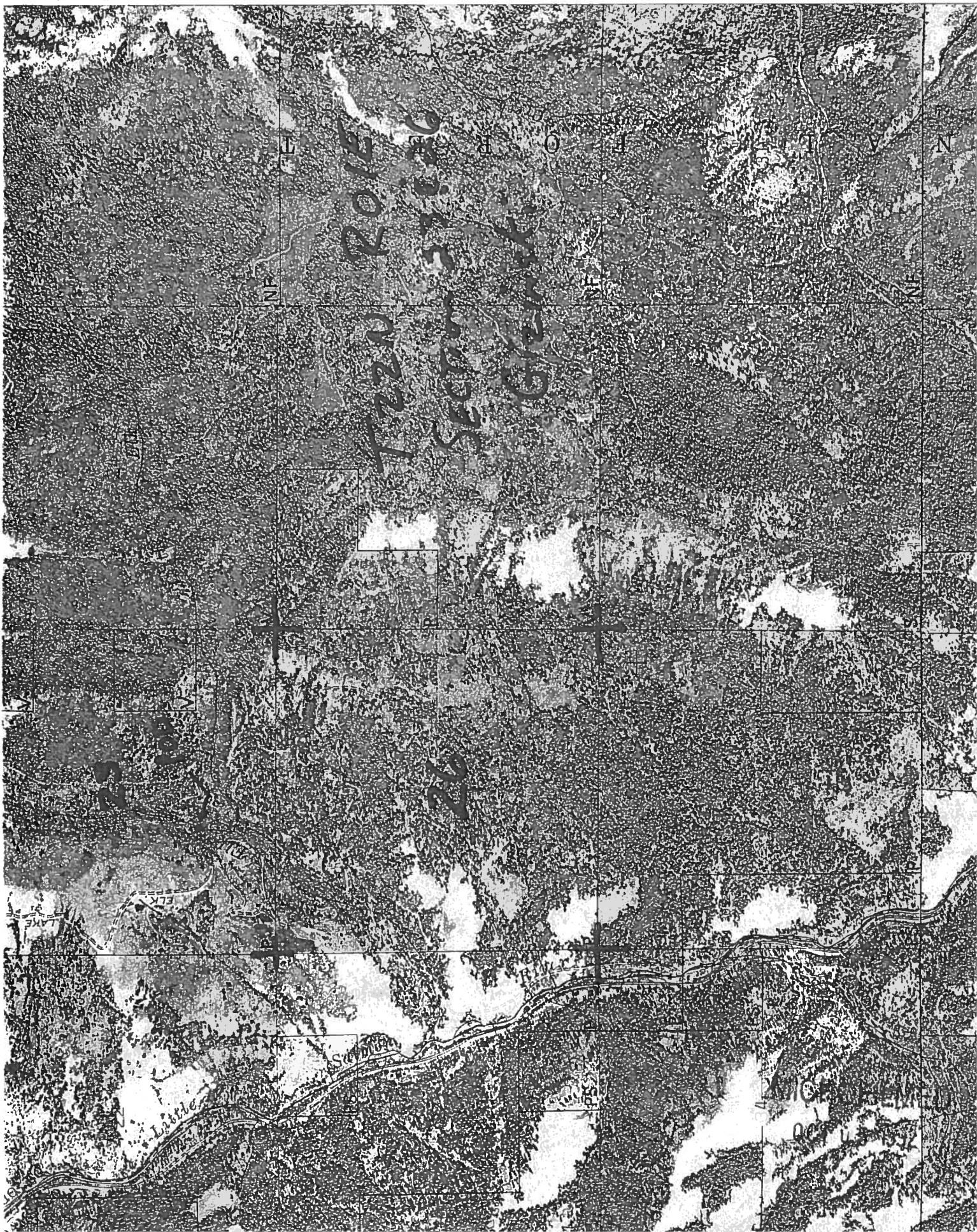
Residing at Boise ID

My Commission Expires 6/2/94

Sections 23 & 26

INDIAN MOUNTAIN ORTHOF
IDAHO





09

200 000

100

008

007

12' 30"

006

005

T. 22 N.

T. 21 N.

Indian Mountain
1963

INDIAN MOUNTAIN
ID#

