

06/13/2006

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

RIGHT NUMBER: 78-4031A

NAME AND ADDRESS: RAPID RIVER HOMEOWNERS ASSOCIATION
C/O TIM HEATH
BOX 316
RIGGINS ID 83549

SOURCE: RAPID RIVER

TRIBUTARY: LITTLE SALMON RIVER

QUANTITY: 0.200 CFS

PRIORITY DATE: 04/21/1894

POINT OF DIVERSION:

T23N R01E S6 NENE Lot 1 Within IDAHO County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	02/15 11/30	0.200 CFS

PLACE OF USE: IRRIGATION Within IDAHO County

T23N R01E S05	NWNW	4.00	T24N R01E S32	SWSW	6.00
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10 ACRES TOTAL

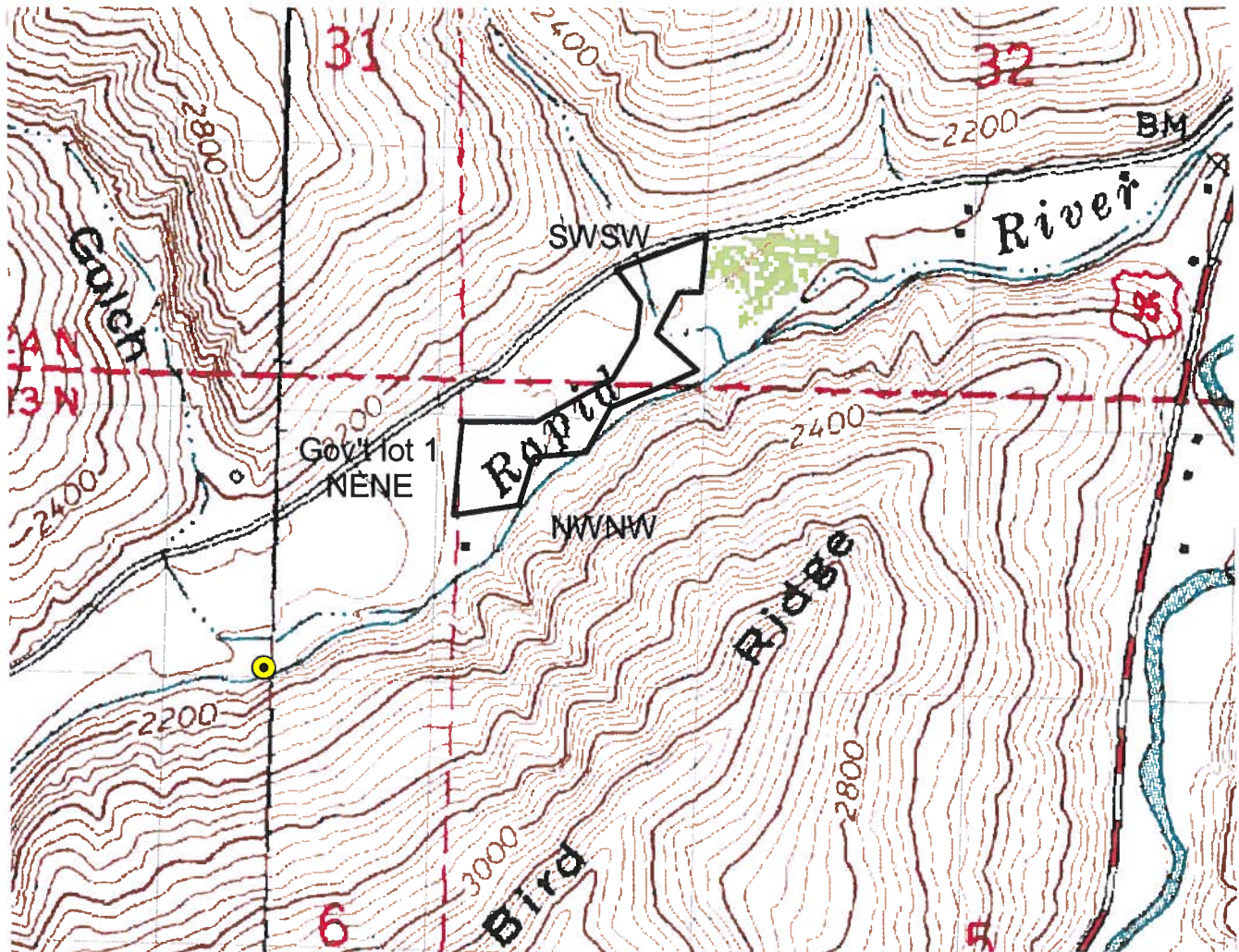
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Right includes accomplished change in purpose of use pursuant to Section 42-1425, Idaho Code.

78-4031A



0 500 1000 Feet

Sections 5 & 6
T23N R1E
Section 32
T24N R1E



● Point of Diversion

□ Place of Use

Map prepared on June 13, 2006
By Kenneth Knoblock
Idaho Department of Water Resources

This file contains info
re Vogelsoy's Exception to
claims & complaints & association.
Complaints started in 1992.

-JL 12/19/94

Note mailing
address:

40 Tim HEATH
(President)
PO Box 316
Riggins

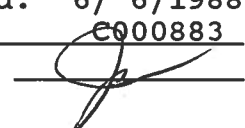
per file info
-JL 10/30/92

78-A031A

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: A78-04031A
Date Received: 6/ 6/1988
Receipt No: C000883
Received By: 

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: RAPID RIVER HOMEOWNERS ASSOCIATION
Address: RIGGINS ID 83549

2. Date of Priority: APR 21, 1894

3. Source: RAPID RIVER Trib. to: LITTLE SALMON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
23N	01E	6	NE	NE	NE		IDAHO

5. Description of diverting works:
CONCRETE HEADGATE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/01	10/15	0.200		

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

8. Total consumptive use is 30.0 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
23N	01E	5	NW	NW		IRR	4.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	4.0
24N	01E	32	SW	SW	IRR	6.0
					Section Acres	6.0
					Total Acres	10.0

11. Place of use in counties: IDAHO

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:

NONE

14. Remarks:

CLAIMANT IS AN ASSOCIATION ELECTED BY HOMEOWNERS OF THE
SUBDIVISION
THIS CLAIM ORIGINATED FROM CLAIM 78-4031, ANOTHER CLAIM WAS FILED
FOR THE REST OF THE SUBDIVISION WHICH ALSO ORIGINATED FROM
CLAIM 78-4031
6/5/1992: AMENDED CLAIM TO SHOW ACTUAL P/D AND PRIORITY AS
ESTABLISHED ON ATTACHED COURT HOUSE DOCUMENTS.
63-04031 WAS ORIGINALLY FILED IN ERROR.

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: _____

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 _____

ADJUDICATION MEMORANDUM

CLAIM NO: A78-04081

SUBJECT: # Change - split

EMPLOYEE: Jan Thute

DATE: 10-23-98

This claim has been renumbered due to a split filed by Bruce Hardy on another portion of the original right. It should be determined at a later date if his right was also a part of the Homeowners 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 THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A78-04031

Date Received: 6/ 6/1988

Receipt No: C000883

Received By: _____

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: RAPID RIVER HOMEOWNERS ASSOCIATION
Address: RIGGINS ID 83549

2. Date of Priority: APR 21, 1894

3. Source: RAPID RIVER Trib. to: LITTLE SALMON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
23N	01E	6		NE	NE		IDAHO

5. Description of diverting works:
CONCRETE HEADGATE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/01	10/15	0.200		

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

8. Total consumptive use is 30.0 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
23N	01E	5	NW	NW		IRR	4.0

MICROFILMED
OCT 05 1992

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	4.0
24N	01E	32	SW	SW	IRR	6.0
					Section Acres	6.0
					Total Acres	10.0

11. Place of use in counties: IDAHO

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:
NONE

14. Remarks:

CLAIMANT IS AN ASSOCIATION ELECTED BY HOMEOWNERS OF THE
SUBDIVISION
THIS CLAIM ORIGINATED FROM CLAIM 78-4031, ANOTHER CLAIM WAS FILED
FOR THE REST OF THE SUBDIVISION WHICH ALSO ORIGINATED FROM
CLAIM 78-4031
6/5/1992: AMENDED CLAIM TO SHOW ACTUAL P/D AND PRIORITY AS
ESTABLISHED ON ATTACHED COURT HOUSE DOCUMENTS.
63-04031 WAS ORIGINALLY FILED IN ERROR.

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: _____

MICROFILMED
OCT 05 1992

For Organizations:

I do solemnly swear or affirm that I am Asst. Director of
Title
Rapid River Homeowners Assoc., that I have signed the foregoing
Organization
document in the space below as Asst. Director of
Title
Rapid River Homeowners Assoc. and that the statements contained in the
Organization
foregoing document are true and correct. Bryan L. DeVanez
Signature of Authorized Agent
Rapid River Homeowners Assoc.
Title and Organization
6/5/92
Date

State of Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 5 day
of June 19 92

John Harris
Notary Public

Seal

Residing at Boise, Idaho
My Commission Expires 12-8-94

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: A78-04031
Date Received: 5/18/1988
Receipt No: 0000883

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: RAPID RIVER HOMEOWNERS ASSOCIATION
Address: RIGGINS, ID 83549

2. Date of Priority: DEC 01, 1922

3. Source: RAPID RIVER Trib. to: LITTLE SALMON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
23N	01E	5	NW	NW			IDAHO

5. Description of diverting works:
CONCRETE HEADGATE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/01	10/15	0.200		

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

8. Total consumptive use is 30.0 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
23N	01E	5	NW	NW		IRR	4.0
						Section Acres	4.0
24N	01E	32	SW	SW		IRR	6.0
						Section Acres	6.0

MICROFILMED
OCT 05 1992

10. Place of Use: Continued

Total Acres 10.0

11. Place of use in counties: IDAHO

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:
NONE

14. Remarks:

CLAIMANT IS AN ASSOCIATION ELECTED BY HOMEOWNERS OF THE
SUBDIVISION

THIS CLAIM ORIGINATED FROM CLAIM 78-4031, ANOTHER CLAIM WAS FILED
FOR THE REST OF THE SUBDIVISION WHICH ALSO ORIGINATED FROM
CLAIM 78-4031

15. Basis of Claim: STATUTORY CLAIM
Water Right Number:

MICROFILMED
OCT 05 1992

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: 1

For Organizations:

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

Rapid River Home Owners Assn, that I have signed the foregoing Organization

document in the space below as President of _____ Title

Rapid River Homeowners Assn and that the statements contained in the Organization
foregoing document are true and correct.

Tim A. Heath
Signature of Authorized Agent

Pres. Rapid River Home Owners Assn
Title and Organization

5-28-88

Date

State of Idaho)
County of Idaho) ss.

Subscribed and sworn (or affirmed) before me this 28 day

of May 19 88

Willotta Heath
Notary Public

Seal

Residing at Regina Ida

My Commission Expires 5-28-94

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: A78-04031

Date Received: 5/18/1988

Receipt No: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: RAPID RIVER HOMEOWNERS ASSOCIATION

Address: RIGGINS, ID 83549

2. Date of Priority: DEC 01, 1922

3. Source: RAPID RIVER Trib. to: LITTLE SALMON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
23N	01E	5	NW	NW			IDAHO

5. Description of diverting works:
CONCRETE HEADGATE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/01	12/01	0.200		

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

8. Total consumptive use is 30.0 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
23N	01E	5	NW	NW		IRR	4.0
						Section Acres	4.0
24N	01E	32	SW	SW		IRR	6.0
						Section Acres	6.0

MICROFILMED
OCT 05 1992

10. Place of Use: Continued

Total Acres 10.0

11. Place of use in counties: IDAHO

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:
NONE

14. Remarks:

CLAIMANT IS AN ASSOCIATION ELECTED BY HOMEOWNERS OF THE
SUBDIVISION
THIS CLAIM ORIGINATED FROM CLAIM 78-4031, ANOTHER CLAIM WAS FILED
FOR THE REST OF THE SUBDIVISION WHICH ALSO ORIGINATED FROM
CLAIM 78-4031

15. Basis of Claim: STATUTORY CLAIM
Water Right Number:

MICROFILMED
OCT 05 1992

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: 1

For Organizations:

I do solemnly swear or affirm that I am President of _____

Title

Rapid River Homeowners Assn.
Organization

, that I have signed the foregoing document in the space below as President of _____

Title

Rapid River Homeowners Assn
Organization

and that the statements contained in the foregoing document are true and correct.

Rita A. Heath
Signature of Authorized Agent

Pres Rapid River Homeowners Assn
Title and Organization

5-23-88
Date

State of Idaho)
County of Idaho) SS.

Subscribed and sworn (or affirmed) before me this 23 day

of May 19 88

Malletta M. Heath
Notary Public

Seal

Residing at Pygmy Idaho

My Commission Expires 5-17-94

Application for Permit:

"To Appropriate the Public Waters of the State of Idaho.

Application "No. 2220-S-.

Permit No. 15-65-7.

District No. 73-6.

Name of Applicant: B. B. Hinkley, Post Office Address, Pollock,
County, Idaho, State, Idaho

1. If applicant is a corporation, Give:

(a) Date and place of incorporation: (b) Amount of capital stock: \$ -

(c) Amount paid in, \$ - (d) Name and address of directors.

11 The financial resources of the applicant are, (a) Cash on hand \$ -

(b) Treasury stock \$ - (c) Bonds to be issued: \$ - (d) Other resources.

2 Quantity of water claimed: 60 cubic feet per second.

3 Source of water supply: Rapid River, which is a tributary of - - -

4 Location of point of diversion: 1000 feet distant from the Northeast

corner of Section 6, T. 23, N. R. 1, East B. M., and is in the Northeast

quarter of Northeast quarter of Section 6, T. 23 N. R. 1 East B. M.,
County of Idaho.

5 Water is to be used for: Irrigation.

6. If for mining, milling, power or manufacturing purposes, Give:

(a) Point of use of water - - feet distant from - - corner of Section -

T., R., B. M., in the - - of Section - - T., R., B. M.

(b) Amount of power generated, - - H. P., under - - feet head.

(c) Water is to be returned to - - at a point - - feet distant from the - -
corner of Section - - T., R., B. M., in the - - of Section - - T., R., B. M.

7 Estimated cost of works \$1000.00: 8 Kind of works: - - -

9 Height of dam: - - feet, length of dam at top - - feet, length of dam at
bottom - - feet; material used in dam.

10 Size of headgate: Width twenty inches, height six ten inches

11 Ditch: Width at bottom 20 in. Width at water line 26

Depth of water 18 in: Dimensions of flume - - Diameter of pipe - - miles.

Length of conduit $\frac{3}{4}$ miles. Average grade per mile $\frac{1}{2}$ in to rod

12 Use required for the completion of such work as, Now.

con. le. months:

13. If we required for the complete application of the
water to the proposed use is no additional years:

14: The land to be irrigated is described in the following
tabulation:

March 1

Notice of Water Right.

State of Idaho }
County of Blaine } At All Whom These May Concern:

I, Henry M. Parsons, Clerk of Blaine, do hereby publish and declare as a public notice to all the world:

That we have a large right to use, possess and control of, and claim six thousand (6000) inches of the water of Rapid River, in said County and State, measured under a four inch pressure, and flowing at the foot of diversion, which point of diversion is divided as follows to wit: At a point four one to one and one half miles above its junction with Little Salmon River, water posted on line two feet in diameter, standing on left bank of said Rapid River.

That the special purpose for which said water is intended to be used is for the generation of electric power and general milling and manufacturing purposes.

That the place of intended use is at or near the junction of said Rapid River with Little Salmon River, a distance of 1 to 1 1/2 miles below point of diversion.

That we intend to divert it from said Rapid River by means of natural channel ditch or flume which said natural channel, ditch or flume is 6000 inches capacity in size and carries a discharge 600 inches of water from said Rapid River.

That we appropriate and took said water on the nineteenth day of March A.D. 1894, and the name of the appropriation of said water are Joseph Butcher, Frank A. Bond, Henry M. Parsons, and Mr. Day, & Frank A. Bond.

That we also hereby claim said ditch and the right of way thereto and for said water by it conveyed, or to be conveyed, from said point of appropriation to said land or point of final discharge, and also the right of location upon any lands of any flume, sluice or reservoir, constructed, or to be constructed by us in elaboration and in using said water.

That we also claim the right to keep in repair and to enlarge said means of water appropriation at any time, and the right to dispose of the said right, water, ditch or said appropriances, in part or whole at any time.

Witness our hands at Pella Idaho on the 19th day of March 1894.

Joseph Butcher.
Frank M. Day.
Frank A. Bond.

Henry M. Parsons.

Frank A. Bond.

Location.

Filed for record at Pella Idaho. Rapid River Mining Dist. Mch 20 1894.

Recorded in Book - Page 79.

Thomas Pella.

Filed for record at Mt. Idaho. Idaho. April 21 1894. at 8 o'clock

A.M.

A.W. Partridge
County Recorder

A. 1894

Notice is hereby given, That John Brundage, a citizen of the United States of Colcock County of Idaho, State of Idaho, has this 26 day of February 1903, appropriated and hereby claims the use of the water of Rapid River to the extent of Tenacity, under first for second, flowing at the point of intended diversion, which said point of intended diversion is particularly described as follows to wit:

At a point where a copy of this notice is posted being the North East end of David Emmons field and on the North side of what is known as the Big Hole on the North bank of Rapid River.

That the special purpose or purpose for which said water is claimed is for irrigation. The place of intended use is the S. 24 1/4 of the N. 24 1/4 of S. 5 T. 23 N. R. 1 E. and the S. 24 1/4 of S. 24 1/4 of S. 3 T. 24 N. R. 1 E.

That the general course of the proposed Canal or conduit is in an Easterly direction.

The length of the proposed Canal or Conduit is about a half mile along the North bank of Rapid River.

That it is intended to complete the work for the diversion and use of said water as aforesaid within five years.

A copy of this notice was duly posted at or near the point of intended diversion on the 26th day of February 1903.

Witness my hand at Colcock County of Idaho, 11th E. of Idaho, this 10th day of March, 1903.

Appropriator and Claimant { John Bridge

State of Idaho }
County of Idaho } ss. John Bridge being first duly sworn, deposes and says that he is of lawful age and the appropriator and claimant of the Water Right described in the within and foregoing notice and whose name is subscribed thereto.

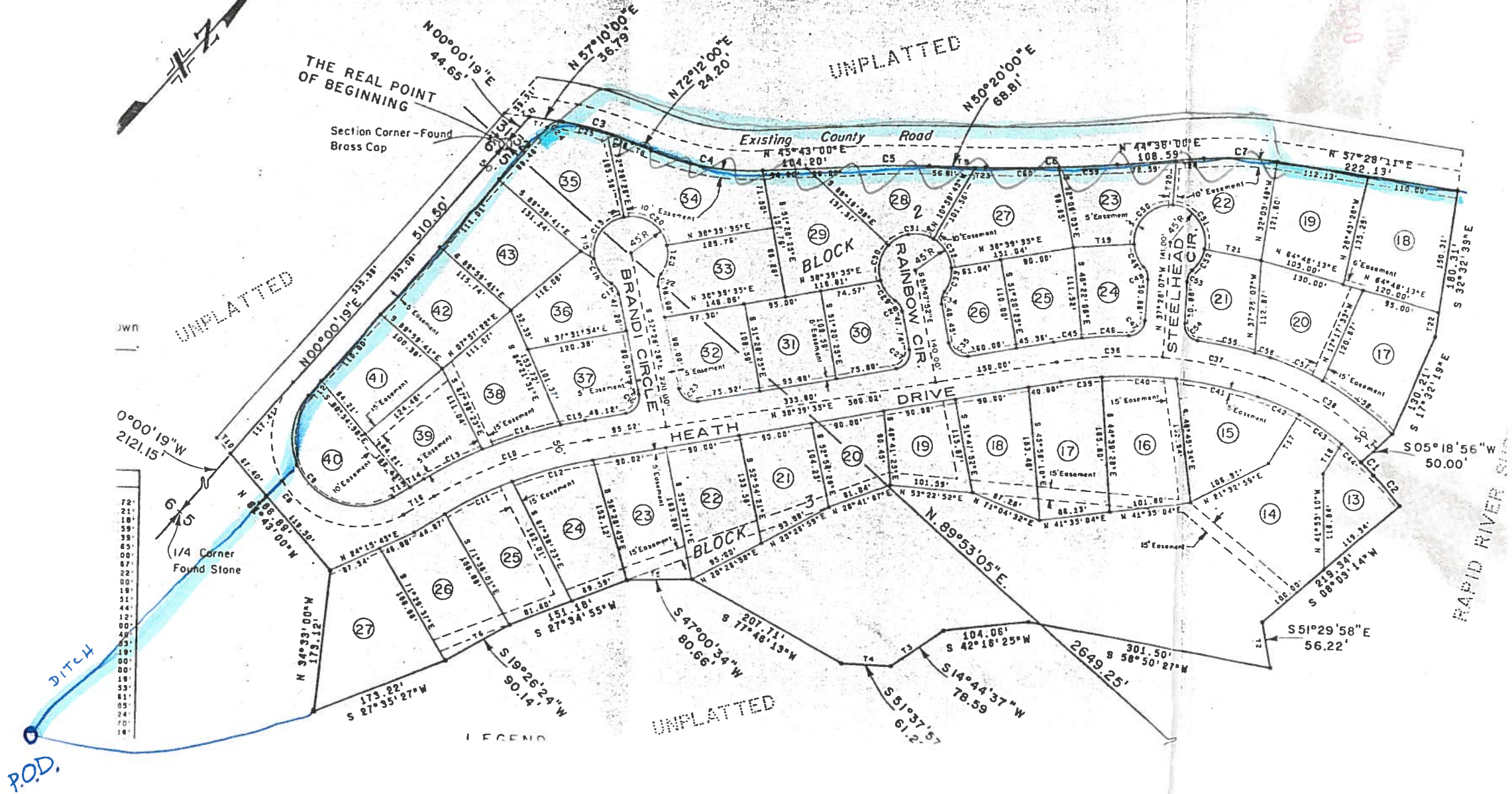
THE UNIVERSITY OF CHICAGO

REVIEW OF THE LITERATURE

11080M
OCT 12 1964

RAPID RIVER
SUBDIVISION #2

SW 1/4 NW 1/4 Section 5, T. 24 N., R. 1 E., B.M. B.
SW 1/4 SW 1/4 Section 32, T. 24 N., R. 1 E., B.M. B., Idaho County, Idaho



(KESSLER CREEK)

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

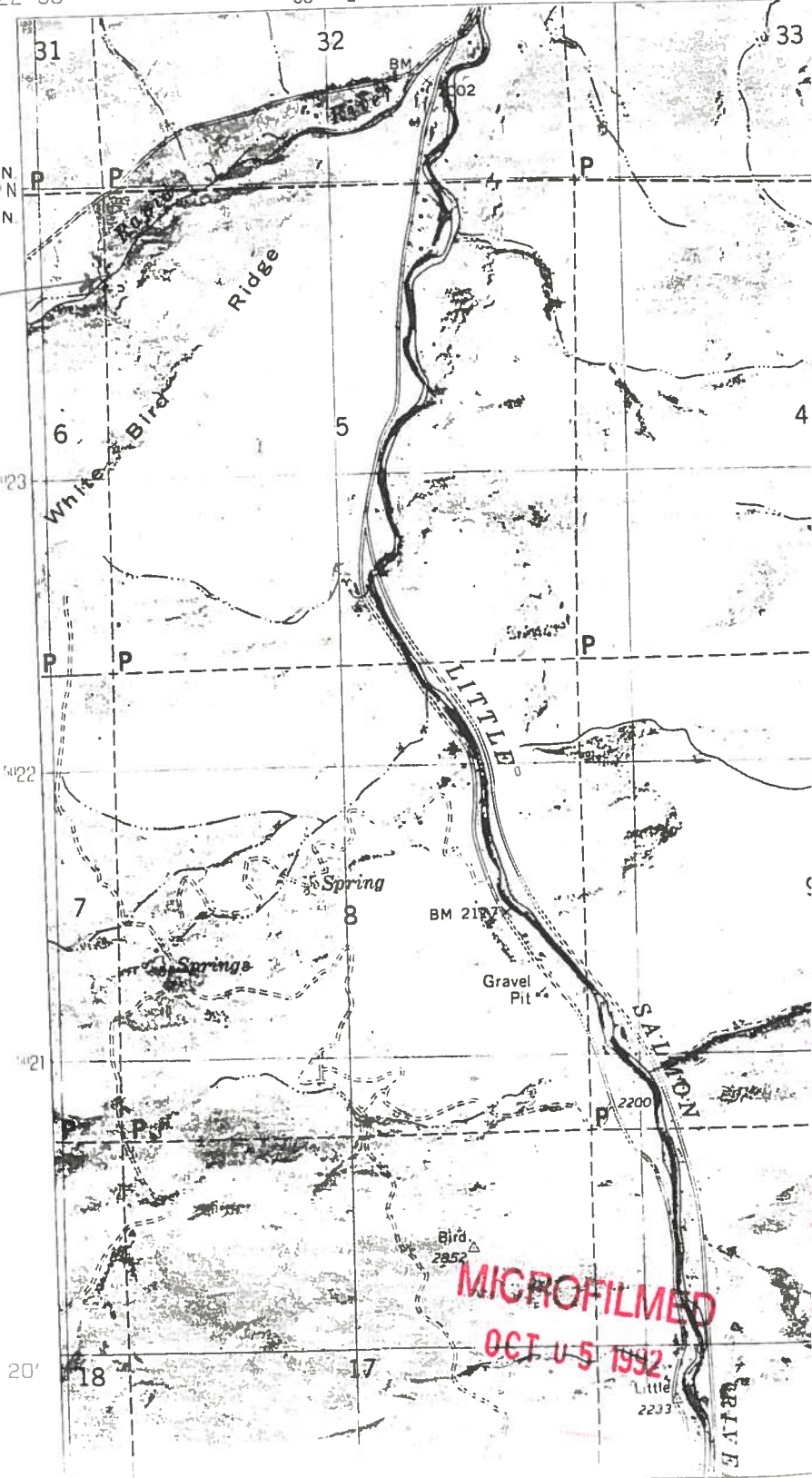
116° 22' 30"
45° 22' 30"

50000m E

51

T. 24 N.
T. 23 N.

P/D



A

XF XXX



Idaho County District Court

FILED

AT 9:10 O'CLOCK A.M.

JUL 1 1996

ROSE E. GEHRING

Clerk of District Court

By *[Signature]*
Deputy

RECORDED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CHARLES M. VOGELSONG and
GEORGIANNA VOGELSONG, husband
and wife,

Plaintiffs,

vs.

RAPID RIVER HOMEOWNER'S
ASSOCIATION, INC., RAPID RIVER
HOMEOWNERS ASSOCIATION WATER &
SEWER DISTRICT and JOHN DOES 1-XV,
their respective officers and
agents,

Defendants.

Case #CV29677

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This is an action for damages based on tort and for
injunctive relief.

FINDING OF FACT AND CONCLUSIONS OF LAW

1. At sometime in the 1920's diversion works were
constructed on the northerly bank of the Rapid River abutting Idaho
County property presently owned by Plaintiffs Charles M. and
Georgianna Vogel song and acquired by them in 1991. They
constructed a home upstream of the works in 1991-92. The water
diverted transverses the Vogel song property by way of an open ditch
running generally downstream and parallel to the river.

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 1

2. At some time prior to 1991, the ownership of the water rights to which the works are appurtenant was acquired by Rapid River Homeowners Association, Inc., subsequent to the formation of the Rapid River Homeowners Association Water and Sewer District in 1993 the rights were transferred to the District by the Homeowners Association.

3. Since at least 1943, the operation of the Diversion works has typically involved the utilization of a wing wall structure extending upstream from the diversion works and angling slightly into the natural channel of the Rapid River so as to facilitate diversion of water during the low water periods, typically, August and September.

4. The wing wall is rebuilt from time to time to preserve and maintain the flow. No equipment other than hand tools has been employed for this purpose; the river dynamics, particularly in high flow years, partially dismantles the wing wall and partially fills in the diversion channel between the wall and the northerly bank of the river.

5. The diversions works itself has been reconstructed periodically, including 1966, and most recently, in 1974, when it was washed out by extreme high water; at that time the present concrete structure was constructed.

6. The introduction of any artificial structures within the dynamics of the river system inevitably produces further change which in turn produces some impact on the banks and properties abutting the water course.

7. The operators of the diversion works are under a duty to operate such works in a non-negligent manner exercising ordinary care.

8. Factors relevant to a determination of whether or not the conduct of the operators is or is not negligent include, but are not necessarily limited to, the purpose of the diversion, the design of the structure, and the manner of operation of the overall system (being the concrete gate structure, the wing wall and the transport ditch) relative to such purpose. Also relevant is the impact on the servient owner, in this case, Mr. and Mrs. Vogelsong.

9. The court finds the manner and extent of the operation of the system is reasonable under the facts and circumstances presented, particularly, the annual reconstruction of the wing wall and reclamation of the diversion channel adjoining it, so long as they are not materially altered or enlarged.

10. So long as the operation falls within the scope of conduct as outlined above some erosion of the abutting banks is inevitable and is reasonable and non-negligent.

11. No significant or material change in the design or operation of the existing diversion system may be made without an adequate engineering study.

Dated this 30 day of June, 1996.



GEORGE REINHARDT
District Judge

October 4, 2000

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

**Re: No. A78-04031 and A78-04031A Priority Dates of
04/21/1894**

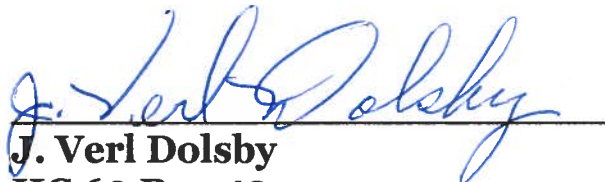
Enclosures:

- 1. State of Idaho Department of Water
Administration CLAIM TO A WATER RIGHT,
states that the upper and lower ditch priority
dates are December 1922. Dated November 17,
1971.**
- 2. A letter from State of Idaho DEPARTMENT OF
WATER RESOURCES, to Mr. Harold G. (Nick)
Smith dated April 4, 1984. Which states that
the earliest priority date for claim 78-4031 is
December 1922.**

**The above letters contradict the date of two water rights
listed above.**

**Which is the correct date 12/01/ 1922 or 4/21/1894? This
could affect the priority date on my property.**

Sincerely,



**J. Verl Dolsby
HC 69 Box 42
Riggins, ID. 83549**



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

file 78-4031

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

Mailing address:

Statehouse

Boise, Idaho 83720

(208) 334-4440

April 4, 1984

Mr. Harold G. (Nick) Smith
Coolwater Trout Farm
Star Route
Riggins, ID 83549

Dear Mr. Smith:

I have searched our records for filings appurtenant to the following lands described in your letter of March 28, 1984:

T. 23 N., R. 1 E.

Sec. 5: Lot 4 (NW $\frac{1}{4}$ NW $\frac{1}{4}$)

T. 24 N., R. 1 E.

Sec. 32: NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$

In reply to your inquiry with regard to a water right filed with the earliest priority date appurtenant to the above lands, our records show Claim 78-4031 filed by Margaret Roakey claimed a priority date of December 1922 for a total of 4 cfs from Rapid River for stockwater and irrigation.

Other rights identifying the place of use within the above described lands or a portion of the lands are Claim 78-4187, Permits 78-7159 and 78-7189 with diversions from Rapid River. Our records also show a licensed right, 78-7034, for use of groundwater.

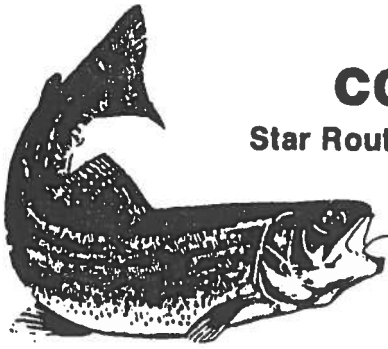
For your review, enclosed are copies of the water rights mentioned along with a billing for providing the copies. If you do not wish to keep the copies, please return them and no charge will be made.

If you have any questions or need further assistance, please do not hesitate to contact us.

Sincerely,

ROBERTA GARRETT
Records Supervisor

Enclosures



COOLWATER TROUT FARM

Star Route, Riggins, Idaho 83549 • Telephone 208-628-3706

78-4031

March 28, 1984

RECEIVED
APR 2 1984

DEPT OF WATER RESOURCES
Statehouse
Boise, Idaho 83720

Gentlemen:

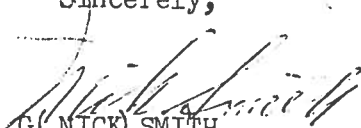
Department of Water Resources

Will you please check your records and advise me as to the earliest water right either by recording or being put to beneficial use granted the land legal description being: In Idaho County, state of Idaho, to-wit: Lot number 4; Section 5; Township 23 North; Range 1 East of BM; and the Northeast 1/4 of the Southwest 1/4 and the South 1/2 of the Southwest 1/4 of Section 32; Township 24 North; Range 1 East of BM containing 160 acres more or less."

This information is vitally needed to stave off a possible conflict.

1 Enc.

Sincerely,


HAROLD G. (NICK) SMITH
Director

his heirs and assigns forever, all of the following described real estate in Idaho County, State of Idaho, to-wit:

Lot number 4; Section 5; Township 23 North; Range 1 East of BM; and $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ and the South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 32; T Range 1 East of BM containing in all 160 acres more or less.

TOGETHER with all and singular, the hereditaments and appurtenances in or in any wise appertaining and the reversion and reversions, remain rents, issues, and profits thereof, and all estate, right, title, and interest said property of the said parties of the first part.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described together with the appurtenances, unto the party of the second part and to assigns forever. And the said parties of the first part covenants that and lawful right to sell and convey the said land and that they are possess title thereto and that they and their heirs and assigns will forever warrant the same against all persons lawfully claiming the same.

IN WITNESS WHEREOF, The said parties of the first part have hereunto and seals the day and year first above written.

Signed, sealed and delivered
in the presence of: --

Robert J. Gill

Iola Gill

(Int. Rev. \$7.70)

STATE OF WASHINGTON)
COUNTY OF SPOKANE) ss.

On this 14th day of July, in the year 1945, before me, J. J. Moore, a Notary Public in and for said County and State, personally appeared Robert J. Gill and Iola Gill, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they 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.

Notary Public
" J. J. Moore, Notary Public
" State of Washington
" commission expires March 28, 1947"

Wm. J. Moore, Notary Public
at Spokane, Wash.

STATE OF IDAHO)
COUNTY OF IDAHO) ss.

rs and assigns forever, all of the following described real estate, situated
o County, State of Idaho, to-wit:
t number 4; Section 5; Township 23 North; Range 1 East of EM; and the Northeast
e Southwest 1/4 and the South 1/2 of the Southwest 1/4 of Section 32; Township 24 North;
. East of EM containing in all 160 acres more or less.

GETHER with all and singular, the hereditaments and appurtenances thereunto belong
in any wise appertaining and the reversion and reversions, remainder and remainder
issues, and profits thereof, and all estate, right, title, and interest in and to
roperty of the said parties of the first part.

HAVE AND TC HOLD, all and singular, the above mentioned and described premises,
er with the appurtenances, unto the party of the second part and to his heirs and
s forever. And the said parties of the first part covenants that they have good
ful right to sell and convey the said land and that they are possessed of fee simpl
hereto and that they and their heirs and assigns will forever WARRANT and DEFEND
ne against all persons lawfully claiming the same.

WITNESS WHEREOF, The said parties of the first part have hereunto set their hands
als the day and year first above written.

, sealed and delivered
presence of: --

Robert J. Gill (Seal)
Iola Gill (Seal)

(Int. Rev. \$7.70)

OF WASHINGTON }
OF SPOKANE } ss.

On this 14th day of July, in the year 1945, before me Wm. J.
a Notary Public in and for said County and State, personally appeared Robert J.
d Iola Gill, known to me to be the persons whose names -- subscribed to the within
ment, and acknowledged to me that they executed the same.

WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the
d year in this certificate first above written.

Wm. J. Moore, Notary Public, residing
at Spokane, Wash.
J. Moore, Notary Public "
State of Washington "
ission expires March 26, 1947"

OF IDAHO)
OF IDAHO) ss.

REC 5

TS 23N

R 1E

on

RAPID RIVER

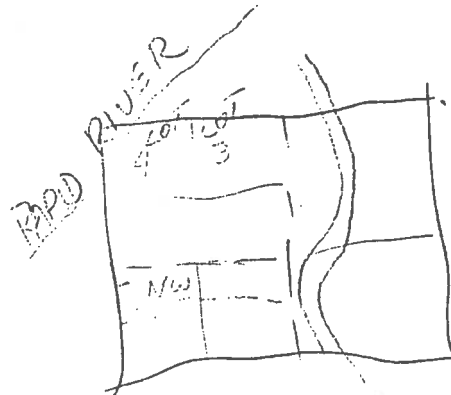
from

1000

2000 ft.

78-403

78-4031



78 4031

January 13, 1972

Re: Claim to a Water Right No. 78-4031

Margaret Roakey
Box 244
Riggins, Idaho 83549

Dear Ms. Roakey:

The Department of Water Administration has completed the processing of your claim to a water right, and no further action is authorized under Sections 42-225a and 42-225b, Idaho Code. Your claim will be retained in our files and will be available at any time for use by you or the court.

As you are aware, the filing of your claim does not, in itself, guarantee you a water right; it only records and preserves the information and the evidence which you included in your claim.

If, at a later date, you find that you have additional information or supporting evidence that you would like to have included in your claim file, you may have that information or evidence added at any time. Please refer to your claim number when corresponding with this office.

We are enclosing, for your records, a copy of your claim. If you have any questions, or if we can be of further assistance, please feel free to call upon us.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:bb
Enclosure: Copy of claim

78 4031

STATE OF IDAHO

DEPARTMENT OF WATER ADMINISTRATION

Statehouse - Annex 2

Boise, Idaho 83707

(208) 384-2215



R. Keith Higginson
Director

Water Rights Administration
Water Resource Investigations
Dam and Reservoir Safety
Water Well Drilling
Flood Plain Management
Irrigation and
Flood Control Districts

December 9, 1971

Re: Claim No. 78-4031 - Margaret Roakey
" " 82-4005 - Floyd J. Patrin
" " 84-4007 - Flora May Gentry

Idaho County Free Press
Box 267
Grangeville, Idaho 83500

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted assuming the notice is correct. If we have any corrections, we will notify you before the first publication date. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. In order to receive payment, the following certification must appear on the bill:

"I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid."

(signature of claimant)

Very truly yours,

Fred Eisenbarth
Appropriation Examiner

FE:cr

Enc: Legal Notices

Bill submitted 1-12-72. CR
78 4031

78 4031

**NOTICE OF CLAIM TO
A WATER RIGHT**

No. 78-4031

Notice is hereby given that Margaret Roakey, Box 244, Riggin, Idaho has filed a claim to a water right established by diversion and application to beneficial use of 4.0 cubic feet per second of water from Rapid River, tributary to Little Salmon River with point of diversion in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 5, T. 23N, R. 1E, B.M., Idaho County.

The water is claimed to be used from April 1 to Oct. 15 for stockwatering purposes and the irrigation of 50 acres with a priority of December, 1922; the place of use is within Lot 4, Sec. 5, T. 23N, R. 1E, B.M.; NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 32, T. 24N, R. 1E, B.M.

Any exception to this claim of water right may be filed with the Idaho Department of Water Administration, Statehouse, Boise, Idaho.

R. KEITH HIGGINSON

Director

Published in the Idaho County Free Press, Grangeville, Idaho on Dec. 22 and Dec. 29, 1971. D22-29

78 4031

Handwritten:
11-1-71
J. R. Roakey
O.K.

NOTICE OF CLAIM TO A WATER RIGHT

No. 78-4031

Notice is hereby given that Margaret Roakey,

Box 244, Riggins, Idaho

has filed a claim to a water right established by diversion and application to beneficial use of 4.0 cubic feet per second ~~20000 feet~~ of water from Rapid River, tributary to Little Salmon River with point of diversion in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 5, T. 23N, R. 1E, B.M.,
Idaho County.

The water is claimed to be used from April 1 to Oct. 15 for stock-
watering purposes and the irrigation of 50 acres
with a priority of December, 1922;
the place of use is within ~~the~~ Lot 4, Sec. 5, T. 23N, R. 1E, B.M.;
NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 32, T. 24N, R. 1E, B.M.

Any exception to this claim of water right may be filed with the
Idaho Department of Water Administration, Statehouse, Boise, Idaho.

R. KEITH HIGGINSON

Director

Published in the Idaho County Free Press, Grangeville, Idaho
on Dec. 22 and Dec. 29, 1971.

78 4031

November 29, 1971

Margeret Roakey
Box 244
Riggins, Idaho 83549

Dear Mr. Roakey:

Attached herewith is your receipt No. 8509 in the amount of \$ 10.00
for your claim to water right
which was received in this office.

Very truly yours,

M. RUSSELL BOSCH
Administrative Assistant

MRB:ejw

Enclosure: Receipt

78 4031

Identification No. 78-4031P
Claim No. _____
Map No. _____

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

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 MARGARET ROARKEY
post office address Box 244 RIGGINS
2. The point of diversion is in NW 1/4 of SW 1/4 Section 5 Township 23 N
Range 1 E B.M. located on RAPID RIVER (name of source)
tributary to LITTLE SALMON RIVER in SE DAHO 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:

Upper Ditch Dec 1922 amount: 2 c.f.s. or _____ acre feet
Lower Ditch Dec 1922 amount: 2 c.f.s. or _____ acre feet
amount: _____ c.f.s. or _____ acre feet

Total claimed 4 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 irrigational period of use from April 1 to Oct 15 (both dates inclusive)
use Stockwater period of use from April 1 to Oct 15 (both dates inclusive)
use _____ period of use from _____ to _____ (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: ^{upper} material is composed of Wood & Concrete;
_____ ; length is 3 feet; height is 5 feet;
width at bottom is 2 1/2 feet; with at top is 2 1/2 feet; explain any increase in diversion capacity since structure was first built, giving dates and estimated capacities if known _____
Lower Headgate - Width - 3' Length 6' Height 4'
Concrete & Wood

- 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 _____ ;

b. Do you get water through a ditch owned by several users? _____ 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 9 Head Cattle

7. Where water is used for domestic or municipal purposes give number of families served _____
name of town supplied _____

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
1943 - Purchased By William & Margaret Roakey

State of Idaho }
County of Idaho } ss.

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

Sworn to before me this 17 day of November 1971
Margaret Roakey Claimant
Walter Schleichers Notary Public
Residing at Logans Idaho
My commission expires January 15, 1972

For Department Use Only	
Received by _____	Date _____
Prelim. check by <u>BDF</u>	Date <u>11-19-71</u>
Fee received by <u>WJ</u>	Date <u>11-19-71</u> Fee \$ <u>10.00</u>
Approved for publication by <u>BDF</u>	
Published in <u>Idaho City News Press</u>	Date <u>12-22-71</u>
Exception filed by: _____	Date _____
Forwarded to claimant by: _____	Date _____

78 4034

AFFIDAVIT OF PUBLICATION

.....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 t.W.O..... weeks,
being published t.W.O..... times, the first publication being
on the 22nd.. day of December....., 1971.....,
and the last publication on the 29th..... day of
.....December..... 1971...; 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 29th day
of December 1971....

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

NOTICE OF CLAIM TO A WATER RIGHT

No. 78-4031

Notice is hereby given that Margaret Roakey, Box 244, Riggin, Idaho has filed a claim to a water right established by diversion and application to beneficial use of 4.0 cubic feet per second of water from Rapid River, tributary to Little Salmon River with point of diversion in the NW¼SW¼, Sec. 5, T. 23N, R. 1E, B.M., Idaho County.

The water is claimed to be used from April 1 to Oct. 15 for stockwatering purposes and the irrigation of 50 acres with a priority of December, 1922; the place of use is within Lot 4, Sec. 5, T. 23N, R. 1E, B.M.; NE¼SW¼, S½SW¼, Sec. 32, T. 24N, R. 1E, B.M.

Any exception to this claim of water right may be filed with the Idaho Department of Water Administration, Statehouse, Boise, Idaho.

R. KEITH HIGGINSON,
Director

Published in the Idaho County Free Press, Grangeville, Idaho on Dec. 22 and Dec. 29, 1971.

78 4031

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 _____.

c. Conveying works: length of ditch to place of use is _____ feet; width of ditch at top is 3 feet; width of bottom of ditch is 2 $\frac{1}{2}$ feet; depth of water is 1 $\frac{1}{2}$ feet; grade of ditch per 1000 feet is _____ feet; material through which ditch passes is 2 x 1 L _____; 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 _____

5. a. Where water is used for irrigation, describe area irrigated by 40-acre subdivisions and give total acres:

[illegible]

Total number of acres to be irrigated 50

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

RECEIVED

AUG 03 1995

WATER RESOURCES
WESTERN REGION

IDAHO COUNTY DISTRICT COURT

FILED

AT 1:25 O'CLOCK P M

JUN 26 1995

ROSE E. GEHRING
CLERK OF DISTRICT COURT
JOY HIGGINS

Deputy

WILLIAM M. KILLEN, ESQ.
WILLIAM M. KILLEN, P.A.
Attorney at Law
200 Park Street
P. O. Box A.O.
McCall, Idaho 83638
Telephone: (208) 634-7118

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CHARLES M. VOGELSONG and
GEORGIANNA VOGELSONG, husband and
wife,

Plaintiffs,

vs.

RAPID RIVER HOMEOWNER'S
ASSOCIATION, INC., RAPID RIVER
WATER & SEWER DISTRICT and
JOHN DOES I-XV, their respective
officers and agents,

Defendants.

Case No.

CV29677

COMPLAINT FOR
DAMAGES AND
INJUNCTIVE RELIEF

Fee Schedule: A.1.

Fee: \$65.00

COME NOW the Plaintiffs, and for their cause of action,
allege as follows:

I.

Situate in the Rapid River watershed in Idaho County,
Idaho, is a subdivision known as the Rapid River Subdivision

consisting of approximately 80 lots and certain common amenities.

II.

Among these are certain water works alleged to include the right(s) to direct water from the Rapid River at a point upstream of the subdivision and a right to convey such water across certain lands lying between the point of diversion and the subdivision lands.

III.

In the spring of 1993, pursuant to the provisions of Idaho Code 42-3204, a water and sewer District, known as the Rapid River Water & Sewer District was created by Court Order. The boundaries of the District are coincident with the boundaries of the subdivision.

IV.

Subsequent to its formation, all right, title and interest in the above referenced water right(s) and ditch rights were transferred to the District.

V.

The diversionary works and ditch have been constructed, reconstructed, and maintained and operated in a negligent manner by the Association, the District and their agents causing proximate and actual damages to the lands of plaintiffs abutting the point of diversion, which damages are ongoing to this date and if unabated will cause irreparable harm to such lands because of the continuing

erosion of plaintiffs' lands for which there is no adequate remedy at law.

VI.

Defendants have a duty to operate their works in a non-negligent manner so as to cause no harm to plaintiffs as both an adjoining owner and as a servient owner.

VII.

Plaintiffs seek damages in an amount in excess of \$10,000.00 to restore and stabilize the river bank, which has been subjected to harm by defendants' acts or omissions, as well as a permanent injunction requiring plaintiffs to conform their diversionary works and their maintenance and operation thereof in such a manner as to preclude future damage, including, but not limited to, erosion and subsidence of the lands, as well as, impairing plaintiffs' use and asthetic enjoyment of their rights of ownership.

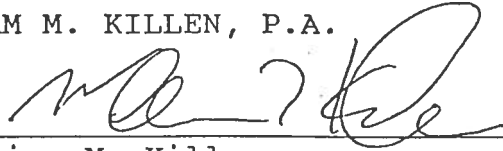
WHEREFORE Plaintiffs pray for relief as follows:

1. Damage in an amount in excess of \$10,000.00 against the named entities jointly and severally.
2. A permanent injunction against the named entities, and their officers and agents, directing them to conform their diversionary works, and their maintenance and operations thereof, in such a manner as to preclude future damage to plaintiffs' lands.
3. Costs of suit, including reasonable attorney fees, as provided by law.
4. For such other and further relief as is just in the premises.

DATED this 22nd day of June, 1995.

WILLIAM M. KILLEN, P.A.

By

A handwritten signature in dark ink, appearing to read 'W. M. Killen', written over a horizontal line.

William M. Killen

Attorney for Plaintiffs Vogelsong

Idaho County District Court

FILED

AT 9:10 O'CLOCK A.M.

JUL 1 1996

ROSE E. GEHRING

Clerk of District Court

By *Stella Allen*
Deputy

RECEIVED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CHARLES M. VOGELSONG and
GEORGIANNA VOGELSONG, husband
and wife,

Plaintiffs,

vs.

RAPID RIVER HOMEOWNER'S
ASSOCIATION, INC., RAPID RIVER
HOMEOWNERS ASSOCIATION WATER &
SEWER DISTRICT and JOHN DOES 1-XV,
their respective officers and
agents,

Defendants.

Case #CV29677

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This is an action for damages based on tort and for
injunctive relief.

FINDING OF FACT AND CONCLUSIONS OF LAW

1. At sometime in the 1920's diversion works were
constructed on the northerly bank of the Rapid River abutting Idaho
County property presently owned by Plaintiffs Charles M. and
Georgianna Vogel song and acquired by them in 1991. They
constructed a home upstream of the works in 1991-92. The water
diverted transverses the Vogel song property by way of an open ditch
running generally downstream and parallel to the river.

2. At some time prior to 1991, the ownership of the water rights to which the works are appurtenant was acquired by Rapid River Homeowners Association, Inc., subsequent to the formation of the Rapid River Homeowners Association Water and Sewer District in 1993 the rights were transferred to the District by the Homeowners Association.

3. Since at least 1943, the operation of the Diversion works has typically involved the utilization of a wing wall structure extending upstream from the diversion works and angling slightly into the natural channel of the Rapid River so as to facilitate diversion of water during the low water periods, typically, August and September.

4. The wing wall is rebuilt from time to time to preserve and maintain the flow. No equipment other than hand tools has been employed for this purpose; the river dynamics, particularly in high flow years, partially dismantles the wing wall and partially fills in the diversion channel between the wall and the northerly bank of the river.

5. The diversions works itself has been reconstructed periodically, including 1966, and most recently, in 1974, when it was washed out by extreme high water; at that time the present concrete structure was constructed.

6. The introduction of any artificial structures within the dynamics of the river system inevitably produces further change which in turn produces some impact on the banks and properties abutting the water course.

7. The operators of the diversion works are under a duty to operate such works in a non-negligent manner exercising ordinary care.

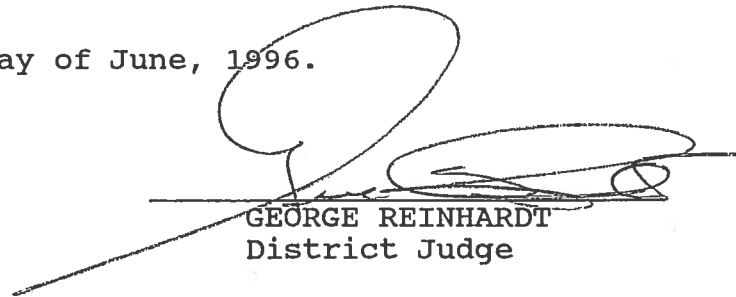
8. Factors relevant to a determination of whether or not the conduct of the operators is or is not negligent include, but are not necessarily limited to, the purpose of the diversion, the design of the structure, and the manner of operation of the overall system (being the concrete gate structure, the wing wall and the transport ditch) relative to such purpose. Also relevant is the impact on the servient owner, in this case, Mr. and Mrs. Vogelsong.

9. The court finds the manner and extent of the operation of the system is reasonable under the facts and circumstances presented, particularly, the annual reconstruction of the wing wall and reclamation of the diversion channel adjoining it, so long as they are not materially altered or enlarged.

10. So long as the operation falls within the scope of conduct as outlined above some erosion of the abutting banks is inevitable and is reasonable and non-negligent.

11. No significant or material change in the design or operation of the existing diversion system may be made without an adequate engineering study.

Dated this 30 day of June, 1996.



GEORGE REINHARDT
District Judge

- Sandy - SA
- file in
A78-04031

JAMES W. GIVENS
LAWYER
1026 F STREET - P.O. BOX 875
LEWISTON, IDAHO 83501
TELEPHONE 208/746-2374
Fax #208/746-0446

RECEIVED

AUG 03 1995

WATER RESOURCES
WESTERN REGION

August 1, 1995

SL
Mr. Steve Lester
Senior Agent
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: Rapid River

Dear Mr. Lester:

To confirm our phone conversation, it is my understanding Miss Hemingway may appear as a witness in the Vogelsong case, if served with a subpoena.

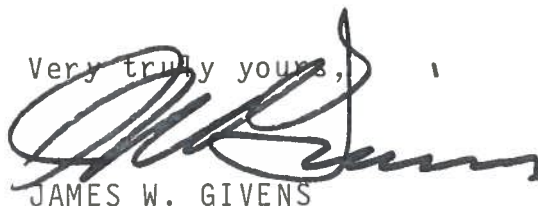
Enclosed is a copy of the complaint Mr. Vogelsong filed against the district.

I do not understand why Mr. Vogelsong feels the district has damaged him.

We are serving interrogatories on Mr. Vogelsong. The answers may establish more clearly his claim. When I receive the answers I shall forward a copy to you.

Thank you for visiting with me and for your help and assistance in this matter.

Very truly yours,



JAMES W. GIVENS

JWG:p
enc

CONVERSATION MEMORANDUM

DATE 5/22/95
FILE A78-04031NAME OF PARTY Buz Hardy *
EMPLOYEE Steve LesterRE: Lateral Water Users Assoc.

He is Pres. of Homeowners "Lower Water Dist." & also
owns the water ("ditchmaster").

Questions c how to deal with common ditch for
8 users in Rapid River Homeowners Assoc.

Discussed Chpt 13, Title 42.

Sent him copy of Chpt 13 + parts Chpt 9, re:
Lat. Water Users Assoc.; also sent 2 samples of
recent interpretation of same with by-laws etc.

Possible IDMR role in assisting formation of
Lat. Hw users want to see if ask
for such help.

* HC 69 Box 65
Riggins 83549

He is also on mailing list c Vogelzang complaints.

JAMES W. GIVENS
LAWYER
1026 F STREET - P.O. BOX 875
LEWISTON, IDAHO 83501
TELEPHONE 208/746-2374

RECEIVED
APR 24 1995
WATER RESOURCES
WESTERN REGION

April 21, 1995

2
Mr. Steve Lester
Water Rights Supervisor
Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

Re: Adjudication Claim No. A78-04031

Dear Mr. Lester:

On October 30, 1992 you wrote the Rapid River Homeowners Association advising them of Mr. Vogelsong's protest in connection with the association's water right.

In order to update your records, the water rights held by the Rapid River Homeowners Association have been assigned to the Rapid River Homeowners Association Water and Sewer District, a district formed and organized under the statutes of the state of Idaho.

Reference is made to Mr. Vogelsong's protest which reads: "The lawyer disagreed negotiations were ceased. As a result, our position is that the parties now have no legal access to Section 6, and the Idaho Water Resources informs us that no active permit is on file with their office as is required under current law." The position of the Homeowners Association and its predecessors, and the position of the Water and Sewer District, is that the water rights in question have been held for years, have been used actively every year, the ditch in question exists in its present location and has for many years. There was no necessity to obtain an easement from Mr. Vogelsong as neither Mr. Vogelsong nor any of his predecessors would be able to assert an interest adverse to that of the association or the district, as the statute has run on any adverse claim they may have.

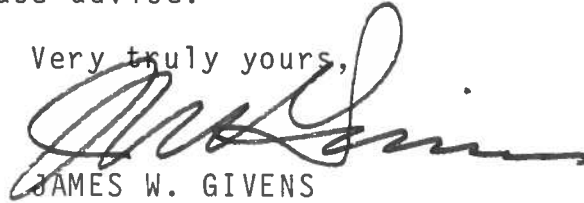
*Change in Ownership from
Required*

NO COMMENT NEEDED

Mr. Steve Lester
April 21, 1995
Page 2

If for any reason the Water Resources Department disagrees with that position, would you please advise.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. W. Givens", written over the typed name.

JAMES W. GIVENS

JWG:p
cc: Eileen Hardy, Sec-Treas.
for Water and Sewer Dist.



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

March 16, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

MR JOHN TETRO
HC 69 BOX 130
RIGGINS ID 83549

--- REPLY VIA FAX ---

RE: QUESTIONS FROM YOUR FAX OF 3-2-98

Dear Mr. Tetro:

Your fax letter dated March 2, 1998 contained three questions related to the community water system(s) for Rapid River Homeowners Association. I regret that I was unable to respond by March 10 as we discussed in our March 4 telephone conversation.

Questions 1 and 3 are legal matters beyond my expertise and have been referred to the department's legal staff located in Boise. I hope the legal staff can clarify those points for you.

I can respond to Question 2. Licensed water right no. 78-07034 includes ground water (wells) for the community system. The license provides potable water and lawn irrigation water. The association can provide internal and external water to the homes served under this water right.

Enclosed are profile reports of the rights serving the association. Two reports are water rights (nos. 78-04031 and 78-07034) while three reports cover Snake River Basin Adjudication claims (nos. A78-04031, A78-07034 and A78-10188). Adjudication claims are filed to protect already recorded water rights and/or to document beneficial uses of water that not have been previously recorded.

Sincerely,

Steve Lester
Water Rights Supervisor

Enclosure

c: IDWR Legal Services

*follow up → faxed cc of Transfer 3831 to him
After he rec'd this letter i called. T3831 allowed
add'l. well in 78-07034.*

Attn: Mr. Gary Spackman / Mr. Steve Lester One of One (No Cover)

March 2, 1998

Mr. Gary Spackman / Mr. Steve Lester
I.D.W.R.
2735 Airport Way
Boise, ID. 83705

Subject: Charging of a fee for the use of water for irrigation purpose from a water system that derives it's water from wells that were drilled for the purpose of supplying potable water for a community.

Dear Mr. Gary Spackman / Mr. Steve Lester

The purpose of my letter is to get a written clarification from the Department of Water Resources of Idaho as to the following three questions;

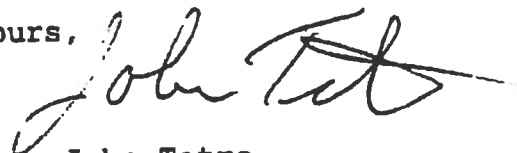
- 1.) Can a Homeowners Association and or a Water and Sewer District charge a separate fee to their memberships respectively for the purpose of irrigation, if said water that the fee is being charged for is derived from a source that is the same source the Association and or the District use to deliver potable water to their membership?
- 2.) Can water from a well or wells drilled for the purpose of supplying potable water to a community (public water system) be used for irrigation purposes also?
- 3.) Can a Water and Sewer District formed under Idaho Code Chapter 32, Section 42-3201, charge a fee to it's membership for "Ditch Cleaning"?

- yes per
License
78-07034
-JC

This ditch (irrigation ditch) runs in, out, through and around the District.

If you have any questions before you reply to this fax/letter, please feel free to call me at the following unlisted number; 208 628 3616.

Await your soonest response, Sincerely Yours,

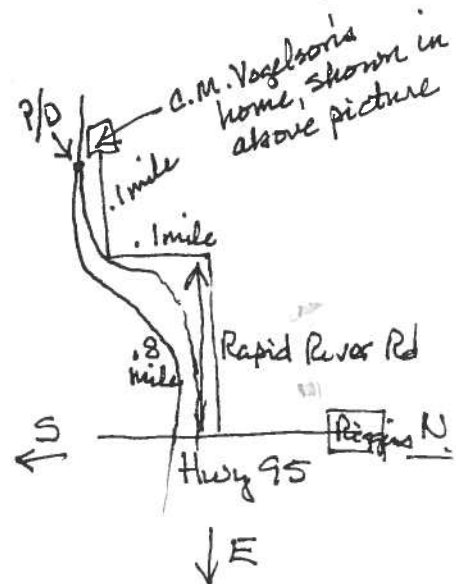
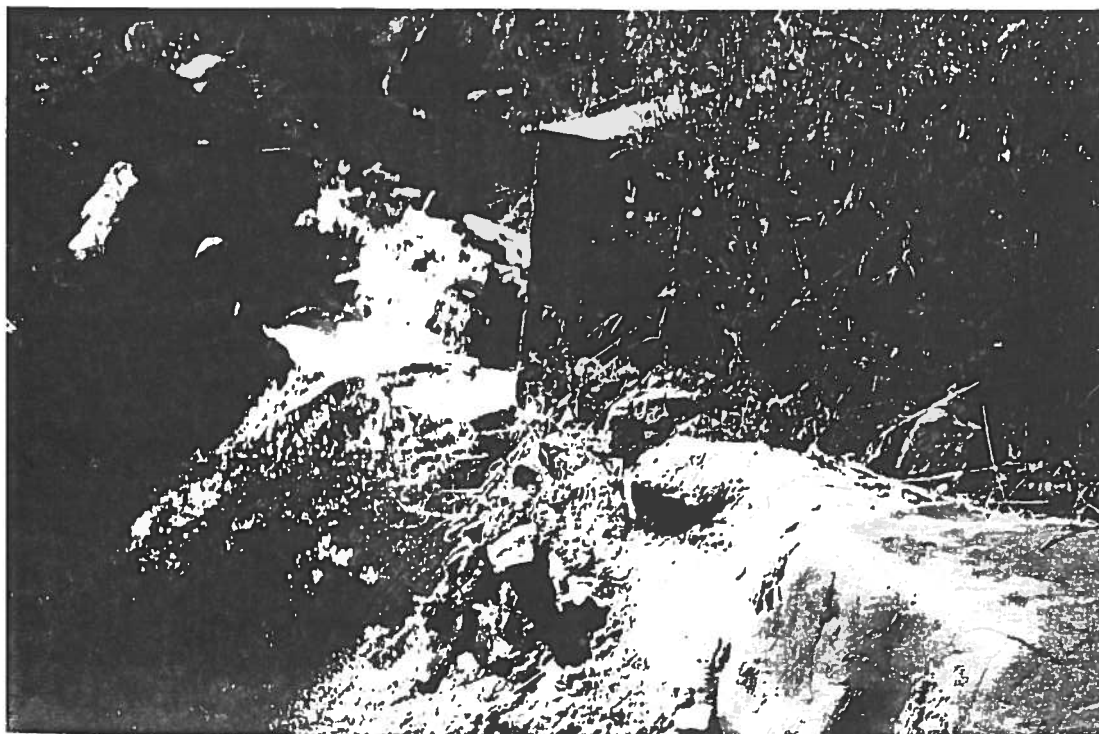


John Tetra
HC 69 Box 130
Riggins, ID. 83549



6/3/95 S.H
A78-04031
Pictures taken
below the
property of
C.M. Vogelson.

Pictures should
be referenced to
a complaint
made by Bughard
that Vogelson
was shutting off
the P/O that
goes into the
subdivision.
(no blockage of P/O
at time of inspection
but said had previous



78-4031



78-4031





State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

MARCH 12, 1996

JAMES W. GIVENS
1026 F. STREET - PO BOX 875
LEWISTON, IDAHO 83501

Re: Vogelsong v. Rapid River Homeowners Assn., CV 29677

Dear James Givens:

I feel that my appearance as a witness for the defendants, is not a necessary factor in your case. I have notes, photographs, and a diagram of what I saw at the time of my inspection, which I have enclosed a copy, and have had them notarized. I do not have any more information that I feel would be helpful in any way.

At the present time, I am on seasonal layoff from my position at the Department of Water Resources until after April 15, 1996, providing the department receives the funding to hire me for another season.

Very truly yours,

A handwritten signature in cursive script, reading "Sandy Hemenway".

Sandy Hemenway
Water Resources Agent

RECEIVED
MAR 06 1996
WATER RESOURCES
WESTERN REGION

JAMES W. GIVENS
LAWYER
1026 F STREET - P.O. BOX 875
LEWISTON, IDAHO 83501
TELEPHONE 208/746-2374
FAX 208/746-0446

March 4, 1996

Sandy Hemingway
State of Idaho
Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

Re: Vogelsong v. Rapid River Homeowners Assn., et al
Idaho County Case No. CV29677

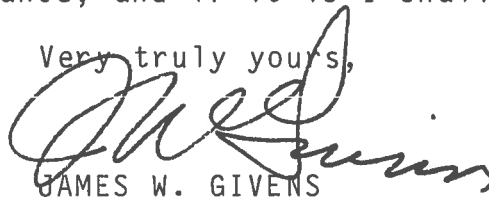
Dear Ms. Hemingway:

The case of Charles M. Vogelsong, et ux, v. Rapid River Homeowners Association, et al, is now set for trial on Monday, May 20, 1996, at 9:30 a.m., in the District Courtroom of the Idaho County Courthouse, Grangeville, Idaho.

It is my desire to call you as a witness for the defendants.

Please advise at your earliest convenience if it is necessary to subpoena you for your appearance, and if it is I shall do so.

Very truly yours,


JAMES W. GIVENS

JWG:p

JAMES W. GIVENS
LAWYER
1026 F STREET - P.O. BOX 875
LEWISTON, IDAHO 83501
TELEPHONE 208/746-2374
FAX 208/746-0446

RECEIVED

MAR 21 1996

WATER RESOURCES
WESTERN REGION

327-7900
S.D.

March 18, 1996

Sandy Hemenway
Water Resources Agent
Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

Re: Vogelsong v. Rapid River Homeowners Assn., et al
Idaho County Case No. CV29677

Dear Sandy:

Thank you for your letter of March 12th.

Unfortunately, I cannot use the photographs without you, as a witness, identifying them by saying who you are, when you took them, and that they truly and accurately represent the scene portrayed.

In order to do that I have to call you as a witness.

I am enclosing herewith a copy of the Complaint which has been filed by Mr. Vogelsong so you will have an understanding of the contention he is making by the allegations contained in the Complaint.

4/15/96
called Jim Givens & told him:
Essentially what he is saying is, the wing dam located within the confines of the stream creates turbulence which in turn causes erosion and damage to his property. *I was not at the location in reference to erosion - I was there in reference to blockage of the diversion*
The individuals living in the subdivision, who over the years have been in charge of the point of diversion and the ditch, advise me, that in their judgment the structure is not responsible in any fashion for causing erosion to the bank or to Mr. Vogelsong's property.

I have on a number of occasions gone to the point of diversion at several different times during the year, and while I am no hydrologist, I was unable to observe that either the wing dam, or

→ I am not a hydrologist either, nor have expertise in soil erosion.

gave him S.D. phone # to contact a hydrologist there - He said he was sorry he'd bothered me.

Sandy Hemenway
March 18, 1996
Page 2

what I refer to as the headgate, have been in any way responsible for causing erosion on the bank against Mr. Vogel song's property and that is the reason I need to call you as a witness.

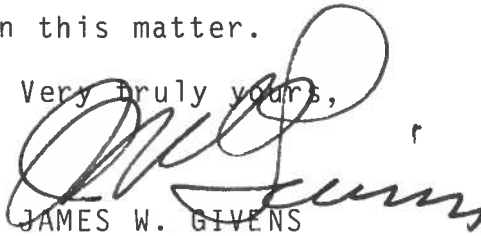
Your expertise in your field, your knowledge of this situation, and your ability to describe what you have observed there and express opinions as to whether or not the structure is in fact causing erosion would be helpful to us.

Again, I respectfully request you permit me to call you as a witness. If it would make it easier for you, I would be happy to subpoena you as a witness.

Given the information herein contained, please advise at your earliest convenience whether or not I may call you as a witness.

Thank you for your courtesy in this matter.

Very truly yours,



JAMES W. GIVENS

JWG:p
enc

RECEIVED

MAR 21 1996

WATER RESOURCES
WESTERN REGION

IDAHO COUNTY DISTRICT COURT
FILED
AT 1:25 O'CLOCK P M

JUN 26 1995

ROSE E. GEHRING
CLERK OF DISTRICT COURT
JOY HIGGINS

Deputy

WILLIAM M. KILLEN, ESQ.
WILLIAM M. KILLEN, P.A.
Attorney at Law
200 Park Street
P. O. Box A.O.
McCall, Idaho 83638
Telephone: (208) 634-7118

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CHARLES M. VOGELSONG and
GEORGIANNA VOGELSONG, husband and
wife,

Plaintiffs,

vs.

RAPID RIVER HOMEOWNER'S
ASSOCIATION, INC., RAPID RIVER
WATER & SEWER DISTRICT and
JOHN DOES I-XV, their respective
officers and agents,

Defendants.

Case No.

CV29677

COMPLAINT FOR
DAMAGES AND
INJUNCTIVE RELIEF

Fee Schedule: A.1.

Fee: \$65.00

COME NOW the Plaintiffs, and for their cause of action,
allege as follows:

I.

Situate in the Rapid River watershed in Idaho County,
Idaho, is a subdivision known as the Rapid River Subdivision

consisting of approximately 80 lots and certain common amenities.

II.

Among these are certain water works alleged to include the right(s) to direct water from the Rapid River at a point upstream of the subdivision and a right to convey such water across certain lands lying between the point of diversion and the subdivision lands.

III.

In the spring of 1993, pursuant to the provisions of Idaho Code 42-3204, a water and sewer District, known as the Rapid River Water & Sewer District was created by Court Order. The boundaries of the District are coincident with the boundaries of the subdivision.

IV.

Subsequent to its formation, all right, title and interest in the above referenced water right(s) and ditch rights were transferred to the District.

V.

The diversionary works and ditch have been constructed, reconstructed, and maintained and operated in a negligent manner by the Association, the District and their agents causing proximate and actual damages to the lands of plaintiffs abutting the point of diversion, which damages are ongoing to this date and if unabated will cause irreparable harm to such lands because of the continuing

erosion of plaintiffs' lands for which there is no adequate remedy at law.

VI.

Defendants have a duty to operate their works in a non-negligent manner so as to cause no harm to plaintiffs as both an adjoining owner and as a servient owner.

VII.

Plaintiffs seek damages in an amount in excess of \$10,000.00 to restore and stabilize the river bank, which has been subjected to harm by defendants' acts or omissions, as well as a permanent injunction requiring plaintiffs to conform their diversionary works and their maintenance and operation thereof in such a manner as to preclude future damage, including, but not limited to, erosion and subsidence of the lands, as well as, impairing plaintiffs' use and aesthetic enjoyment of their rights of ownership.

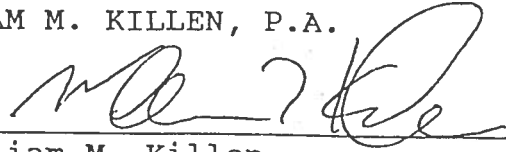
WHEREFORE Plaintiffs pray for relief as follows:

1. Damage in an amount in excess of \$10,000.00 against the named entities jointly and severally.
2. A permanent injunction against the named entities, and their officers and agents, directing them to conform their diversionary works, and their maintenance and operations thereof, in such a manner as to preclude future damage to plaintiffs' lands.
3. Costs of suit, including reasonable attorney fees, as provided by law.
4. For such other and further relief as is just in the premises.

DATED this 22nd day of June, 1995.

WILLIAM M. KILLEN, P.A.

By

A handwritten signature in dark ink, appearing to read 'W. M. Killen', written over a horizontal line.

William M. Killen

Attorney for Plaintiffs Vogelsong

CONVERSATION MEMORANDUM

DATE 3/14/95FILE A 78-04031NAME OF PARTY Mr. Givens 746-2374EMPLOYEE Steve LattaRE: RE: Vogelung's Complaint

Mr. Givens (attorney for Reginald R. Hunsom) called to tell me that Vogelung has filed tort claim against owner for alleged damages to Vogelung land due to ditch for A 78-04031.

Asked if I had had taken any action in SRBA yet with ~~respect~~ respect to this claim. I told him that no SRBA verification or recommendation had been done yet for Basin 78.

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APR 25 1994

WATER RESOURCES
WESTERN REGION

4/22/94

Idaho Dept of Water Resources
2735 Airport Way
Boise, ID. 83705 - 5082

Attn: Steve Lester 

Dear Mr. Lester;

Pursuant to our telephone conversation of a few days ago, enclosed herewith is a copy of the protest I filed with the Court regarding claims # A78-04031 and A78- 10350.

The long and short of it is that the claimants have switched their claims to cover taking water from Sec. 6 (NE $\frac{1}{4}$ NE $\frac{1}{4}$) instead of from Sec. 5 as had been filed for several years. They claim the original claims were filed in error. That is not true. There are, in fact, TWO DITCHES. One is in Sec. 5, the other in Sec, 6.. The original filing was indeed correct, and still would be if they had left it alone. These people never filed for a right in Section 6.

It is my feeling they are trying to pull a fast one on both Water Resources and the Court. I don't know how this may strike you, but to me, it stinks.

Thankyou for sending the updated info I requested, It shook me a bit when our own permits didnt show up there, but I called and your associate explained it to me more fully.

Sincerely,



C.M. "Chuck" Vogelsong
P.O.Box 347
Riggins, ID. 83549

MICROFILMED

AUG 08 1994

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: A78-04031
A78-10350

PROTEST

AMENDED CLAIM OT WATER RIGHT

PROTEST

1. Names: RAPID RIVER HOMEOWNERS ASSOCIATION, and
BRYAN G. DEVENY or SANDI DEVENY
Addresses: RIGGINS, IDAHO ----- 83549

THE UNDERSIGNED OWNERS OF LAND SITUATED IN THE NE $\frac{1}{4}$ OF THE NE $\frac{1}{4}$ OF
SECTION 6, TOWNSHIP 23N., RANGE 1 E.B.M., IDAHO COUNTY, IDAHO,
HEREWITH PROTEST THE ABOVE REFERRED AMENDED CLAIM TO WATER RIGHT
FOR THE FOLLOWING REASONS, TO-WIT:

Claimants were previously filed on a ditch located in Section 5,
Twp. 23N. R.1 EBM, Idaho County, Idaho, and the same is still
in use now. Two ditches exist serving locations in Sections 5 and
32 (situated in Twp. 24N.); but only one, that located in Section
5, was filed upon as required by law, and even that filing is
defective. The claims are based upon a claim filed in 1894 for
water to be used for the stated purposes of generating electricity,
and several milling and manufacturing purposes. NO CLAIM FOR IRRE-
GATION WAS MADE. This claim is also most vague as to where the
water is being taken from. The description fits either of the two
present day ditches, and might have applied to either; but the
entire claim seems to have simply died sometime between the filing
date in 1894, and the Application for Permit Number 22255 on
Permit number 15657 filed by B.B.Hinkley, December 6, 1922. If that
were not the case, the 1922 Hinkley permit application would not
have been filed. It is the ONLY document of record which might
provide ANY foundation for a claim in Section 6 to use water from
there for irrigation. We are informed by the prior owner of our
property that all any of these people ever had by way of access
was permission from the landowners to operate their ditch; and
that no easement of any kind was ever granted to use the land for
that or any other purpose. That permission continued through several
ownerships to and including the undersigned until earlier in
1992 when these people through their attorney informed us that
they neither wanted nor needed our permission to have their ditch
on and accross our land, at which time we informed said lawyer
that the permission was thenceforth discontinued. This came about
due to our suggestion that the parties should have an easement
for their ditch for better future security of same. The lawyer
disagreed and negotiations were ceased. As a result, our position
is that the parties now have no legal access to Section 6, and
the Idaho Water Resources informs us that no active permit is on

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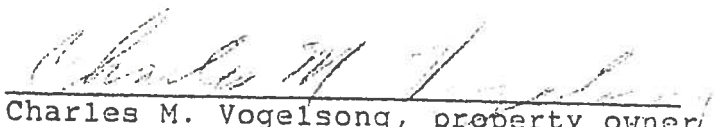
AUG 08 1994

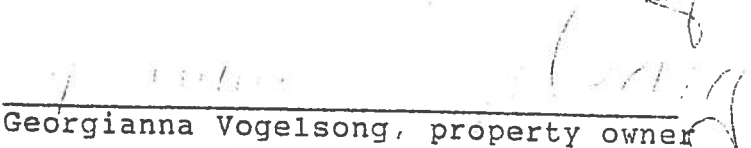
Ident. Numbers: A78-04031 and A78-10350

PROTEST TO AMENDED CLAIM OF WATER RIGHT. continued

file with their office as is required under current law. Therefore, no valid claim or permit exists presently for the claimants to take water from Section 6. Due to the above, and the demonstrated total disregard of landowner's property rights, esthetic and safety considerations, we ask the Court to declare claimants' amended water right claim be disallowed and any and all right to claim and/or take water from Section 6 be suspended until proper access is acquired by claimants. If proper legal access for use of the land to transport any water acquired across Section 6 for usage in other sections is not attained within a reasonable time as determined by this Court, then we ask that all claims of the claimants for water right or permit in Section 6 be ordered discontinued.

Submitted for consideration this 19th day of October, 1992.


Charles M. Vogelsong, property owner


Georgianna Vogelsong, property owner

MICROFILMED

AUG 08 1994



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

December 19, 1994

William M. Killen, P.A.
PO Box AO
McCall, ID 83638

RE: Rapid River Homeowners Association

Dear Mr. Killen:

According to your recent letter, you represent Mr. Vogelsong in the matter he has raised regarding the diversion works for the Rapid River Homeowners Assoc. with respect to use of water from Rapid River. Mr. Vogelsong's first contact with me dates to October 8, 1991 and his first complaint in this regard was a letter dated March 13, 1992. The response from this office to your client has focused on the Snake River Basin Adjudication; that avenue seemed the most appropriate course to follow in resolving whatever issues exist between the parties.

Your letter of October 21, 1994 addresses alleged enlargement of Rapid River diversion works for the homeowners association. You refer to "a concrete headgate some 12 x 16 inches" and further indicate that this structure has been enlarged and therefore violates the stream channel protection act, specifically violating I. C. 42-3806. In addition, you indicate that this department should consider an administrative process to correct the situation.

Additional information is needed prior to any next step on the part of this office. Please respond with information that identifies when the alleged enlargement of diversion works occurred and some supporting information to verify this date. If the work was done within the last five years, this office will make a field visit to look into the matter.

However, if the change happened more than five years ago, your client's complaint is more suited to the adjudication procedure and will not result in a field visit at this time. Should this be the case, the issue would be considered more of a civil matter outside of the purview of this agency.

William Killen
December 19, 1994
Page 2

I look forward to hearing from you in this and any other related topics. All correspondence in the issues raised by Mr. Vogelsong are copied to the other interested parties indicated below. A copy of this letter has not been sent directly to Mr. Vogelsong since you are his representative.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Lester".

Steve Lester
Water Rights Supervisor

c: T. Heath, Assoc. President
J. W. Givens, Attorney at Law
B. Hardy

Steve ✓ - NO

Can you tell from the
info provided how
recently the expansion is
alleged to have occurred?
1922?

Dave

INTER-DEPARTMENT MEMO--1

FROM Steve L.

DATE 11/4/94

TO Dave T.

SUBJECT Rapid Run H.O. Asses P/O

This letter is continuation of C.M. Vogelberg complaint & div. works for H.O. Asses Rights (A78-04031 & A78-10188). Previously we have indicated that this is civil matter & that our review would occur in SRBA time-frame. Attorney now alleges that div. works enlarged & thus violates S.C.A. program - that enlarging of div. works not protected under water right in I.C. 42-3806. However, on reading the statute, I can't see where enlarging div. works violates the code.

This still appears to me to be civil matter & competing rights, damages, etc & not a stream channel violation.

Do you have any insight into this
issue?

Thanks,
Steve

SIGNATURE

(Previous info filed
in A78-04031 - lots
of letters)

78-4031A

William M. Killen

Law Offices of
William M. Killen, P.A.
200 Park Street
McCall, Idaho

Telephone: (208) 634-7118
FAX: (208) 634-5880

Mailing Address:
P.O. Box AO
McCall, Idaho 83638

October 21, 1994

RECEIVED

OCT 24 1994

WATER RESOURCES
WESTERN REGION

Steve Lester
Senior Water Resource Agent
Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

Re: Rapid River Homeowner's Association

Dear Mr. Lester:

I was contacted earlier this year by Mr. Vogelsong of Riggins with whom you have had prior correspondence regarding the subject matter. In an effort to get up to speed on this matter I have reviewed his files which includes items of correspondence between your office, Mr. Givens, on behalf of the Homeowner's Association, and Mr. Brian DeVeney who, as I understand it is an individual property owner within that subdivision who basically filed "shadow" claims on the top of the Homeowner's claims, presumably seeking to protect whatever rights may accrue to his lots directly, as opposed to the association collectively.

It is further my understanding that there is some dispute about the ability of the association (or DeVeney) to rely on the claims cited in behalf of their positions because of a potential discrepancy between the point of diversion in those underlying claims (1894 and 1922 priorities) and the actual diversion routes. At this point we are willing to forgo, at least for the sake of argument, contesting the validity of their claimed water rights and their reliance on the underlying historical rights.

However, in reviewing the underlying rights, it appears there are material variances with the actual works at the site; for example, as to the 1922 permitted right it is

apparent that at some point the head gate has been substantially enlarged and altered from what was originally submitted and approved, namely, a concrete head gates some 12 x 16 inches.

Alternatively, their claim is predicated on the earlier right claimed in 1894, in addition to the point raised earlier that the beneficial use there was for power generation, milling and manufacturing as opposed to irrigation, the diversionary works set forth in that claim does not involve a concrete head gate but relies instead on a natural channel or flume. In fact, if I remember my structures classes from engineering school correctly, concrete didn't even exist in 1894. Thus, regardless of whether the current claims are legitimately predicated on either the 1894 or the 1922 rights, neither would support the nature or size of the current diversionary works.

Why not?

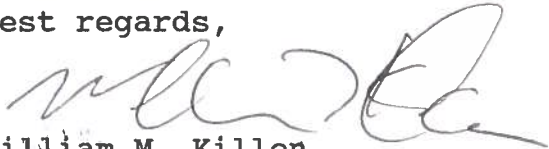
Mr. Vogelsong's primary concern all along has been the ongoing damage to his abutting lands, and potentially his home if allowed to continue, due to erosion and sluffing at the point of diversion caused by the diversionary works. And what to Mr. Vogelsong is a direct threat of injury to his lands is simultaneously an unwarranted and unpermitted alteration of a natural stream channel. While the former may be a matter solely for private redress the latter is a matter of public concern and subject to control and regulation by the Department of Water Resources. As I am sure you are aware, Chapter 38 of Title 42 specifically charges the Department and its Board with protecting the public interest in unregulated alterations of natural channels or streams, providing for administrative and criminal penalties in the event of violations.

Further I would point out that the exceptions to the applicability of the act, namely as set forth in 42-3806 while repairs and maintenance of works integral to a permitted or vested right are permissible. An expansion of an otherwise permitted structure is not lacking prior application and approval. If you agree then one can only be left with the conclusion that the existing headgate as presently sited and constructed is not protected and thus is subject to the provisions of the chapter and title cited; since the Department of Water Resources is vested with the authority to regulate and enforce the act, it is our perspective that an appropriate administrative hearing to determine and require appropriate corrective action at the site is warranted.

Given the nature of the circumstances and situation it would appear the administrative route would be preferable to

criminal sanctions; I believe the Department is better positioned to reconcile the competing interest and develop an effective, long-term solution and remedy than the courts. I would appreciate hearing from you, or someone within your agency, as to the foregoing. If necessary to trigger such a review, consider this a notice of a claimed violation of the chapter and title cited.

Best regards,

A handwritten signature in dark ink, appearing to read 'William M. Killen', with a stylized, flowing script.

William M. Killen

WMK/ch

cc: Chuck Vogelsong

MAILING List & Complaints

DISTRIBUTION LIST FOR CORRESPONDENCE RELATED TO CLAIMS A78-04031
AND/OR A78-10188

(telephone #'s not
PS)

C. M. Vogelsong
PO Box 347
Riggins, ID 83549-0347

Water + Sewer dist
Rapid River ~~Homeowners Association~~
~~C/O Tim Heath~~, President
PO Box 316
Riggins, ID 83549

Att. for Association -
J. W. Givens, Attorney
PO Box 875
Lewiston, ID 83501

Buzz Hardy
HC 69 Box 65
Riggins, ID 83549

*12/19/94
update*
*Att. for -
Vogelsong*
William M. Killen, P.A.
PO Box AO
McCall, ID 83638

KEEP THIS AT FRONT OF
CORRESPONDENCE PART
OF FILE

MICROFILMED
AUG 08 1994

Mailing List

C. m. Vogelburg
PO Box 347

Riggins 83549-0347

Rapid River Hummers Assoc. *

% Tim Heath, Pres.

PO Box 316

Riggins 83549

J. W. Givens, Atty

PO Box 895

Lewiston 83501 746-2374

(Atty for Hummers Assoc)

Buzz Hardy

HC 69 Box 65

Riggins 83549

Vogelburg's
atty

William M. Kilken P.A.

PO Box 100

McCall 83638 634-7118
(fax - 5880)

* Tim H 628-3322

Debbie Hays Feity B.

NO MORE
Katherine Smithers 628-3834 L.H.?

Bryan DeVany - on Bd. of Directors

See typed
list in 6/9/93
letter to these
people
- JR

include in all
mailing, per 3/26/92
taken

MICROFILMED
OCT 05 1992

RECEIVED

APR 25 1994

WATER RESOURCES
WESTERN REGION

4/22/94

Idaho Dept of Water Resources
2735 Airport Way
Boise, ID. 83705 - 5082

Attn: Steve Lester 

Dear Mr. Lester;

Pursuant to our telephone conversation of a few days ago, enclosed herewith is a copy of the protest I filed with the Court regarding claims # A78-04031 and A78- 10350.

The long and short of it is that the claimants have switched their claims to cover taking water from Sec. 6 (NE $\frac{1}{4}$ NE $\frac{1}{4}$) instead of from Sec. 5 as had been filed for several years. They claim the original claims were filed in error. That is not true. There are, in fact, TWO DITCHES. One is in Sec. 5, the other in Sec. 6.. The original filing was indeed correct, and still would be if they had left it alone. These people never filed for a right in Section 6.

It is my feeling they are trying to pull a fast one on both Water Resources and the Court. I don't know how this may strike you, but to me, it stinks.

Thankyou for sending the updated info I requested, It shook me a bit when our own permits didnt show up there, but I called and your associate explained it to me more fully.

Sincerely,



C.M. "Chuck" Vogelsong
P.O.Box 347
Riggins, ID. 83549

MICROFILMED

AUG 19 1994

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: A78-04031
A78-10350

PROTEST

AMENDED CLAIM OT WATER RIGHT

PROTEST

1. Names: RAPID RIVER HOMEOWNERS ASSOCIATION, and
BRYAN G. DEVENY or SANDI DEVENY
Addresses: RIGGINS, IDAHO ----- 83549

THE UNDERSIGNED OWNERS OF LAND SITUATED IN THE NE $\frac{1}{4}$ OF THE NE $\frac{1}{4}$ OF
SECTION 6, TOWNSHIP 23N., RANGE 1 E.B.M., IDAHO COUNTY, IDAHO,
HEREWITH PROTEST THE ABOVE REFERRED AMENDED CLAIM TO WATER RIGHT
FOR THE FOLLOWING REASONS, TO-WIT:

Claimants were previously filed on a ditch located in Section 5,
Twp. 23N. R.1 EBM, Idaho County, Idaho, and the same is still
in use now. Two ditches exist serving locations in Sections 5 and
32 (situated in Twp. 24N.); but only one, that located in Section
5, was filed upon as required by law, and even that filing is
defective. The claims are based upon a claim filed in 1894 for
water to be used for the stated purposes of generating electricity,
and several milling and manufacturing purposes. NO CLAIM FOR IRRE-
GATION WAS MADE. This claim is also most vague as to where the
water is being taken from. The description fits either of the two
present day ditches, and might have applied to either; but the
entire claim seems to have simply died sometime between the filing
date in 1894, and the Application for Permit Number 22255 on
Permit number 15657 filed by B.B.Hinkley, December 6, 1922. If that
were not the case, the 1922 Hinkley permit application would not
have been filed. It is the ONLY document of record which might
provide ANY foundation for a claim in Section 6 to use water from
there for irregation. We are informed by the prior owner of our
property that all any of these people ever had by way of access
was permission from the landowners to operate their ditch; and
that no easement of any kind was ever granted to use the land for
that or any other purpose. That permission continued through several
ownerships to and including the undersigned until earlier in
1992 when these people through their attorney informed us that
they neither wanted nor needed our permission to have their ditch
on and accross our land, at which time we informed said lawyer
that the permission was thenceforth discontinued. This came about
due to our suggestion that the parties should have an easement
for their ditch for better future security of same. The lawyer
disagreed and negotiations were ceased. As a result, our position
is that the parties now have no legal access to Section 6, and
the Idaho Water Resources informs us that no active permit is on

MICROFILMED

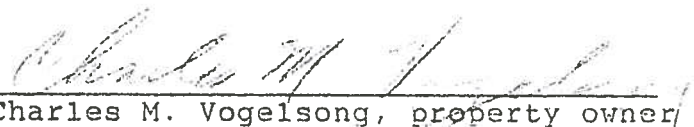
AUG 19 1994

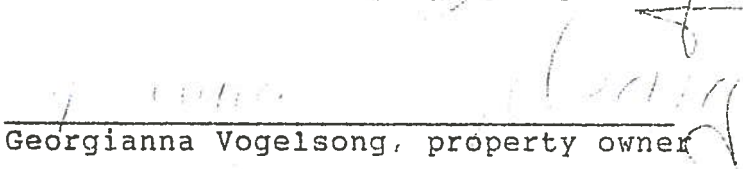
Ident. Numbers: A78-04031 and A78-10350

PROTEST TO AMENDED CLAIM OF WATER RIGHT. continued

file with their office as is required under current law. Therefore, no valid claim or permit exists presently for the claimants to take water from Section 6. Due to the above, and the demonstrated total disregard of landowner's property rights, esthetic and safety considerations, we ask the Court to declare claimants' amended water right claim be disallowed and any and all right to claim and/or take water from Section 6 be suspended until proper access is acquired by claimants. If proper legal access for use of the land to transport any water acquired across Section 6 for usage in other sections is not attained within a reasonable time as determined by this Court, then we ask that all claims of the claimants for water right or permit in Section 6 be ordered discontinued.

Submitted for consideration this 19th day of October, 1992.


Charles M. Vogelsong, property owner


Georgianna Vogelsong, property owner

MICROFILMED

AUG 19 1994



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

June 9, 1993

Mr. C. M. Vogelsong
PO Box 347
Riggins, ID 83549-0347

RE: Rapid River Homeowners Association Water Rights

Dear Mr. Vogelsong:

I am responding to your letter dated 6/3/93 regarding the diversion from Rapid River for the homeowners association. The owners have two recorded rights for such water, and the rights are identified in the ongoing adjudication as nos. A78-04031 and A78-10188.

Your letter focused on changing the point of diversion for either or both rights. Any changes in a water right should be filed upon by the owner(s) of the right instead of by an interested party such as yourself. No water right change is required if the point of diversion is not moved from its historical location or if it is relocated from one point to another but all within the same quarter-quarter of a section. If the point of diversion is to be relocated in another quarter-quarter, an Application for Transfer of a Water Right(s) must be filed.

No applications in the name of the homeowners are before the department at this time. Issues of damages or safety related to diversions are not within the jurisdiction of this agency - these are civil questions between private parties. No involvement by the department is required at this time.

A copy of this letter is provided to the attached distribution list as requested by those parties during previous communication associated with your letters to this department.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Steve Lester'.

Steve Lester
Water Rights Supervisor

CC: Distribution List, Attached

MICROFILMED
AUG 08 1994

MAILING List &
Complaints

DISTRIBUTION LIST FOR CORRESPONDENCE RELATED TO CLAIMS A78-04031
AND/OR A78-10188

(telephone #'s next
PS)

C. M. Vogelsong
PO Box 347
Riggins, ID 83549-0347

Rapid River Homeowners Association
C/O Tim Heath, President
PO Box 316
Riggins, ID 83549

Att. for Association -
J. W. Givens, Attorney
PO Box 875
Lewiston, ID 83501

Buzz Hardy
HC 69 Box 65
Riggins, ID 83549

12/18/94
update
Att. for -
Vogelsong
William M. Gillen, P.A.
PO Box AO
McCall, ID 83638

MICROFILMED
AUG 08 1994

RECEIVED

JUN 7 1993

Department of Water Resources
Western Regional Office

6/3/93

Idaho Water Resources Dept.
2735 Airport Way
Boise, Idaho - 83705

Attn: Steve Lester - Sr. Resource Agent

Dear Mr. Lester;

Finally an inkling of progress with our ongoing "ditch" problem with Rapid River Homeowners' Assn., Inc.; Bryan DeVeney and their lawyer Mr. Givens. I met with President Tim Heath of the Assn. and his associate Mr. Hardy the afternoon of June 2, 1993 to determine whether or not we can find a solution to their claims, our claims, etc.. I believe we have agreed that when the association replaced their washed out headgate some years ago, situated on what is now our property, it was not installed in the best place nor with the best design to produce the best results for both the association users AND THE PROPERTY OWNER. With this in mind, it has been tentatively decided that a new and better headgate should be built to replace the present one for the benefit of all concerned; and to eliminate some severe safety hazards created by the earlier construction. To this end Mr. Heath and Mr. Hardy requested that I contact your department to reactivate the permit (?) that the present headgate was built under to include the building its replacement, also to be situated on our property. I would have to assume that no field agent inspected the last construction, or the unsafe conditions and virtual wipe-out of upwards of 100 feet of river bank would not have been allowed to stand; and this whole mess would not have taken place at all. If there is any problem with the association, in conjunction with us, the property owners proceeding to relocate this headgate and correct the aforementioned problems, please advise me what action is required to "get this show on the road". It has been difficult to just get this far and we do not want to lose the momentum to keep going toward a good conclusion. Your immediate consideration and reply will be appreciated.

Sincerely,

C.M. Vogelsong

C.M. Vogelsong
P.O. Box 347
Riggins, Idaho - 83549

cc: Tim Heath
Buzz Hardy

MICROFILMED

AUG 08 1994

A78-04031
A78-10188



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 30, 1992

Rapid River Homeowners Association
C/O Tim Heath, President
PO Box 316
Riggins, ID. 83549

RE: Adjudication Claim No. A78-04031

Dear Mr. Heath:

This office received information related to the above-referenced claim filed by the association. The information was submitted by Charles and Georgianna Vogel song of Riggins.

The information is labeled as an Exception to the claim, and it will be evaluated as part of the adjudication review process in making recommendations to the court regarding the claim. The review and recommendation process is tentatively scheduled for late 1995.

You will have ample opportunity to respond to any concerns that the department may have based on its evaluation of the Exception. Enclosed is a copy of the Exception for your records and a copy of an acknowledgement letter sent to the Vogel songs.

Sincerely,

A handwritten signature in cursive script that reads "Steve Lester".

Steve Lester
Water Rights Supervisor

Enclosure: Vogel song Exception
CC: J. W. Givens, Atty. for Association

MICROFILMED

AUG 08 1994



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 30, 1992

Charles and Georgianna Vogelsong
1301 S. US Hwy 95
Riggins, ID. 83549

RE: Exception to Claims A78-04031 and A78-10350

Dear Mr. and Mrs. Vogelsong:

This letter acknowledges receipt of the information dated 10/19/92 that you submitted regarding the above-referenced claims. The information is labeled as an Exception to the claim, and it will be evaluated as part of the adjudication review process in making recommendations to the court regarding the claims. Recommendations will be made by evaluating each claim for accuracy, completeness, and supporting or negating information (such as an Exception). The recommendations will be included in the Director's Report to the court, tentatively scheduled for late 1995.

If you are dissatisfied with the department recommendations to the court concerning the above-referenced claims, you may file an objection with the court at the proper time.

The claimants, and the association's attorney, were provided a copy of the Exception and of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Steve Lester".

Steve Lester
Water Rights Supervisor

CC: Rapid River Homeowners Assoc.
Bryan and Sandi Deveny
J. W. Givens, Atty. for Association

MICROFILMED

AUG 08 1994

RECEIVED

OCT 21 1992

Department of Water Resources
Western Regional Office

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: A78-04031
A78-10350

PROTEST

AMENDED CLAIM OF WATER RIGHT

PROTEST

1. Names: RAPID RIVER HOMEOWNERS ASSOCIATION, and
BRYAN G. DEVENY or SANDI DEVENY
Addresses: RIGGINS, IDAHO ----- 83549

Copy to
file

THE UNDERSIGNED OWNERS OF LAND SITUATED IN THE NE $\frac{1}{4}$ OF THE NE $\frac{1}{4}$ OF
SECTION 6, TOWNSHIP 23N., RANGE 1 E.B.M., IDAHO COUNTY, IDAHO,
HEREWITH PROTEST THE ABOVE REFERRED AMENDED CLAIM TO WATER RIGHT
FOR THE FOLLOWING REASONS, TO-WIT:

MICROFILMED

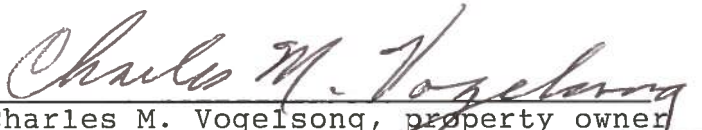
CLAIMANTS were previously filed on a ditch located in Section 5,
Twp. 23N. R.1 EBM, Idaho County, Idaho, and the same is still
in use now. Two ditches exist serving locations in Sections 5 and
32 (situated in Twp. 24N.); but only one, that located in Section
5, was filed upon as required by law, and even that filing is
defective. The claims are based upon a claim filed in 1894 for
water to be used for the stated purposes of generating electricity,
and several milling and manufacturing purposes. NO CLAIM FOR IRRE-
GATION WAS MADE. This claim is also most vague as to where the
water is being taken from. The description fits either of the two
present day ditches, and might have applied to either; but the
entire claim seems to have simply died sometime between the filing
date in 1894, and the Application for Permit Number 22255 on
Permit number 15657 filed by B.B.Hinkley, December 6, 1922. If that
were not the case, the 1922 Hinkley permit application would not
have been filed. It is the ONLY document of record which might
provide ANY foundation for a claim in Section 6 to use water from
there for irrigation. We are informed by the prior owner of our
property that all any of these people ever had by way of access
was permission from the landowners to operate their ditch; and
that no easement of any kind was ever granted to use the land for
that or any other purpose. That permission continued through several
ownerships to and including the undersigned until earlier in
1992 when these people through their attorney informed us that
they neither wanted nor needed our permission to have their ditch
on and accross our land, at which time we informed said lawyer
that the permission was thenceforth discontinued. This came about
due to our suggestion that the parties should have an easement
for their ditch for better future security of same. The lawyer
disagreed and negotiations were ceased. As a result, our position
is that the parties now have no legal access to Section 6, and
the Idaho Water Resources informs us that no active permit is on

Ident. Numbers: A78-04031 and A78-10350

PROTEST TO AMENDED CLAIM OF WATER RIGHT. continued

file with their office as is required under current law. Therefore, no valid claim or permit exists presently for the claimants to take water from Section 6. Due to the above, and the demonstrated total disregard of landowner's property rights, esthetic and safety considerations, we ask the Court to declare claimants' amended water right claim be disallowed and any and all right to claim and/or take water from Section 6 be suspended until proper access is acquired by claimants. If proper legal access for use of the land to transport any water acquired across Section 6 for usage in other sections is not attained within a reasonable time as determined by this Court, then we ask that all claims of the claimants for water right or permit in Section 6 be ordered discontinued.

Submitted for consideration this 19th day of October, 1992.


Charles M. Vogelsong, property owner


Georgianna Vogelsong, property owner

MICROFILMED

AUG 08 1994

(KESSLER CREEK)

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

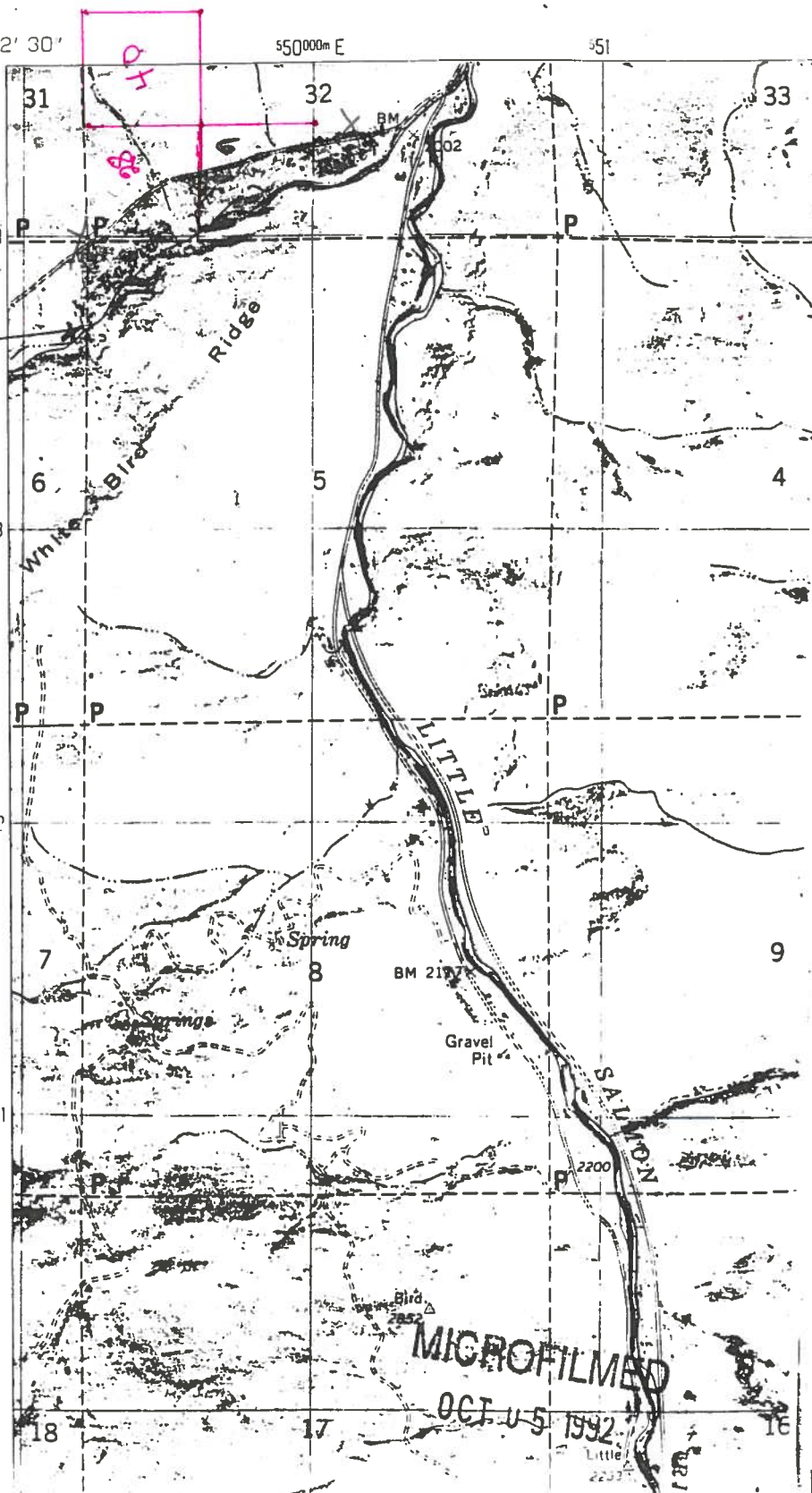
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45° 22' 30"

550000m E

51

T. 24 N.
5024000m N
T. 23 N.

P/D



78-4031

FROM Rapid River Homeowners
Assoc.
Riggins, Idaho 19

TO

ADDRESS

CITY

TERMS

Line 6 - We wish to change
irrigation dates as follows.
3/01 to 10/15.

on. # A-78-04031 A 78-10188

Pres. Tim R. Heath

MICROFILMED

OCT 05 1992



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 30, 1992

Mr. C. M. Vogel song
P.O. Box 347
Riggins, ID. 83549-0347

RE: Adjudication Claim Nos. A78-04031 and A78-10350

Dear Mr. Vogel song:

I received your recent letter concerning the above-referenced adjudication claims. It appears that a misunderstanding has occurred regarding advertising of water rights.

Water right applications for new development or proposed changes to existing water rights are advertised for public notice and comment. However, changes recorded solely within the adjudication claim process are not advertised. Therefore, a claimant may record changes to a right via an adjudication claim, and such changes do not imply new modifications but instead reflect changes or corrections that occurred prior to the adjudication commencement. The difference between advertised and unadvertised changes depends on whether the modification is proposed (advertised) or already was accomplished when the adjudication started (not advertised). The current adjudication commenced in November, 1987.

Although adjudication claims or amended claims are not advertised, these filings may be protested by letters to the files. Adjudication protests will be investigated during the adjudication review period for the area. The tentative adjudication review for your area is scheduled for 1995.

You can protest or challenge any adjudication claim by writing to this office, attention Adjudication Staff. Be sure to identify the protested claim(s) in your correspondence. I hope this letter clarifies the process for you.

Sincerely,

Steve Lester
Water Rights Supervisor

MICROFILMED

AUG 08 1994

RECEIVED
JUL 22 1992

7/20/92 Department of Water Resources
Western Regional Office

Steve Lester
Idaho Dept. of Water Resources
2735 Airport Way
Boise, Idaho - 83705 - 5082

Dear Mr. Lester;

Thankyou for the copies of the amended claims from Rapid River Subdivision and the DeVenys Ident. # A78-04031 and A78-10350. I have been waiting for the publication in the Idaho County Free Press legal notices; however have not seen them. Can you please advise when the publication is scheduled? I will then file timely protests for both claims.

Thanking you in advance for your further assistance, I remain,

Sincerely,



C.M.Vogelsong
P.O.Box 347,
Riggins, Idaho - 83549 - 0347

MICROFILMED

AUG 08 1994

FILE WITH : A78-04031

RECEIVED
MAY 18 1992

5/13/92

Steve Lester

Idaho Dept. of Water Resources
2735 Airport Way,
Boise, Idaho - 83705 - 5082

Department of Water Resources
Western Regional Office

Dear Mr. Lester:

Thankyou for the copy of your letter to Mr. Givens; lawyer for the Rapid River Homeowner's Assn., and our telephone conversation of this morning. The inference I drew from your letter was that Mr. Brian DeVeney had called you and said that there might be some confusion over where the section line between Sec. 6 and Sec. 5 is located; and that might be the problem. As I told you, this is not some four or five foot difference of opinion; but rather a 400 foot incursion onto our property with an impound channel, a huge cement gate that they are calling a "headgate", which it is not, and a ditch leading to the subdivision. The bone of contention is the liability for this mess they have created which we feel is unsafe to say the least; and downright dangerous to the elderly and young children. The "water right" as such has never been in question, and we have not threatened to cut off the ditch at any time. We do, however, want some indication from the Homeowners Assn. that they are responsible for the above mentioned situated on our property; hence my desire to require them to comply with the Snake River Adjudication rules for filing.

You have said that they did file 'something', even though it is wrong; so they need not comply with the rules now. My view is that they have filed at least two claims, and both may very well be perfectly valid; BUT THEY DO NOT COVER WHAT IS BEING TAKEN FROM OUR PROPERTY!! Therefore, it is my position that they have refused to file and should not be allowed to maintain even their water right unless they do. I would like this complaint entered into your files for consideration of the Court when adjudication time comes in late 1995 or 1996; the point being that if there is no valid water right then we can eliminate the hazardous nuisance they have created and refuse to accept the responsibility for. There are several other parties using from that same system, and only one of them is properly filed. I would ask that the records on those be included as well. By that time, the entire matter could well be resolved in some other way. We will be looking into that further in the next few weeks/months as time permits.

In closing, may I request further that ANY claims for water to be taken from the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 6, TWP.23N, R1EBM cause your office to give us a written notice, if that is possible. Thanking you in advance for your consideration and assistance, I remain,

Sincerely,

C.M. Vogelsong

cc: Mr. Givens & Assn. c/o T. Heath/

B. Hardy.

MICROFILMED

AUG 08 1994

ADD'L. INFO RELATED
TO ABOVE FILED IN
SL'S "MISC. CORRESPONDENCE"
UNDER Vogelsong.

SL 5/2/92



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

May 8, 1992

Mr. James W. Givens, Attorney
1026 F Street
PO Box 875
Lewiston, ID. 83501

RE: Rapid River Homeowners Association

Dear Mr. Givens:

I am responding to your letter dated 3/31/92 and to complaints received at this office from C. M. Vogel song of Riggins. According to the information that you and members of the association provided, the association point(s) of diversion has not changed. The historic point(s) of diversion continues to be used based on the correspondence that I received.

The Rapid River Homeowners Association water rights for Rapid River are identified by adjudication claims A78-04031 and A78-10188, both claimed as "grandfather" or beneficial use rights. Claim A78-10188 lists a point of diversion in Section 32, and A78-04031 identifies a diversion in NWNW Section 5. Enclosed are copies of the claims and of the letters of complaint that I mentioned.

Based on a telephone call from Mr. Brian DeVen y of Riggins on 3/24/92, some confusion may exist regarding accurate survey information for the section line common to sections 5 and 6 in the disputed area. It is conceivable that the association diversion point may be in either or both sections (possibly on the section line?).

The association has a recorded water right for its use. No suggestion has been made of a relocated point of diversion. Based on earlier and less complete information, I thought that an immediate water right change document should be filed for claim A78-04031. However, the exact legal description of the historic point(s) of diversion for the association will be settled in the adjudication process to be completed at a later date.

*File of complaints & correspondence - see file
A 78-04031 RE: RAPID RIVER Homeowners Assoc.
and
C. M. Vogel song*

MICROFILMED
OCT 05 1992

Mr. J. W. Givens

May 8, 1992

Page 2

Therefore, no additional action by the association is required at this time. Any disagreement about the water right(s) is essentially a civil matter between the private parties. No involvement by this office is necessary at this time.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Lester", written in a cursive style.

Steve Lester

Sr. Water Resource Agent

CC: C. M. Vogelsong

Rapid River Homeowners Assoc. C/O T. Heath

B. Hardy

MICROFILMED
OCT 05 1992

RECEIVED

APR 29 1992

Department of Water Resources
Western Regional Office

4/24/92

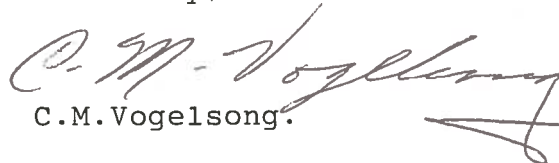
Steve Lester
Idaho Dept. of Water Resources
2735 - Airport Way
Boise, Idaho - 83705 - 5082

Dear Mr. Lester;

3/13/92 I filed a complaint with you against Rapid River Homeowner's Assn. for taking water from our property; for which they have no proper filing. I am in receipt of a copy of your letter to Mr. Heath, the President of the association, in which you ask for a response within 30 days from March 18, 1992. I should like to inquire as to whether or not you have gotten the necessary response; and will the filing be corrected, and the correction published in the Idaho County FreePress -- if so, when? If they have in fact not filed the satisfactory documentation, what recourse do I have; or do you have?

Thanking you in advance for your further assistance, I remain,

Sincerely,


C.M. Vogelsong.



CM VOGELSONG
1301 S US HWY 95
RIGGINS ID 83549

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APR - 3 1992

Department of Water Resources
Western Regional Office

JAMES W. GIVENS
LAWYER
1026 F STREET - P. O. BOX 875
LEWISTON, IDAHO 83501
TELEPHONE 208/746-2374

March 31, 1992

Mr. Steve Lester
Sr. Water Resource Agent
State of Idaho
Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

Re: Rapid River Homeowners Assn.

Dear Mr. Lester:

Reference is made to our telephone conversation of last week re the above-captioned matter.

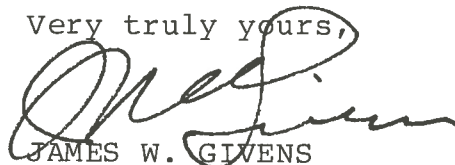
Would it be possible to obtain from you a copy of whatever documentation you have indicating the Association's point of diversion to be in Township 23 North, Range 1E, Section 6, NE $\frac{1}{4}$ of NE $\frac{1}{4}$.

The reason for this request is that the point of diversion employed by the Association has not changed over the years and is as indicated by the various water rights or permits they own.

For your information, I am enclosing copies of all of the documents reflecting their water rights.

Should you have any information indicating there is a problem with respect to the point of diversion, would you kindly advise.

Very truly yours,



JAMES W. GIVENS

JWG:p
enclosures
cc :Rapid River Homeowners Assn.

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RAPID RIVER HOMEOWNERS ASSOCIATION

P.O. BOX 316

RIGGINS, ID. 83549

KATHERYN SMOTHERS

628-3634

TIM HEATH

628-3322

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MAR 30 1992

Department of Water Resources
Western Regional Office

Dear Steve Lester,

This is a letter of confirmation of the telephone call to from Bryan DeVeney on 3/24/92. Bryan called and gave information on when our ditch was patented, and information about our water rights.

Our first water rights were given on March 29, 1894 to Joseph Bartlett, Cash M. Day, Frank A. Ferin, George M. Parsons, Frank A. Bond. The next on was March 10, 1903 to John Bridge. The place of diversion on this water right is N.W. 1/4 of the N.W. 1/4 of Sec. 5 T23N R01E and the S.W. 1/4 of S.W. 1/4 of Sec. 32 T24N and R01E.

These papers should ^{be} on file in the State of Idaho Department of Water Resources. If you need more information please contact us in writing.

Thank You,

Debbie Hays,
Secretary

Rapid River Homeowners Association

Want map showing where
place is

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P.S. The points of diversions have never been changed.

CONVERSATION MEMORANDUM

DATE 3/24/92NAME OF PARTY Bryan DeVary
~~Bryan~~ DeVary - Board of Directors of
EMPLOYEE Steve Laster
Homenewers Assn.FILE RSPID R. Homenewers Assn.RE: LETTER TO Homenewers dated 3/18/92:

① Surveys showed different Q&Q over time for p/b.
Thinks p/b probably is in S.B.

② Has info to document use to < 1922 (re
A 78-04031).

③ Want to change claim to show
different p/b
earlier d.o.p.

④ will send info to ASAP (probably will take > 1 month
since arch f- term numbers have key to safe
deposit box).

IF NO info by MAY 1, send 2nd letter.

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State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 18, 1992

Rapid River Homeowners Association
C/O Tim Heath, President
Riggins, ID. 83549

RE: Complaint About Diversion of Water

Dear Mr. Heath:

This office received a complaint on 3/17/92 that your organization is diverting water from Rapid River at a point in T23N, R1E, Section 6, NE 1/4 of NE 1/4. According to the water right records of this agency, the homeowner association does not have a right to divert water from that quarter-quarter. Therefore, such a diversion - if occurring - does not enjoy legal protection and should be corrected.

Of course, I cannot confirm the validity of the complaint without visiting the site. Prior to a possible field visit, please provide the following information.

- Contact
Hamm + me
info - 5/1/92*
1. A map showing the current diversion point(s) from the river should be supplied. The map should indicate the section and quarter-quarter lines.
 2. Identify the water right(s) that allow you to divert water from Rapid River. I found adjudication claim ("Notice of Claim") nos. A78-04031 and A78-10188. Are any rights used other than these two?
 3. A more complete address and telephone number would be useful.
- See
letter re: 3/30*

Based on your response, the proper type of water right correction can be filed. Such corrections are subject to protests under Idaho statute. Please respond within thirty (30) days. Call me at 334-2190 if you have any questions.

Sincerely,

Steve Lester
Sr. Water Resource Agent

CC: C. M. Vogelsong, Riggins

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MAR 17 1992

3/13/92

Mr. Steve Lester
Idaho Dept. of Water Resources
Statehouse Mail,
Boise, Idaho - 83720-9000

Department of Water Resources
Western Regional Office

Dear Mr. Lester;

Pursuant to our several telephone conversations in past weeks, I should like to complain that Rapid River Homeowners Assn. of Riggins, Idaho has again resumed taking water from Rapid River in Section 6(NE $\frac{1}{4}$ NE $\frac{1}{4}$), Twp. 2~~2~~3N. Range 1 EBM.; a location for which they have no valid permit or water right. In earlier conversations you had mentioned that you could force them to change their filing to the correctly described location; and that we could protest the application at the time, thereby indicating that we are not a willing participant in this water project. Our problem is one of liability. We want no part of ANY liability for the ditch, headgate and approach apron that the assn. has placed upon our ground. We think their facilities are unsafe, and will protest on that basis and others.

Thanking you in advance for any assistance you can give in this matter, I remain,

Sincerely,



C.M. Vogelsong
P.O. Box 347
Riggins, Idaho -83549 - 0347

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State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 16, 1991

C. M. Vogelsong
PO Box 347
Riggins, ID. 83549-0347

RE: Water Right Applications and Related Information

Dear Sir:

In response to your questions concerning water rights in the Rapid River area, please see the attached information. An Application for Permit may be filed to obtain a new water right for new development utilizing Rapid River water. For information regarding water rights in Section 6, refer to the two-page attachment shown as **water right indeces**. The point of diversion index lists those rights diverting water from a point in the section. The place of use index identifies the rights using water in Section 6, and the diversion points for the latter may or may not be within Section 6.

Because most of Idaho is involved in the Snake River Basin Adjudication or summary of water uses and rights in place by the adjudication commencement of November, 1987, adjudication claims exist for water uses identified by water users. The users have filed adjudication claims to claim their rights. This department will review the claims and recommend them in one form or another to the court. Ultimately, the court will issue decreed rights based on the claims, department review and recommendations, and any other pertinent information. The second two-page enclosure listed as **adjudication claims** identifies the claims with a point of diversion or place of use in Section 6.

An adjudication claim is a statement by a land owner outlining the owner's opinion of the nature of the alleged water right. An adjudication claim is based on a previously established form of a water right such as a permit or can be based on an unrecorded use of water. Note that adjudication claims are preceded with the A prefix. These claims are not the same as statutory claims. A statutory claim is a water right filed by a user to document "grandfather" or historical uses of water. Thus, an adjudication claim might be filed to reflect an already recorded use of water identified in a statutory claim. The validity of statutory claims will be determined by the adjudication process.

The point of all this confusing jargon is that adjudication claims are just statements by users and are not necessarily valid or accurate rights. The validity of the claims will be determined in the adjudication process. Meanwhile, the established water rights are generally considered to be those shown in the water right indeces. Therefore, I did not include notes about particular adjudication claims on the second attachment.

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C. M. Vogelsong

Oct. 16, 1991

Page 2

Generally, water rights are considered property rights and usually, but not always, are appurtenant to land. For more specific legal issues such as quiet title law suits, I direct your attention to legal counsel. The staff of this office does not include attorneys and should not attempt to give legal advice on such complicated issues. Also, it would not be proper for me to refer you to a specific attorney at the possible expense of another attorney. It may be helpful to consult a librarian, professional groups, the yellow pages (for example, see Attorneys, Water), and so on. The State Law Library (334-3316) in Boise may be a useful reference source.

Please contact this office if you need additional information.

Sincerely,



Steve Lester

Sr. Water Resource Agent

Enclosures: Application Forms and Water Indexes

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Department of Water Resources
Western Regional Office

10/8/91

State of Idaho
Dept. of Water resources
2735 Airport Way
Boise, Idaho - 83705

Gentlemen:

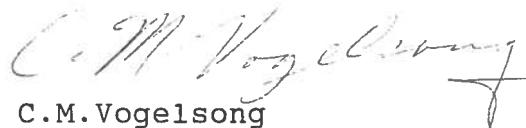
We have recently acquired land in Section 6, Twp. 23 North, Range 1 East Boise Meridian, Idaho County, Idaho. We have approximately the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of same, through which Rapid River, tributary to the Little Salmon River flows. We anticipate some small irrigation requirements from Rapid River water, by small electric pump at some future date, so will appreciate your sending whatever forms are needed to apply for same.

Also, please send along any and all water right claims to water from Rapid River being taken in the above described Section.

Please clarify: Does a Quiet Title law suit cancel out previous water right claims if uncontested? What, if any property rights are included with water rights (by pipe/pump - by ditch, etc.)?

If it is a fair question, do you have a list of Idaho lawyers who are well versed in Water Law? I know most are not; but thought you might know some who might specialize or at least know considerable about it. Any help in that direction will also be appreciated.

Sincerely,



C.M. Vogel song
P.O. Box 347
Riggins, Idaho - 83549-0347

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