

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 43-103B
Date Received: 5/31/1989
Receipt No: S007430
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

*Amended
9-17-01*

1. Name of Claimant(s)
TED HIGLEY Phone: (208)645-2444
BETTY ANN HIGLEY
2200 RODOCKER LANE BOX 57
MALTA ID USA 83342
2. Date of Priority: 04/01/1894
3. Source: CASSIA CREEK Trib. to: RAFT RIVER
4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
13S	26E	14	NE SW	CASSIA	

5. Description of diverting works:
SEE REMARKS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/01	11/01	3.06	

7. Total Quantity Appropriated is:
3.06 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
13S	26E	13	NW NE	IRRIGATION	40
			NE NW	IRRIGATION	40
			NE NE	IRRIGATION	40
Section Acres					120
Total Acres					120

11. Place of use in counties: CASSIA

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

13. Other Water Rights Used:

14. Remarks:

the claim was amended to reflect 3/5 ths of the original right.

DESCRIPTION OF DIVERSION WORKS: 12 CEMENT CHECK IN CASSIA CREEK (WITH A WATER GAUGE) DIVERTS THE WATER INTO A MAN-MADE DITCH ABOUT 2 1/2 TO 3 DEEP AND 4 WIDE; WATER EMPTIES INTO A POND, AND A 50 HP MOTOR AND PUMP PUMPS WATER FROM POND INTO THE SAME MAINLINE AS DESCRIBED IN RIGHT #43-02310; OPERATES ON A PRESSURE OF 65-70 PSI DEED OF CONVEYANCE CONVEYS N. 120 INCHES OF DECREED WATER OF CASSIA CREEK BEARING DATE OF PRIORITY 1894 --- ALSO ALL WATER DEVELOPED FROM THAT WELL LOCATED IN THE SOUTH PORTION OF SAID LAND. THE TOTAL QUANTITY OF WATER (0.96 CFS) CLAIMED HEREIN, TOGETHER WITH THE QUANTITY IN THE OTHER RIGHTS (#13 ABOVE) TOTAL 119.5 INCHES. THE "120" INCHES WERE THE CONTROLLING WORDS AND FIGURES, NOT THE PRIORITY DATE

15. Basis of Claim: Decreed

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):

[Signature]

Date: 9-17-01

Date: _____

State of Idaho

County of

Twin Falls)
SS.

Subscribed and sworn (or affirmed) before me this 17th day of Sept 2001

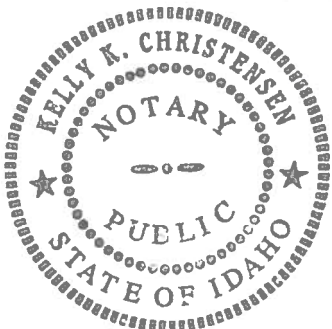
Kelly K. Christensen
Notary Public

Residing at

Twin Falls

My commission Expires

3-11-01



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: A43-00103B

Date Received: 5/31/1989

Receipt No: S007430

Received By: ownership change

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: TED HIGLEY 208-645-2444
Address: 2200 RODOCKER LANE
PO BOX 57
MALTA ID 83342

AND/OR

Name: BETTY ANN HIGLEY 208-645-2444
Address: 2200 RODOCKER LANE
PO BOX 57
MALTA ID 83342

2. Date of Priority: APR 1, 1894

3. Source: CASSIA CREEK Trib. to: RAFT RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
13S	26E	14	NE	SW			CASSIA

5. Description of diverting works:
SEE REMARKS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.960		

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

8. Total consumptive use is 360.0 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
13S	26E	13	NE		NE		IRR	40.0
			NW		NE		IRR	40.0
			NE		NW		IRR	40.0
							Section Acres	120.0
							Total Acres	120.0

11. Place of use in counties: CASSIA

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

13. Other Water Rights Used:

43-00100, -00101, -00102, -00099, -00104, -02310

14. Remarks:

DESCRIPTION OF DIVERSION WORKS: 12' CEMENT CHECK IN CASSIA CREEK (WITH A WATER GAUGE) DIVERTS THE WATER INTO A MAN-MADE DITCH ABOUT 2 1/2 TO 3' DEEP AND 4' WIDE; WATER EMPTIES INTO A POND, AND A 50 HP MOTOR AND PUMP PUMPS WATER FROM POND INTO THE SAME MAINLINE AS DESCRIBED IN RIGHT #43-02310; OPERATES ON A PRESSURE OF 65-70 PSI.

DEED OF CONVEYANCE CONVEYS N. 120 INCHES OF DECREED WATER OF CASSIA CREEK BEARING DATE OF PRIORITY 1894 --- ALSO ALL WATER DEVELOPED FROM THAT WELL LOCATED IN THE SOUTH PORTION OF SAID LAND. THE TOTAL QUANTITY OF WATER (0.96 CFS) CLAIMED HEREIN, TOGETHER WITH THE QUANTITY IN THE OTHER RIGHTS (#13 ABOVE) TOTAL 119.5 INCHES. THE "120" INCHES WERE THE CONTROLLING WORDS AND FIGURES, NOT THE PRIORITY DATE.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: / /

Decree Plaintiff

vs

Decree Defendant

16. Signature(s)

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

Number of attachments: _____

For Individuals:

I/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)
County of _____) SS.

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

Notary Public

Seal

Residing at _____

My Commission Expires _____

OWNER NAME & ADDRESS
C TED HIGLEY
C BETTY ANN HIGLEY
2200 RODDOCKER LANE
PO BOX 57
MALTA ID 83342
(208) 645-2444

PRIORITY DATE WATER USE
04/01/1894 IRRIGATION

USE PERIOD FROM TO
04-01 11-01

DIVERSION RATE
0.96 CFS

DIVERSION VOLUME
360.00 AFA

TOTAL DIVERSION:
CONSUMPTIVE USE:

Water Source: CASSIA CREEK
Point(s) of Diversion: T13S R26E S14
Tributary to: RAFT RIVER
Stage: DECREED
CASSIA County

Place of use Legal Description for: IRRIGATION

T R S	NENE	NAME	SENE	NEW	NW	SW	SE	SUM
13S 26E 13	40	40	40	40	40	40	40	120.0
TOTAL ACRES								120.0

POU County: CASSIA
Non-Irrigation Uses: NONE
Other Rights: 43-00100, -00101, -00102, -00099, -00104, -02310

Remarks: GEN DESCRIPTION OF DIVERSION WORKS: 12' CEMENT CHECK IN CASSIA CREEK (WITH A WATER GAUGE) DIVERTS THE WATER INTO A MAN-MADE DITCH ABOUT 2 1/2 TO 3' DEEP AND 4' WIDE; WATER EMPTIES INTO A POND, AND A 50 HP MOTOR AND PUMP PUMPS WATER FROM POND INTO THE SAME MAINLINE AS DESCRIBED IN RIGHT #43-02310; OPERATES ON A PRESSURE OF 65-70 PSI.
DEED OF CONVEYANCE CONVEYS N. 120 INCHES OF DECREED WATER OF CASSIA CREEK BEARING DATE OF PRIORITY 1894 --- ALSO ALL WATER DEVELOPED FROM THAT WELL LOCATED IN THE SOUTH PORTION OF SAID LAND. THE TOTAL QUANTITY OF WATER (0.96 CFS) CLAIMED HEREIN, TOGETHER WITH THE QUANTITY IN THE OTHER RIGHTS (#13 ABOVE) TOTAL 119.5 INCHES. THE "120" INCHES WERE THE CONTROLLING WORDS AND FIGURES, NOT THE PRIORITY DATE.

Dates: Exam Made Date: Verified Date: Objection Filed Date:
Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

AJ0749NP
No. R43-001038

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 11/06/97
PAGE: 2

Comments:

Date: 11/06/1997 User-ID: JROBERTS Subject: OWNERSHIP CHANGE
FORM AND WARRANTY DEED RECEIVED 11/5/97 FROM BLAINE & VIOLA WIGHT
TO TED & BETTY ANN HIGLEY. A43-001038 ALSO CHANGED. jr

Audit: 11/06/97 JROBERTS

"DO NOT FILM"

RECEIVED

STATE OF IDAHO
IDAHO DEPARTMENT OF WATER RESOURCES

NOV 06 1997

Department of Water Resources
Southern Region

NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

1. Water Right No(s).: #A43-00099B, A43-00100B, A43-00101B, A43-00102B & A43-00103B, A43-00104A, A43-02310, A43-04190, A43-07
Adjudication Claim No(s).: _____

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

A. A copy of the most recent DEED, TITLE POLICY, CONTRACT OF SALE or other legal document indicating your ownership of the property and water rights or claims in question, WITH ATTACHED LEGAL DESCRIPTION.

AND

B. PLAT OF PROPERTY or SURVEY MAP for parcel of ten acres or less. (These are usually attached to your deed or on file with the county.)

OR

C. For water rights or adjudication claims involving ten or more irrigated acres, a USDA Farm Service Agency AERIAL PHOTO with irrigated acres outlined and point(s) of diversion clearly marked.

3. Name and Address of Former Owner/Claimant

Blaine + Viola WightMAITA, Idaho 83842

4. New Owner/Claimant(s)

Ted + Betty Ann Higley

Name Connector (Check one): [] and, [] or, [x] and/or

New Mailing Address

2200 Rodocker Ln. Box 57

City, State and ZIP Code

MAITA, Idaho 83342

New Telephone Number

(208) 645-2444

5. Date you acquired the property

Feb. 7-1992

6. If you have acquired only a portion of the former owner's property, IDWR may need to split the water right(s) or adjudication claim(s). If this applies, describe in detail your portion of each water right or adjudication claim in the space below. If necessary, attach additional pages.

Number of acres you irrigate _____ Number and type of stock _____

Diversion rate in CFS _____ Number of homes _____ Other uses _____

If a water right or adjudication claim is being split and you are not sure how to identify your portion of the original right or claim, please contact the nearest IDWR office for assistance.

7. Signature of New Owner or Claimant(s)

Ted Higley for Betty Ann Higley

(Corporations or other organizations must submit a list of directors and/or officers demonstrating authority to sign form.)

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

Copy
Original Held in Escrow
until Contract is paid

WARRANTY DEED

For Value Received

Blaine Wight and Viola June Wight, Husband and Wife,
Box 8, Malta, Idaho,

the grantors, do hereby grant, bargain, sell and convey unto

Ted Higley and Betty Ann Higley, Husband and Wife,
Box 57, Malta, Idaho,

the grantees, the following described premises, to-wit:

Township 13, Range 26 East Boise Meridian, Cassia County,
Idaho,
Section 13: $S\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}NE\frac{1}{4}$, $N\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$, $N\frac{1}{2}$ of Tax Number
2086, $S\frac{1}{2}$ of Tax Number 2086.

Reserving and excepting to Sellers a life estate in the
resident, garage, cellar and surrounding approximately
two acres located on said property.

Township 13 South Range 26 East Boise Meridian, Cassia
County, Idaho,
Section 13: $SW\frac{1}{4}SW\frac{1}{4}$
Township 12 South, Range 28 East Boise Meridian, Cassia
County, Idaho,
Section 13: $SE\frac{1}{4}NE\frac{1}{4}$ $NE\frac{1}{4}-SE\frac{1}{4}$ (80 acres)

Township 12 South, Range 29 East Boise Meridian, Cassia
County, Idaho,
Section 18: $S\frac{1}{2}$ $NE\frac{1}{4}$, $N\frac{1}{2}$ $SE\frac{1}{4}$, $SW\frac{1}{4}$ $SE\frac{1}{4}$,
 $E\frac{1}{2}$ $SW\frac{1}{4}$, and Lots 3 & 4 of said section
(330.4 acres)

Section 17: $SW\frac{1}{4}$ (160 acres)

Township 14 South, Range 30 East Boise Meridian, located
in Oneida County, State of Idaho.

Section 28: $E\frac{1}{2}$, $SE\frac{1}{4}$ $NW\frac{1}{4}$ (360 acres)

and

Sellers one half ($1/2$) interest in the Glen Canyon Spring
water right located on land that is controlled by the
United States of America Bureau of Land Management.

Together with all and singular the tenements,
hereditaments, appurtenances and water rights thereto.

TO HAVE AND TO HOLD the said premises with their appurtenances unto the said Grantee and to the successors heirs and assigns of the Grantee forever. The Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from all incumbrances except as above described and that Grantor will warrant and defend the same from all lawful claims whatsoever.

DATED this 7 day of February, 1992.

Blaine Wight
BLAINE WIGHT

Viola June Wight
VIOLA JUNE WIGHT

STATE OF IDAHO)
 SS
County of Cassia)

On this 7 day of February, 1992, before me, a notary public in and for said State, personally appeared Blaine Wight and Viola June Wight, Husband and Wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Douglas R. Wight
Notary Public of Idaho
Residing at Burley, Idaho
My Commission Expires: Aug. 1992

13S
CC82





State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

November 7, 1997

TED & BETTY ANN HIGLEY
2200 RODOCKER LANE
PO BOX 57
MALTA ID 83342

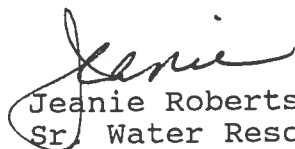
Re: Ownership Change for Adjudication Claim #A43-00099B,
A43-00100B,
A43-00101B,
A43-00102B,
A43-00103B,
A43-00104A,
A43-02310,
A43-04190,
A43-07057, &
A43-10296
(WIGHT/HIGLEY)

Dear Mr. and Mrs. Higley:

Pursuant to notification that you presently own the property in which the above referenced Adjudication Claims are appurtenant, the Department has changed the records of the current owner as you requested. Please find enclosed copies of the computer records of the claims noting the change in claimant.

Please review the records and if you have any corrections or questions, please feel free to call this office.

Sincerely,


Jeanie Robertson
Sr. Water Resource Agent

/jr
Enclosures

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: A43-00103B
Date Received: 5/30/1989
Receipt No: 5007430
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: BLAINE WIGHT 208-645-2545
Address: POB 8
MALTA, ID 83342
AND
Name: VIOLA WIGHT 208-645-2545
Address: POB 8
MALTA, ID 83342

2. Date of Priority: APR 01, 1894

3. Source: CASSIA CREEK Trib. to: RAFT RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
13S	26E	14		NE	SW		CASSIA

5. Description of diverting works:
SEE REMARKS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.960		

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

8. Total consumptive use is 360.0 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

A43-00103B

Page 1

Date: 05/31/89

MICROFILMED
MAR 02 1993

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
13S	26E	13	NE	NE		IRR	40.0
			NW	NE		IRR	40.0
			NE	NW		IRR	40.0
						Section Acres	120.0
						Total Acres	120.0

11. Place of use in counties: CASSIA

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

13. Other Water Rights Used:
43-00100, -00101, -00102, -00099, -00104, -02310

14. Remarks:

DESCRIPTION OF DIVERSION WORKS: 12' CEMENT CHECK IN CASSIA CREEK (WITH A WATER GAUGE) DIVERTS THE WATER INTO A MAN-MADE DITCH ABOUT 2 1/2 TO 3' DEEP AND 4' WIDE; WATER EMPTIES INTO A POND, AND A 50 HP MOTOR AND PUMP PUMPS WATER FROM POND INTO THE SAME MAINLINE AS DESCRIBED IN RIGHT #43-02310; OPERATES ON A PRESSURE OF 65-70 PSI.

DEED OF CONVEYANCE CONVEYS N. 120 INCHES OF DECREED WATER OF CASSIA CREEK BEARING DATE OF PRIORITY 1894 --- ALSO ALL WATER DEVELOPED FROM THAT WELL LOCATED IN THE SOUTH PORTION OF SAID LAND. THE TOTAL QUANTITY OF WATER (0.96 CFS) CLAIMED HEREIN, TOGETHER WITH THE QUANTITY IN THE OTHER RIGHTS (#13 ABOVE) TOTAL 119.5 INCHES. THE "120" INCHES WERE THE CONTROLLING WORDS AND FIGURES, NOT THE PRIORITY DATE.

15. Basis of Claim: DECREED

Case Number:
Court :
Decree date:

Decree Plaintiff

vs

Decree Defendant

16. Signature(s)

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

Number of attachments: _____

For Individuals:

I/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)
County of _____) SS.

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

Notary Public

Seal

Residing at _____

My Commission Expires _____

8/01/1988

SRBA CLAIMS RECEIVING CHECKLIST

CLAIMANT'S NAME BLAINE ID VIOLA WIGHT CL. IDENT. NO. A43-00103
DATE RECEIVED 5/30/89 CK # 623 AMOUNT \$ 545

- | | YES | NO |
|--|-------------------------------------|-------------------------------------|
| 1. Is the name and address complete with zip code? | ☒ | ☐ |
| 2. Is priority date entered? | ☒ | ☐ |
| Is the water use exempt from the Permit requirements, or if it is not exempt, has a Permit been approved or a License issued?
A Permit is required: (1) for groundwater developed after March 25, 1963 (except single family domestic and stockwater wells using less than 13,000 gpd), or (2) for surface water developed after May 20, 1971 (except for instream stockwater). USE CARE IF CLAIM IS RETURNED. REFER TO ADJUDICATION MEMOS # 1 (ADJ. CLAIMS/APPLICATIONS) AND # 9 (REJECTION OF CLAIMS). EXPLAIN IN COMMENTS. | | |
| 3. (a) Is a source entered? | ☒ | ☐ |
| (b) Is a tributary to entered? (if required) | ☒ | ☐ |
| 4. Is the legal description of the p.d. complete? | ☒ | ☐ |
| 5. Is there a description of the diverting works? | ☒ | ☐ |
| 6. Are the water uses appropriate for the form? The short form limited domestic and stockwater. Instream stockwater must use long form. | ☒ | ☐ |
| Is the period of use included? | ☒ | ☐ |
| Is a quantity claimed for each use? | ☒ | ☐ |
| 7. Is a total quantity claimed entered? | ☒ | ☐ |
| 8. Is the consumptive use correct? <u>3x120=360</u> | ☒ | ☐ |
| If required is a consumptive use entered? | ☒ | ☐ |
| 9. Are the non-irrigation uses listed properly? If this claim is on the short form, and more than one domestic use is listed, single ownership must be stated. If not under single ownership, each household must file a separate claim. See Adjudication Memo # 4. | ☒ | ☐ |
| 10. Is (are) the place(s) of use entered? | ☒ | ☐ |
| 11. Is (are) the county(ies) entered? | ☒ | ☐ |
| 12. Is the ownership of p.u. checked? | ☒ | ☐ |
| 13. Are other water rights listed or "none" checked? | ☒ | ☐ |
| 14. If required, are remarks correct? (If the claimant does not own the place of use, authority for filing the claim must be explained in the remarks.) | ☒ | ☐ |
| 15. Is the basis of the claim checked? | ☒ | ☐ |
| 16. Is the claim signed by the claimant?
Is the signature appropriate? (If an individual is the claimant, has that individual signed the claim, or if an organization is the claimant, is the organization signature block complete?) | ☒ | ☐ |
| Has the claim been signed, sealed, and dated by a notary? | ☒ | ☐ |
| Is the fee enclosed correct? | ☒ | ☐ |
| If this claim is based on an existing water right, has the identification number been entered? | ☐ | ☒ |
| Should this claim be receipted and data entered? | ☒ | ☐ |

MICROFILMED

Claim checked by MAR 02 1993

Comments: SPLIT RIGHT #43-00103

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
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CIVIL CASE NUMBER: 39576

Ident. Number

Date Received

Receipt Number

A43-00103 B

5/30/89

S007430 J

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED

MAY 30 1989

Department of Water Resources
Southern Region Office

Please type or print clearly

1. Name of Claimant (s) Blaine and Viola Wight Phone (208) 645-2545Mailing Address POB 8, Malta, ID Zip 833422. Date of Priority (Only one (1) per claim) April 1, 18943. Source of water supply (a) Cassia Creek
which is tributary to (b) Raft River4. a. Location of existing point of diversion is: Township 13S Range 26E Section 14,
1/4 of NE 1/4 of SW 1/4, Govt. Lot, B.M., County of Cassia

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. 12' cement check in Cassia Creek (with a water gauge) diverts the water into a man-made ditch about 2 1/2-3 ft. deep and 4' wide water empties into a pond, and a 50 h.p. motor and pump, pumps water from pond into the same mainline as described in Right #43-2310; operates on a pressure of 65-70 psi.

MICROFILMED

MAR 02 1993

6. Water is claimed for the following purposes:

(both dates are inclusive) (cfs) (acre feet)

For Irrigation purposes from 4-1 to 11-1 amount .96 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) .96 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is 300 acre feet per annum for this and the other claim for this land.

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

10. Description of place of use:

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

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

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
13S	26E	13	40	40			40												120

Total number of acres irrigated 120

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

12. Do you own the property listed above as place of use? Yes X No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.
43-0099; 43-0100; 43-0101; 43-0102; 43-0104 and 43-2310 or None ()

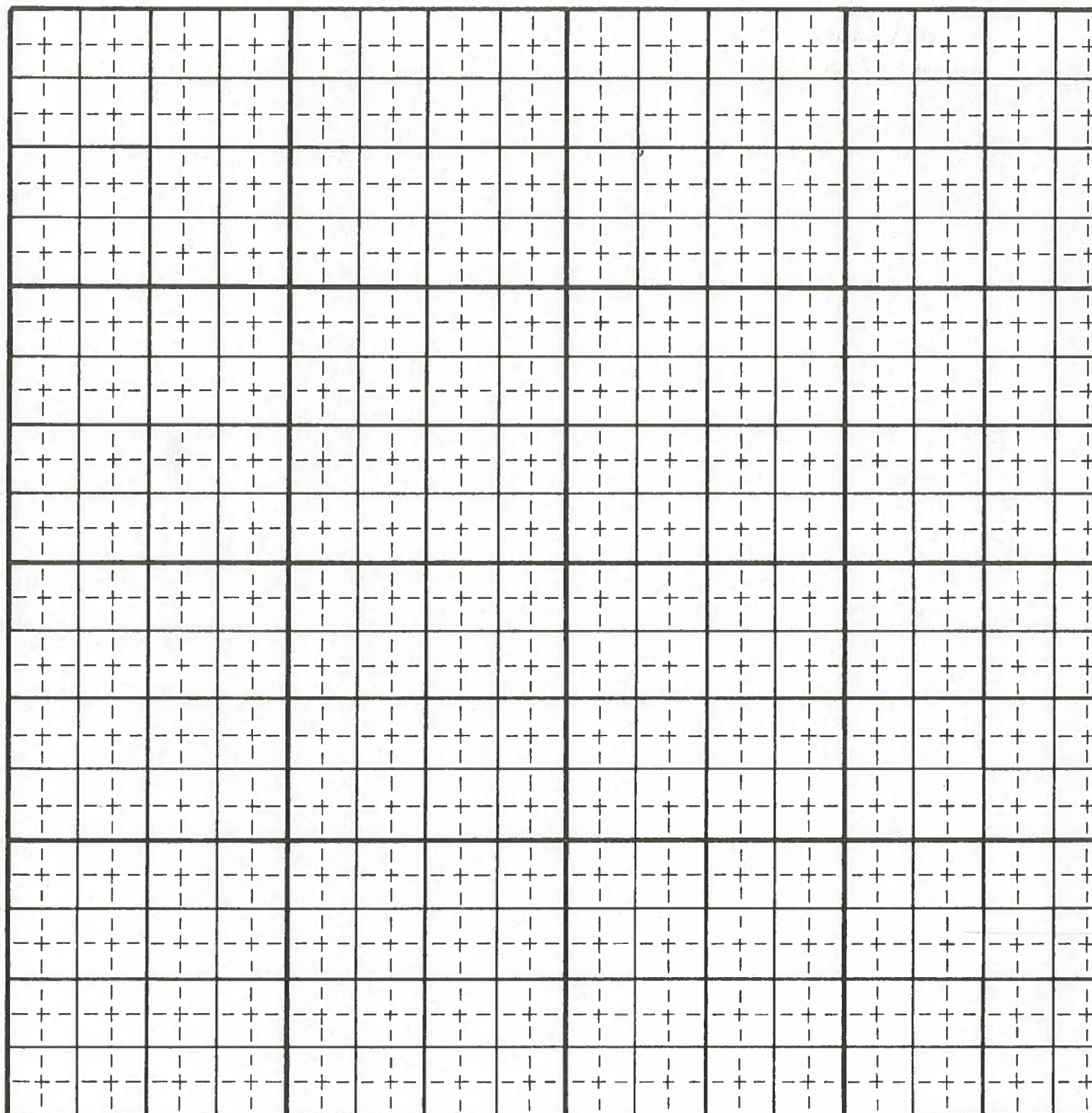
14. Remarks:
Deed of conveyance (copy attached) conveys N. 120 inches of decreed water of Cassia
Creek bearing date of priority 1894 - - - also all water developed from that well
located in the South portion of said land. The total quantity of water (.96 cfs) claime
herein, together with the quantity in the other rights (#13 above) total 119.5 inches.
The "120 inches" were the controlling words and figures, not the priority dates.

Last Name Wight Ident No. A43-00103 B

MICROFILMED
Copies: White-Suite, Yellow-Claimant
MAR 02 1993

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

Scale: 2 inches equals 1 mile



MICROFILMED

Last Name Wight

Ident No. A43-00103B

MAR 02 1993

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License _____ Permit _____
Decree X

If applicable provide IDWR Water Right Number 43-0103
Court 11th Judicial District Case Number 81068 Decree Date 4-22-26
Plaintiff vs Defendant J. B. Hitt, et al. v. H. F. Deardorff

16. Signature (s)

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

Number of attachments 3

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

Signature of Claimant (s) Blaine Wight Date 5/24/89
Viola Wight Date 5/24/89

For Organizations: I do solemnly swear or affirm that I am _____ Title _____

of _____, that I have signed the foregoing
Organization

document in the space below as _____ of _____
Title Organization

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

Signature of Authorized Agent _____

Title and Organization _____ Date _____

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

Subscribed and sworn (or affirmed) before me this 24th day of May 19 89

SEAL

Notary Public Debra A. Keller

Residing at Rexburg, Idaho

My Commission Expires 11-15-93

Please Print Name

17. Notice of Appearance:

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

Signature Ray W. Rigby

Address 25 N. 2nd E., POB 250, Rexburg, ID 83440

Date 5-24-89

MICROFILMED

MAR 02 1993

Last Name Wight Ident. Number A43-00103B

Copies White-State, Yellow-Claimant



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

May 3 1985

Blaine & Viola Wight
Box 8
Malta, Idaho 83342

Dear Mr. Wight:

Please accept our apologies for the delay in sending the following material requested by you.

Please find enclosed the water rights for the Legal description of land you requested.

NENW, NWNE, & NENE; Sec. 13, T. 13 S. R. 26 E. Approximately 120 Acres.

Water Right #	Priority	Amount
43-0099	4/1/1879	0.46 cfs
43-0100	11/30/1880	0.45 cfs
43-0101	4/30/1883	0.22 cfs
43-0102	1/1/1886	0.15 cfs
43-0103	4/1/1894	0.96 cfs
43-0104	8/30/1904	0.15 cfs
		<u>2.39 cfs</u>

If you have further questions regarding this matter please feel free to contact this office.

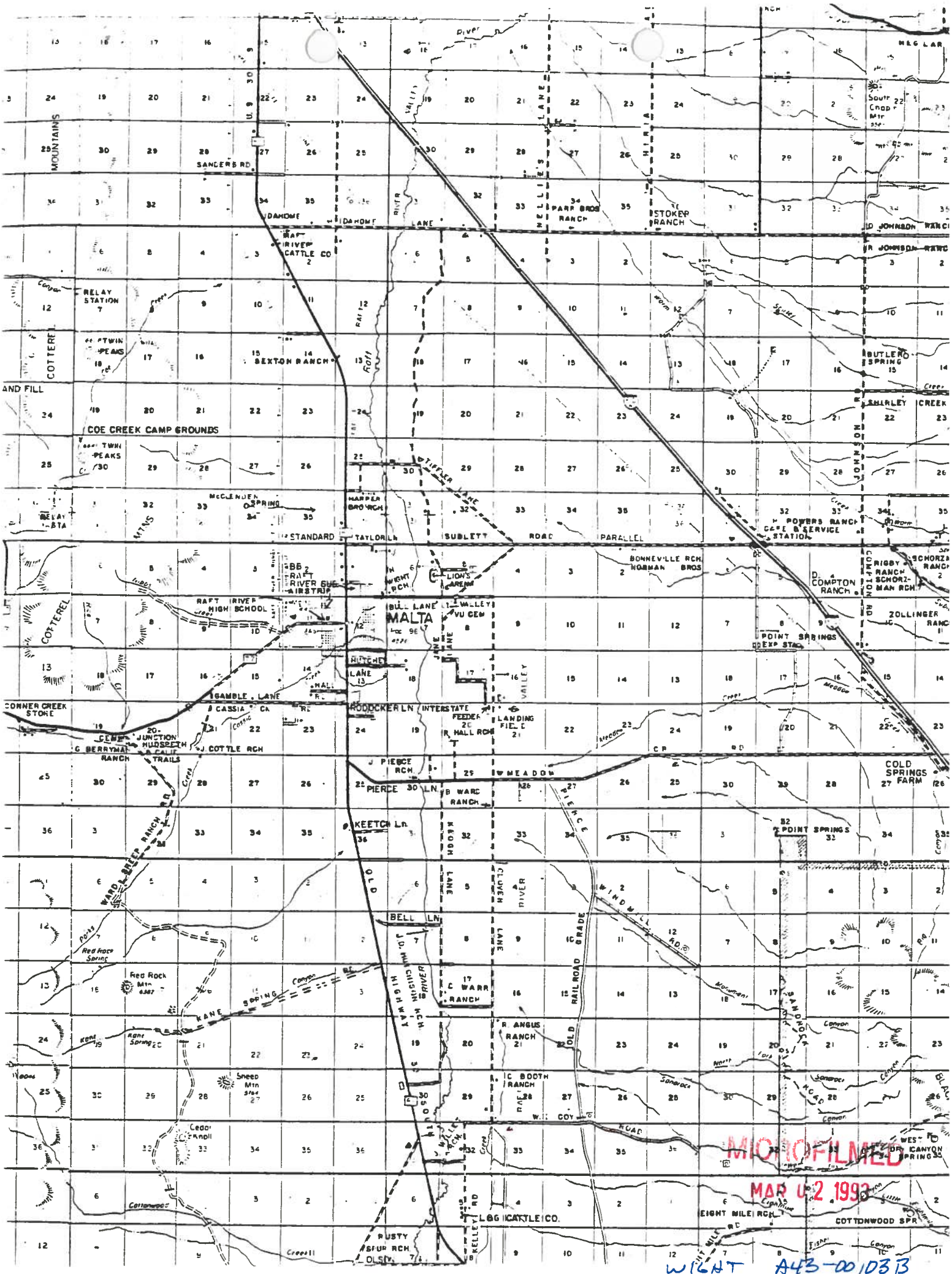
Very truly yours,

Gary J. Funderburg
Gary J. Funderburg
Sr. Water Resource Agent

LOH:GLF:marya

MICROFILMED
MAR 02 1993

WIGHT A43-00103B



MICROFILMED

MAR 12 1993

WIGHT A43-0010313

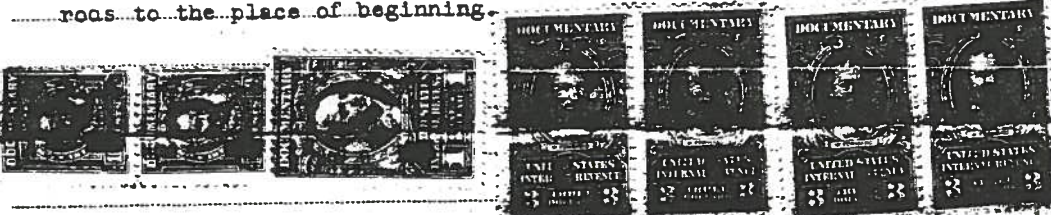
THIS INDENTURE, Made this Fif day of November
 in the year of our Lord one thousand nine hundred and fortyfive
 between H. F. Deardorff and Rosa V. Deardorff, his wife
 of Burley, County of Cassia
 State of Idaho, the parties of the first part, and
Blaine Wight and Viola Wight, his wife
 of Valta, County of Cassia
 State of Idaho, the parties of the second part:

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of
Twelve Thousand and no/100----- DOLLARS,
 lawful money of the United States of America, to them in hand paid by the
 said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained
 and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said parties
 of the second part, and to their heirs and assigns forever, all the following described real estate,
 situated in Cassia County, Idaho, State of Idaho, to-wit:

All of the Northeast quarter of the Northwest quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$), the
 Northwest quarter of the Northeast quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$) and the Northeast
 quarter of the Northeast quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 13, Twp. 13 South,
 Range 26 E.B.M. except therefrom all land deeded to the State of Idaho
 for Highway purposes therein as recorded in Book of Deeds no. 42, of
 Cassia County, Idaho, at page 561; together with 120 inches of the
 decreed water of Cassia Creek bearing date of priority 1894 and all ditches
 and ditch rights pertaining to the land herein described. Also all water
 developed from that well located in the South portion of said land.

Also the use of $\frac{1}{2}$ of the water developed from that Tile stream located
 in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said section each year from Nov. 1, to April first of
 the succeeding year. Said water to be used for stock watering purposes
 on the property herein conveyed and not diverted to other lands.

Said parties of the first part hereby reserve a continuous easement
 and right to use a portion of the land herein conveyed and the perpetual
 use of an irrigation well thereon. Said land being more particularly
 described as beginning at the intersection of the East boundary line
 of Idaho highway no. 30 S. and the North boundary line of the NE $\frac{1}{4}$ NW $\frac{1}{4}$
 of said section 13, Twp. 13 South, Range 26 E.B.M. thence East 3 rods,
 thence South three rods, thence West three rods, thence North three
 rods to the place of beginning.



TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging
 or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits
 thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the
 said parties of the first part:

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together
 with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever.
 And the said parties of the first part, and their heirs, the said premises in the quiet and peaceable
 possession of the said parties of the second part, their heirs and assigns, against the said parties
 of the first part, and their heirs and against all and every person and persons whomsoever, lawfully
 claiming or to claim the same, shall and will WARRANT and by these presents forever DEFEND.

MICROFILMED

MAR 02 1993

WIGHT A43-00103B

Name of Parties Filing Document:

Ted and Betty Ann Higley, Pro Se
2200 Rodocker Lane Box 57
Malta, ID 83342

and

J. R. Simplot Company

Attorneys' Names and Addresses for J. R. Simplot Company:

Albert P. Barker (#2867)
Barker Rosholt & Simpson LLP
221 West Idaho Street, Suite 600
PO Box 2139
Boise, ID 83701-2139

GRAY A. YOUNG (#4173)
Associate General Counsel

TERRY T. UHILING (#2581)
General Counsel Elect
J. R. Simplot Company
PO Box 27
Boise, Idaho 83707
999 Main Street Suite, 1300
Boise, ID 83702

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

In Re SRBA	) Subcase Numbers: 43-103B and 43-11263
	)
	)
Case No. 39576	) JOINT MOTION TO SET ASIDE
	) PARTIALLY DECREED SUBCASES
	) AND REFER TO
_____	) THE SPECIAL MASTER

MOTION

The J. R. Simplot Company ("Simplot"), by and through the undersigned attorney and Ted Higley and Betty Ann Higley ("Higley" or "Higleys") acting pro se, respectfully move this Court for the following:

JOINT MOTION TO PARTIAL SET ASIDE DECREED SUBCASES AND REFER TO THE SPECIAL
MASTER Page 1

1. Pursuant to Idaho R. Civ. P. 60(a), for an Order setting aside the partial decrees filed in the above-captioned subcases because, through oversight or omission, the water rights were decreed while a valid objection was pending on another subcase, namely subcase 43-103C, involving the same water which was decreed under subcase nos. 43-103B and 43-11263.
2. Alternatively, pursuant to Idaho R. Civ. P. 60(b)(5), should Simplot's claim no. 43-103C be recommended during the contested subcase proceedings, the prospective application of claim nos. 43-103B and 43-11263 would no longer be equitable since they contain, through administrative error, omission, or oversight and without notice to Simplot, the water Simplot is entitled to receive under 43-103C.
3. For an Order referring the above-captioned subcases to the Special Master to allow corrections that may become necessary from the resolution of the pending objection to 43-103C.

MEMORANDUM AND POINTS AND AUTHORITIES

Subcase 43-103A was an irrigation claim originally filed by Grant N. Beyler and Clara W. Beyler ("Beyler"). Subcase 43-103B was an irrigation claim originally filed by Blaine Wight and Viola Wight ("Wight"). Subcase 43-103C was an irrigation claim originally filed by Simplot.

The Higleys are the successors to Beyler's interest in claim no. 43-103A pursuant to a warranty deed recorded in the official real property records of Cassia County, Idaho on January 30, 1995 as instrument no. 243341. The Higleys are also the successor to Wight's interest in claim no. 43-103B pursuant to an unrecorded contract for the purchase of Wight's real property dated February 7, 1992.

Beyler, Wight and Simplot claimed portions of a water right originally owned by their predecessor in the real property and water right interest, H. F. Deardorff and Rosa V. Deardorff ("Deardorff"). This water right was decreed in the 1928 Jobe Adams Decree

under water right no. 43-103 in the amount of 5.1 cfs. As previously mentioned, during the claims filing period in 1989, the Idaho Department of Water Resources ("IDWR") assigned the Beyler, Wight and Simplot claims with the following claim numbers respectively, 43-103A, 43-103B and 43-103C.

For reasons that are not clear to Simplot but apparently pursuant to an IDWR claim numbering policy, during the period between 1989 and the administrative preliminary recommendation procedure, claim no. 43-103A was renumbered to 43-10794. Without notice to Simplot, on October 16, 2000, IDWR split claim no. 43-10794 again renumbering the claim into claim nos. 43-11263 and 43-11264. Claim no. 43-11263 was further revised and amended by the IDWR and Higley on September 17, 2001.

The IDWR's Director's Report was filed with the court on September 29, 2001. Inexplicably, the IDWR changed its earlier recommendation for Simplot's claim no. 43-103C from allowing 1.1 cfs to disallowing the entire claim. Simplot filed a timely objection to the Director's Recommendation for the disallowal of 43-103C. Higley also filed a timely objection to the Director's Recommendation for the disallowal of 43-103C.

Uncontested claim no. 43-103B, relating to the original Deardorff water right no. 43-103 was partially decreed with Simplot's knowledge on June 8, 2002. Simplot did not object or otherwise contest this decree because on its face, it only decreed 3.060 cfs out of the total 5.1 cfs, leaving sufficient water to supply Simplot's right of 1.1 cfs, and it did not appear to involve water Simplot is entitled to receive under Simplot's claim 43-103C. On September 9, 2003, Simplot was informed by IDWR that uncontested claim 43-11263 was partially decreed on June 28, 2002, in the amount of 2.040 cfs. At the time of the partial decree, Simplot had no notice of claim 43-11263, its relationship to the original water right decreed to Deardorff, its relationship to claim 43-103C or the fact that 43-11263 was partially decreed.

In August 2002, an initial hearing was held for several subcases contested by Higley and Simplot involving the Deardorff water right. It was decided during the hearing that Higley's counsel would file a motion to set aside the partial decrees entered for the

JOINT MOTION TO PARTIAL SET ASIDE DECREED SUBCASES AND REFER TO THE SPECIAL
MASTER -- Page 3

uncontested claims relating to the Deardorff water right to facilitate adjustment to claims that might be required by a resolution of the subcases involved in the hearing. On August 28, 2002, counsel for Higley, Jason Walker, filed a Motion to Set Aside the Partial Decrees for 43-103B and 43-104A. Subcase 43-104A does not affect the water right at issue here, 43-103C.

The re-numbering of subcase 43-103A into 43-11263 without identifying its relationship to the original Deardorff water right no. 43-103 obscured the origin for claim 43-11263 and Simplot consequently was unaware of its relationship with 43-103C. This situation was and is so confusing that Simplot respectfully suggests to the Court that it is probable that Higley's lawyer inadvertently did not seek to set aside the partial decree entered for 43-11263 when it would be reasonable to assume that 43-11263 should also be set aside to fully and fairly adjudicate the water rights at issue.

Subsequently, pursuant to a Court Order issued on August 11, 2003, Higley's counsel withdrew, and Higley has represented themselves, pro se in this action.

Procedurally, Simplot timely filed an objection to the IDWR's Director's recommendation for the 43-103C claim to protect its rights. Simplot now is in the untenable position of having taken every appropriate and necessary procedural action to protect its interest in water right no. 43-103C, yet having the water represented by its claim partially decreed by the Court to another claimant under an entirely different subcase numbering sequence selected by the IDWR without notice to Simplot.

Unless the partial decrees are set aside, Simplot's property rights may be impaired without due process of law even though Simplot has diligently pursued its rights in its contested subcase no. 43-103C. As indicated in the attached Affidavit by Kelly Christensen, the Department has determined that Simplot is entitled to receive the quantity allowed under 43-103C.

The facts set forth in this Memorandum and the supporting Christensen Affidavit clearly show that the partial decrees entered for 43-103B and 43-11263 were based upon an oversight or omission in the administrative process that led the Court to the conclusion that no parallel contested subcases were pending involving all or portions of the same water claimed under 43-103C. But for this oversight or omission, the Court or the Department would have taken notice on its own initiative that the subject partial decrees should be set aside pending the outcome of subcase 43-103C.

Simplot and Higley agree that the provisions of Idaho R. of Civ. P. 60(b)(5) apply as a basis to set aside the partial decrees entered for 43-103B and 43-11263. Specifically, Simplot's claim no. 43-103C is entitled to be recommended during the contested subcase proceedings, the prospective application of claim nos. 43-103B and 43-11263 would no longer be equitable since 43-103B and 43-11263 incorrectly and inappropriately contain water Simplot is entitled to receive under 43-103C. It would be inequitable for the claimant under 43-103B and 43-11263 to be awarded water belonging to Simplot based on these administrative irregularities that it has not beneficially used and in which it has no title or interest. The IDWR agrees that an award of these water rights to the claimant, unless modified as set forth in the attached, would result in an expansion of the original decreed water right no. 43-103 (see Christensen Affidavit attached).

In view of all of the facts and circumstances set forth herein above, Higley, Simplot and the Department agree that it is appropriate to set aside these two decrees in order to properly allocate water among water right nos. 43-11263, 43-103B and 43-103C.

Therefore, for good cause shown, this Court should set aside the partial decrees filed in the above captioned subcases. In accordance with Administrative Order 1, 10.b., the above-captioned subcases should be referred to the Special Master to resolve the pending objections to 43-103C.

In addition, Simplot, Higley, and the Department agree that water rights 43-11263, 43-103B and 43-103C would be decreed in the amounts set forth in the attached SF-5s.

JOINT MOTION TO PARTIAL SET ASIDE DECREED SUBCASES AND REFER TO THE SPECIAL
MASTER – Page 5

Those amounts equal the 5.1 cfs decreed in the original water right from which these three rights are split.

Dated this _____ day of _____, 2003.

Respectfully submitted,

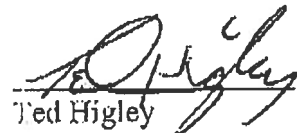
J. R. Simplot Company



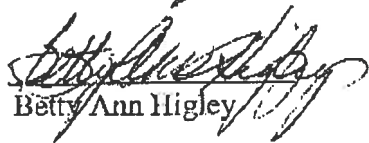
Albert P. Barker
Attorney for J. R. Simplot Company

Dated this _____ day of _____, 2003.

Higleys, Pro Se



Ted Higley



Betty Ann Higley

Those amounts equal the 5.1 cfs decreed in the original water right from which these three rights are split.

Dated this _____ day of _____, 2003.

Respectfully submitted,

J. R. Simplot Company



Albert P. Barker

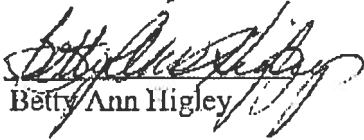
Attorney for J. R. Simplot Company

Dated this _____ day of _____, 2003.

Higleys, Pro Se



Ted Higley



Betty Ann Higley

CERTIFICATE OF SERVICE

I certify that on _____, 2003, I served a true and correct copy of the foregoing JOINT MOTION TO PARTIAL SET ASIDE DECREED SUBCASES AND REFER TO THE SPECIAL MASTER by placing the documents in the United States Mail in Washington D.C. postage paid, and addressed as follows:

Original to

Snake River Basin Adjudication
PO Box 2707
Twin Falls, ID 83303-2707

Copies to:

US Department of Justice
General Litigation Section
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83720-0098

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Ted Higley
2200 Rodocker Lane Box 57
Malta, ID 83342

Signature of Person Serving Documents

AFFIDAVIT OF KELLY K. CHRISTENSEN

STATE OF IDAHO)
) S.S.
Twin Falls County)

The undersigned being duly sworn upon his oath, hereby states and avers as follows:

1. My name is Kelly K. Christensen. I am a Senior Water Resource Agent for the State of Idaho Department of Water Resources ("IDWR") Southern Regional Office, which is located at 1341 Fillmore Street, Suite 200, Twin Falls, ID 83301.
2. I was first hired at this location on June 1, 1991. Since that time it has been my responsibility to evaluate claims to water rights filed in the Snake River Basin Adjudication ("SRBA"). This involves working directly with claimants, field-verifying claims, utilizing IDWR records, county real property and assessor records, aerial photography, and any other available documentation to verify claims and to assist in preparing the Director's Recommendations to be filed with the SRBA Court for water rights including, but not limited to those located in IDWR administrative basin no. 43.
3. I am familiar with the facts circumstances and records used in preparing the Director's Recommendations for SRBA Claim Nos. 43-103B, 43-103C and 43-11263. These claims were based upon portions of the original water right decreed in the 1928 Jobe Adams Decree (Federal District Court Decree No. 992) as water right no. 43-103 with a decreed quantity of 5.10 cfs.
4. My original preliminary recommendation allocating 1.10 cfs under 43-103C was based partly on a proportional split of the decreed rights located on properties owned by J.R. Simplot Co. ("Simplot"), Ted Higley and Grant and Clara Beyler and on the quantity contained in Simplot's original claim filed in the SRBA.
5. However, I changed by preliminary recommendation and recommended in the Director's Report to the SRBA the following quantities of water under the relevant water rights: 43-103C – disallowed; 43-103B for 3.06 cfs and 43-11263 for 2.04 cfs.
6. In preparing the recommendations for the Director's Report for claim nos. 43-103B, 43-103C and 43-11263, I concluded that all of the water originally decreed under 43-103 should be recommended under SRBA Claim nos. 43-103B and 43-11263. I also concluded that Claim no. 43-103C filed by Simplot was not entitled to receive any portion of the water right 43-103. This conclusion was recently discovered to be in error based upon a closer reading of the deeds conveying the property.
7. Although the Director's Report contained an allocation of all of the water under right no. 43-103 to right nos. 43-103B and 43-11263, it is now my conclusion after reviewing and

analyzing the recorded deed conveyances, that Simplot is entitled to receive 1.10 cfs under claim no. 43-103C.

8. In order to accurately allocate water under claim no. 43-103, the partial decrees entered under 43-103B and 43-11263 would have to be set aside and reduced accordingly to allow 1.10 cfs of the water to be allocated to Simplot under claim no. 43-103C. Setting aside these partial decrees is necessary if 43-103C is to be recognized as a valid water right with a quantity of 1.10 cfs in order to prevent an expansion of the original decreed water right no. 43-103.

Further the affiant sayeth not.

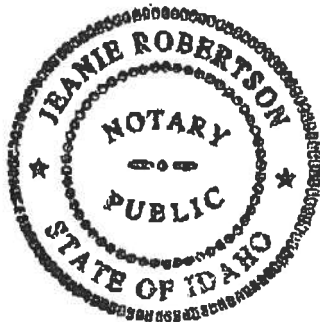
AFFIANT:

Kelly K. Christensen
Kelly K. Christensen

STATE OF IDAHO)
) S.S.
COUNTY OF Twin Falls)

On this 23rd day of September, 2003, before me, a Notary Public in and for said State, personally appeared **Kelly K. Christensen**, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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



Jeanie Robertson
Notary Public for Idaho
Residing at: Twin Falls, ID.
My Commission Expires: 9-23-06

10/16/2003

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

RIGHT NUMBER: 43-103B

NAME AND ADDRESS: BETTY ANN HIGLEY
2200 RODOCKER LN BOX 57
MALTA ID 83342

TED HIGLEY
2200 RODOCKER LN BOX 57
MALTA ID 83342

SOURCE: CASSIA CREEK

TRIBUTARY: RAFT RIVER

QUANTITY: ~~3-060~~ 2.40 CFS

WHEN COMBINED THE FOLLOWING RIGHTS SHALL PROVIDE NO MORE THAN
.02 CFS PER ACRE. COMBINED RIGHTS 43-103B AND 43-2310.

PRIORITY DATE: 04/01/1894

POINT OF DIVERSION:

T13S R26E S14 SESENW Within CASSIA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/15 11/15	~~3-060~~ 2.40 CFS

PLACE OF USE: IRRIGATION Within CASSIA County

T13S R26E S13	NENE	40.0	T13S R26E S13	NWNE	40.0
T13S R26E S13	NENW	36.0			

116 ACRES TOTAL

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 116 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHTS 43-103B AND 43-2310.

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: Decreed

SF-5



RECEIVED

SEP 19 2003

Department of Water Resources
Southern Region

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

September 17, 2003

JR Simplot Company
Gray A. Young
Vic Conrad
PO Box 27
Boise, ID 83707

Re: SRBA Subcase Nos. 43-103B, 103C and 11263

Dear Mssr. Young and Conrad:

I received an email message September 16, 2003, from Mr. Conrad stating that you believe IDWR should file Motions to Set Aside Partial Decree Nos. 43-103B and 43-11263. However, as discussed with you previously, because IDWR is not a party to the SRBA, IDWR does not have the authority to file motions with the Court. See I.C. § 42-1401B (Director of IDWR's role is limited to an independent expert and technical assistant and the Director "shall not be a party to an adjudication.")

In our previous conversations, I offered to review an affidavit prepared by Simplot for IDWR Senior Water Resource Agent Kelly Christensen's signature to accompany any motion(s) filed by Simplot. The affidavit would acknowledge that 1.1 cfs could have been recommended to Simplot under water right number 43-103C pursuant to the deeds conveying the property.

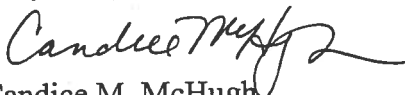
You are also welcome to copy and use any documents from the claim files to include with your motion. You may be interested in a copy of a table in the water rights claim file for 43-99A. I believe that Mr. Conrad is familiar with this table and has reviewed it before, including during the notice of error period last summer, and earlier this spring. It shows that 43-103 was split into 43-11263 and may be helpful to you.

Again, IDWR will not be filing any motion to set aside partial decrees with the SRBA Court. My offer to review an affidavit prepared by Simplot for Mr. Christensen's signature to accompany any motion Simplot may file is still open. This is common

Young and Conrad
September 17, 2003
Page 2

practice with all claimants in the SRBA and IDWR extends this courtesy to Simplot as it would any claimant in the SRBA.

Very Truly Yours,


Candice M. McHugh

cc: Phillip J. Rassier
Susan E. Hamlin Nygard
David R. Tuthill, Jr.
Kelly Christensen

TRANSMITTAL COVER SHEET

TO: VIC CONRAD

TOTAL PAGES SENT: 3
(including cover sheet)

DOCUMENT DESCRIPTION: orig Cldm 43-103B

FROM:

IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE ST, STE 200
TWIN FALLS ID 83301-3380

PHONE: 736-3033

FAX: 736-3037

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per request, cover sheet not
counted. Two (2) or more
copies per request will cost
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minimum)

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The charge for your fax copies is: _____ Please remit to the above address.

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09/11 13:41
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03
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TRANSMISSION VERIFICATION REPORT

TRANSMISSION VERIFICATION REPORT

TIME : 09/23/2003 08:06
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AFFIDAVIT OF KELLY K. CHRISTENSEN

STATE OF IDAHO)
) S.S.
Twin Falls County)

The undersigned being duly sworn upon his oath, hereby states and avers as follows:

1. My name is Kelly K. Christensen. I am a Senior Water Resource Agent for the State of Idaho Department of Water Resources ("IDWR") Southern Regional Office, which is located at 1341 Fillmore Street, Suite 200, Twin Falls, ID 83301.
2. I was first hired at this location on June 1, 1991. Since that time it has been my responsibility to evaluate claims to water rights filed in the Snake River Basin Adjudication ("SRBA"). This involves working directly with claimants, field-verifying claims, utilizing IDWR records, county real property and assessor records, aerial photography, and any other available documentation to verify claims and to assist in preparing the Director's Recommendations to be filed with the SRBA Court for water rights including, but not limited to those located in IDWR administrative basin no. 43.
3. I am familiar with the facts circumstances and records used in preparing the Director's Recommendations for SRBA Claim Nos. 43-103B, 43-103C and 43-11263. These claims were based upon portions of the original water right decreed in the 1928 Jobe Adams Decree (Federal District Court Decree No. 992) as water right no. 43-103 with a decreed quantity of 5.10 cfs.
4. My original preliminary recommendation allocating 1.10 cfs under 43-103C was based partly on a proportional split of the decreed rights located on properties owned by J.R. Simplot Co. ("Simplot"), Ted Higley and Grant and Clara Beyler and on the quantity contained in Simplot's original claim filed in the SRBA.
5. However, I changed by preliminary recommendation and recommended in the Director's Report to the SRBA the following quantities of water under the relevant water rights: 43-103C – disallowed; 43-103B for 3.06 cfs and 43-11263 for 2.04 cfs.
6. In preparing the recommendations for the Director's Report for claim nos. 43-103B, 43-103C and 43-11263, I concluded that all of the water originally decreed under 43-103 should be recommended under SRBA Claim nos. 43-103B and 43-11263. I also concluded that Claim no. 43-103C filed by Simplot was not entitled to receive any portion of the water right 43-103. This conclusion was recently discovered to be in error based upon a closer reading of the deeds conveying the property.
7. Although the Director's Report contained an allocation of all of the water under right no. 43-103 to right nos. 43-103B and 43-11263, it is now my conclusion after reviewing and

analyzing the recorded deed conveyances, that Simplot is entitled to receive 1.10 cfs under claim no. 43-103C.

8. In order to accurately allocate water under claim no. 43-103, the partial decrees entered under 43-103B and 43-11263 would have to be set aside and reduced accordingly to allow 1.10 cfs of the water to be allocated to Simplot under claim no. 43-103C. Setting aside these partial decrees is necessary if 43-103C is to be recognized as a valid water right with a quantity of 1.10 cfs in order to prevent an expansion of the original decreed water right no. 43-103.

Further the affiant sayeth not.

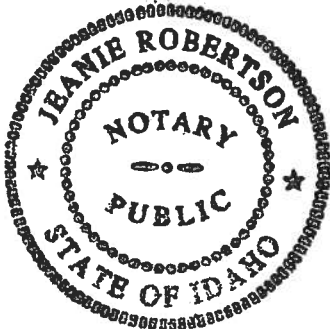
AFFIANT:

Kelly K. Christensen
Kelly K. Christensen

STATE OF IDAHO)
) S.S.
COUNTY OF Twin Falls)

On this 23rd day of September, 2003, before me, a Notary Public in and for said State, personally appeared **Kelly K. Christensen**, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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



Jeanie Robertson
Notary Public for Idaho
Residing at: Twin Falls, Id.
My Commission Expires: 9-23-06

IDAHO DEPARTMENT OF WATER RESOURCES 09/17/2001
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

Water Right 43-103B

NAME AND ADDRESS: BETTY ANN HIGLEY
2200 RODOCKER LANE BOX 57
MALTA ID 83342

TED HIGLEY
2200 RODOCKER LANE BOX 57
MALTA ID 83342

SOURCE: CASSIA CREEK TRIBUTARY: RAFT RIVER

QUANTITY: 3.06 CFS

WHEN COMBINED THE FOLLOWING RIGHTS SHALL PROVIDE NO MORE THAN .02
CFS PER ACRE. COMBINED RIGHTS 43-103B AND 43-2310.

PRIORITY DATE: 04/01/1894

POINT OF DIVERSION:

T13S R26E S14 SESENW Within CASSIA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/15 11/15	3.060 CFS

PLACE OF USE: IRRIGATION Within CASSIA County

T13S R26E S13	NENE	40.0	T13S R26E S13	NWNE	40.0
T13S R26E S13	NENW	36.0			

116 ACRES TOTAL

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED
TOTAL OF 116 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHTS
43-103B AND 43-2310.

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: Decreed

05/09/2001

**NOTICE OF ERROR
REPLY**

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: June 15, 2001

Water right number: 43-103B

BETTY ANN HIGLEY
2200 RODOCKER LANE BOX 57
MALTA ID 83342
Telephone Number: (208)645-2444

TED HIGLEY
2200 RODOCKER LANE BOX 57
MALTA ID 83342
Telephone Number: (208)645-2444

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

2. Describe the changes you wish to make in the proposed recommendation:

3. Give a brief explanation as to why you disagree with these portions:

☒ I AGREE with this proposed recommendation: no changes need to be made.

DATE: 6-6-01 SIGNATURE: Ted Higley
Please print your name: Ted Higley

IDWR Regional Office, 1341 Fillmore St, Suite 200, Twin Falls, ID 83301, 2087363033

10/31/2000

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

RIGHT NUMBER: 43-103B

NAME AND ADDRESS: BETTY ANN HIGLEY
TED HIGLEY
2200 RODOCKER LANE
PO BOX 57
MALTA, ID 83342

SOURCE: CASSIA CREEK TRIBUTARY: RAFT RIVER

VERIFIED BY: KKC
10-31-00

QUANTITY: 0.96 CFS

WHEN COMBINED THE FOLLOWING RIGHTS SHALL PROVIDE NO MORE THAN
.02 CFS PER ACRE. COMBINED RIGHTS 43-99B, 43-100B, 43-101B, 43-102B,
43-103B, 43-104A, AND 43-2310.

PRIORITY DATE: 04/01/1894

POINT OF DIVERSION: T13S R26E S14 SESENW Within CASSIA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03-15 11-15	0.96 CFS

PLACE OF USE:

<u>IRRIGATION Within CASSIA County</u>			
T13S R26E S13	NENE	40	T13S R26E S13
T13S R26E S13	NENW	36	NWNE
116 ACRES TOTAL			40

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION
OF A COMBINED TOTAL OF 116 ACRES IN A SINGLE IRRIGATION
SEASON. COMBINED RIGHTS 43-99B, 43-100B, 43-101B, 43-102B,
43-103B, 43-104A, AND 43-2310.

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

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

Utah Dept of Water Resources
Claims review notes and narrative

Date: 10-30-2000

File: 43-99 thru 104 recom analysis

Prepared by Kelly K Christensen

SPLIT ANALYSIS FOR 43-99, 43-100, 43-101, 43-102, 43-103, AND 43-104
These rights were decreed to Deardorff and are collectively referred to as the
DEARDORFF RIGHTS

DECREED RIGHTS	SIMPLOT	BEYLER	HIGLEY
43-99	43-99C	43-99A	43-99B
43-100	43-100C	43-100A	43-100B
43-101	43-101C	43-101A	43-101B
43-102	43-102C	43-102A	43-102B
43-103	43-103C	43-11263	43-103B
43-104	43-104C		43-104A

Two different parties now own the decreed property. When claims were filed there were three different owners. Higley now owns the Beyler property but for narrative purposes the two parcels will be analyzed individually and be referred to as either the Beyler property or the Higley property. (see table above)

There are two arguments concerning how the rights are to be split.

Argument 1. Simplot Rights should be 'unstacked'

Simplot's argument is that 43-99 thru 43-103 are appurtenant to the property currently owned by Simplot and that 43-104 is appurtenant to the ground claimed by Beyler and Higley. This is based upon wording in the warranty deed when the property was first split.

Argument 2, All rights should be delivered proportionately

The Beyler-Higley argument was that the rights have been historically delivered on a proportionate basis and should continue to be delivered in such manner.

A conflict concerning the delivery surfaced and the department was contacted. The department's decision was that the rights should be delivered according to the decree (proportionally) until as such time as Simplot filed a transfer and supported the delivery of the rights as unstacked and appurtenant to the parcels as described above. That transfer was never filed. Throughout the 1980's and 1990's the rights have been delivered proportionately. As this is the historic practice and it has been supported by the department in administrative action I am recommending these rights based upon the proportionate splitting of the original decreed rights based upon a percentage of each claimant's ownership of a portion of the original decreed place of use. See the excel spreadsheet printout that documents the proportionate split rates. (File: 43-99 to 104 proportional rate table.xls)

HIGLEY PLACE OF USE ANALYSIS

Found irrigated place of use = 116 acres. Total of surface water rights.2.39 cfs. One ground water right exists, 43-2310. This right was licensed for 2.40 cfs on 120 acres. I am recommending a 116-acre place of use with the rights limited to 0.02 cfs/acre when combined.

BEYLER PLACE OF USE ANALYSIS

There was a change of ownership from Beyler to Higley in 1997, however this property will be referred to as the Beyler property for analysis purposes.

The place of use is 71 irrigated acres within the original decreed place. The total claimed diversion rate for the Cassia Creek rights is 1.50 cfs. No individual right exceeds 1 inch to the acre or $(71 * 0.02 \text{ cfs/acre} = 1.42 \text{ cfs})$.

One ground water right (43-2355) is also appurtenant to this property. I located the well during my field exam on 9-20-2000 and found that there was no motor or pump installed at that location. I talked with the current owner's daughter-in-law and she indicated that the pump had been pulled for several years. She did not know how many years. As the system was in operation as of 1987 I am recommending this right as valid for the licensed rate of 1.42 cfs and the 71-acre place of use.

SIMPLOT PLACE OF USE ANALYSIS

Simplot owns that portion of the decreed place of use for the Deardorf property that lies west of highway 81. I am recommending that ground with the proportionate rate that is appurtenant to that ground. I found approximately 416 irrigated acres within the decreed place of use. The combined proportional diversion rate is less than one inch per acre when applied to the 416 acres (combined rate = 4.74 cfs). This system overlaps with other decreed Cassia Creek rights and a ground water right.

Beyler A43-00099A

Higley A43-00099B

Simplot A43-00099C

DECREED RIGHT	DIVERSION RATE	PRIORITY DATE	NUMBER OF QUARTERS DECREED	CLAIMED QUARTERS OF QUARTERS DECREED			CLAIMED QUARTERS CLAIMED PROPORTIONAL			CLAIMED QUARTERS CLAIMED PROPORTIONAL		
				QUARTERS /ACRES	RATE	PROPORTIONAL RATE	QUARTERS /ACRES	RATE	PROPORTIONAL RATE	QUARTERS /ACRES	RATE	PROPORTIONAL RATE
43-00099	2.50	1879	16	2	0.312	0.313	3	0.460	0.469	11	2.50	1.719
43-00100	2.40	1890	16	2	0.300	0.300	3	0.450	0.450	11	2.40	1.650
43-00101	1.20	1883	16	2	0.150	0.150	3	0.220	0.225	11	1.20	0.825
43-00102	0.80	1886	16	2	0.100	0.100	3	0.150	0.150	11	0.80	0.550
43-00103*	5.10	1894	16	2	0.630	0.638	3	0.960	0.956	11	5.10	3.506
43-00104**	0.80	1904	16	2		0.100	3	0.150	0.150	11	0.80	0.550
					1.492	0.863	120	2.390	1.294		12.80	4.744

* 43-103 was claimed by Beyler as a combined right with 43-00297 as claim 43-10794.

43-103 has been split into 43-11263 and 43-11264 with 43-11263 representing that portion of 43-103 identified above.

**** Beyler has not claimed against 43-104 as of 8-22-2000**

Prepared by: Kelly K Christensen

October 26, 2000

File:43-00099 to 104 proportional rate table

SPLIT RIGHT ANALYSIS FOR 43-00103

SD-0611-2 Basin: 43 Starting Water Right: 00103

S E L	Water Right No.	Name Last, First	O W N	Priority Date	STG/ STS	Source	Use Desc	S Y S
	43-00103	DEARDORFF, H. F.	C	04/01/1894	D/	CASSIA CREEK	IRR	WR
	A43-00103	RENUMBERED CLAIM SPLIT RIGHT COMBINED RIGHT	C C C	04/01/1894	/Z	CASSIA CREEK SPLIT RIGHT COMBINED RIGHT RENUMBERED CLAIM	IRR	AJ
	A43-00103A	RENUMBERED CLAIM	C	04/01/1894	/Z	CASSIA CREEK RENUMBERED CLAIM	IRR	AJ
	A43-00103B	HIGLEY, TED HIGLEY, BETTY ANN	C C	04/01/1894	D/	CASSIA CREEK	IRR	AJ
	A43-00103C	J R SIMPLOT COMPANY	C	04/01/1894	D/	CASSIA CREEK	IRR	AJ
	R43-00103B	HIGLEY, TED HIGLEY, BETTY ANN	C C	04/01/1894	D/	CASSIA CREEK	IRR	AJ
	R43-00103C	J R SIMPLOT COMPANY	C	04/01/1894	D/	CASSIA CREEK	IRR	AJ

* Decreed copied to Water Right Database (G6=Print Profile Rpt) (G8=Cancel)
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