

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: A43-00294
Date Received: 6/20/1989
Receipt No: M003768
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: DOUGLAS R. HARPER
Address: HC 61 BOX 1156
MALTA, ID 83342
208-645-2278

2. Date of Priority: APR 30, 1880

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
13S	26E	11	NW	SE	SE		CASSIA

5. Description of diverting works:
HEADGATE AND MEASURING DEVICE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.400		

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

8. Total consumptive use is 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
12S	26E	36	NE	NE		IRR	40.0
			NW	NE		IRR	35.0
			SW	NE		IRR	40.0

A43-00294

Page 1

Date: 06/20/89

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10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
12S	26E	36	SE	NE		IRR	40.0
			NE	NW		IRR	35.0
			SE	NW		IRR	40.0
						Section Acres	230.0
						Total Acres	230.0

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:
43-0295, 43-02388, 43-00295, 43-00296B

14. Remarks:
THIS AREA OF USE HAS BEEN EXPANDED TO COVER THE AREA INDICATED
ABOVE. SEE ATTACHED LETTER FROM NEIGHBOR- BUD TRACY

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date:

ALBION-IDAHO LAND CO.
Decree Plaintiff

vs

JOBE ADAMS ET AL
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 _____

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 443-00294Date Received 5-31-89Receipt Number MO03768

RECEIVED
MAY 31 1989

Department of Water Resources

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

Please type or print clearly

1. Name of Claimant (s) Douglas R. Harper Phone () 645-2278Mailing Address HC 61, Box 1156, Malta, Id. Zip 833422. Date of Priority (Only one (1) per claim) 04/30/18803. 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 11,
NW 1/4 of SE 1/4 of SE 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.

Head gate + Measuring Device

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6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from 3/15 to 11/15 amount 0.40 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 0.40 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is 360 720 acre feet per annum.

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

10. Description of place of use:

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

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

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
12S	26E	36	40	35		40													115
12S	26E	36			40	35			40										115
					EXPANDED AREA														

Total number of acres irrigated 230

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.

43-02388, 43-0295, 43-00296B or None ()

14. Remarks:

place of use
This permit area has been expanded to
cover the area indicated above. See attached
letter from neighbor - Bud Tracy.

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Last Name Harper, Ident No. 43-00294

Copies: White -State, Yellow-Claimant

DO-25
S-25
T-12
R-24

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MAR 03 1993

1877
T 156.1

10.0

S-25
T-12
R-24

MAR 03 1993

15. Basis of Claim (check one) ☐ Beneficial Use ☒ Posted Notice ☐ License ☐ Permit

Decree ☒

If applicable provide IDWR Water Right Number 43-00294

Court _____ Case Number _____ Decree Date 10/18/28

Plaintiff vs Defendant Albion-Idaho Land CO. - Jobe Adam

16. Signature (s)

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

Number of attachments _____

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

Signature of Claimant (s) X Douglas R Harper Date X 5-31-89

Date _____

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

of _____, Title _____, that I have signed the foregoing

document in the space below as _____ of _____

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 Cassia) SS.

Subscribed and sworn (or affirmed) before me this 31st day of May 1989

SEAL

Notary Public Robert V. Horstall

Residing at Twin Falls, Idaho

My Commission Expires 1/16/1995

Please Print Name

17. Notice of Appearance:

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

Signature _____

Address _____

Date _____

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Last Name _____ Ident. Number _____

Copies White-State, Yellow-Claimant

May 30, 1989

TO WHOM IT MAY CONCERN:

The purpose of this letter is to record my knowledge of Douglas R. Harper expanding his water right in the Spring of 1971 to the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, Township 12 South, Range 27 East. Furthermore, in the Spring of 1974, he expanded his usage to the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 36, Township 12 South, Range 26 East.

Through conservative practices, he continues to irrigate said land as of this writing.

Signed:

Bud Tracy

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MAR 03 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-357

CECIL D. ANDRUS
Governor

June 20, 1989

Douglas R. Harper
HC61 Box 1156
Malta, ID 83342

RE: SRBA Claim

Dear Claimant:

Please find enclosed your claim ~~and your check~~ # 1003768 for \$ 280.00 which you submitted to our office. I am returning these pursuant to rule 10,4 of the Department's Adjudication Rules and Regulations. In checking your claim it appears that the following items need clarification:

- (✓) Item #2 Priority date ((day/month/year))
- () Item #4 Point of Diversion Legal Description
- () Item #6 Uses descriptions
- () Item #9 Description of Non-irrigation uses
- () Item #10 Place of Use Legal Description
- () Item #16 Signature & Notarization
- () Improper fee (THE CORRECT FEE IS \$ _____)
- () Other or Remarks

If you will make the necessary corrections and return your claim with the correct fee and a copy of this letter within 30 DAYS of the date of this letter, your filing will be considered timely and will not be assessed and additional late fee of \$ 50.00.

Sincerely,

Steve Clelland
Water Right's Agent

enc:

R. KEITH HIGGINSON
Director

KKC

00295

00294

00087

10295

10294

A43-02362

00249

00250

02388

00296B

00086

Received

Water Right Number - 43-00294 Adj. Flag Translation: Standard Water Right Number Old (D) Number -

Last Name - + First Name - + Address - + State - Zip -
*** C - CURRENT OWNER *** HARRY
SHAW 1 -
2 -
3 -
City -
Phone -

Priority Date - + Region - + Stage - + Status -
04/30/1880 17 D - DECREED

Source - + Tributary - +
CASSIA CREEK RAFT RIVER

Twn Rng Sec Tract Lot RFlg County Point of Diversion - Stream Index (Blank if no Index Code)

Code Description Period From Period To Water Use Diversion Rate Diversion Volume

01 - IRRIGATION 0.400
Total Div. Rate - + Total Div. Volume - + Total Div. Capacity - + Total Consumptive Use - + KW Usage - +
0.400

Twn	Rng	Sec	Tract	Lot	Acres	Place of Use	Description	County
12S	26E	36	NE NE			01	IRRIGATION	31 CASSIA
12S	26E	36	NW NE			01	IRRIGATION	31 CASSIA
12S	26E	36	SE NE			01	IRRIGATION	31 CASSIA

Total Acres:

- - - Diversion Means -

- - - Non-Irrigation Use -

- - - Other Rights for Same Use - 43-0295

Remarks -
No Remarks found.

Conditions of Approval -
No Conditions of Approval found.

Decree Plaintiff - - - + Decree Defendant - - - + Decree Date - +
ALBION-IDAHO LAND CO. JOBE ADAMS ET AL 10/18/1928

- - - Microfilm Rolls -

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Water Right Number - 43-00294
+ - - - - Audit Fields - 02/11/86

Adj. Flag Installation: Standard Water Right Number
05/28/88 CONVERT

Water Rights Dates and Flags Area					
Proof Due Date	- 00/00/0000	Field Exam Made	- 00/00/0000	Field Exam Fee	-
Approved/Denied	- 00/00/0000	Protected Date	- 00/00/0000	Swan Falls	-
Proof Made Date	- 00/00/0000	Hearing Date	- 00/00/0000	Temporary Right	- P
Start Work Date	- 00/00/0000	Verified Date	- 04/08/1985	DLE/Carey Act	-
Order Show Cause	- 00/00/0000	Receipt Number	-	Water District	- 43C
Licensed Date	- 00/00/0000	Appl Received	- 00/00/0000	Transfer/Amended	-
Decree Date	- 10/18/1928				

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MAR 03 1993

05/03/2001

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

RIGHT NUMBER: 43-294

NAME AND ADDRESS: DOUGLAS R HARPER
1300 S 2201
MALTA, ID 83342

VERIFIED BY KKC

SOURCE: CASSIA CREEK

TRIBUTARY: RAFT RIVER

QUANTITY: 0.4 CFS

WHEN COMBINED THE FOLLOWING RIGHTS SHALL PROVIDE NO MORE THAN .02 CFS
PER ACRE. COMBINED RIGHT NOS. 43-294, 43-295, 43-296B, 43-2338, 43-12992,
AND 43-12993.

PRIORITY DATE: 04/30/1880

POINT OF DIVERSION: T13S R26E S14

NENENE

Within CASSIA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
IRRIGATION

PERIOD OF USE
3-15 11-15

QUANTITY
0.40 CFS

PLACE OF USE:

IRRIGATION Within CASSIA County

T12S R26E S36	NENE	38	T12S R26E S36	NWNE	36
T12S R26E S36	SWNE	40	T12S R26E S36	SENE	35
T12S R26E S36	NENW	35	T12S R26E S36	SENE	40

224 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 109 ACRES WITHIN THE PLACE OF
USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 224 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED
RIGHT NOS. 43-294, 43-295, 43-296B, 43-2388, 43-12992 AND 43-12993.

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

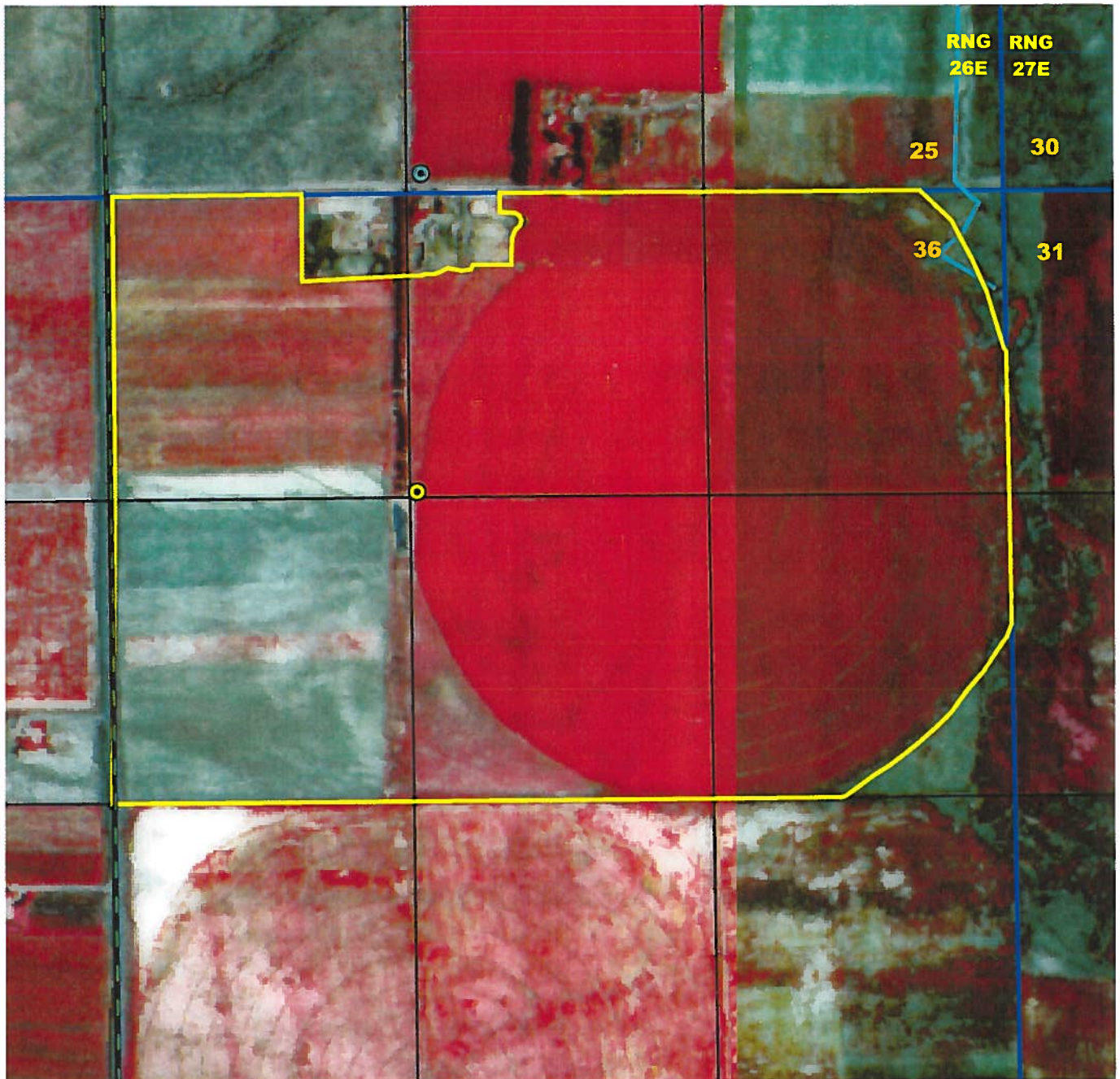
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR
THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE
WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME
NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6),
IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

RIGHT NO. 43-12992 IS AN ENLARGEMENT OF THIS RIGHT PURSUANT
TO SECTION 42-1426, IDAHO CODE.

Idaho Department of Water Resources

**RECOMMENDED PLACE OF USE FOR
43-294, 43-295, 43-296B, 43-2338, 43-12992, AND 43-12993.**



660 0 660 1320 1980 Feet

PLACE OF USE
TWP 12S, RNG 26E, SEC 36
Data entry on May 3, 2001

GIS PLACE OF USE PRESENTATION
1987/1988 NAPP AERIAL PHOTOGRAPHY
DATA ENTRY BY KELLY K CHRISTENSEN

-  **RECOMMENDED POINT OF DIVERSION**
-  **RECOMMENDED PLACE OF USE**
-  **SECTION LINES**
-  **QUARTER/QUARTER LINES**



CLAIM NUMBER

A43-00294 - 2388
-00295
-00296B

DATE

AGENT

TRANSFER NUMBER

CLAIMED ACRE TOTAL

GIS ACRE TOTAL

	TWP	RNG	SEC	NE ^E				^E NW ^E				SW				SE			
				NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
CLAIM	<u>12N</u>	<u>26E</u>	<u>36</u>	<u>36.7</u>	<u>36.5</u>	<u>40.1</u>	<u>34.7</u>	<u>36.4</u>			<u>40.3</u>								
LICENSED P/L	<u>2388</u>		<u>36</u>	<u>35</u>	<u>40</u>		<u>35</u>												<u>1</u>
RECOM																			
CLAIM																			
GIS																			
RECOM																			
CLAIM																			
GIS																			
RECOM																			

B43-DBPOU.SHP

SHAPE NOS.

43-DBPOD.SHP

NOS. DESCRIPTION

DBF TABLES UPDATED

B43-DBPOU.DBF

B43-DBPOD.DBF

JPEG LAYOUT

Notification of ENLARGEMENT CLAIM REQUIREMENT

MAILED 5-18-99 KKC

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

15:59:05
05/13/99
34

PAGE: 17
PROFILE REPORT

CLAIM NUMBER: A43-00294

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	DOUGLAS R HARPER	04/30/1880	IRRIGATION	03-15 11-15	0.40 CFS	
TOTAL DIVERSION:					0.40 CFS	

Water Source: CASSIA CREEK

Tributary to: RAFT RIVER

Stage: DECREED

Point(s) of Diversion: T13S R26E S11

NWSESE

CASSIA County

Place of use Legal Description for: IRRIGATION

				NE				NW				SW				SE					
T	R	S	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	:	SUM
12S	26E	36	:	40		35		40		40	:	35				40	:			:	230.0
																			TOTAL ACRES	230.0	

POU County: CASSIA

Non-Irrigation Uses: NONE

Other Rights: 43-0295, 43-02388, 43-00295, 43-00296B

Remarks: GEN THIS AREA OF USE HAS BEEN EXPANDED TO COVER THE AREA INDICATED
ABOVE. SEE ATTACHED LETTER FROM NEIGHBOR- BUD TRACY

Dates: Exam Made Date: Verified Date: 04/08/1985 Objection Filed Date:

Misc: Water District Number: 43C Field Inspection Flag:
Presumption Flag:



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

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 17, 1999

COPY

DOUGLAS R HARPER
HC 61 BOX 1156
MALTA ID 83342

RE: SNAKE RIVER BASIN ADJUDICATION CLAIM: A43-02388, A43-00294, A43-00295, & A43-00296B

Dear Mr Harper

The department is scheduled to submit its director's report for basin 43 to the Snake River Basin Adjudication court late this fall. Accordingly, the department has scheduled this summer for field verification of adjudication claims in order to prepare the director's report. With this letter I am attempting to explain some of the changes to Idaho code and court procedures that directly affect your water rights. I understand that much of this may be difficult to follow and I expect to meet personally with you in Malta sometime this spring to go through this in depth. If you wish to call, you can reach me at the above listed number.

At claims taking in 1989, you filed the above claims in accordance to court and department directions. Since that time, through legal challenges and a change in Idaho code, the method of identifying enlargements to licensed and decreed rights have changed. The enlargements for groundwater and decreed surface water rights are treated differently and I am, therefore, addressing them separately.

As I have not visited your property or reviewed your claims with you, I have not formed a recommendation for your rights at this time. I did, however, review the evidence relating to the enlargements and, barring contrary information, find that it is sufficient to establish the priority dates for the enlargement claims. This is based upon the assumption that the groundwater and surface water systems both were applied to the new acreage at the same time. The evidence submitted identifies two different enlargement dates of 1971 for the SENE of sec 36 and 1974 for the W $\frac{1}{2}$ NW $\frac{1}{4}$ of sec 36.

The filing fee for each new claim is \$50.00. As you claimed all acres and paid the variable fees for those acres at the time of the original filing, there is no additional acreage fee due. Also, although the original time for claim taking has past, no late fee is due as your original filings were timely. I have enclosed several irrigation claim forms for your use.

I have also attached copies of the Idaho code sections 42-1416B and 42-1426 mentioned in the following paragraphs.

**ENLARGEMENT OF 43-02388
(groundwater)**

The mandatory permit statute for groundwater rights was enacted on March 25, 1963 and the Raft River Critical groundwater area closed July 23, 1963. This right was licensed for 110 acres and is now claimed on 225 acres. As all enlargements from a groundwater source within a critical groundwater management area will receive a June 30, 1985 priority date (see 42-1416B) and both parcels were developed prior to 1985, only one claim needs to be filed for those enlargements. The claim would be for the difference between the licensed 110 acres and the total irrigated place of use. No additional diversion rate can be recommended.

**ENLARGEMENT OF 43-00294, 43-00295, & 43-00296B
(decreed surface water rights)**

The decreed rights place of uses are the E $\frac{1}{2}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$, all in sec 36. As Idaho code establishes different regulations for surface water rights you have different options for the 'newly' irrigated acres from a surface water source.

Option 1.

For ground irrigated prior to May 20, 1971 (the mandatory permit date for surface water) a beneficial use based right may be claimed. This claim can include an additional diversion rate for those acres if developed and delivered. The approximate 40 acres within the SESE of sec 36 appear to fall within this definition. If so you may claim those acres as a beneficial use with the applicable diversion rate. This would not be considered or analyzed as an enlargement claim.

Option 2.

The evidence submitted for the W $\frac{1}{2}$ NW $\frac{1}{4}$ of sec 36 indicates that that ground was first irrigated in 1974. Based upon that information, this ground cannot legally be claimed under the beneficial use category. Those acres, however, can be claimed as enlargement acres as described in 42-1426 (attached). They would have a 1974 priority date but with no additional diversion rate.

Option 3.

You could combine the place of use under options 1 and 2 and file just one new claim for the surface water enlargement. This claim would have the 1974 priority date, be limited to the original decreed diversion rate, and include the combined place of use identified under each option.

I realize that all of this can be confusing as I am not able to discuss all details within this letter, but hopefully, this will be sufficient for you to understand the basics of your choices.

Sincerely

Kelly K Christensen
Senior Water Resource Agent
Enclosures

TITLE 42
IRRIGATION AND DRAINAGE -- WATER
RIGHTS AND RECLAMATION
CHAPTER 14

ADJUDICATION OF WATER RIGHTS

42-1416B. CLAIM FOR EXPANDED USE IN CRITICAL GROUND WATER AREA -- DETERMINATION OF WATER AVAILABILITY.

- (1) Within any critical ground water area designated pursuant to section 42-233a, Idaho Code, a claim to the expanded use of a ground water right, which use was expanded in violation of the mandatory permit requirements, may be decreed in a general water rights adjudication if the expansion occurred after the designation of the critical ground water area, before the commencement of the adjudication, and before the date of enactment of this section. The priority date for the right decreed shall be June 30, 1985.
- (2) Water shall be deemed unavailable to fill the rights for expanded use, even if decreed in the adjudication, unless the director finds that a management program exists which will, within a time period acceptable to the director, limit the average annual water withdrawals from the aquifer designated in the critical ground water area to no more than the average annual recharge to the aquifer.
- (3) Within two (2) years after a decree determining the water rights within a critical ground water area becomes final, but not sooner than four (4) years from the date of enactment of this section the director of the department of water resources shall make a finding as to whether an adequate management program exists to bring withdrawals into balance with recharge.
- (4) If the director finds that an adequate management program to bring withdrawals into balance with recharge does not exist, the director shall order all holders of rights to expanded use of ground water within the area to cease or reduce withdrawal of water until such time as the director determines that withdrawals have been brought into balance with recharge and sufficient ground water is available to resume or increase withdrawals. The director's order shall be issued before September 1 and shall be effective beginning with the following growing season.
- (5) For purposes of this section, the following definitions shall apply:
 - (a) "Expanded use" means an increase in the number of acres irrigated, or other additional use, under a valid ground water right without any increase in the rate of diversion or volume of water diverted.
 - (b) "Management program" means a program to recharge the aquifer, limit withdrawals from the aquifer or provide surface water supplies for all, or a portion, of the land irrigated with water withdrawn from the aquifer, including any actions designed to bring withdrawals into balance with the average annual recharge to the aquifer.
 - (c) "Recharge" refers to all processes, natural or artificial, which add water to the aquifer.
 - (d) "Withdrawal" refers to all processes, natural or artificial, which take water from the aquifer.
- (6) The hearing and judicial review provisions of section 42-1701A, Idaho Code, shall apply to any findings and orders issued by the director pursuant to this section.
- (7) Nothing contained in this section shall be construed to limit the authority of the director of the department of water resources to administer and enforce any other ground water laws of the state.

TITLE 42
IRRIGATION AND DRAINAGE -- WATER
RIGHTS AND RECLAMATION
CHAPTER 14

ADJUDICATION OF WATER RIGHTS

42-1426. ENLARGEMENTS -- WAIVER OF MANDATORY PERMIT REQUIREMENTS.

- (1) Legislative findings regarding enlargements:
 - (a) The legislature finds that prior to the commencement of the Snake River basin adjudication and subsequent to the mandatory permit system provided in sections 42-201 and 42-229, Idaho Code, persons entitled to the use of water or owning any land to which water has been made appurtenant by decree, license or constitutional appropriation have through water conservation and other means, enlarged the use of said water without increasing the rate of diversion and without complying with the mandatory permit system

adopted by the legislature. Enlargements have been done with the knowledge of other water users, and water has been distributed based upon the right as enlarged. Junior water users made appropriations based upon a water system that reflected these enlarged uses. Thus, the legislature further finds and declares that it is in the public interest to waive the mandatory permit requirements for these enlargements in use prior to the commencement of a general adjudication, so long as such enlargements in use did not increase the rate of diversion of the original water right or exceed the rate of diversion for irrigation provided in section 42-202, Idaho Code, after the enlargement of use, and the enlargement of use did not reduce the quantity of water available to other water rights existing on the date of the enlargement in use.

- (b) The legislature further finds that it is in the public interest to waive certain statutory provisions for the appropriation of water that has been diverted and applied to beneficial use to insure the economic and agricultural base in the state of Idaho as it existed on the date of the commencement of the Snake River basin adjudication and to maintain historic water use patterns existing on that date.
- (2) The mandatory permit requirements of sections 42-201 and/or 42-229, Idaho Code, are waived, and a new water right may be decreed for the enlarged use of the original water right based upon the diversion and application to beneficial use, with a priority date as of the date of completion of the enlargement of use for any enlargement occurring on or before November 19, 1987; provided however, that the rate of diversion of the original water right and the separate water right for the enlarged use, combined, shall not exceed the rate of diversion authorized for the original water right; and further provided, that the enlargement in use did not injure water rights existing on the date of the enlargement of use. An enlargement may be decreed if conditions directly related to the injury can be imposed on the original water right and the new water right that mitigate any injury to a water right existing on the date of enactment of this act. If injury to a water right later in time cannot be mitigated, then the new right for the enlarged use shall be advanced to a date one (1) day later than the priority date for the junior water right injured by the enlargement. It is further provided that any such enlargement of use allowed in a general adjudication shall not constitute an abandonment or forfeiture of the original water right to the extent of current use.
- 3) The director shall publish a notice of enlargement of water right for all water rights recommended under this section. The notice shall contain a summary of the notice of claim and shall be published in the same manner as notices for applications to appropriate water in section 42-203A, Idaho Code. Any person who has filed an application for a water right prior to the enactment of this act or who has been issued a permit for a water right prior to enactment of this act but who has not filed a claim in an adjudication shall have one hundred twenty (120) days from the date of last publication of the notice of enlargement of a water right under this section to file a petition with the department of water resources to assert any claimed injury from the enlargement. No appeal of the determination of the department shall be allowed. If the applicant or permittee is dissatisfied with the determination of the department on any claim of injury, the sole remedy is to intervene in the general adjudication and assert their claim of injury in an objection to the water right.