

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 43-2409B
Date Received: 2/22/93
Receipt No: X111111
Received By:

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

1. Name of Claimant(s)

UNITED STATES OF AMERICA ACTING THROUGH Phone: (208)334-1401

BUREAU OF LAND MGMT
IDAHO STATE OFFICE
1387 SOUTH VINNELL WAY
BOISE ID 837091657

2. Date of Priority: 04/23/1954

3. Source: GROUND WATER Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
13S	27E	34	NE SE NW	CASSIA	

5. Description of diverting works:

WELL, PUMP, PIPE, DITCH

6. Water is used for the following purposes:

Purpose	From To	C.F.S.	(or) A.F.A
IRRIGATION	3/15 11/15	3.2	640

7. Total Quantity Appropriated is:

3.2 C.F.S. and/or 640 A.F.A.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
13S	27E	34	SW	NW	IRRIGATION	40
			SE	NW	IRRIGATION	40
			NE	SW	IRRIGATION	40
			NW	SW	IRRIGATION	40
					Section Acres	160
					Total Acres	160

11. Place of use in counties: CASSIA

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

13. Other Water Rights Used:

14. Remarks:

PREVIOUSLY FILED WITH THE DEPARTMENT OF WATER RESOURCES BLM NUMBER: 4302488175

15. Basis of Claim: License

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

In Re SRBA Rev'd?: ☐ Prob?: ☐

NEXT

AMENDED NOTICE of CLAIM for
Water Right number:

Case No. 39576

4302409B (IDWR number)

NAME and
ADDRESS:

United States of America acting through
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, ID 83709 - 1657

BLMIDENT:

Stg: StFed:

4302488175

L

S

NONE

Other Right and date:

SOURCE:

Source Tributary

GROUNDWATER

QUANTITY:

3.2

CFS

or VOLUME:

640

Acre Feet

PRIORITY DATE:

4/23/54

Diversion Means: WELL, PUMP, PIPE, DITCH

REMARKS:

YATES WELL

POINT of
DIVERSION:

Township Range Section T1 T2 T3 LOT B/E within the County of
13S 27E 34 NE SE NW 31 Cassia

PURPOSE
and
PERIOD
OF USE:

Purpose of Use Period of Use (from - to): Rate in CFS or Volume in AcFt
01 0315 1115 3.2 640

CONSUMPTIVE
USE:

DATE: 09-Feb-00

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

The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.

PLACE
of USE:

Water Use	Twn	Rge	Sec	T1	T2	LOT	within the County of
01	13S	27E	34	SW	NW	0	31 Cassia
01	13S	27E	34	SE	NW	0	31 Cassia
01	13S	27E	34	NE	SW	0	31 Cassia
01	13S	27E	34	NW	SW	0	31 Cassia

RECEIVED

FEB 18 2000

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

In Re SRBA

Case No. 39576

NEXT

AMENDED NOTICE of CLAIM for
Water Right number:

43-02409B

NAME and
ADDRESS:

United States of America acting through
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, ID 83709 - 1657

BLMIDENT:

4302488175

Stg:

L

StFed:

S

SOURCE:

Source	Tributary
GROUNDWATER	

QUANTITY:

3.2

CFS

or VOLUME:

640

Acre Feet

PRIORITY DATE:

4/23/1954

Diversion Means: WELL, PUMP, PIPE, DITCH

REMARKS:

YATES WELL

POINT of
DIVERSION:

Township	Range	Section	T1	T2	T3	LOT	B/E	within the	County of
13S	27E	34	NE	SE	NW			31	Cassia

PURPOSE
and
PERIOD
OF USE:

Purpose of Use	Period of Use (from - to):	Rate in CFS	or	Volume in AcFt
01	0315	1115	3.2	640

CONSUMPTIVE
USE:

stockwater use

DATE:

08-Dec-97

2:08 PM

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

The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.

PLACE
of USE:

Water Use	Twn	Rge	Sec	T1	T2	LOT	within the County of
01	13S	27E	34	SW	NW	0	31 Cassia
01	13S	27E	34	SE	NW	0	31 Cassia
01	13S	27E	34	NE	SW	0	31 Cassia
01	13S	27E	34	NW	SW	0	31 Cassia

RECEIVED

DEC 09 1997

Department of Water Resources

DATE: 02/06/98
PAGE: 1

DIVERSION
VOLUME

640.00 AFA

640.00 AFA

Stage: LICENSE

CASSIA County

SE

	NENE	NNNE	SWNE	SENE	NENW	NNNW	SWNW	SENW	NESSW	NWSW	SWSW	SESW	NEESE	NWSE	SWSE	SESE	SUM
T	lt	Ac	lt	Ac	lt	Ac	lt	Ac	lt	Ac	lt	Ac	lt	Ac	lt	Ac	
R	lt	Ac	lt	Ac	lt	Ac	lt	Ac	lt	Ac	lt	Ac	lt	Ac	lt	Ac	
S	lt	Ac	lt	Ac	lt	Ac	lt	Ac	lt	Ac	lt	Ac	lt	Ac	lt	Ac	
13S	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	160.0
27E	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	160.0
34	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	160.0
TOTAL	ACRES																160.0

Other Rights: NONE

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources)-
A4.3-02409B R4.3-02409

Remarks: GEN PREVIOUSLY FILED WITH THE DEPARTMENT OF WATER RESOURCES
BLM NUMBER: 4302488175

Objection Filed Date:

Field Inspection Flag:
Presumption Flag:

Audit: 00/00/00

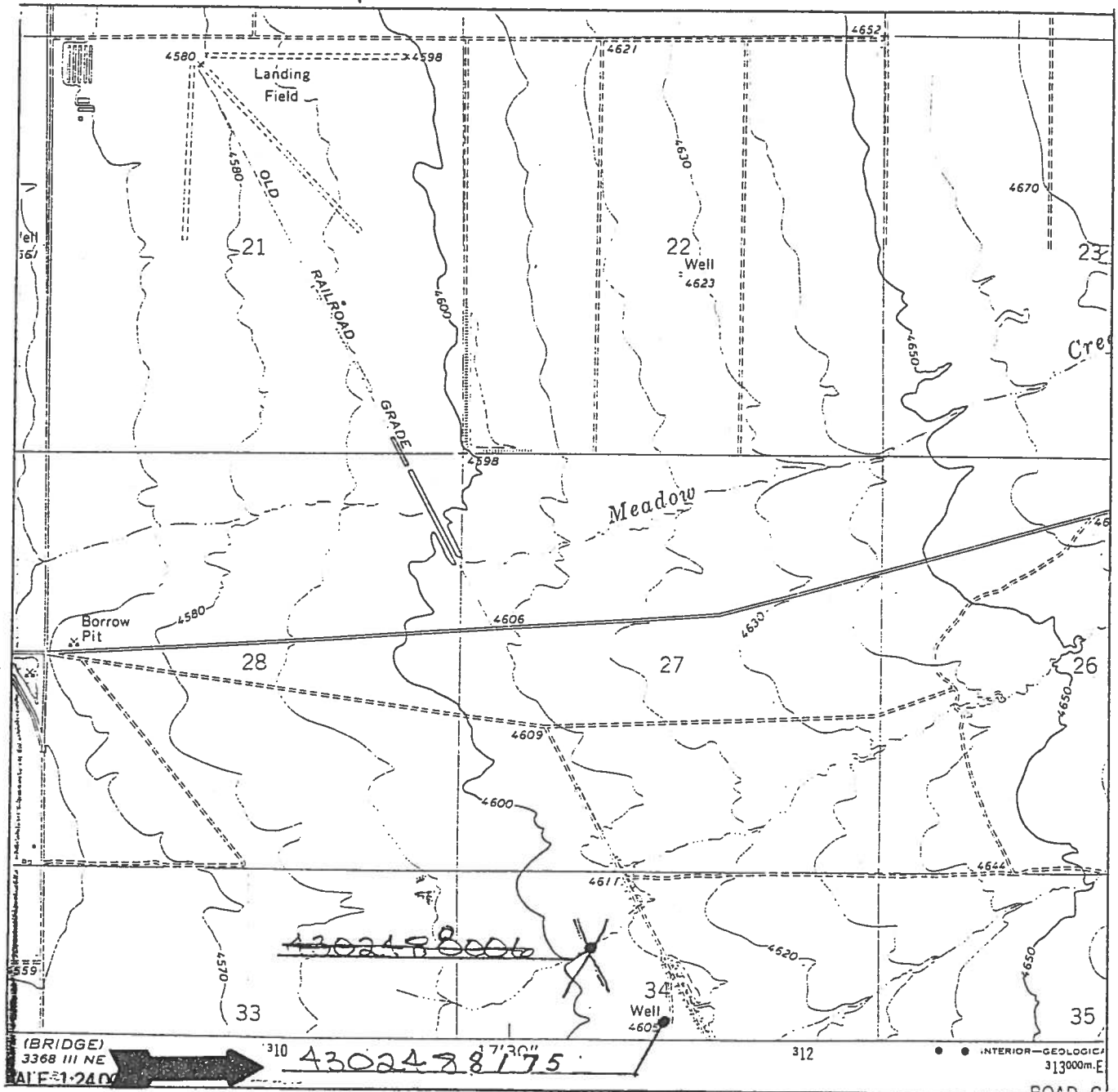
Hold back
on right

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

WATER RIGHTS CLAIM MAP

BLM IDENTIFICATION NUMBER
4302488175

TOWNSHIP 13 South RANGE 27 East MERIDIAN: BOISE QUAD MAP NAME Malta



LEGEND

SCALE: 1" = 24,000

●	POD (ORIGINAL, CORRECT LOCATION)	○	INSTREAM USE CLAIM
✕	POD (ORIGINAL LOCATION, INCORRECT)		INSTREAM USE CLAIM, DROPPED SEGMENT
○	POD (CORRECTED LOCATION)		

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: **A43-02409B**

Date Received: 2/22/1993

Receipt No: X111111

Received By:

suffix added

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

1. Name: U S DEPT OF INTERIOR 208-334-1401
Address: BUREAU OF LAND MGMT
IDAHO STATE OFFICE
3380 AMERICANA TERRACE
BOISE ID 83706

2. Date of Priority: APR 23, 1954

3. Source: GROUNDWATER (YATES WELL) Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
13S	27E	34	NE	SE	NW		CASSIA

5. Description of diverting works:
WELL, PUMP, PIPE, DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	6.400		1280.00

7. Total Quantity Appropriated is:
6.400 C.F.S. (and/or) 1280.00 A.F.A.

8. Total consumptive use is 1280.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
13S	27E	33	SW	NE		IRR	40.0
			SE	NE		IRR	40.0
			NE	SE		IRR	40.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
13S	27E	33	NW	SE		IRR	40.0
						Section Acres	160.0
		34	SW	NW		IRR	40.0
			SE	NW		IRR	40.0
			NE	SW		IRR	40.0
			NW	SW		IRR	40.0
						Section Acres	160.0
						Total Acres	320.0

11. Place of use in counties: CASSIA

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

13. Other Water Rights Used:
NONE

14. Remarks:
PREVIOUSLY FILED WITH THE DEPARTMENT OF WATER RESOURCES
BLM NUMBER: 4302488175

15. Basis of Claim: LICENSE

Water Right Number: 24883

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 _____



State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

22-Nov-1993

U S DEPT OF INTERIOR
BUREAU OF LAND MGMT
IDAHO STATE OFFICE
3380 AMERICANA TERRACE
BOISE ID 83706

RE: Snake River Basin Adjudication (SRBA)
Cassia County - #A43-02409
Identification Number Change

Dear Claimants:

The Identification Number of your Notice of Claim to a Water Right has been changed from A43-02409 to A43-02409B. The suffix has been added to the number in order to distinguish your claim from other claims that may claim a portion of the same original water right. This change does not affect your claim in any other way.

Enclosed is a computer-generated copy of your claim with the new Identification Number. Refer to this record number in any future inquiries or correspondence.

Sincerely,


Jeanie Robertson
Records Clerk

/jr
Enclosures:
Claim A43-02409B

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

CIVIL CASE NUMBER: 39576

IN RE THE GENERAL ADJUDICATION OF RIGHTS TO THE USE OF WATER
FROM THE SNAKE RIVER BASIN WATER SYSTEM

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

U.S. DEPT. OF INTERIOR
BUREAU OF LAND MGMT.
IDAHO STATE OFFICE
3380 AMERICANA TERRACE
BOISE ID 83706
TELEPHONE: 208-334-1401

PRIORITY DATE: 1954-04-23
IDWR NUMBER: 4302409^B
BLM NUMBER: 4302488175
BASIS OF CLAIM: LICENSE
BASIN NUMBER: 43

SOURCE	TRIBUTARY TO
GROUNDWATER (YATES WELL)	SINKS

DESCRIPTION OF DIVERSION WORKS

WELL, PUMP, PIPE, DITCH

PURPOSE OF USE	DIVERSION RATE	DIVERSION VOLUME	PERIOD OF US FROM	TO
IRRIGATION	6.400	1280.00	0315	1115
TOTAL:	6.400 CFS	1280.00 AF		

NON-IRRIGATION USES

IRRIGATION

				POINT OF DIVERSION				
TWP	RNG	SEC	TRACT1	TRACT2	TRACT3	LOT	COUNTY	
13S	27E	34		SE	NW	00	CASSIA	

PLACE OF USE							IRRIGATED	
TWP	RNG	SEC	TRACT1	TRACT2	LOT	COUNTY	OWNED	ACRES
13S	27E	33	SW	NE	00	CASSIA	YES	40.0
13S	27E	33	SE	NE	00	CASSIA	YES	40.0
13S	27E	33	NE	SE	00	CASSIA	YES	40.0

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 3768 (WATER RIGHT
NO. 43-02409) IN THE NAME OF
NATHAN F. GARDINER

**AMENDED FINAL
ORDER**

A Final Memorandum Decision and Order was issued by the Director of the Department of Water Resources (Department) on August 28, 1992, which found that water right no. 43-02409 was developed in speculation and trespass. The order revoked the water right license pursuant to Idaho Code § 42-350.

Both the applicant, Nathan Gardiner, and the protestant, the Bureau of Land Management (BLM), filed petitions for rehearing. In response to the petitions for rehearing, the Director requested a statement of the nature and quantity of new or additional evidence the petitioners would offer if rehearing was granted. Gardiner and the BLM exchanged quitclaim deeds, each granting to the other one-half of water right no. 43-02409. Gardiner claimed this was new information which should be considered by the Department. Nathan Gardiner subsequently withdrew the application for transfer.

Despite withdrawal of the Gardiner transfer, the portion of the Final Memorandum Decision and Order revoking license no. 43-02409 was not affected by the withdrawal of the transfer. Nathan Gardiner requested clarification from the Department regarding the status of the Final Order now that the application for transfer has been withdrawn.

I have reviewed all of the evidence from the hearing and the exhibits. Since the application for transfer has been withdrawn, this amended order will not deal further with the transfer issues. This order addresses only the question about the status of the water right.

FINDINGS OF FACT

1. Transfer no. 3768 proposed a change in the point of diversion and place of use for water right no. 43-02409. Water right no. 43-02409 is a license which authorizes diversion of 6.40 cfs from groundwater for the irrigation of 320 acres.

2. Groundwater diverted pursuant to license no. 43-02409 was developed in conjunction with Desert Land Entry (DLE) application no. I-5070. The DLE application was filed with BLM on April 23, 1954.

3. Application for permit to appropriate water right no. 43-02409 filed by Phoebe Biggers (Biggers), was approved by the Department of Water Resources on April 27, 1954, and amended on May 21, 1954. The amended permit authorized diversion of 6.40 cfs of water for irrigation of 320 acres in the S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, Section 33, and the S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, Section 34, T13S, R27E, B.M. The place of use described by the amended permit is the same land that was sought for DLE classification.

4. The place of use identified above is federal land surveyed by the Department of Interior in 1872 and 1873, and resurveyed in 1947.

5. On July 23, 1963, the lands covered by the DLE and water permit no. 43-02409 were included within the Raft River Critical Ground Water Area.

6. In 1964, BLM granted Biggers the right to enter the place of use for water right permit no. 43-02409 and the Department extended the time for filing of proof of beneficial use until October 15, 1969. In 1966, prior to filing of proof of beneficial use with the Department, Biggers assigned the approved DLE no. I-5070 to Betty Bishop (Bishop). Willard and Katherine Yates leased the DLE land from Bishop in October, 1967. Bishop filed final proof of development with BLM in 1968. In 1969, Biggers assigned her interest in water right permit no. 43-02409 to Bishop. The Department approved applications for extension of time filed by Bishop in 1969, 1971, and 1972.

7. In 1970, the federal government filed a complaint against DLE entry no. I-5070, alleging that the entry was not made and maintained in good faith and that the original entryman had not intended to reclaim the land for her own use and benefit. An administrative hearing officer, Judge Dalby, determined in October, 1972, that, prior to the 1964 allowance of entry to Bigger, she had abandoned the entry and any intent to reclaim the land.

8. In the original decision by Judge Dalby, he details some of the history surrounding the development of the well on the property:

The Biggers applied for and were issued special land use permits for the period from June 10, 1963 to June 10, 1964, which contained stipulations that failure to discover sufficient quantity of water by the expiration date would result in the rejection of the Desert Land applications.

Clarence D. Bishop, a well driller residing in Burley, Idaho, drilled three wells to service the entries in May, 1964.

On June 3, 1964, Mr. Thomas H. Church filed an amended application for Phoebe Biggers which included the 40 acre subdivision on which one well had been drilled. Dennis Biggers' entry was allowed on June 26, 1964, and Phoebe Biggers' on October 15, 1964. In July and August of 1965 annual proofs were submitted on behalf of the Biggers by Mr. Church. The annual proofs showed expenditures of \$22,800 for drilling wells and \$1,000 for clearing brush on the two entries.

Pursuant to arrangements made by Clarence Bishop, the Biggers quitclaimed the entries on April 11, 1966, to Chester Bishop, Clarence's nephew, and Betty Bishop, Chester's wife. Clarence Bishop paid the Biggers \$1,000 for their entries. In September, 1966, Chester and Betty Bishop executed a promissory note to Clarence Bishop for \$43,200 secured by a mortgage on the entries. The note was ostensibly given to evidence Chester and Betty Bishop's obligation to pay Clarence Bishop for the development work previously performed on the entries.

9. A hand written letter written by Phoebe Biggers, contained in the Department files, dated April 24, 1969, explains the reason why the desert land entry was assigned to Bishop:

About 15 years ago Phoebe Biggers and D D Biggers filed on some land near Malta Ida[.] . . . Cattlemen brought suit that government had classified land wrong but after many suits had used up our capital we were told we could go on the land but had to relinquish the land to Clarence Bishop of Burley Idaho. Of course the water permits which we got from you went with the land.

10. The lengthy litigation alleged by Phoebe Biggers was confirmed by the 1973 decision of Judge Dalby:

Dennis B. Biggers and his wife, Phoebe F. Biggers, filed applications on April 23, 1954 for Desert Land entries . . .

Protests were entered to classification for entry of the land covered by the . . . applications. The matter was in litigation for an extended period, but in March, 1963, the lands were favorably classified.

11. At the time Biggers filed their application to appropriate water in 1954, and the application was approved as a permit, there was no evidence that Biggers lacked intent to develop the water as proposed.

12. Betty Bishop appealed the decision of the hearing officer to the Interior Board of Land Appeals (IBLA). The IBLA stated in its December 10, 1973, appellate decision regarding the Biggers' entry:

An entryman must have the requisite good faith intention to reclaim the land for his own use and benefit at the time the entry is allowed. (Citations omitted). If it is later discovered that an entryman did not have the requisite intention to reclaim the land, the entry is subject to cancellation for "illegal inception" pursuant to 43 U.S.C. 329 (1970), which reads in pertinent part:

Provided however * * * the claims or entries * * * shall be subject to contest, as provided by the law, relating to homestead cases, for illegal inception, abandonment, or failure to comply with the requirements of law * * *.

Judge Dalby, having found that the entrymen, prior to allowance, had abandoned the entries and any intent to reclaim the land, held the entries canceled. His decision contains a complete and accurate statement of the facts and law pertinent to this case. The Board finds itself in complete agreement with his decision . . .

13. Bishop represented in her 1972 application for extension of time for filing proof of beneficial use with the Department of Water Resources, that the Desert Land Entry had been contested. Proof of beneficial use was submitted by Bishop on October 15, 1973, after the original BLM decision which declared her DLE approval canceled. Bishop did not inform the Department at the time proof of beneficial use was filed that BLM had declared her DLE entry canceled.

14. After the decision by the Department of Interior Board of Land Appeals, BLM notified Chester and Betty Bishop in February, 1974, they must remove their improvements from the property and stated Bishops were no longer entitled to farm the lands, possess the lands, or occupy the lands. Between 1974 and 1976, BLM did not actively pursue eviction of anyone who might be using the land. Yates farmed the land without authorization between 1974 and 1976. BLM issued a trespass notice to Yates in December 1976. Yates negotiated a \$10,000 settlement with BLM to pay for the trespass. Yates leased the property from BLM, and continued to farm the property until 1987.

15. The Department issued license no. 43-02409 to Bishop on April 29, 1975.

16. In May, 1977, the Department received correspondence from BLM stating that the DLE entry no. I-5070 had been canceled on December 10, 1973, by the Secretary of the Interior, and asking the Department to change ownership of license no. 43-02409. The Department responded by letter as follows:

The Department has no procedure for changing the records of ownership on a water right license. These rights are considered to be appurtenant to the land to which they are licensed and are owned by the owner of that land.

17. Betty Bishop assigned her interest in license no. 43-02409 to Clarence D. Bishop on July 9, 1990, and Clarence D. Bishop assigned his interest in license no. 43-02409 to Nathan F. Gardiner. Gardiner bases his claimed ownership of license no. 43-02409 on the assignment from Clarence D. Bishop.

18. BLM originally objected to the alleged ownership of the water right by Nathan Gardiner and claimed ownership to itself.

19. At the hearing, BLM witnesses testified neither Phoebe Biggers nor Betty Bishop were trespassers on the land.

20. After issuance of the Final Memorandum Decision and Order on August 28, 1992, BLM and Gardiner exchanged quitclaim deeds, each granting to the other one-half interest in license no. 43-02409.

CONCLUSIONS OF LAW

1. In considering an application to appropriate water, the Department must determine whether the application is filed in good faith, or is filed for purposes of delay or speculation.

2. The filing of an application to appropriate water with the intent to establish a priority date, and prevent other prospective users from appropriating water, with no accompanying intent to develop the water at the time of filing is speculation, and filed for delay.

3. A person who files an application to appropriate water, and concurrently files an entry application with the federal government with the intent to assign the entry, or attempts to circumvent the federal entry law, files the water right in bad faith, and the application is speculative.

4. An application, even if approved as a permit or license, is void from the time it is filed if, at the time of the filing, the applicant was acting in bad faith or was speculating without any intent to develop the permit.

5. The DLE entry was cancelled because it was "illegal from its inception." Some case law could be interpreted to hold that the entry is viewed as if there was never permission for the entrymen, their successors, assignees or agents to be on federal land, Byron v. U.S., 259 F. 371, 376 (9th Cir. 1919); as if the patents and entries had never existed, Bradford v. U.S., 222 F. 258, 259 (5th Cir. 1915); and as between the United States and

their assignees, successors or agents might be viewed as trespassers on the surveyed public domain. See U.S. v. West, 232 F.2d 694, 699 (9th Cir. 1956).

6. In Idaho, a water right cannot be developed in trespass. Lemmon v. Hardy, 95 Idaho 778, 780, 519 P.2d 1168 (1974).

7. While the decision by BLM merits consideration, it does not bind the Department. The Department must determine the intent of the entryman between the time the application was filed and the time the permit was approved.

8. The filing of an application to appropriate water, where there is intent to develop the property, even if there is an accompanying intent to market the water or property after development, is not considered speculation.

9. In this case, although the BLM held that the DLE entry was illegal from its inception, the Department of Water Resources does not have similar information to show that the applicant, Phoebe Biggers, filed the application for permit to appropriate water for purposes of delay or speculation. Furthermore, there is no evidence of bad faith in filing the water right on the part of Phoebe Biggers. It appears that after the assignment, Betty Bishop also diligently attempted to perfect the water right, even though Yates was the actual farmer on the property.

10. There is no evidence in the record other than the decisions of the BLM which canceled the DLE entry, that Biggers, Bishop or Yates, the farmer of the land at the time of cancellation of the DLE entry, were trespassers prior to the final decision of the BLM. In fact, BLM witnesses testified that Biggers and Bishop were not trespassers. Yates was only found to be trespassing on the land following the issuance of the final decision rejecting the DLE entry.

11. Biggers, Bishop and Yates were all farming the property pursuant to an entry approval until the final decision by the IBLA. A water right could be perfected during the entry approval period.

12. Furthermore, a license was issued to Betty Bishop. A water right license is prima facie evidence of the existence of a

water right, and will not be revoked unless evidence is presented to show the non existence of the right.

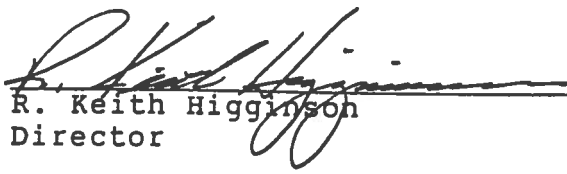
13. Water right license no. 43-02409 is valid in the records of the Department of Water Resources.

14. Because the parties have exchanged quitclaim deeds, and have agreed to share the water right, ownership of the water right as between the parties is no longer an issue.

ORDER

IT IS HEREBY ORDERED that these Findings of Fact and Conclusions of Law be entered in the records of the Department for water right no. 43-02409 and that the file reflect the ownership of the right by Nathan F. Gardiner and the U. S. Bureau of Land Management as evidenced by the quit claim deeds.

Dated this 28TH day of October, 1993.

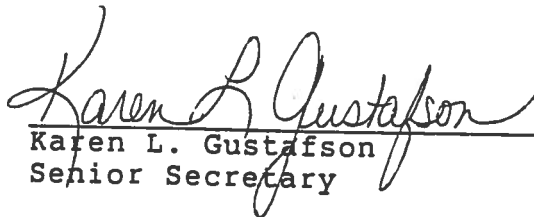

R. Keith Higginson
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of November, 1993, I mailed a true and correct copy of the foregoing Final Memorandum Decision and Order, postage prepaid, to the following:

Nathan Gardiner
HC 72 Box 2038
Malta, ID 83342

Jack Hockberger
U. S. Dept of Interior
Box 020
Boise, ID 83724



Karen L. Gustafson
Senior Secretary

SD-0601-2

Water Right Number: A43-02409B

Page: 1

END OF DATA

FIRST PAGE

Office -----	Reg ---	Location -----	Type-Description -----	Date -----
ROBERTSO	S	CIN	Pending Claim Review	04/27/94

(Enter=Cont) (GOLD4=Prev Scr) (GOLD5=Next Scr) (GOLD6=End of Data) (GOLD8=Exit

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

In Re SRBA

Case No. 3957

NEXTAMENDED NOTICE of CLAIM for
Water Right number:

43-02409B

NAME and
ADDRESS:

United States of America acting through
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, ID 83709 - 1657

BLMIDENT:

4302488175

Stg:

StFad:

L

S

SOURCE:

Source	Tributary
GROUNDWATER	SINKS

QUANTITY:

3.2

CFS

or VOLUME:

640

Acre Feet

PRIORITY DATE:

4/23/1954

Diversion Means: WELL, PUMP, PIPE, DITCH

REMARKS:

YATES WELL

POINT of
DIVERSION:

Twship	Range	Section	T1	T2	T3	LOT	B/E	within the	County of
13S	27E	34	NE	SE	NW	0		31	Cassia

PURPOSE
and
PERIOD
OF USE:

Purpose of Use	Period of Use (from - to):	Rate in CFS	or	Volume in AcFt
01	0315	1115	3.2	640

CONSUMPTIVE
USE:

stockwater use

DATE:

06-Oct-97 9:51 AM

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

The quantity of water decreed for this water right for stockwater use is not a
determination of historical beneficial use.

PLACE
of USE:

Water Use	Tw	Range	Sec	T1	T2	LOT	within the County of
01	13S	27E	34	SW	NW	0	31 Cassia
01	13S	27E	34	SE	NW	0	31 Cassia
01	13S	27E	34	NE	SW	0	31 Cassia
01	13S	27E	34	NW	SW	0	31 Cassia

RECEIVED

OCT 06 1997

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

In Re SRBA

Case No. 39576

NEXT

AMENDED NOTICE of CLAIM for
Water Right number:

no21

43-02409B

NAME and
ADDRESS:

United States of America acting through
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, ID 83709 - 1657

BLMIDENT:

4302488175

Stg:

StFed:

L

S

SOURCE:

Source	Tributary
GROUNDWATER	SINKS

QUANTITY:

6.4

CFS

or VOLUME:

1280

Acre Feet

PRIORITY DATE:

4/23/1954

Diversion Means: WELL, PUMP, PIPE, DITCH

REMARKS:

YATES WELL

POINT of
DIVERSION:

Twndship	Range	Section	T1	T2	T3	LOT	B/E	within the	County of
13S	27E	34	SE	NW		0		31	Cassia

PURPOSE
and
PERIOD
OF USE:

Purpose of Use	Period of Use (from - to):	Rate in CFS	or	Volume in AcFt
01	0315	1115	6.4	1280

CONSUMPTIVE
USE:

stockwater use

DATE:

13-Sep-97

9:22 AM

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

The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.

PLACE
of USE:

Water Use	Twnd	Rge	Sec	T1	T2	LOT	within the	County of
01	13S	27E	33	SW	NE	0	31	Cassia
01	13S	27E	33	SE	NE	0	31	Cassia
01	13S	27E	33	NE	SE	0	31	Cassia
01	13S	27E	33	NW	SE	0	31	Cassia
01	13S	27E	34	SW	NW	0	31	Cassia
01	13S	27E	34	SE	NW	0	31	Cassia
01	13S	27E	34	NE	SW	0	31	Cassia
01	13S	27E	34	NW	SW	0	31	Cassia

RECEIVED

SEP 15 1997

Department of Water Resources

AJ0749NP
No. R43-024098

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

DATE: 10/09/97
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	UNITED STATES OF AMERICA ACTING THROUGH BUREAU OF LAND MGMT IDAHO STATE OFFICE 1387 SOUTH VINNELL WAY BOISE ID 837091657 (208) 334-1401	04/23/1954	IRRIGATION	03-15 11-15	3.20 CFS	640.00 AFA
TOTAL DIVERSION:					3.20 CFS	640.00 AFA

Water Source: GROUNDWATER (VATES WELL) Tributary to: SINKS

Stage: LICENSE

Point(s) of Diversion: T13S R27E S34

NESENW

CASSIA County

Place of use Legal Description for: IRRIGATION

	NE	NESE	SE	SUM
T R S : Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac
13S 27E 34 :	: 40 40 : 40 40	: 40 40	:	: 160.0
TOTAL ACRES	:	:	:	: 160.0

POU County: CASSIA

Other Rights: NONE

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):

A43-024098 (R43-02409) split Rt.

Other Water Rights Listing Overlapping Place(s) of Use:

A43-024098

Remarks: GEN (PREVIOUSLY FILED WITH THE DEPARTMENT OF WATER RESOURCES
BLM NUMBER: 4302488175)

Dates: Exam Made Date: Verified Date: Objection Filed Date:

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

10/9/97
car

Hancock, Vikie

From: Brown, Roxanne
Sent: Monday, April 14, 2003 8:44 AM
To: Hancock, Vikie
Subject: RE: 43-2409B

I'll put it in the next report!

-----Original Message-----

From: Hancock, Vikie
Sent: Friday, April 11, 2003 4:05 PM
To: Brown, Roxanne
Subject: 43-2409B

Roxanne,

I have come across an irrigation right that, although it was included in our preliminary DR, was not included in the Director's Rept for Basin 43. 43-2409B is in the name of BLM and is also currently (I believe still) in the water bank. The recommendation is ready to go and the notice of error was returned with no corrections. Would you please add this to your list of rights that need to be reported in the next supplemental? If you have any questions, let me know and I can get you the file.

Note that, according to the subcase summary, this right was originally reported to the court in 1998 but withdrawn in 1999 to be included in the 43 I and O.

Vikie

4/14/2003

05/11/2001

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: 43-2409B

UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF LAND MGMT
IDAHO STATE OFFICE
1387 SOUTH VINNELL WAY
BOISE ID 837091657
Telephone Number: (208)334-1401

RECEIVED

JUN 15 2001

Department of Water Resource
Southern Region

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: 5-29-01 SIGNATURE: Cynthia Slack for Steve Davis
Please print your name: Cynthia Slack

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

05/11/2001

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

RIGHT NUMBER: 43-2409B
NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF LAND MGMT
IDAHO STATE OFFICE
1387 SOUTH VINNELL WAY
BOISE ID 837091657

SOURCE: GROUND WATER TRIBUTARY:

QUANTITY: 3.200 CFS
640.00 AFY

PRIORITY DATE: 04/23/1954

POINT OF DIVERSION:

T13S R27E S34 NESENW 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	3.200 CFS 640.00 AFY

PLACE OF USE:

IRRIGATION Within CASSIA County

T13S R27E S34	SWNW	40.0	T13S R27E S34	SENW	40.0
T13S R27E S34	NESW	40.0	T13S R27E S34	NWSW	40.0

160 ACRES TOTAL

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

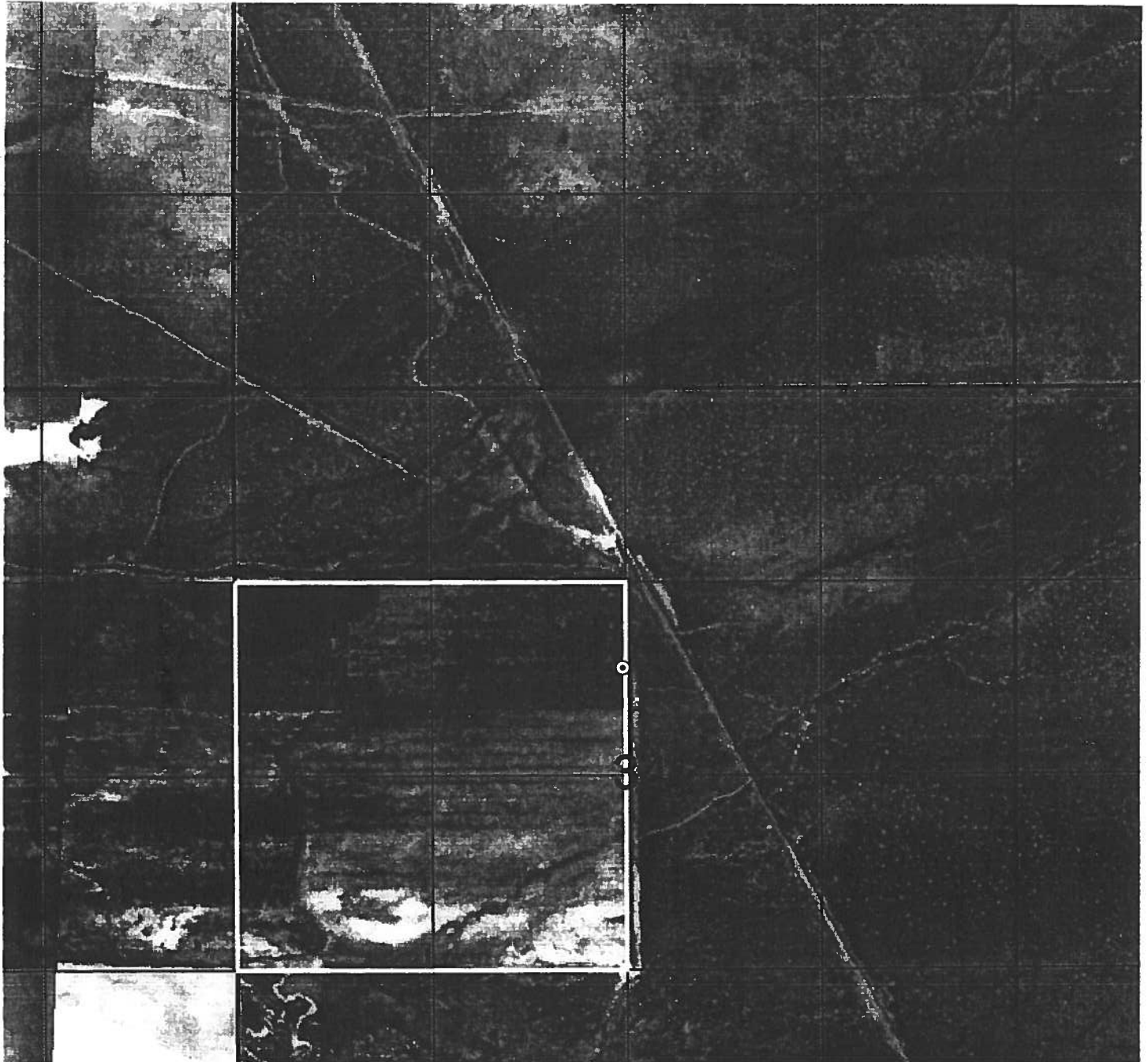
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY
FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF
THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A
POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION
42-1412(6), IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License
BLM NUMBER: 4302488175

Idaho Department of Water Resources

RIGHT: 43-2409B

RECOMMENDED PLACE OF USE
TWP 13S, RNG 27E, Sec 34
Data entry on April 16, 2001



0 1320 2640 3960 5280 Feet

⊙ RECOMMENDED POINT OF DIVERSION

RECOMMENDED PLACE OF USE



SECTION LINES



QUARTER/QUARTER LINES



GIS PLACE OF USE PRESENTATION
1987/1988 NAPP AERIAL PHOTOGRAPHY
PREPARED BY VIKIE HANCOCK

04/16/2001

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

RIGHT NUMBER: 43-2409B

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF LAND MGMT
IDAHO STATE OFFICE
1387 SOUTH VINNELL WAY
BOISE, ID 837091657

SOURCE: GROUND WATER

QUANTITY: 3.2 CFS
640 AFY

PRIORITY DATE: 04/23/1954

POINT OF DIVERSION: T13S R27E S34 NESENW 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	3.20 CFS 640.00 AFY

PLACE OF USE:

<u>IRRIGATION Within CASSIA County</u>			
T13S R27E S34	SWNW	40	T13S R27E S34 SENW 40
T13S R27E S34	NESW	40	T13S R27E S34 NWSW 40

160 ACRES TOTAL

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

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

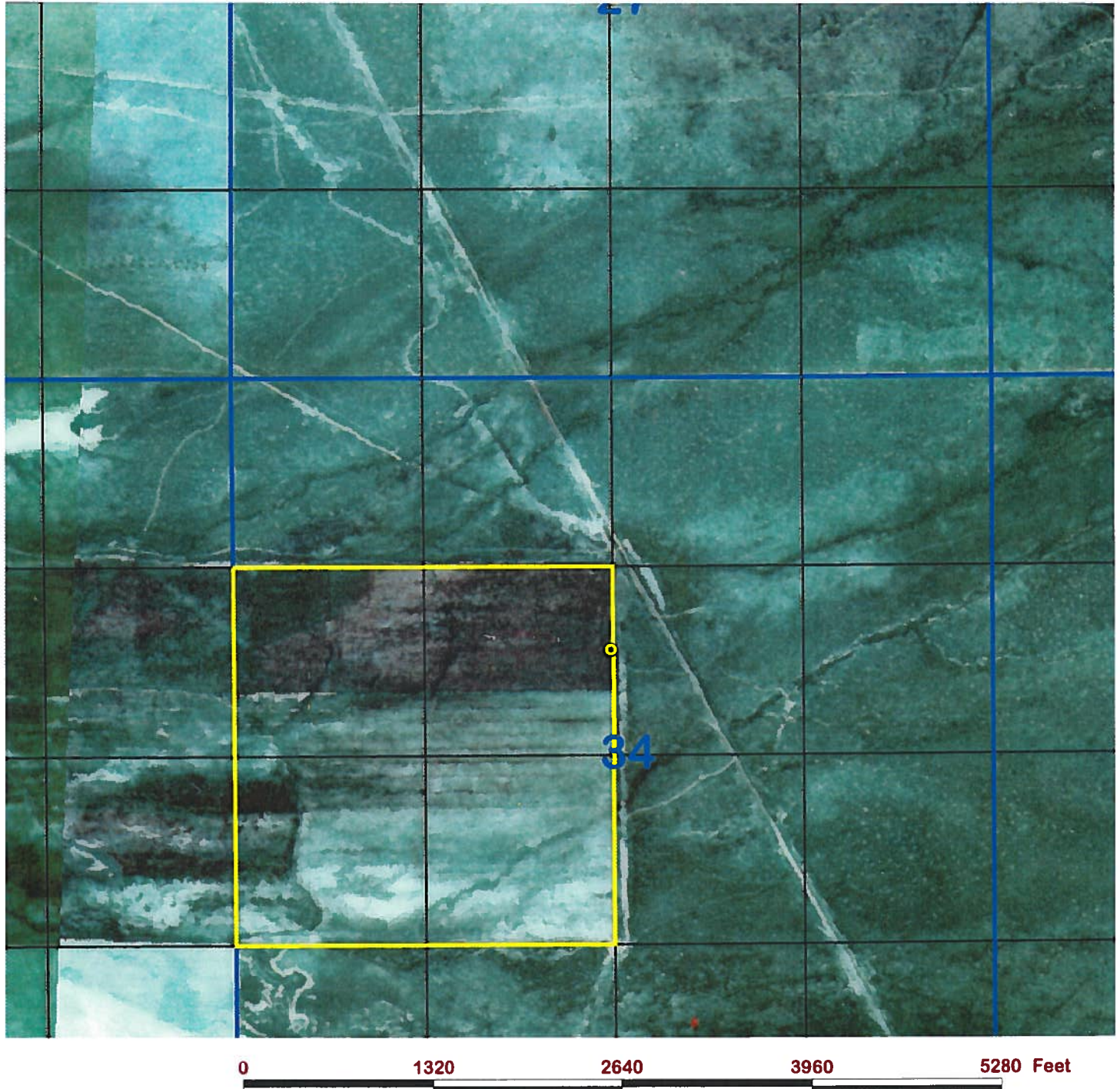
EXPLANATORY MATERIAL: BASIS OF CLAIM - License

BLM NUMBER: 4302488175

Idaho Department of Water Resources

RIGHT: 43-2409B

RECOMMENDED PLACE OF USE
TWP 13S, RNG 27E, Sec 34
Data entry on April 16, 2001



○ RECOMMENDED POINT OF DIVERSION

□ RECOMMENDED PLACE OF USE

□ SECTION LINES

□ QUARTER/QUARTER LINES



GIS PLACE OF USE PRESENTATION
1987/1988 NAPP AERIAL PHOTOGRAPHY
PREPARED BY VIKIE HANCOCK

Idaho Department of Water Resources

Analysis for Recommendation

Prepared by: Vikie Hancock

4/25/01

Regarding: **43-2409 parts A & B**

HISTORY

Right 43-2409 was originally licensed to Biggers in 1975 for use upon a Desert Land Entry that was ultimately denied by the BLM. The water use continued on the federal lands (see 1987 NAPP photo), and ownership of the water right license was conveyed from Biggers to Bishop. In 1989 the entire right was placed in the Water Bank by BLM who also claimed ownership of the water right, as it was appurtenant to federal land. The right was subsequently purchased by Nathan Gardiner, who applied to transfer the right onto private lands. This application for transfer #3768 was protested by the BLM and subsequently withdrawn by Gardiner at the advice of IDWR.

A hearing on the validity of the water right was held in 1993, and the Department of Water Resources determined that the license was indeed valid. Quit Claim deeds between Gardiner and the BLM split the water right equally between the two parties into parts A and B. Part A (Gardiner) has now been removed from the Water Bank. Part B (BLM) has remained in the water bank.

43-2409B

The BLM filed SRBA claim 43-2409 (renumbered 43-2409B) for 320 acres and 6.4 cfs listing the original point of diversion and place of use. Amendments to adjust the diversion rate to 3.2 cfs were filed in 1997 and 2000. The BLM claims are unclear as to how many acres are claimed, however according to the 1993 Order, the BLM has ownership of half the original license or 3.2 cfs for irrigation use on 160 acres. All of right 43-2409B is currently in the Water Bank. See email from Glen Saxton dated 04-10-2001. Confusion existed at one time, because the BLM had requested a portion of 43-2409B be removed from the water bank. The BLM had proposed to develop some uses for wildlife, which were never completed. Temporary splits were prepared within the water right database. The BLM subsequently requested that the removed portion of 43-2409B be returned to the water bank. As of this date, right 43-2409B is best described as one intact right. There is a pending

request to rent this right from the water bank - see letter in file from Glen Saxton dated April 10, 2001.

43-2409A

In the meantime, Gardiner filed adjudication claim 43-2409 in 1990 for 6.4 cfs and 320 acres listing the original licensed place of use and noting his intent to transfer the entire place of use and point of diversion. In 1993 he amended this claim to 160 acres and 3.2 cfs, and his right was renumbered 43-2409A. He then filed transfer #4294 to change the place of use and point of diversion of the 160 acres claimed in the SRBA. This transfer was not protested and was approved in 1994. An application for extension of time to avoid forfeiture was filed by Gardiner in 1994 which extended his deadline for completion of works to April 1999.

The place of use and point of diversion were visited 4-24-2001. According the renter at the house located in the SWSWSE of Section 36, the land is owned by Gardiner but farmed by Peter Grush.

POD:

The well was found and GPS'd. It was equipped with a Layne and Bowler WellLine 4 stage pump stamped with the date 10-17-94. Serial number LP 94358. The motor was a 100 HP General Electric, serial number ER 1523322. Rainbird brand pressure gauge was reading steady at 52 psi.

POU:

The place of use was irrigated by two pivots. The smaller one to the south of the well in the NENE Section 1 T14S R26E was 4 towers long, therefore a radius of approximately 600 feet is assumed. The center of that pivot was GPS'd.

The larger pivot was to the north of the well; the center lay in the approximate middle of the SE quarter of Section 36, T13S R26E. This pivot was 8 towers long. Both pivots were equipped with low pressure sprinkler heads and were running at the time of the visit.

The place of use corresponds with that outlined in approved transfer 4294, however the corner area around the well did not seem to be irrigated as proposed. 160 acres are outlined and included in my recommendation per the approved transfer.

See attached GIS layout with notations.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 10, 2001

RECEIVED
APR 12 2001
Department of Water Resources
Southern Region

FREDERICK L. NEILSON
PO BOX 15
BURLEY, ID 83318

RE: APPLICATION TO RENT WATER RIGHT NO. 43-02409B FROM THE WATER
SUPPLY BANK

Dear Mr. Neilson:

On May 19, 2000, I sent a partially completed Water Supply Bank application to you for review, signature and return together with a rental fee for a five year duration. Department files do not show that you have signed and returned the rental agreement with the required fee.

Please consider the draft rental agreement which I sent you last May is removed from further consideration unless you sign and return the agreement and fee before May 1, 2001, or can otherwise show why the draft agreement should not be voided.

If you have questions, please feel free to contact me.

Sincerely,

L. GLEN SAXTON, P.E.
Chief, Water Allocation Bureau

c: IDWR - S. Region
Jean Robertson

Robertson, Jean

From: Shaff, Don
Sent: Thursday, April 12, 2001 9:02 AM
To: Robertson, Jean
Subject: RE: water bank claims...

Yes. Of course, the review confirms the right is still in the water bank.

Don
dshaff@idwr.state.id.us
208/327-7932

-----Original Message-----

From: Robertson, Jean
Sent: Thursday, April 12, 2001 8:54 AM
To: Shaff, Don
Subject: water bank claims...

Hi Don,

Just wanted to make sure one last time that recommendations for rights in the **water bank** don't get any special remarks or anything? And the shapefile shows the acres where the right was originally claimed, even though there may be no activity there now, right? Thanks, Jeanie

Robertson, Jean

From: Saxton, Glen
Sent: Tuesday, April 10, 2001 11:22 AM
To: Robertson, Jean
Cc: Gibson, Deborah
Subject: FW: 43-02409A and B

I have reviewed license file 43-02409 in the state office and have determined the following:

- The entire license was accepted into the Water Supply Bank on September 15, 1989.
- The right presently is best described as parts A and B.
- 43-02409A is represented by transfer no. 4294 in the name of Nathan F. Gardiner. This part of the water right is not in the water Supply bank.
- 43-02409B in the name of the BLM is in the water supply bank. At one time, the BLM split off 0.08 cfs and 60 AF for wildlife habitat purposes, thus removing that amount of part B from the bank. On March 20, 1998, the BLM asked that the split-off part B be included with the remainder of part B, since the split-off part was never used by the BLM for the planned wildlife habitat purposes. Hence part B in the bank is for 3.2 cfs of water.
- Frederick Nielson applied to rent all of part B from the bank for a 10 year period. The department prepared a rental agreement for Nielson to sign, but he has not signed and returned it. I need to correspond with Nielsen withdrawing the draft rental agreement from further consideration.

If you have additional questions, please feel free to contact me or Debbie. lgs

-----Original Message-----

From: Gibson, Deborah
Sent: Tuesday, April 10, 2001 10:26 AM
To: Robertson, Jean
Cc: Saxton, Glen
Subject: RE: 43-02409a, b, & whatever...

Hi. Gosh this one's a mess. I'll need to have Glen review this, because I'm not sure where part B is presently at. Nathan Gardiner (B split) was removed from the Water Supply Bank (WSB) for 3.2 cfs around the time IDWR issued an Amended Final Order. However, he applied for an Extension of Time to Avoid Forfeiture on 3/23/94 was granted the extension until 4/1/99. There was a transfer filed by Barbara Gardiner (D split) which ultimately was withdrawn. So I don't know where that leaves Nathan with his extension of time.

Part A (BLM) was originally in the WSB until 8/26/94 when they requested 0.08 cfs for use in development for a wildlife project. However that didn't work out and so they requested that it be replaced into the WSB on 3/20/98. Frederick Nielson applied for rental from the WSB, however, on 5/19/2000 I mailed a Rental Agreement to him for his signature and return with the appropriate rental fee, and haven't had a response from him, to this day. So all of BLM's 3.2 cfs is still remaining in the WSB.

I'll talk to Glen and ask him to review Nathan Gardiner's status and we'll get back to you.

-----Original Message-----

From: Robertson, Jean
Sent: Friday, April 06, 2001 4:43 PM
To: Gibson, Deborah
Subject: 43-02409a, b, & whatever...

Hi there,

I'm trying to put together my recommendation for these rights and I have a few questions...are they both (all) still in the water bank? What are the actual numbers or suffixes of the splits? In the remarks of part C, it talks about part of it being split off into a wildlife area and right being split into parts E and F.

(I even found an old printout from the Vax of part F, but part F doesn't seem to show up on the new system and part C looks to be the same as part F?) Then I noticed in the water right file here that Neilson was going to rent part of this right, did that ever happen? And how can he rent the entire right from the BLM if part of it is in the wildlife portion? Thanks for any help you can provide in clearing this up! Jeanie Robertson/Southernn Aj



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

A.3-02409B

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

February 18, 1998

FEB 23 1998

Raft River Flood Control Dist.
c/o Alvin Neddo
HC 67, Box 1000
Malta, Idaho 83342

Department of Water Resources
Southern Region

RE: APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK

Dear Mr. Neddo:

The department has completed advertisement of the application you submitted to the Idaho Water Resource Board (Board) to rent water right No. 43-02409 from the Water Supply Bank (bank) on behalf of the Raft River Flood Control District. There were no protests filed in connection with advertisement of the application.

The next step is to obtain Board approval for the requested rental period of ten (10) years. Before this request is submitted to the Board at its next scheduled meeting on March 20, 1998 in Boise, I would like written confirmation from you of the district's continuing interest in the long term rental of the right. I also would like reasonable assurance from you that the district is willing to pay the annual rental cost of \$1,885 per year for the 580 AF of groundwater sought. Please correspond with me at your earliest convenience in this regard.

If you have questions, please feel free to contact me.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - S. Region
Wayne Haas

43-02409

IDAHO
CASSIA
Report ID: ASCS-156EZ

U.S. Dept. of Agriculture
Agri. Stab. & Conserv. Svc.
Abbreviated 156 Farm Record

FARM 893
Prepared: 12/27/91
Crop Year: 1991
Page: 1

OPERATOR: Name, Address & I D No.	FARMLAND	CROPLAND	IRRIGATED CROPLAND	EFFECTIVE CROPLAND	FARM IDENTIFIER	STATUS
528-78-4138 S HENRY J YATES MALTA	320.0	260.4	260.4	260.4		ACTIVE
ID 83342 0000						

CRP: .0
IFM: N
RECON. REF. NO.: 000000
OFAY NORMAL PLANTED ACRES: .0

No. of Tracts:	1	Current Year															
TRACT NO.	FARMLAND	CROPLAND	IRRIGATED CROPLAND	HEL	027	A027	W	CW	FW	PC	AW	MW	RW	MG	CWTE	CWNA	PCW
1635	320.0	260.4	260.4	N	N		N										N
IDENTIFIER	FF-28 Z-26 S-33.34 T-13 R-27																
OWNER	1 - BUREAU OF LAND MANAGEMENT																

NW
HEL

693

440.3

326

33' 34

2

446

3

421

INHELW

66.5

INHELW

7

46.3

INHELW

1075

71640

32.1

HEL/NW

33' 34

From: DWR60::DJONES 3-OCT-1995 14:03:33.75
To: DWR03::DSHAFF
CC: DJONES
Subj: GARDINER/BLM:43-02409...

NEVER ACCEPT THE PICKLED EGG THAT FLOATS AT THE TOP...IT'S BOUND TO BE ROTTEN.

This right/claim has been a horror since it's origination in the 1950's. At present though it appears that Gardiner has part "A" on both water right and claim sides. The BLM has parts "C" & "D" on water rights and part "B" on claim. Parts "C" & "D" appear to have come into being by action of the Water Resource Board (one year only?) and since there is no formal DWR filing (e.g. transfer) we have not split the claims. I have been in touch with Jim J and Glen about this revolting development and nothing has been done. I requested that they remove the water rights split from the database and pursue contact with the BLM to clarify their intentions. I called the BLM and tried to get them to file a transfer (contacted Steve Davis in Burley), nothing has been done. If you can get action, more power to you. We do not have any pending change of ownerships on this right so if you would like Sally to interface with us regarding attorney address have her contact me.

From: DWR03::DSHAFF
To: DWR60::DJONES
CC: DSHAFF
Subj: A43-02409

2-OCT-1995 16:26:24.28

Doug, I am left confused. I see _9A is for Gardiner to cover the split that is hers. No _9B for BLM? Particularly if both parts are in the Water Supply Bank. Change in owner from BLM to Gardiner for _9B? If Gardiner has all of it, in or out of the WSB, could we go back to just -02409 without the splits? (Sally crossed this one dealing with the change in address for attorneys on the fed. claims.) Think about it when you have time. Thanx

SD-0607-2 Basin: 43 Starting Water Right: 02408

STATI

S E L	Water Right No.	Name Last, First	O W N	Priority Date	STG/ STS	Source	Use Code Desc
—	43-02408	BISHOP, CHESTER I.	C	07/14/1954	L/	GROUNDWATER	01 IRR
—	43-02409			00/00/0000	/Z		
—	43-02409A	GARDINER, NATHAN F	C	04/23/1954	L/	GROUNDWATER	01 IRR
—	43-02409B			00/00/0000	/Z		
—	43-02409C	US DEPT OF INTERIOR,	C	04/23/1954	L/	GROUNDWATER	01 IRR
—	43-02409D	US DEPT OF INTERIOR,	C	04/23/1954	L/	GROUNDWATER	01 IRR
—							16 WILDLI
—							17 WILD S
—	43-02410	JONES, REUBEN M.	C	06/15/1954	L/	GROUNDWATER	01 IRR
—							04 STOCK
—	43-02411	WARD, WESLEY B.	C	08/11/1954	L/	GROUNDWATER	01 IRR
—	43-02412	ATWOOD, ALBURN	C	08/30/1965	L/	GROUNDWATER	01 IRR
—	43-02413	SCHMIDT, BEN V.	C	09/21/1954	L/	GROUNDWATER	01 IRR
—							43 DOMES
—	43-02414	NEDDO, MILTON L.	C	12/08/1954	L/	GROUNDWATER	01 IRR
—	43-02415	JONES, GLENN L.	C	01/20/1955	L/	GROUNDWATER	01 IRR

(Enter=Continue)

(GOLD 7=This Query)

(Menu _____)

SD-0607-2 Prefix: A Basin: 43 Starting Water Right: 02408

STATE

Water Right No.	Name Last, First	O W N	Priority Date	Stg/ Sts	Source	Use Code Desc
A43-02408	US DEPT OF INTERIOR,	C	07/14/1954	L/	GROUND WATER(YAT	01 IRR
A43-02409	SPLIT RIGHT,	C	04/23/1954	/Z	GROUNDWATER	01 IRR
					SPLIT	
A43-02409A	GARDINER, BARBARA	C	04/23/1954	L/	GROUNDWATER	01 IRR
A43-02409B	U S DEPT OF INTERIOR,	C	04/23/1954	L/	GROUNDWATER (YAT	01 IRR
A43-02410	HOPE, ROBERT S	C	06/15/1954	L/	GROUNDWATER	01 IRR
	HOPE, MARIAN P	C				04 STOCK
A43-02411	WARD, ROSCOE B	C	08/11/1954	L/	GROUNDWATER	01 IRR
A43-02412	BODILY, JAMES B	C	08/30/1965	L/	GROUNDWATER	01 IRR
A43-02413	DARRINGTON, IVAN	C	09/21/1954	L/	GROUNDWATER	01 IRR
A43-02414	ANDERSON, HAL T	C	12/08/1954	L/	GROUNDWATER	01 IRR
	ANDERSON, KEITH H	C				
A43-02415	SPLIT RIGHT,	C	01/20/1955	/Z	GROUNDWATER	01 IRR
					SPLIT RIGHT	
A43-02415A	JONES, GLENN L	C	01/20/1955	L/	GROUNDWATER	01 IRR
	JONES, HAZEL R	C				

(Enter=Continue)

(GOLD7=This Query)

(Menu _____)

SD-0607-2 Prefix: R Basin: 43 Starting Water Right: 02408

STATI

Water Right No.	Name Last, First	W N	Priority Date	Stg/ Sts	Source	Use Code Desc
R43-02409	SPLIT RIGHT,	C	04/23/1954	L/	GROUNDWATER SPLIT RIGHT	01 IRR
R43-02409A	GARDINER, BARBARA	C	04/23/1954	L/	GROUNDWATER	01 IRR
R43-02425	CARPENTER, ALVIN	C	04/04/1955	L/	GROUNDWATER	01 IRR
R43-02431	EDWARDS, LARRY	C	08/11/1955	L/	GROUNDWATER	01 IRR
	EDWARDS, DORIS B	C				
R43-02433	STATE OF IDAHO,	C	05/25/1955	L/	GROUNDWATER	43 DOMEST
R43-02446	TRACY, VERNON L (BUD)	C	07/13/1956	L/	GROUNDWATER	01 IRR
	TRACY, SHARYL L	C				
R43-02452	WARD, CHARLES R	C	09/27/1956	L/	GROUNDWATER	01 IRR
	WARD, JANET O	C				
R43-02459	WARD, CHARLES R	C	07/02/1957	L/	GROUNDWATER	01 IRR
	WARD, JANET O	C				
R43-02464A	BODILY, JAMES NORMAN	C	03/10/1958	L/	GROUNDWATER	01 IRR
	BODILY, GLENDA J	C				
R43-02467	SPLIT RT.,	C	12/23/1958	/Z	GROUNDWATER	01 IRR

(Enter=Continue)

(GOLD7=This Query)

(Menu _____)

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE

STATE OF IDAHO

RECEIVED

JAN 27 1994

Department of Water Resource
Southern Region Office

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 3768 (WATER RIGHT
NO. 43-02409) IN THE NAME OF
NATHAN F. GARDINER

AMENDED FINAL
ORDER

A Final Memorandum Decision and Order was issued by the Director of the Department of Water Resources (Department) on August 28, 1992, which found that water right no. 43-02409 was developed in speculation and trespass. The order revoked the water right license pursuant to Idaho Code § 42-350.

Both the applicant, Nathan Gardiner, and the protestant, the Bureau of Land Management (BLM), filed petitions for rehearing. In response to the petitions for rehearing, the Director requested a statement of the nature and quantity of new or additional evidence the petitioners would offer if rehearing was granted. Gardiner and the BLM exchanged quitclaim deeds, each granting to the other one-half of water right no. 43-02409. Gardiner claimed this was new information which should be considered by the Department. Nathan Gardiner subsequently withdrew the application for transfer.

Despite withdrawal of the Gardiner transfer, the portion of the Final Memorandum Decision and Order revoking license no. 43-02409 was not affected by the withdrawal of the transfer. Nathan Gardiner requested clarification from the Department regarding the status of the Final Order now that the application for transfer has been withdrawn.

I have reviewed all of the evidence from the hearing and the exhibits. Since the application for transfer has been withdrawn, this amended order will not deal further with the transfer issues. This order addresses only the question about the status of the water right.

FINDINGS OF FACT

1. Transfer no. 3768 proposed a change in the point of diversion and place of use for water right no. 43-02409. Water right no. 43-02409 is a license which authorizes diversion of 6.40 cfs from groundwater for the irrigation of 320 acres.

2. Groundwater diverted pursuant to license no. 43-02409 was developed in conjunction with Desert Land Entry (DLE) application no. I-5070. The DLE application was filed with BLM on April 23, 1954.

3. Application for permit to appropriate water right no. 43-02409 filed by Phoebe Biggers (Biggers), was approved by the Department of Water Resources on April 27, 1954, and amended on May 21, 1954. The amended permit authorized diversion of 6.40 cfs of water for irrigation of 320 acres in the S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, Section 33, and the S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, Section 34, T13S, R27E, B.M. The place of use described by the amended permit is the same land that was sought for DLE classification.

4. The place of use identified above is federal land surveyed by the Department of Interior in 1872 and 1873, and resurveyed in 1947.

5. On July 23, 1963, the lands covered by the DLE and water permit no. 43-02409 were included within the Raft River Critical Ground Water Area.

6. In 1964, BLM granted Biggers the right to enter the place of use for water right permit no. 43-02409 and the Department extended the time for filing of proof of beneficial use until October 15, 1969. In 1966, prior to filing of proof of beneficial use with the Department, Biggers assigned the approved DLE no. I-5070 to Betty Bishop (Bishop). Willard and Katherine Yates leased the DLE land from Bishop in October, 1967. Bishop filed final proof of development with BLM in 1968. In 1969, Biggers assigned her interest in water right permit no. 43-02409 to Bishop. The Department approved applications for extension of time filed by Bishop in 1969, 1971, and 1972.

7. In 1970, the federal government filed a complaint against DLE entry no. I-5070, alleging that the entry was not made and maintained in good faith and that the original entryman had not intended to reclaim the land for her own use and benefit. An administrative hearing officer, Judge Dalby, determined in October, 1972, that, prior to the 1964 allowance of entry to Biggers, she had abandoned the entry and any intent to reclaim the land.

8. In the original decision by Judge Dalby, he details some of the history surrounding the development of the well on the property:

The Biggers applied for and were issued special land use permits for the period from June 10, 1963 to June 10, 1964, which contained stipulations that failure to discover sufficient quantity of water by the expiration date would result in the rejection of the Desert Land applications.

Clarence D. Bishop, a well driller residing in Burley, Idaho, drilled three wells to service the entries in May, 1964.

On June 3, 1964, Mr. Thomas H. Church filed an amended application for Phoebe Biggers which included the 40 acre subdivision on which one well had been drilled. Dennis Biggers' entry was allowed on June 26, 1964, and Phoebe Biggers' on October 15, 1964. In July and August of 1965 annual proofs were submitted on behalf of the Biggers by Mr. Church. The annual proofs showed expenditures of \$22,800 for drilling wells and \$1,000 for clearing brush on the two entries.

Pursuant to arrangements made by Clarence Bishop, the Biggers quitclaimed the entries on April 11, 1966, to Chester Bishop, Clarence's nephew, and Betty Bishop, Chester's wife. Clarence Bishop paid the Biggers \$1,000 for their entries. In September, 1966, Chester and Betty Bishop executed a promissory note to Clarence Bishop for \$43,200 secured by a mortgage on the entries. The note was ostensibly given to evidence Chester and Betty Bishop's obligation to pay Clarence Bishop for the development work previously performed on the entries.

9. A hand written letter written by Phoebe Biggers, contained in the Department files, dated April 24, 1969, explains the reason why the desert land entry was assigned to Bishop:

About 15 years ago Phoebe Biggers and D D Biggers filed on some land near Malta Ida[.] . . . Cattlemen brought suit that government had classified land wrong but after many suits had used up our capital we were told we could go on the land but had to relinquish the land to Clarence Bishop of Burley Idaho. Of course the water permits which we got from you went with the land.

10. The lengthy litigation alleged by Phoebe Biggers was confirmed by the 1973 decision of Judge Dalby:

Dennis B. Biggers and his wife, Phoebe F. Biggers, filed applications on April 23, 1954 for Desert Land entries . . .

Protests were entered to classification for entry of the land covered by the . . . applications. The matter was in litigation for an extended period, but in March, 1963, the lands were favorably classified.

11. At the time Biggers filed their application to appropriate water in 1954, and the application was approved as a permit, there was no evidence that Biggers lacked intent to develop the water as proposed.

12. Betty Bishop appealed the decision of the hearing officer to the Interior Board of Land Appeals (IBLA). The IBLA stated in its December 10, 1973, appellate decision regarding the Biggers' entry:

An entryman must have the requisite good faith intention to reclaim the land for his own use and benefit at the time the entry is allowed. (Citations omitted). If it is later discovered that an entryman did not have the requisite intention to reclaim the land, the entry is subject to cancellation for "illegal inception" pursuant to 43 U.S.C. 329 (1970), which reads in pertinent part:

Provided however * * * the claims or entries * * * shall be subject to contest, as provided by the law, relating to homestead cases, for illegal inception, abandonment, or failure to comply with the requirements of law * * *.

Judge Dalby, having found that the entrymen, prior to allowance, had abandoned the entries and any intent to reclaim the land, held the entries canceled. His decision contains a complete and accurate statement of the facts and law pertinent to this case. The Board finds itself in complete agreement with his decision . . .

13. Bishop represented in her 1972 application for extension of time for filing proof of beneficial use with the Department of Water Resources, that the Desert Land Entry had been contested. Proof of beneficial use was submitted by Bishop on October 15, 1973, after the original BLM decision which declared her DLE approval canceled. Bishop did not inform the Department at the time proof of beneficial use was filed that BLM had declared her DLE entry canceled.

14. After the decision by the Department of Interior Board of Land Appeals, BLM notified Chester and Betty Bishop in February, 1974, they must remove their improvements from the property and stated Bishops were no longer entitled to farm the lands, possess the lands, or occupy the lands. Between 1974 and 1976, BLM did not actively pursue eviction of anyone who might be using the land. Yates farmed the land without authorization between 1974 and 1976. BLM issued a trespass notice to Yates in December 1976. Yates negotiated a \$10,000 settlement with BLM to pay for the trespass. Yates leased the property from BLM, and continued to farm the property until 1987.

15. The Department issued license no. 43-02409 to Bishop on April 29, 1975.

16. In May, 1977, the Department received correspondence from BLM stating that the DLE entry no. I-5070 had been canceled on December 10, 1973, by the Secretary of the Interior, and asking the Department to change ownership of license no. 43-02409. The Department responded by letter as follows:

The Department has no procedure for changing the records of ownership on a water right license. These rights are considered to be appurtenant to the land to which they are licensed and are owned by the owner of that land.

17. Betty Bishop assigned her interest in license no. 43-02409 to Clarence D. Bishop on July 9, 1990, and Clarence D. Bishop assigned his interest in license no. 43-02409 to Nathan F. Gardiner. Gardiner bases his claimed ownership of license no. 43-02409 on the assignment from Clarence D. Bishop.

18. BLM originally objected to the alleged ownership of the water right by Nathan Gardiner and claimed ownership to itself.

19. At the hearing, BLM witnesses testified neither Phoebe Biggers nor Betty Bishop were trespassers on the land.

20. After issuance of the Final Memorandum Decision and Order on August 28, 1992, BLM and Gardiner exchanged quitclaim deeds, each granting to the other one-half interest in license no. 43-02409.

CONCLUSIONS OF LAW

1. In considering an application to appropriate water, the Department must determine whether the application is filed in good faith, or is filed for purposes of delay or speculation.

2. The filing of an application to appropriate water with the intent to establish a priority date, and prevent other prospective users from appropriating water, with no accompanying intent to develop the water at the time of filing is speculation, and filed for delay.

3. A person who files an application to appropriate water, and concurrently files an entry application with the federal government with the intent to assign the entry, or attempts to circumvent the federal entry law, files the water right in bad faith, and the application is speculative.

4. An application, even if approved as a permit or license, is void from the time it is filed if, at the time of the filing, the applicant was acting in bad faith or was speculating without any intent to develop the permit.

5. The DLE entry was cancelled because it was "illegal from its inception." Some case law could be interpreted to hold that the entry is viewed as if there was never permission for the entrymen, their successors, assignees or agents to be on federal land, Byron v. U.S., 259 F. 371, 376 (9th Cir. 1919); as if the patents and entries had never existed, Bradford v. U.S., 222 F. 258, 259 (5th Cir. 1915); and as between the United States and

their assignees, successors or agents might be viewed as trespassers on the surveyed public domain. See U.S. v. West, 232 F.2d 694, 699 (9th Cir. 1956).

6. In Idaho, a water right cannot be developed in trespass. Lemmon v. Hardy, 95 Idaho 778, 780, 519 P.2d 1168 (1974).

7. While the decision by BLM merits consideration, it does not bind the Department. The Department must determine the intent of the entryman between the time the application was filed and the time the permit was approved.

8. The filing of an application to appropriate water, where there is intent to develop the property, even if there is an accompanying intent to market the water or property after development, is not considered speculation.

9. In this case, although the BLM held that the DLE entry was illegal from its inception, the Department of Water Resources does not have similar information to show that the applicant, Phoebe Biggers, filed the application for permit to appropriate water for purposes of delay or speculation. Furthermore, there is no evidence of bad faith in filing the water right on the part of Phoebe Biggers. It appears that after the assignment, Betty Bishop also diligently attempted to perfect the water right, even though Yates was the actual farmer on the property.

10. There is no evidence in the record other than the decisions of the BLM which canceled the DLE entry, that Biggers, Bishop or Yates, the farmer of the land at the time of cancellation of the DLE entry, were trespassers prior to the final decision of the BLM. In fact, BLM witnesses testified that Biggers and Bishop were not trespassers. Yates was only found to be trespassing on the land following the issuance of the final decision rejecting the DLE entry.

11. Biggers, Bishop and Yates were all farming the property pursuant to an entry approval until the final decision by the IBLA. A water right could be perfected during the entry approval period.

12. Furthermore, a license was issued to Betty Bishop. A water right license is prima facia evidence of the existence of a

water right, and will not be revoked unless evidence is presented to show the non existence of the right.

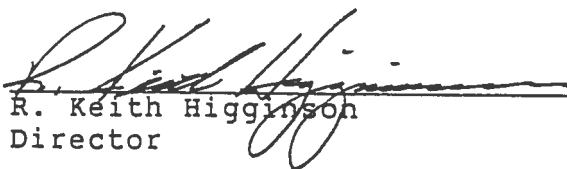
13. Water right license no. 43-02409 is valid in the records of the Department of Water Resources.

14. Because the parties have exchanged quitclaim deeds, and have agreed to share the water right, ownership of the water right as between the parties is no longer an issue.

ORDER

IT IS HEREBY ORDERED that these Findings of Fact and Conclusions of Law be entered in the records of the Department for water right no. 43-02409 and that the file reflect the ownership of the right by Nathan F. Gardiner and the U. S. Bureau of Land Management as evidenced by the quit claim deeds.

Dated this 28TH day of October, 1993.

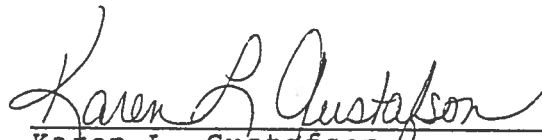

R. Keith Higginson
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of November, 1993, I mailed a true and correct copy of the foregoing Final Memorandum Decision and Order, postage prepaid, to the following:

Nathan Gardiner
HC 72 Box 2038
Malta, ID 83342

Jack Hockberger
U. S. Dept of Interior
Box 020
Boise, ID 83724



Karen L. Gustafson
Senior Secretary

Water Supply Bank No.

Waterbury
DISTRICT OFFICE
BURLEY, IDAHO

RECEIVED

MAY 18 1989

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE
WATER SUPPLY BANK

RGES1 0 15 AM '89

RECE

AUG 10

Department of Water Resources

Name of Seller/Lessor Bureau of Land Management Phone (208) 678-5514

Phone (208) 678-5514

Post office address Route 3, Box 1, Burley, ID 83318

Department of W

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
(Name)

In case of _____ vs _____

dated _____ in _____ county of _____
(Name of court)

- b. License No. 43-2409 issued by the Idaho Department of Water Resources

- C. Permit No. _____ issued by the Idaho Department of Water Resources

2. Source of water Groundwater tributary to _____

3. Date of priority 04/23/54

4. Water is used for the following purposes:

- amount 6.4 cfs for irrigation purposes from 03/15 to 11/15

- amount _____ for _____ purposes from _____ to _____

- amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

5. Total amount of water under right: a. 6.4 cubic feet per second
b. 1280 acre feet per annum

6. Location of point of diversion is SE 1/4 of NW 1/4 of Section 34

- Township 13S Range 27E B.M. in Cassia Co.

- Additional points of diversion, if any _____ none

7. Lands irrigated or place of use:

[illegible]

Total number of acres to be irrigated _____

B. DESCRIPTION OF PORTION OF RIGHT FOR SALE OR LEASE (If the entire right is for sale or lease, omit part B.)

1. Amount of water: a. 6.4 cubic feet per second &/or
b. 1280 acre feet per annum
2. Point of diversion SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 34 Township 13S
Range 27E, B.M., Cassia County
3. Additional points none

3. Place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
13S	27E	33			40	40									40	40			160
		34						40	40	40	40								160

Total number of acres to be irrigated 320

C. ADDITIONAL INFORMATION ABOUT RIGHT, OR PORTION THEREOF, FOR SALE OR LEASE

1. Explain how the right, or portion thereof, was acquired and attach a copy of the deed to the land to which it is appurtenant or other evidence of ownership of the right.

The well was developed as part of a Desert Land Entry in the early 1950s. Development was done fraudulently and the property ownership reverted to the BLM.

2. Describe the frequency of water use under the right, or portion thereof, during the past 5 years. Attach watermaster records, pumping power bills, or other evidence to demonstrate that the right has not been lost through abandonment or forfeiture.

This well was last used in the summer of 1984 for irrigation of 320 acres. See attached Raft River Electric bills for verification.

3. Describe the relative availability of water to fill the right, or portion thereof. Attach evidence to support this description:

Although this right is within a critical groundwater basin, the aquifer still has a relatively available supply. We have no evidence of water availability in the basin beyond this well's past dependable performance.

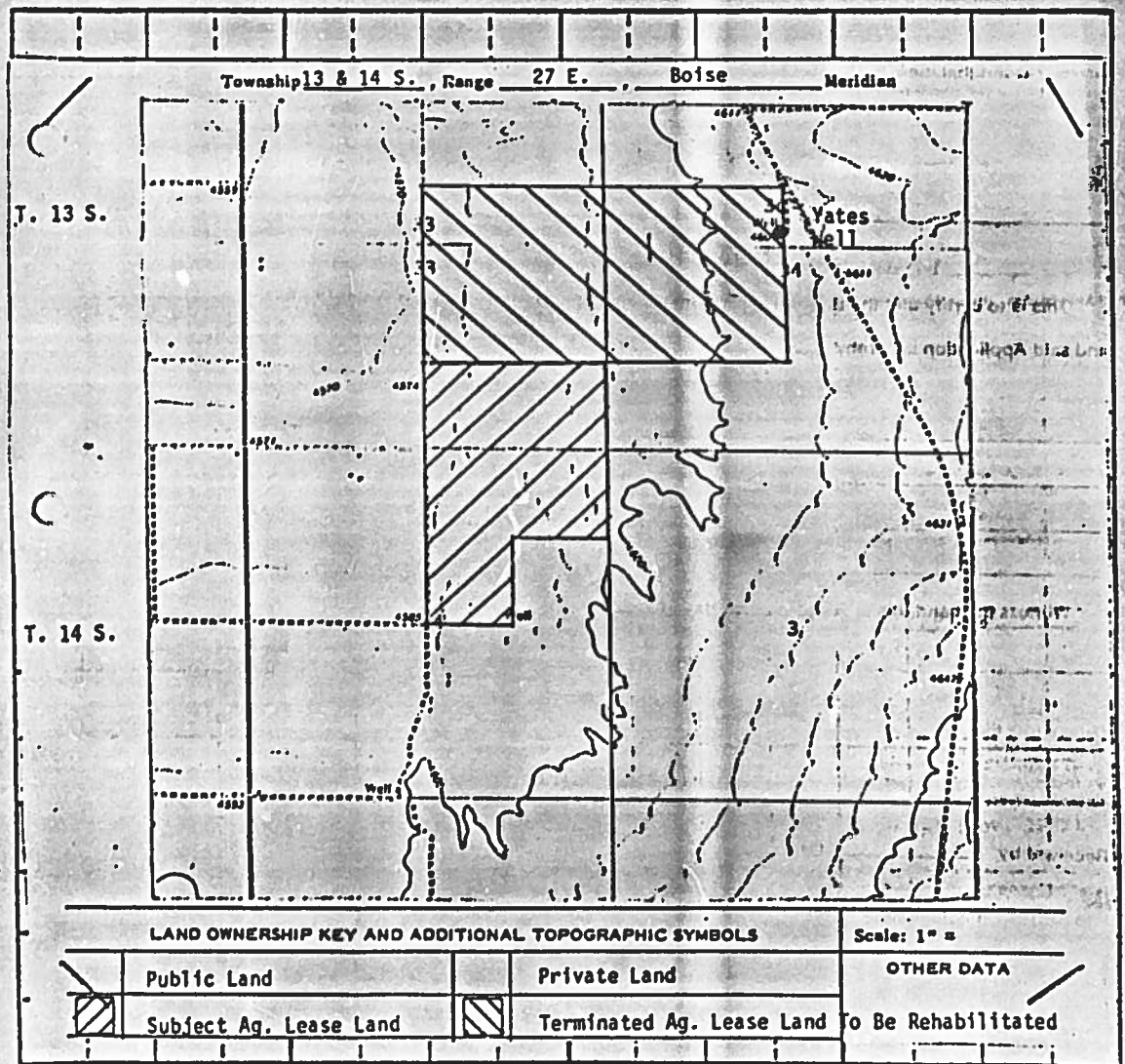
4. Describe any other water rights with the same purpose and place of use as the right, or portion thereof. Will the present place of use no longer receive water from any source?

There are no other water rights associated with this source or the points of use.

5. Describe the anticipated effect of this sale or lease upon other water users.

Impacts to other water users within the basin would depend on the new points of diversion and use. Analysis at this point is conjecture, but a proposed transfer of license should be thoughtfully evaluated by IDWR.

6. List any assessments, charges or fees currently being paid for the use of the water. None.
7. If the water right is a permit, describe the work accomplished toward developing the right. N/A
8. If the right to the use of the water or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district, a written consent of the sale or lease must be attached. N/A
9. Draw a map indicating the point(s) of diversion and place of use of the right, or portion thereof. Show clearly the land involved by section, township and range.



SCALE: 2 inches equal 1 mile. Draw plan in ink.

10. Remarks The Bureau wants to preserve this water right and offer it for use.

All offers to lease should be considered, but a decision to sell will not be made until
a period after the year 2000.

D. SALE/LEASE AGREEMENT

1. The water right, or portion thereof, described above is offered to the Idaho Water Resource Board:

 For sale

XX For lease for the period from 9/1/89 to 11/15/1991

 As a gift to the State of Idaho.

2. The minimum payment acceptable to the Seller/Lessor is: (Include the method of determining the minimum payment)

Minimum acceptable lease fee = \$2.00/Acft/year. Minimum sale price will be dictated
by the market after the year 2000.

3. Payment contingent on subsequent sale or leasing of this right, or portion thereof, is:

XX Acceptable Not Acceptable

I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer the sale or lease of this right to the Idaho Water Resource Board.

8/9/89
(Date)

Pat S. Milbank
(Signature of applicant)

ACTION OF THE WATER RESOURCE BOARD

This is to certify that the Board has reviewed Application to Sell or Lease a Water Right No.

and said Application is hereby

Witness my hand this day of , 19

FOR DEPARTMENT USE ONLY

Received by Date Prelim. check by

Watermaster recommendation requested on rec'd.

Recommended for approval denial by

DEPARTMENT OF WATER ADMINISTRATION
FIELD REPORT

RECEIVED

1. Name of permit holder Betty L. Bishop

Post office address 1203 Sears Dr. Ontario, Oregon 97914 Phone

Person to contact _____ Phone _____

2. Source of water supply: Groundwater ☒ Surface water ☐ _____
(name spring, stream, etc.)

3. Water will be used for the following purposes:

Amount **6.4** c.f.s. for **irrigation**
AF/Annum (nature of use)

Period of Use: from Mar. 15 to Nov. 15
(mo -day) inclusive (mo -day)

Amount 6.4 c.f.s. for domestic AF/Annum (nature of use)

Period of Use from **Jan. 1** to **Dec. 31**
(mo.-day) inclusive (mo.-day)

Amount		
	c f s for	
	AF/Annum	(nature of use)

Period of Use: from _____ to _____
(mo. day) inclusive (mo. day)

Other uses: _____

4. Total amount to be appropriated:

Max Rate of Diversion 6.4 cubic feet per second and annual volume AF/Annum

5. Location of Point(s) of Diversion:

Township 13S N/S, Range 27E E/W, B.M., Section 34, Subdivision SE $\frac{1}{4}$ NE $\frac{1}{4}$, Cassia
County

Township _____ N/S, Range _____ E/W, B.M., Section _____ Subdivision $\frac{1}{4}$ $\frac{1}{4}$ County _____

Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____, County _____

County

Other Points of Diversions:

Description of diverting works: 800' deep, 20" casing, 12" column, 250 hp motor.

Measuring device required: yes ☐ no ☒

6 Lands to be irrigated or place of use.

[illegible]

TOTAL ACREAGE 320

Rge - 27E

T
13
S

3	3	40	40	40	40	3	4
		40	40	40	40		

Diagram of System

DATE OF EXAM

9-25-74

ACREAGE

Found

Recommended

320
220

Irrigation Requirement

4.0

Ac Ft/Ac

USE

Irrigation Q = 6.4 c.f.s.
Domestic Q = c.f.s.
Livestock Q = c.f.s.V = 1280
V =
V =AF/Ann. from
AF/Ann. from
AF/Ann. fromMarch: 15 to Nov: 15
to
toIs water co-mingled? yes no ☒Name source
twp

N/S, Rge

E/W, B.M., Sec.

Sub

1/4

1/4

County

Exchange? yes no ☒Name source exchanged with
twp

N/S, Rge

E/W, B.M., Sec.

Sub

1/4

1/4

County

Point of injection:
twp

N/S, Rge

E/W, B.M., Sec.

Sub

1/4

1/4

County

Point of exchange:
twp

N/S, Rge

E/W, B.M., Sec.

Sub

1/4

1/4

County

Total Q measured 6.57 c.f.s.

Method of measurement

Badge Meter

Total Q recommended 6.4 c.f.s. Meter No M0559790 Type NEW Condition New

Total V recommended 1280 ACFT/ANN

Recommended Amendments:

P.D.

Pick of Use

Other

None

ANN 6LF

SE NW Sec. 34 T13S-R34E

MEASUREMENT CALCULATION:

Q = 6.4 c.f.s. Amount Applied for.

V = 1280 ACFT/ANN.

SYSTEM DESCRIPTION

Hollow shaft Motor 250 HP. # 11413972
Verti-line Pump I.B. D18522

REMARKS

No Domestic use. Only Irrigation

Examiner's Signature

Larry J. Jundt

Checked by

Bob Kump

Approved by

Date

9-26-74

Date

10-28-74

Date

6/9/94

COMMUNICATION DOCUMENTATION

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Kelly K Christensen

DATE

February 13, 1996 3:21pm

CUSTOMER

STEVE DAVIS

SUBJECT: RIGHTS APPURTENANT TO TNS 13S; RNG 25E; SEC 11; ?¼?¼ AND SEC 14; ?¼?¼ B.M.

phone call (X) walk-in (.)

I repeated the AJQ5 and WRQ5 searches on the above legals and found no appurtenant rights within the legals given.

He then asked for the status of 43-02409B. The computer records show it being split with NO following rights. I checked the file and it appears that it should not have been split. I tried to refer it to the SO but have to wait for a return call.

WARNING

THE DESERT LAND ENTRY FOR THIS PERMIT HAS BEEN CANCELLED
License

05069
 (Serial No. 1)

Depute Land Application, 10/24/31, Sec. 7
 (Name and address)
 Dennis D. Rogers
 413 Main Ave. S.E.
 Twin Falls, Idaho

1265 Sec. 40
 Contain Sec. 1114
 (Description of land)

T. 13 S., R. 27 E., S. 22 E., Idaho
 Sec. 33 - 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

T. 14 S., R. 27 E., S. 22 E., Idaho
 Sec. 4 - 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

Chase Co.
 233 35
 232 acres

DATE	ACTION TAKEN
April 23, 1951	Application filed in duplicate. Amount \$761.32 - \$250.00 - 1st. payment of 1/5. 60 of SR to RA, DRI & DP.
5-21-54	Amended application filed.
AUG 17 1956	NOTIFIED OF PL 834; TO 5347. 715
6-17-57	Protest to Classif. filed by range manager. minutes decision dated 11-13-62 approved the managers proposed agricultural classification.
11-13-62	
6-26-64	Answered.
7-14-65	Annual proof acceptable for 3 years.
6-7-66	Assignment to Chester J. Bishop approved.
4-30-68	Proof for June 26, 1968 @ 7:00 a.m.
8-15-68	Final proof filed.
8-12-70	CONTEST FILE TO HEARINGS EXAMINER
5-17-71	Hearing scheduled 7-14-71, 9 a.m., District Courtroom, Burley, Idaho.
7-6-71	Hearing rescheduled, 9/27/71, 9 a.m., District Courtroom, Burley, Idaho.

DATE	ACTION TAKEN
July 12, 1971	I-05069 Place of hearing changed to convene in Room No. 1, Extension Service Conference Room of the District Courthouse, Burley, Ida., 9/27/71 at 9:00 a.m.
10/17/1972	<i>Entry cancelled by Hearing Examiner's decision of October 12, 1972.</i>
3-24-77	ENTRY CANCELLED PURSUANT TO 14 IRLA 62 (12-10-73) FOR REASON OF BAD FAITH & ENTRYMAN'S ASSIGNOR HAD, PRIOR TO ALLOWANCE OF ENTRY, ABANDONED ALL INTENT TO RECOVER THE ENTRY FOR HIS OWN USE & BENEFIT. (Removed from Statute records 3/25/77, 8am) WN



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

District Office

Route #3, Box 1

Burley, ID 83318

RECEIVED

Department of Water Resources

May 24, 1977

Department of Water Resources
State Office
373 W. Franklin
Boise, Idaho 83702

Attention: Mr. Bob Fleenor

Dear Mr. Fleenor:

This is to inform you that the Chester I. and Betty L. Bishop Dese Land Entries which have Water Right License Nos. 24882/43-2408 and 24883/43-2409 tied to the land were canceled on December 10, 1977 by decision of the Secretary of the Interior. At that time the land was converted back to the Bureau of Land Management.

As discussed with you in our telephone conversation of May 18, 1977 you stated that a water right license stays with the person who owns the land. We now request that the above-referenced licenses be reissued to the Bureau of Land Management, Burley District Office, Burley, Idaho 83318.

We wish to thank you for your assistance in this matter.

Sincerely yours,

Nick James Cozakos
Nick James Cozakos
District Manager



June 6, 1977

Re: Permit No's. 43-2408 and 43-2409

Nick James Cozakos
District Manager, BLM
Route 3, Box 1
Burley, Idaho 83318

Dear Mr. Cozakos:

We acknowledge receipt of your letter asking that the above referenced licensed permits be assigned to the Bureau of Land Management. The Department has no procedure for changing the records of ownership on a water right license. These rights are considered to be appurtenant to the land to which they are licensed and are owned by the owner of that land.

We will, however, keep your letter in the files for future reference to present ownership.

Sincerely,

BOBBY D. FLEENOR
Chief, Operations Bureau

BDF:JFR

WR5811NP
SELECTION FILE: JR-STAGE-W

IDAHO DEPARTMENT OF WATER RESOURCES
SELECTION FILE CONTENTS

DATE: 04/06/99
TIME: 14:50:13
PAGE: 1

02-02267	02-02339	02-07065C	02-07065D	37-02165C	43-024098	43-04037	43-07126	77-04207	77-04208
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TOTAL RECORDS IN SELECTION FILE: 10

W = Water Bank

SD-0607-2 Basin: 43 Starting Water Right: 02409		STATE	
S	O		
E	W		
L	N		
Water	Priority	STG/	Use
Right No.	Date	STS	Code Desc
		Source	
43-02409	00/00/0000	/Z	
43-02409A	04/23/1954	L/	GROUNDWATER 01 IRR
43-02409B	00/00/0000	/Z	
43-02409E	04/23/1954	L/	GROUNDWATER 01 IRR
43-02409F	04/23/1954	L/	GROUNDWATER 01 IRR
			16 WILDLI
			17 WILD S
43-02410	06/15/1954	L/	GROUNDWATER 01 IRR
			04 STOCK
43-02411	08/11/1954	L/	GROUNDWATER 01 IRR
43-02412	08/30/1965	L/	GROUNDWATER 01 IRR
43-02413	09/21/1954	L/	GROUNDWATER 01 IRR
			43 DOMEST
43-02414	12/08/1954	L/	GROUNDWATER 01 IRR
43-02415	01/20/1955	L/	GROUNDWATER 01 IRR

(Enter=Continue)

(GOLD 7=This Query)

(Menu)

03/27/2001

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

WATER RIGHT NO. 43-2409B

Owner Type Name and Address
Current Owner US DEPT OF INTERIOR
 BUREAU OF LAND MANAGEMENT
 3380 AMERICANA TERRACE
 BOISE, ID 83706

Original Owner PHEBE F BIGGERS

Priority Date: 04/23/1954
Basis: License
Status: Active

Source Tributary to
GROUND WATER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>	<u>Subuse Code</u>
IRRIGATION	3/15	11/15	3.12 CFS	580 AFA	
Total Diversion			3.12 CFS	580 AFA	

Location of Point(s) of Diversion:

GROUND WATER SENW Sec. 34 Township 13S Range 27E CASSIA County

IRRIGATION Use:
Acre Limit: 145

Place(s) of use:

Place of Use Legal Description: IRRIGATION CASSIA County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
13S	27E	34		SWNW	40		SESW	25						
				NESW	40		NWSW	40						

Total Acres: 145

Remarks:

1. General DLE CANCELLED.
 This right has been placed in the water supply bank.

Comments:

<u>Author</u>	<u>Date</u>	<u>Subject</u>	<u>Comment</u>
BALDWIN	4/3/91	Trans. #3768 (protested)	Trans. #3768 (protested)
CURTIS	9/23/92	Water Supply Bank	This right has been conditionally accepted into the Water Supply Bank but has not been rented since the validity of the right is questionable. A decision issued in August, 1992 found the right lost. See Final Order Comment (11-08-93 Skaggs)
SKAGGS	11/8/93	FINAL ORDER RIGHT NO. 43-02409	Final Order dated 10-28-93 states that Right No. 43-02409 reflect the ownership of the right by Nathan F. Gardiner and the U.S. Bureau of Land Management as evidenced by the quit claim deeds submitted

Water Right 43-2409B

PSKAGGS 8/10/94 RESOLUTION RIGHT
NO. 43-02409B

and retained in the file. The deeds split the right evenly into parts A and B. The entire right was accepted into the Water Supply Bank by Resolution signed 09-15-89 prior to the splitting of the right, therefore both portions of the right are held in the Water Supply Bank.

The Bureau of Land Management made a request to remove a portion of Right No. 43-02409B from storage for development of a wildlife area, changing the nature of use and splitting the right into parts E and F. Approval was made by Resolution.

Dates:

Licensed Date: 06/28/1979
Decreed Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Water Supply Bank Enrollment Date Accepted: 09/15/1989
Water Supply Bank Enrollment Date Removed:
Application Received Date:
Protest Deadline Date:
Number of Protests: 0

Other Information:

Receipt Number(s):
State or Federal:
Owner Name Connector:
Water District Number:
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Civil Case Number:
Old Case Number:
Decree Plaintiff:
Decree Defendant:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Claim Report

04/06/2001

There is no claim right ID for water right number 43-2409C

04/06/2001

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

WATER RIGHT NO. 43-2409C

Owner Type Name and Address
Current Owner US DEPT OF INTERIOR
 BUREAU OF LAND MANAGEMENT
 3380 AMERICANA TERRACE
 BOISE, ID 83706

Original Owner PHEBE F BIGGERS

Priority Date: 04/23/1954
Basis: License
Status: Active

Source Tributary to
GROUND WATER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>	<u>Subuse Code</u>
IRRIGATION	4/01	10/31	0.08 CFS	32 AFA	
WILDLIFE	1/01	12/31	0.08 CFS	23.4 AFA	
WILDLIFE STORAGE	1/01	12/31		3 AFA	
Total Diversion			0.08 CFS	58.4 AFA	

Location of Point(s) of Diversion:

GROUND WATER SENW Sec. 34 Township 13S Range 27E CASSIA County

IRRIGATION Use:
Acre Limit: 8

Place(s) of use:

Place of Use Legal Description: IRRIGATION CASSIA County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
13S	27E	34		SENW	8									

Place of Use Legal Description: WILDLIFE same as IRRIGATION

Total Acres: 8

Conditions of Approval:

- R31 This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for irrigation of the lands above.

Comments:

<u>Author</u>	<u>Date</u>	<u>Subject</u>	<u>Comment</u>
BALDWIN	4/3/91	Trans. #3768 (protested)	Trans. #3768 (protested)
CURTIS	9/23/92	Water Supply Bank	This right has been conditionally accepted into the Water Supply Bank but has not been rented since the
Water Right 43-2409C			

SKAGGS	11/8/93	FINAL ORDER RIGHT NO. 43-02409	validity of the right is questionable. A decision issued in August, 1992 found the right lost. See Final Order Comment (11-08-93 Skaggs) Final Order dated 10-28-93 states that Right No. 43-02409 reflect the ownership of the right by Nathan F. Gardiner and the U.S. Bureau of Land Management as evidenced by the quit claim deeds submitted and retained in the file. The deeds split the right evenly into parts A and B. The entire right was accepted into the Water Supply Bank by Resolution signed 09-15-89 prior to the splitting of the right, therefore both portions of the right are held in the Water Supply Bank.
PSKAGGS	8/10/94	RESOLUTION RIGHT NO. 43-02409B	The Bureau of Land Management made a request to remove a portion of Right No. 43-02409B from storage for development of a wildlife area, changing the nature of use and splitting the right into parts E and F. Approval was made by Resolution.

Dates:

Licensed Date: 06/28/1979

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

Receipt Number(s):

State or Federal:

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Water Right Number - 43-02409F

Prefix Translation: WATER RIGHT

Old (D) Number - 24883

----- Last Name ----- + - First Name - - - + ----- Address ----- +

*** C - CURRENT OWNER ***
US DEPT OF INTERIOR

1 - BUREAU OF LAND MANAGEMENT
2 - 3380 AMERICANA TERRACE
3 -
City- BOISE
Phone - 208-000-0000
State- ID Zip- 83706

*** O - ORIGINAL OWNER ***
BIGGERS

PHEBE F
1 -
2 -
3 -
City-
Phone - 208-000-0000
State- ID Zip-

----- Priority Date ----- + ----- Region ----- + ----- Stage ----- + ----- Status ----- +
04/23/1954 17 SOUTHERN L - LICENSE

----- Source ----- + ----- Tributary ----- +
GROUNDWATER

----- Twm Rng Sec Tract Lot RFlg County ----- Point of Diversion ----- Diversion Name ----- Diversion Rate ----- Diversion No.
13S 27E 34 SE NW (31) CASSIA

Code	Description	Period From	Period To	Water Use	Diversion Rate	Diversion Volume
01 - IRRIGATION		04/01	10/31		0.080	32.00
16 - WILDLIFE		01/01	12/31		0.080	23.40
17 - WILDLIFE STORAGE		01/01	12/31			3.00

----- Total Div. Rate ----- + ----- Total Div. Volume ----- + ----- Total Div. Capacity ----- +
0.080 58.40

Twm	Rng	Sec	Tract	Lot	Acres	Code	Description	County
13S	27E	34	SE NW		8.0	01	IRRIGATION	(31) CASSIA
					Total Acres:	8.0		

----- Diversion Means -----

----- Non-Irrigation Use -----

----- Other Rights for Same Use -----

----- Remarks -----
No Remarks found.

Water right number - 43-02409F

Prefix Translation: WATER RIGHT

+ - - - - Old Water Right Numbers - - - - -

+ - - - - Old Water Right Numbers - - - - -
No Old Water Right Numbers found.

+ - - - - Conditions of Approval - - - - -
R31 - This right when combined with all other rights shall provide no
- more than .02 cfs per acre nor more than 4.0 afa per acre for the
- lands above.

+ - - - - Decree Plaintiff - - - + - - - - Decree Defendant - - - + - - - - Decree Date - - +
00/00/0000

+ - - - - Comments - - - - -

Date: 04/03/1991 User Id: BALDWIN Subject: Trans. #3768 (protected)
Date: 09/23/1992 User Id: CURTIS Subject: Water Supply Bank
This right has been conditionally accepted into the Water Supply Bank but has not been rented since the validity of the right is
questionable. A decision issued in August, 1992 found the right lost.

See Final Order Comment (11-08-93 Skaggs)
Date: 11/08/1993 User Id: SKAGGS Subject: FINAL ORDER RIGHT NO. 43-02409
Final Order dated 10-28-93 states that Right No. 43-02409 reflect the ownership of the right by Nathan F. Gardiner and the U.S.
Bureau of Land Management as evidenced by the quit claim deeds submitted and retained in the file. The deeds split the right
evenly into parts A and B. The entire right was accepted into the Water Supply Bank by
Resolution signed 09-15-89 prior to the splitting of the right, therefore both portions of the right are held in the Water Supply
Bank.

Date: 08/10/1994 User Id: PSKAGGS Subject: RESOLUTION RIGHT NO. 43-024098
The Bureau of Land Management made a request to remove a portion of Right No. 43-024098 from storage for development of a wildlife
area, changing the nature of use and splitting the right into parts E and F. Approval was made by Resolution.

+ - - Audit Fields - 08/10/94

+ - - - - 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	Protested Date	- 00/00/0000	Swan Falls	-
Proof Made Date	- 00/00/0000	Hearing Date	- 00/00/0000	Temporary Right	- P
Exam to S.O. Date	- 00/00/0000	Verified Date	- 00/00/0000	DLE/Carey Act	-
Order Show Cause	- 00/00/0000	Receipt Number	-	Water District	-
Licensed Date	- 06/28/1979	Appl Received	- 00/00/0000	Transfer/Amended	-
Decree Date	- 00/00/0000	Name Connector	-	POU Ownership Flag	-
Presumption Flag	-				