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WATER RESOURCES
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OFFICE OF THE
ATTORNEY GENERAL

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

In Re SRBA

A: Subcase A51-10207

(Insert water right number)

Case No. 39576

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B: NAME AND ADDRESS OF PERSON OBJECTING

Name: Susan G. Robertson Pres. TRI-VIAL INC.

Address: HC 85 Box 139E

Bruneau, Id. 83604

Daytime Phone: 208-845-2106

Name & Address of Attorney, if any:

Susan Wildwood

P.O. Box 372

Star, Id. 83669

C: CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: TRI-VIAL INC.

Address: HC 85 Box 139E

Bruneau, Id. 83604

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ Name and Address
Should be: _____
2. ☐ Source
Should be: _____
3. ☐ Quantity
Should be: .180 C.F.S.
4. ☐ Priority Date
Should be: _____
5. ☐ Point(s) of Diversion
Should be: T06S R04E S25 SWNWSE Owyhee County
6. ☐ Instream Flow Description
Should be: _____
7. ☐ Purpose(s) of Use
Should be: _____
8. ☐ Period of Year
Should be: _____
9. ☐ Place of Use
Should be: Same for Stockwater and Domestic
T06S R04E S25 Owyhee County

11. I object because:

- ☐ This water right should not exist.
- ☒ This water right ~~was not recommended but~~ should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): Water right has been changed
From original and was not authorized by the owner TRI-VIAL INC.

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. FAX filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on Jan 12, 1999, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: TRI-VIAL INC.
Address: HC 85 Box 139E
Bruneau, Id. 83604

3. Copies to:

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

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Susan E. Robertson
Signature of Objector or attorney
mailing on Objector's behalf
Pres. Tri-Vial Inc.

F.

VERIFICATION (Must be Completed)

State of Idaho)
)ss.
County of Owyhee)

TRI-VIAL INC.

Susan G. Robertson Pres., duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Susan G. Robertson
(Signature of person filing objection)
Pres. TRI-VIAL INC.

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: 1/11/99

[Signature]
Notary Public for Blaine City, Blaine County
Residing at: Blaine, ID
My Commission Expires: 1/13/2002



Appropriation of water as creating right to continue a method or means of diversion as against subsequent appropriators. 121 A.L.R. 1044.

Divisibility of easement in gross or license in respect to water. 130 A.L.R. 1253.

42-104. Appropriation must be for beneficial purpose. — The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such purpose, the right ceases. [R.S., § 3156; 1899, p. 380, § 3; reen. R.C. & C.L., § 3243; C.S., § 5559; I.C.A., § 41-104.]

Cited in: *Marshall v. Niagara Springs Orchard Co.*, 22 Idaho 144, 125 P. 208 (1912); *Village of Peck v. Denison*, 92 Idaho 747, 450 P.2d 310 (1969); *Stevenson v. Steele*, 93 Idaho 4, 453 P.2d 819 (1969).

ANALYSIS

Time allowed appropriator to use water.
Use by junior appropriators.
Waste irrigation water.

Time Allowed Appropriator To Use Water.

Appropriator of water for irrigation purposes, after conducting water to point of intended use, had a reasonable length of time to apply it to such intended use. *Hall v. Blackman*, 8 Idaho 272, 68 P. 19 (1902); *Bennett v. Nourse*, 22 Idaho 249, 125 P. 1038 (1912).

Use by Junior Appropriators.

To allow a junior, or other appropriator to establish an adverse right to such water during times when it is not required and not being used by the original appropriator, on the theory that such adverse use was inconsistent with the right of the prior appropriator, would subvert the purpose of the law and encourage wasteful diversion and use of wa-

ter in violation thereof. *Mountain Home Irrigation Dist. v. Duffy*, 79 Idaho 435, 319 P.2d 965 (1957).

Under § 18-4302 and the constitutional policy of securing the maximum use and benefit from water resources, it is the duty of the prior appropriator to allow the water, which he has a right to use, to flow down the channel for the benefit of junior appropriators when he has no immediate need for the use thereof. *Mountain Home Irrigation Dist. v. Duffy*, 79 Idaho 435, 319 P.2d 965 (1957).

Waste Irrigation Water.

Where springs arise in area of respondent's land and those springs were tributary of the watercourse of a creek, waste water in the area constituted a by-product of the irrigation waters likewise arising in the area and reclaiming of such waste water by drainage into the natural channel of a stream, if without detriment or damage to others, is in keeping with the expressed policy of the state to secure the maximum beneficial and least wasteful use of its water resources. *Poole v. Olaveson*, 82 Idaho 496, 356 P.2d 61 (1960).

Collateral References. 78 Am. Jur. 2d, Waters, §§ 330-332.

93 C.J.S., Waters, §§ 157-166.

42-105. Use of natural channels — Measurement of commingled water — Application for right to exchange water. — The water to which a person may be entitled by reason of valid permit or license issued by the department of water resources of water right heretofore established by diversion and application to beneficial use under the constitution of this state may be turned into the channel of another stream and mingled with its water, and then reclaimed; and water may be turned into any ditch, natural channel or waterway from reservoirs or other sources of water supply, and such water may be substituted or exchanged for an equal amount of water diverted from the stream, creek or river into which such water flows, or any tributary thereof, but in reclaiming the water so mingled, or diverting water in lieu thereof from any such stream, creek, river or tributary, the amount of water to which prior appropriators may be entitled shall not be diminished, and due allowance shall be made for loss by evaporation and seepage. Approval of any such exchange of water shall be obtained by filing

application for permit to appropriate water under the provisions of section 42-202, Idaho Code, in the event the water to be exchanged is unappropriated public water, or by filing an application to exchange water as provided in this act in the event the water to be exchanged has been previously appropriated by the applicant under the constitution or statutes of this state. In no case, however, shall any such exchange of water be approved by the department of water resources until the department has received an agreement in form approved by the attorney general signed by the person proposing the exchange and each person or organization owning rights to water with whom such exchange is proposed to be made. Any such exchange of water hereafter made without the approval of the department of water resources as provided in this act shall be invalid. [R.S., § 3158; reen. R.C., § 3244; am. 1911, ch. 149, § 1, p. 454; C.L., § 3244; C.S., § 5560; I.C.A., § 41-105; am. 1969, ch. 300, § 1, p. 900.]

Compiler's notes. The name of the department of water administration (formerly the department of reclamation) has been changed to the department of water resources on the authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 20, § 28 (§ 42-1801a).

Section 2 of S.L. 1969, ch. 300 has been repealed.

Cited in: *Schodde v. Twin Falls Land & Water Co.*, 161 F. 43 (9th Cir. 1908), aff'd, 224 U.S. 107, 32 S. Ct. 470, 56 L. Ed. 686 (1912); *Rabido v. Furey*, 33 Idaho 56, 190 P. 73 (1920).

ANALYSIS

In general.

Contracts for supplemental water.

Cotenants of canal system.

Decreed and undecreed waters.

Exchange distinguished.

Fluctuating flow.

Injury to channel.

Interruption of flow.

Use of natural channel.

In General.

Party can condemn right to use portion of system of another, if necessary to convey water appropriated by him to land upon which it is to be used and he can also mix waters appropriated by him with those of others in natural watercourse. *Berg v. Twin Falls Canal Co.*, 36 Idaho 62, 213 P. 694 (1922).

Water exchanges are invalid only if they clearly infringe on the rights of other water users. *Almo Water Co. v. Darrington*, 95 Idaho 16, 501 P.2d 700 (1972).

Contracts for Supplemental Water.

Wilder Irrigation District has power to enter into contract with federal government to obtain supplemental water supply for irrigation, to be replaced later with water from another source. *Board of Dirs. v. Jorgensen*,

64 Idaho 538, 136 P.2d 461 (1943).

Cotenants of Canal System.

The cotenant of a canal system must necessarily be able to commingle the waters with other cotenants, if not, condemnation of concurrent ownership in a canal system would never be possible. *Canyon View Irrigation Co. v. Twin Falls Canal Co.*, 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

Decreed and Undecreed Waters.

Watermaster upon a stream, waters of which have been decreed, cannot be compelled by mandatory injunction to distribute decreed waters of one stream in exchange for undecreed waters of another. *Daniels v. Adair*, 38 Idaho 130, 220 P. 107 (1923).

Exchange Distinguished.

An exchange differs from commingling, although the two concepts are closely related and may in some circumstances overlap; essentially, commingling occurs when waters are mixed and later separated, and exchange takes place when different waters are traded without being mixed. *Canyon View Irrigation Co. v. Twin Falls Canal Co.*, 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

Fluctuating Flow.

An easement which granted a power company the right to fluctuate the flow of a river would be construed as granting something in addition to the right of the power company to fill completely the natural channel of the river, since the power company had the latter right without the aid of an easement. *Griffeth v. Utah Power & Light Co.*, 226 F.2d 661 (9th Cir. 1955).

Injury to Channel.

Water appropriator using natural channel for conveyance of water was responsible for

(1927); *Colthorp v. Mountain Home Irrigation Dist.*, 66 Idaho 173, 157 P.2d 1005 (1945).

Dedication of Waste Water.

If waste water is furnished by canal company to applicant, under a sale or a rental, user thereof can maintain action against canal company only to compel it to furnish him with such waste water, if any, and he cannot compel canal company to furnish perpetual supply of water, such as is required to be furnished to an original appropriator. *Gerber v. Nampa & Meridian Irrigation Dist.*, 16 Idaho 22, 100 P. 80 (1908).

Grounds for Injunction Against Diversion.

To enjoin diversion and change in the place of use of water, the injury, if any, must be confined to a water right. *Colthorp v. Mountain Home Irrigation Dist.*, 66 Idaho 173, 157 P.2d 1005 (1945).

Pleading and Practice.

The denial of irrigation district's application of order for change of point of diversion did not constitute *res judicata*. *Colthorp v. Mountain Home Irrigation Dist.*, 66 Idaho 173, 157 P.2d 1005 (1945).

Riparian Owners.

Fact that there had been a conversion by lower riparian owner of seepage water of upper riparian owner would not of itself entitle former to injunctive relief restraining latter from cessation of waste or to beneficial use

of it. *Colthorp v. Mountain Home Irrigation Dist.*, 66 Idaho 173, 157 P.2d 1005 (1945).

Suit for Diversion.

A suit for damages for diversion of return flow of water after 40 years, such water being decreed to defendant's land, the seepage of which had been used by plaintiff and his predecessors, without alleging an abandonment, failed to state a cause of action. *Colthorp v. Mountain Home Irrigation Dist.*, 66 Idaho 173, 157 P.2d 1005 (1945).

Utilization of Seepage.

Construction of ditches to utilize seepage or waste water rightfully under control of another was not authorized by this section. *United States v. Haga*, 276 F. 41 (D. Idaho 1921).

Water in Canals.

There is a priority among consumers from canal analogous to that which exists among appropriators from a natural stream, and rights of later applicants for water are subordinate to those of prior consumers, which, when exercised in full, exhaust the carrying capacity of the canal. *Gerber v. Nampa & Meridian Irrigation Dist.*, 19 Idaho 765, 116 P. 104 (1911).

Collateral References. 78 Am. Jur. 2d, Waters, §§ 119-127.

Right of appropriator of water to recapture water which has escaped or is otherwise no longer within his immediate possession. 89 A.L.R. 210.

42-108. Change in point of diversion, place of use, period of use, or nature of use — Application of act. — The person entitled to the use of water or owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of the constitution and statutes of this state, may change the point of diversion, period of use, or nature of use, and/or may voluntarily abandon the use of such water in whole or in part on the land which is receiving the benefit of the same and transfer the same to other lands, if the water rights of others are not injured by such change in point of diversion, place of use, period of use, or nature of use, provided; if the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district. Any permanent or temporary change in period or nature of use in or out-of-state for a quantity greater than fifty (50) cfs or for a storage volume greater than five thousand (5,000) acre-feet shall require the approval of the legislature, except that any temporary change within the state of Idaho for a period of less than three (3) years may be approved by the director without legislative approval.

Any person desiring to make such change of point of diversion, place of use, period of use, or nature of use of water shall make application for change with the department of water resources under the provisions of section 42-222, Idaho Code. After the effective date of this act, no person shall be authorized to change the period of use or nature of use, point of diversion or place of use of water unless he has first applied for and received approval of the department of water resources under the provisions of section 42-222, Idaho Code. [R.S., § 3157; 1899, p. 380, § 11; reen. R.C. & C.L., § 3247; C.S., § 5563; I.C.A., § 41-108; am. 1943, ch. 53, § 1, p. 101; am. 1947, ch. 80, § 1, p. 130; am. 1969, ch. 303, § 1, p. 905; am. 1981, ch. 147, § 1, p. 253; am. 1986, ch. 313, § 1, p. 763.]

Compiler's notes. Section 2 of S.L. 1943, ch. 53 is compiled herein as § 42-222.

Section 2 of S.L. 1969, ch. 303 is compiled herein as § 42-222.

Section 2 of S.L. 1981, ch. 147 is compiled as § 42-221.

Section 2 of S.L. 1986, ch. 313 is compiled as § 42-201.

Section 2 of S.L. 1947, ch. 80 declared an emergency. Approved February 25, 1947.

Section 4 of S.L. 1981, ch. 147 declared an emergency. Approved March 27, 1981.

Sec. to sec. ref. This section is referred to in §§ 42-222, 42-1425, 42-1763A and 50-1805A.

Cited in: Schodde v. Twin Falls Land & Water Co., 161 F. 43 (9th Cir. 1908); Nettleton v. Higginson, 98 Idaho 87, 558 P.2d 1048 (1977).

ANALYSIS

Abandonment.

Application of 1947 amendment.

Approval of department.

Change causing injury.

Change in nature of use.

Constitutionality.

Dedication.

Extent of right.

Federal decree fixing priorities.

Jurisdiction of district court.

Proof.

Right of diversion.

Rights of subsequent appropriator.

Subterranean waters.

Transfer of rights.

Abandonment.

Such change does not work a forfeiture or is not abandonment of such right. *Joyce v. Rubin*, 23 Idaho 296, 130 P. 793 (1913) (See also, *Joyce v. Murphy Land & Irrigation Co.*, 35 Idaho 549, 208 P. 241 (1922)).

Water right was not forfeited though abandoned for over five years where applicant for transfer resumed use of water prior to filing petition for transfer. In re *Boyer*, 73 Idaho 152, 248 P.2d 540 (1952).

Application of 1947 Amendment.

1947 amendment to this section requiring consent of irrigation district to transfer of water right, which did not take effect until February 25, 1947, did not apply to application for transfer filed on October 7, 1946. In re *Boyer*, 73 Idaho 152, 248 P.2d 540 (1952).

Approval of Department.

Change made without approval of state engineer (department of water resources) did not forfeit the water right. *Joyce v. Rubin*, 23 Idaho 296, 130 P. 793 (1913).

An appropriator who relies upon statutory appropriation through state engineer's (department of water resources) permit, must apply to state engineer (department) to change place of use. *Washington State Sugar Co. v. Goodrich*, 27 Idaho 26, 147 P. 1073 (1915).

Change Causing Injury.

Change cannot be made if others are injured thereby. *Walker v. McGinness*, 8 Idaho 540, 69 P. 1003 (1902); *Hard v. Boise City Irrigation & Land Co.*, 9 Idaho 589, 76 P. 331, 65 L.R.A. 407 (1904); *Hill v. Standard Mining Co.*, 12 Idaho 223, 85 P. 907 (1906); *Montpelier Milling Co. v. Montpelier*, 19 Idaho 212, 113 P. 741 (1911); *Bennett v. Nourse*, 22 Idaho 249, 125 P. 1038 (1912); *Hall v. Blackman*, 22 Idaho 539, 126 P. 1045 (1912); *Hall v. Blackman*, 22 Idaho 556, 126 P. 1047 (1912); *Basinger v. Taylor*, 30 Idaho 289, 164 P. 522 (1917).

Prior appropriator of waters of stream will not be permitted to change his point of diversion, if such change will injuriously affect rights of subsequent appropriators as they existed at time such subsequent appropriations were made. *Crockett v. Jones*, 42 Idaho 652, 249 P. 483 (1926).

No change in point of use of water will be permitted without limitation if enlarged use in time or amount burdens the stream or decreases volume to injury of others. *Beecher v. Cassia Creek Irrigation Co.*, 66 Idaho 1, 154 P.2d 507 (1944).

(2) The director of the department of water resources shall cause the notice to be published in a newspaper printed within the county wherein the point of diversion lies, or in the event no newspaper is printed in said county, then in a newspaper of general circulation therein. When the application proposes a diversion in excess of ten (10) c.f.s. or one thousand (1,000) acre feet, the director shall cause the notice to be published in a newspaper or newspapers sufficient to achieve statewide circulation. Any notice shall be published at least once each week for two (2) successive weeks.

(3) The director of the department shall cause a copy of the notice of application to be sent by ordinary mail to any person who requests in writing to receive any class of notices of application and who pays an annual mailing fee as established by departmental regulation.

(4) Any person, firm, association or corporation concerned in any such application may, within the time allowed in the notice of application, file with said director of the department of water resources a written protest, together with the statutory filing fee as provided in section 42-221, Idaho Code, against the approval of such application, which protest shall state the name and address of protestant and shall be signed by him or by his agent or attorney and shall clearly set forth his objections to the approval of such application. Hearing upon the protest so filed shall be held within sixty (60) days from the date such protest is received. Notice of this hearing shall be given by mailing notice not less than ten (10) days before the date of hearing and shall be forwarded to both the applicant and the protestant, or protestants, by certified mail. Such notice shall state the names of the applicant and protestant, or protestants, the time and place fixed for the hearing and such other information as the director of the department of water resources may deem advisable. In the event that no protest is filed, then the director of the department of water resources may forthwith approve the application, providing the same in all respects conforms with the requirements of this chapter, and with the regulations of the department of water resources.

(5) Such hearing shall be conducted in accordance with the provisions of section 42-1701A(1) and (2), Idaho Code. The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit

1. Application for recreational dredge permits \$10.00
2. Other applications \$20.00

N. For receipt of all notices of application within a designated area, a reasonable annual charge as determined by the department.

All fees received by the department of water resources under the provisions of this chapter shall be transmitted to the state treasurer for deposit in the water administration account. [1903, p. 223, § 10; am. 1905, p. 174, § 1; reen. R.C. & C.L., § 3263; C.S., § 5581; am. 1923, ch. 53, § 1, p. 60; I.C.A., § 41-215; am. 1941, ch. 116, § 1, p. 228; am. 1967, ch. 374, § 12, p. 1079; am. 1968 (2nd E.S.), ch. 25, § 1, p. 47; am. 1971, ch. 151, § 1, p. 750; am. 1978, ch. 143, § 1, p. 323; am. 1980, ch. 151, § 1, p. 320; am. 1981, ch. 147, § 2, p. 253; am. 1983, ch. 61, § 2, p. 141; am. 1985, ch. 226, § 1, p. 540; am. 1986, ch. 242, § 2, p. 657; am. 1986, ch. 313, § 4, p. 763; am. 1990, ch. 319, § 2, p. 870; am. 1994, ch. 64, § 2, p. 121.]

Compiler's notes. Sections 5 and 7 of S.L. 1980, ch. 238 are compiled as §§ 42-219 and 42-224, respectively.

Section 1 of S.L. 1981, ch. 147 is compiled as § 42-108.

Section 1 of S.L. 1983, ch. 61 is compiled as § 42-243.

Section 2 of S.L. 1985, ch. 226 is compiled as § 42-243.

Section 1 of S.L. 1986, ch. 242 is compiled as § 42-217.

Section 3 of S.L. 1986, ch. 313 is compiled as § 42-204.

Section 1 and 3 of S.L. 1990, ch. 319 are compiled as §§ 42-111 and 42-230, respectively.

Section 1 of S.L. 1994, ch. 64 is compiled as § 42-203A.

Section 3 of S.L. 1986, ch. 242 declared an emergency. Approved April 4, 1986.

Sec. to sec. ref. This section is referred to

in §§ 42-111, 42-203A, 42-217, 42-224, 42-238a, 42-243, 42-244, and 42-4201.

ANALYSIS

Construction.

Nature of water use.

Construction.

While conduit through which water user diverted water was not strictly a ditch or canal, nevertheless he was liable for fee based on capacity of his diversion works. *Idaho Power & Transp. Co. v. Stephenson*, 16 Idaho 418, 101 P. 821 (1909).

Nature of Water Use.

The director of the department of water resources has not been granted the authority to approve an application for a requested change in the nature of the use of water. *Baker Indus., Inc. v. Georgetown Irrigation Dist.*, 101 Idaho 187, 610 P.2d 546 (1980).

42-222. Change in point of diversion, place of use, period of use, or nature of use of water under established rights — Forfeiture and extension — Appeals. — (1) Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required in section 42-108, Idaho Code, and if otherwise proper to provide notice of the proposed change in the same manner as applications under

section 42-203A, Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon the receipt of any protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed change and the watermaster shall notify the director of the department of water resources of his recommendation on the application, and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof, which action of the watermaster shall be received and considered as other evidence.

When the nature of use of the water right is to be changed to municipal purposes and some or all of the right will be held by a municipal provider to serve reasonably anticipated future needs, the municipal provider shall provide to the department sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definitions and requirements specified in this chapter. The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made.

When a water right or a portion thereof to be changed is held by a municipal provider for municipal purposes, as defined in section 42-202B, Idaho Code, that portion of the right held for reasonably anticipated future needs at the time of the change shall not be changed to a place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use.

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt

thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; except that all water rights appurtenant to land contracted in a federal cropland set-aside program, shall not be lost and forfeited for nonuse during the contracted period. The five (5) year period of nonuse for forfeiture of a water right shall begin to accrue upon termination of the contract if a period of nonuse did not occur prior to the effective date of the contract or shall continue to accrue if a period of nonuse occurred prior to the effective date of the contract. A water right held by a municipal provider to meet reasonably anticipated future needs shall be deemed to constitute a beneficial use, and such rights shall not be lost or forfeited for nonuse unless the planning horizon specified in the license has expired and the quantity of water authorized for use under the license is no longer needed to meet reasonably anticipated future needs. A water right shall not be forfeited by a failure to divert and apply the water to beneficial use if the water is not needed to maintain full beneficial use under the right because of land application of waste for disposal purposes including, but not limited to discharge from dairy lagoons, used in combination with or substituted for water diverted under the water right. Upon proper showing before the director of the department of water resources of good and sufficient reason for nonapplication to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for nonuse thereof, to such waters for a period of not to exceed five (5) additional years. Application for an extension shall be made before the end of the five (5) year period upon forms to be furnished by the department of water resources and shall fully describe the right on which an extension of time to resume the use is requested and the reasons for such nonuse and shall be accompanied by the statutory filing fee; provided that water rights appurtenant to land contracted in a federal cropland set-aside program, or covered by the waste provision of this section, are exempt from this requirement. Upon the receipt of such application it shall be the duty of the director of the department of water resources to examine the same and to provide notice of the application for an extension in the same manner as applications under section 42-203A, Idaho Code. The notice shall fully describe the right, the extension which is requested and the reason for such nonuse and shall state that any person desiring to object to the requested extension may submit a protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, to the director of the department of

water resources within ten (10) days of the last date of publication. Upon receipt of a protest it shall be the duty of the director of the department of water resources to investigate and conduct a hearing thereon as in this chapter provided. The director of the department of water resources shall find from the evidence presented in any hearing, or from information available to the department, the reasons for such nonuse of water and where it appears to the satisfaction of the director of the department of water resources that other rights will not be impaired by granting an extension of time within which to resume the use of the water and good cause appearing for such nonuse, he may grant one (1) extension of five (5) years within which to resume such use. In his approval of the application for an extension of time under this section the director of the department of water resources shall set the date when the use of water is to be resumed. Sixty (60) days before such date the director of the department of water resources shall forward to the applicant at his address of record a notice by certified mail setting forth the date on which the use of water is to be resumed and a form for reporting the resumption of the use of the water right. If the use of the water has not been resumed and report thereon made on or before the date set for resumption of use such right shall revert to the state and again be subject to appropriation, as provided in this section. In the event the director of the department of water resources determines that a proposed extension of time within which to resume use of a water right shall not be approved as provided in this section, he shall deny same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(3) Any person or persons feeling themselves aggrieved by the determination of the department of water resources in approving or rejecting an application to change the point of diversion, place, period of use or nature of use of water under an established right or an application for an extension of time within which to resume the use of water as provided in this section, may, if a protest was filed and a hearing held thereon, seek judicial review pursuant to section 42-1701A(4), Idaho Code. If no protest was filed and no hearing held, the applicant may request a hearing pursuant to section 42-1701A(3), Idaho Code, for the purpose of contesting the action of the director and may seek judicial review of the final order of the director following the hearing pursuant to section 42-1701A(4), Idaho Code. [1903, p. 223, § 1; am. 1905, p. 27, § 1; am. 1907, p. 507, § 1; reen. R.C., § 3264; am. 1915, ch. 34, § 1, p. 103; am. 1917, ch. 166, § 1, p. 495; C.L., § 3264; C.S., § 5582; am. 1921, ch. 146, § 1, p. 334; I. C.A., § 41-216; am. 1933, ch. 193, § 1, p. 382; am. 1943, ch. 53, § 2, p. 101; am. 1945, ch. 63, § 1, p. 79; rep. and reen. 1969, ch. 303, § 2, p. 905; am. 1980, ch. 238, § 6, p. 526; am. 1981, ch. 147, § 3, p. 253; am. 1982, ch. 202, § 1, p. 531; am. 1986, ch. 313, § 5, p. 763; am. 1988, ch. 153, § 1, p. 273; am. 1990, ch. 141, § 5, p. 316; am. 1994, ch. 64, § 3, p. 121; am. 1996, ch. 297, § 5, p. 967; am. 1996, ch. 333, § 1, p. 1128.]

Compiler's notes. This section was amended by two 1996 acts — ch. 297, § 5, and ch. 333, § 1, both effective July 1, 1996 — which do not appear to conflict and have been compiled together. Whereas both acts added a third sentence to subsection (2), the sentence

thereafter there would be a court ordered sale of the property; such a scheme is totally inconsistent with subsection (2) of this section, which provides that if a water right is abandoned or forfeited it reverts to the state, following which third parties may perfect an interest therein. *Idaho Power Co. v. State*, 104 Idaho 575, 661 P.2d 741 (1983).

Abandonment Not Favored.

If no public interest is forwarded by the abandonment, equity is against declaring a forfeiture. *Idaho Farms Co. v. North Side Canal Co.*, 24 F. Supp. 189 (D. Idaho 1938), rev'd on other grounds, 107 F.2d 481 (9th Cir. Idaho 1939).

Abandonment and forfeitures of water rights are not favored, and, even though forfeited and abandoned for five years prior to the time that subsequent appropriators initiated their right, if, subsequent to such five-year period, and prior to such subsequent appropriators' initiation of their right, the first appropriators and their predecessors in interest under claim of right and continuity of interest again began to exercise their water rights, there would be no abandonment which could inure to the benefit of subsequent appropriators. *Zezi v. Lightfoot*, 57 Idaho 707, 68 P.2d 50 (1937).

Forfeiture of water rights is not favored, and all intendments are to be indulged in against a forfeiture. *Hodges v. Trail Creek Irrigation Co.*, 78 Idaho 10, 297 P.2d 524 (1956).

Action to Quiet Title.

Where predecessor in title of both plaintiff and defendant had transferred water right from ranch now owned by defendant to ranch now owned by plaintiff, latter could maintain action to quiet title to such water right although predecessor in title had not had statutory authority to make such change. *Federal Land Bank v. Union Cent. Life Ins. Co.*, 51 Idaho 490, 6 P.2d 486 (1931).

Appeals.

Any party aggrieved by decision of commissioner may either appeal to district court or commence original action in said court. *Crockett v. Jones*, 42 Idaho 652, 249 P. 483 (1926).

Hearing on appeal to district court from reclamation commissioner must be reviewed by Supreme Court on appeal and not by writ of review. *State v. Adair*, 49 Idaho 271, 287 P. 950 (1930).

Proceedings before district court under this section are de novo. *First Secur. Bank v. State*, 49 Idaho 740, 291 P. 1064 (1930).

On appeal from action of department of reclamation (now department of water resources), district court acquires full equitable jurisdiction over entire controversy. In re

Rice, 50 Idaho 660, 299 P. 664 (1931).

District court acquired full equitable jurisdiction on appeal from reclamation commission order and had full authority to impose reasonable conditions to avoid injury. *Beecher v. Cassia Creek Irrigation Co.*, 66 Idaho 1, 154 P.2d 507 (1944).

Use of a summary judgment procedure is permissible on an appeal from a ruling by the director of the Department of Water Resources. *Beker Indus., Inc. v. Georgetown Irrigation Dist.*, 101 Idaho 187, 610 P.2d 546 (1980).

Appurtenancy.

Water right was not necessarily appurtenant to land on which it was used, and could be separated therefrom. *First Sec. Bank v. State*, 49 Idaho 740, 291 P. 1064 (1930).

When a Civilian Conservation Corps camp was dismantled and a waterline by which it received water from a nearby creek was abandoned, such waterline became the property of the state of Idaho and was not included in a deed of land which included in its habendum clause "the appurtenances thereon." *Sutton v. Brown*, 91 Idaho 396, 422 P.2d 63 (1966).

Burden of Proof.

In an action to quiet title, brought by subsequent appropriators on the theory that the former appropriators had abandoned the use of water, the burden of proof was on the subsequent appropriators to show that persons who had used the water by permission used more than that for which they had permission. *Zezi v. Lightfoot*, 57 Idaho 707, 68 P.2d 50 (1937).

Change in Nature of Use.

The director of the Department of Water Resources has not been granted the authority to approve an application for a requested change in the nature of the use of water. *Beker Indus., Inc. v. Georgetown Irrigation Dist.*, 101 Idaho 187, 610 P.2d 546 (1980).

Change of Diversion.

The owner of a water right had the statutory right to change his point of diversion provided that the rights of others were not injured, and such change did not work a forfeiture or an abandonment of such right. *Graham v. Leek*, 65 Idaho 279, 144 P.2d 475 (1944).

A change in point of use will not be permitted without limitations if the enlarged use in time or amount increases the burden on the stream, or decreases the volume of water in the stream to the injury of appropriators on the stream. *Beecher v. Cassia Creek Irrigation Co.*, 66 Idaho 1, 154 P.2d 507 (1944).

Where the original permit incorrectly located the point of diversion, a subsequent petition to correct this designation to conform

reen. R.C. & C.L., § 3265; C.S., § 5583; I.C.A., § 41-217; am. 1980, ch. 238, § 7, p. 526; am. 1994, ch. 64, § 4, p. 121.]

Compiler's notes. Sections 6 and 8 of S.L. 1980, ch. 238 are compiled as §§ 42-222 and 42-237e, respectively.

Section 3 of S.L. 1994, ch. 64 is compiled as § 42-222.

Cited in: Hillcrest Irrigation Dist. v. Nampa & Meridian Irrigation Dist., 57 Idaho

403, 66 P.2d 115 (1937).

Effect of Amendatory Statutes.

This section was not amended directly or by implication by statutes governing the proceedings before the commissioner to obtain a permit. *Twin Falls Canal Co. v. Huff*, 58 Idaho 587, 76 P.2d 923 (1938).

42-225. Survey of appropriations — Duty of department. [Repealed.]

Compiler's notes. This section which comprised S.L. 1903, p. 223, § 33; reen. R.C., § 3266; compiled and reen. C.L., § 3266;

C.S., § 5604; I.C.A., § 41-218; 1967, ch. 338, § 1, p. 974 was repealed by S.L. 1978, ch. 345, § 3.

42-225a. [Amended and Redesignated.]

Compiler's notes. This section was amended and redesignated as § 42-243 by S.L. 1978, ch. 345, § 6.

42-225b. [Amended and Redesignated.]

Compiler's notes. This section was amended and redesignated as § 42-244 by S.L. 1978, ch. 345, § 7.

42-226. Ground waters are public waters. — The traditional policy of the state of Idaho, requiring the water resources of this state to be devoted to beneficial use in reasonable amounts through appropriation, is affirmed with respect to the ground water resources of this state as said term is hereinafter defined and, while the doctrine of "first in time is first in right" is recognized, a reasonable exercise of this right shall not block full economic development of underground water resources. Prior appropriators of underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the director of the department of water resources as herein provided. In determining a reasonable ground water pumping level or levels, the director of the department of water resources shall consider and protect the thermal and/or artesian pressure values for low temperature geothermal resources and for geothermal resources to the extent that he determines such protection is in the public interest. All ground waters in this state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same for beneficial use. This act shall not affect the rights to the use of ground water in this state acquired before its enactment.

Any application for a water permit that seeks to transfer ground water outside the immediate ground water basin as defined by the director of the department of water resources for the purpose of irrigating five thousand

(5,000) or more acres on a continuing basis or for a total volume in excess of ten thousand (10,000) acre feet per year, the application must first be approved by the director of the department of water resources and then by the Idaho legislature. Each shall give due consideration to the local economic and ecological impact of the project or development so proposed. [1951, ch. 200, § 1, p. 423; am. 1953, ch. 182, § 1, p. 277; am. 1980, ch. 186, § 1, p. 413; am. 1987, ch. 347, § 1, p. 741.]

Compiler's notes. Section 2 of S.L. 1953, ch. 182, is compiled herein as § 42-231.

Section 2 of S.L. 1987, ch. 347 is compiled as § 42-230.

Cited in: *Musser v. Higginson*, 125 Idaho 392, 871 P.2d 809 (1994).

ANALYSIS

Applicability.

Change of diversion.

Constitutionality.

Exemption for domestic wells.

Prior appropriation rights.

Public policy.

Pumping level unreasonable.

Use of underground water.

Water from mining activity.

Applicability.

Domestic wells drilled prior to 1978 are exempt from the provisions of this section. *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982).

Change of Diversion.

It was error for the district court to enjoin landowners from changing the point of diversion of water from a well on one section of their land to another, where such owners had filed a proper application for such change with the state reclamation engineer (now the director of the department of water resources), who had declined to hear or process the application. *State ex rel. Tappan v. Smith*, 92 Idaho 451, 444 P.2d 412 (1968).

A perpetual injunction should not be granted if, by changing the prior appropriator's method or means of diversion, both parties can be supplied with water. The expense of changing the method or means of diversion, however, must be paid by the subsequent appropriator. *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982).

Constitutionality.

The Ground Water Act is consistent with the constitutionally enunciated policy of promoting optimum development of water resources in the public interest. *Baker v. Ore-Ida Foods, Inc.*, 95 Idaho 575, 513 P.2d 627 (1973).

Exemption for Domestic Wells.

Under the plain language of the 1951

Ground Water Act, domestic wells were exempt from the provisions of that act and the exemption for domestic wells was not modified by the 1953 amendment to this section which established the reasonable pumping level limitation on the doctrine of first in time is first in right. *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982).

The mere fact that the words "to clarify that domestic wells are exempted from the provisions of § 42-229" appeared in the title of the 1978 amendment of § 42-227 did not mean that the legislature never intended domestic wells to be exempt from the policy statements contained in this section. *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982).

Prior Appropriation Rights.

Prior to the enactment of the Ground Water Act in 1951, the doctrine of prior appropriation, i.e., first in time is first in right, governed the appropriation of ground water in this state, and although this doctrine was modified in certain respects by the enactment of the Ground Water Act, the law applicable to ground water used for domestic purposes was not significantly modified by the act. *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982).

Under the doctrine of prior appropriation, because the plaintiff's domestic well was drilled prior to the defendant's irrigation well, the plaintiff had a vested right to use the water for his domestic well. That right included the right to have the water available at the historic pumping level or to be compensated for expenses incurred if the defendant subsequent appropriator was allowed to lower the water table and the plaintiff was required to change his method or means of diversion in order to maintain his right to use the water. *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982).

Public Policy.

In the enactment of the Ground Water Act, the legislature decided, as a matter of public policy, that it sometimes may be necessary to modify private property rights in ground water in order to promote full economic development of the resource. *Baker v. Ore-Ida Foods, Inc.*, 95 Idaho 575, 513 P.2d 627 (1973).

Pumping Level Unreasonable.

Although a senior appropriator may have

of beneficial use and administration of each water right under state law and may use uniform parameters for quantification of beneficial use recommended for rights within climatic regions of the state.

(2) The director shall not be a claimant on behalf of the state or any subdivision of the state in an adjudication.

(3) The director shall not be a party to an adjudication. [I.C., § 42-1401B, as added by 1994, ch. 454, § 3, p. 1443.]

ANALYSIS

Declaratory judgment of administrative rules.
— Parties.

Declaratory Judgment of Administrative Rules.

— Parties.

Canal companies could not seek action for

declaratory judgment of administrative rules concerning conjunctive management of ground and surface water rights for the entire state adopted by Idaho Department of Water Resources (IDWR) in Snake River Basin Adjudication (SRBA) since IDWR must be a party to the action and IDWR cannot be a party to SRBA. *Twin Falls Canal Co. v. Idaho Dep't of Water Resources*, — Idaho —, 905 P.2d 89 (1995).

42-1401C. Role of state agencies other than the Idaho department of water resources in an adjudication. — (1) Each state agency, and the Idaho water resource board may file a claim and appear separately in any adjudication through the attorney general. This section shall not apply to the Idaho department of water resources.

(2) The attorney general may appear in any adjudication and shall represent the position of the state of Idaho. [I.C., § 42-1401C, as added by 1994, ch. 454, § 4, p. 1443.]

42-1402. Decreed rights appurtenant to land — Water rights established under federal law excepted. — In allotting the waters of any water system by the district court according to the rights and priorities of those using such waters, such allotment shall be made to the use to which such water is beneficially applied, except where water rights established under federal law are involved, in which case the allotment shall be made in accordance with federal law. The right confirmed by such decree or allotment shall be appurtenant to and shall become a part of the land on which the water is used, and such right will pass with the conveyance of such land, and such decree shall describe the land to which such water shall become so appurtenant. The amount of water so allotted shall never be in excess of the amount actually used for beneficial purposes for which such right is claimed, or in the case of a water right established under federal law, in excess of that amount determined by federal law. [1903, p. 223, § 38; reen. R.C., § 4621; am. 1913, ch. 35, § 1, p. 133; C.L., § 4621; C.S., § 7033; I.C.A., § 41-1302; am. 1969, ch. 279, § 2, p. 822; am. 1986, ch. 220, § 4, p. 558; am. 1994, ch. 454, § 5, p. 1443.]

Compiler's notes. Section 3 of S.L. 1969, ch. 279 repealed § 42-1404, and section 4 of S.L. 1969, ch. 279 is compiled as § 42-1406.

Cross ref. Issuance of license, § 42-219.

Proof of application to beneficial use, § 42-217.

ANALYSIS

Application of proviso.
Application of section.
Carey Act Contracts.
Compliance with statute required.
Description of land.

1919, ch. 171, § 1, p. 544; C.S., § 3052; am. 1925, ch. 94, § 1, p. 134; I.C.A., § 41-2101.]

Compiler's notes. Carey Act, see 43 U.S.C. § 641.

Section 2 of S.L. 1925, ch. 94 declared an emergency.

Cited in: Idaho Irrigation Co. v. Gooding, 285 F. 453 (9th Cir. 1922).

ANALYSIS

Change of place of use.

Forfeiture of water right.

Realty.

Restriction on severance.

Taxation.

Change of Place of Use.

An owner of land and water rights under a Carey Act project may change the place of use of such water if it can be done without material injury to other appropriators. In re Robinson, 61 Idaho 462, 103 P.2d 693 (1940).

Forfeiture of Water Right.

Where individual user of water under the Carey Act allowed portions of his land to lie idle and sold, leased, or used his water on other lands, in absence of intent to abandon his right, he did not forfeit or lose same. Rayl v. Salmon River Canal Co., 66 Idaho 199, 157 P.2d 76 (1945).

Realty.

While shares of water stock may be person-

alty, the water right which such shares control is real property. Bothwell v. Keefer, 53 Idaho 658, 27 P.2d 65 (1933).

Restriction on Severance.

Water right could not be severed from land to which it was appurtenant merely to allow owner to avoid his share of expense of maintaining and operating irrigation works, where such water right was not capable of being transferred to and applied to other lands, and water not otherwise available was still used on land. Strong v. Twin Falls Canal Co., 44 Idaho 427, 258 P. 173 (1927).

Taxation.

As to change of place of use, or transfer of water within a Carey Act system, the only injury which another user may set up to prevent the same is an injury to his water right and the use thereof, and a question of taxation will not be considered in connection therewith. In re Robinson, 61 Idaho 462, 103 P.2d 693 (1940).

Collateral References. 78 Am. Jur. 2d, Waters, §§ 400-405.

Deed or mortgage foreclosure as passing rights in a ditch company. 70 A.L.R. 1008.

Divisibility of an easement in gross or license in respect to water. 130 A.L.R. 1253.

Deed involving water rights as conveying a fee or easement. 136 A.L.R. 404.

42-2502. Instrument of conveyance — Execution — Recordation.

— The transfer of a water right, in whole or in part, made by such person to other lands so owned by him shall be evidenced by a written instrument executed and acknowledged by such person as other conveyances of real estate, reciting therein the facts, stating the amount of the right transferred and describing the land from which and the land to which the transfer is to be made, and the transfer of a water right or any portion thereof from one person to another shall be evidenced by a written instrument containing similar recitals and executed and acknowledged in like manner by the grantor or lessor.

All of such instruments shall be recorded in the office of the county recorder of the county or counties where the land is situated from which such right is transferred and also in the office of the county recorder of the county or counties where the land is situated to which such right is transferred, and to all of such instruments the recording acts of the state shall apply. [1917, ch. 159, § 2, p. 484; reen. C.L. 130:2; C.S., § 3053; I.C.A., § 41-2102.]

Compiler's notes. Section 3 of S.L. 1917, ch. 159 provided for the appointment of an irrigation engineer and specified his annual salary.

is appurtenant to any of said lands. [1917, ch. 159, § 8, p. 484; reen. C.L. 130:8; C.S., § 3058; I.C.A., § 41-2107.]

Realty.

While shares of water stock may be personally, the water right which such shares con-

trol is real property. *Bothwell v. Keefer*, 53 Idaho 658, 27 P.2d 65 (1933).

42-2508. Effect of lease upon appurtenancy. — A lease of a water right or of a portion thereof shall not change the appurtenancy of such right, but the same shall remain an appurtenant of the land of the lessor, subject only to the rights of the lessee to make use of the same. [1917, ch. 159, § 9, p. 484; reen. C.L. 130:9; C.S., § 3059; I.C.A., § 41-2108.]

42-2509. Rights of lienholders protected. — No water right or any portion thereof shall be transferred from one tract of land to another under the provisions of this chapter where there is a valid existing mortgage or other lien or encumbrance on the land to which such water right is appurtenant without the consent of the holder of such mortgage or other lien or encumbrance, which consent shall be evidenced by an instrument in writing executed and acknowledged as other instruments relating to the conveyance of real estate. [1917, ch. 159, § 10, p. 484; reen. C.L. 130:10; C.S., § 3060; I.C.A., § 41-2109.]

Cited in: *Andrews v. North Side Canal Co.*, 52 Idaho 117, 12 P.2d 263 (1932).

CHAPTER 26

SALE OF WATER RIGHTS

SECTION.

- 42-2601. Petition for certificate of authority to sell water rights.
- 42-2602. Examination of works by department of water resources.
- 42-2603. Jurisdiction of department of water resources.
- 42-2604. Water contracts and deeds.

SECTION.

- 42-2605. Penalties for unauthorized sale of water rights.
- 42-2606. Expenses payable from Carey Act trust fund.
- 42-2607. Irrigation districts exempted.
- 42-2608. Annual statement.

42-2601. Petition for certificate of authority to sell water rights. — All persons, copartnerships, associations of persons, companies and corporations now owning or hereafter acquiring or constructing any irrigation works or reservoirs, dams, canals or other structures designed or used wholly or in part for storing, carrying or otherwise conserving or furnishing water for irrigation purposes, shall, before selling any water right therein or right to use water from such works, file with the department of water resources of the state of Idaho a map showing the location of such works and the lands to be reclaimed therefrom and the plans and specifications of construction, duly certified under oath as true and correct by a licensed engineer of the state of Idaho, and such other information as may be necessary to enable the department of water resources to determine the capacity of such irrigation works and the number of acres which may be

August 4, 1998

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: September 4, 1998

Water right number: 51-04000A

TRI VIAL INC
HC 85 BOX 139E
BRUNEAU ID 83604

Daytime Telephone Number: 1-208-845-2106
Evening Telephone Number: 1-208-845-2106

- Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):
*Priority date has been changed from 6/12/50 to 3/15/56
point of diversion - should be only TOBS RO4E S36
Quantity has been changed from 6.38 cfs to 6.47 cfs*
- Describe the changes you wish to make in the proposed recommendation:
*for irrigation
place of use should be only: TOBS RO4E S25
NESW 40 NESE 39 SWNW 40 SENE 40
NWNW 39 SWNE 40 NWSE 40 SENW 40
328 acres total*
- Give a brief explanation as to why you disagree with these portions:
*Paragraphs under Quantity and place of use beginning with "use of this Right --" have been added and are not part of this Right and should be deleted.
place of use for stock water has been changed. This water Right (51-04000A) should be changed back to its original specifications as of 1/17/89 & 8/3/94
last 3 lines under Exp. Nat. page 2 should be changed*

I AGREE with this proposed recommendation; no changes need to be made.
DATE: _____ SIGNATURE: Susan G. Robertson
Please print your name: Susan G. Robertson
Pres. Trivial Inc.

IDWR Western Regional Office, 2735 Airport Way, Boise, ID 83705-5082, (208) 334-2190

*Please Reference Letter from C.L. Honsinger, dated
July 1 1996 To Mr S. Buxton and Mr S. Mathos*

August 4, 1998

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: September 4, 1998

Water right number: 51-02214

TRI VIAL INC
HC 85 BOX 139E
BRUNEAU ID 83604

Daytime Telephone Number: 1-108-845-2106
Evening Telephone Number: 1-108-845-2106

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

Quantity - The paragraph that has been added stating "use of this right is not part of the original and must be omitted. point of diversion should only be T06S R04 S25

2. Describe the changes you wish to make in the proposed recommendation: piece of use should be piece of use [T06S R04E] (S24 SESE 38) (S25 NENE 3S) NENW 38 NWNW 36 [T06S R06E S30 NENW 40 Lot 1 NWNW (Lot 2 SWNW 40) (SENW 42)] paragraph beginning use of this

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

The water Right has been changed from the original. The user has not requested or authorized a change and the water Right # 51-02214 should be return to its original specifications dated 1/17/89 & 8/3/94

☐ I AGREE with this proposed recommendation; no changes need to be made.

DATE: Aug 7 1998 SIGNATURE: Susan H. Robertson
Please print your name: Susan Robertson
Pres. TRI VIAL INC.

IDWR Western Regional Office, 2735 Airport Way, Boise, ID 83705-5082, (208) 334-2190

Please Reference Letter from C.L. Honsinger, dated July 1, 1996, To Ms. S Buxton and Ms. S Mathos



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 1, 1996

Ms. Susan Buxton
Moore & McFadden, Chartered
999 Main St. Ste 910, Drawer A
Boise, ID 83701

Ms. Susan Mattos
P.O. Box 372
Star, ID 83669

RE: Claim No. A51-04000A

Dear Ms. Buxton and Ms. Mattos:

As you are aware, there is a dispute between Mr. Kent Kohring and Mr. Eugene Robertson, your respective clients, over ownership of the above referenced claim to a water right. In accordance with a Change of Ownership request submitted with the appropriate information by Mr. Robertson, the Idaho Department of Water Resources (IDWR) previously indicated that the ownership change would be recorded as requested (see letter of May 29, 1996 from Charles L. Honsinger to Ms. Susan Buxton).

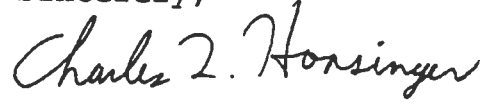
Because of the nature of this dispute, IDWR has found that any decision it makes regarding a change of claim ownership will be met with resistance by one of the parties. Therefore, IDWR has arrived at a solution it believes will be acceptable to both parties.

IDWR expects to complete and file the Director's Report for Basin 61 within eighteen to twenty months. At that time, the Director will make a recommendation as to the ownership of claim no. A51-04000A based on the available information. As of now, IDWR will mark the Change of Ownership form already submitted by Mr. Robertson as "pending." IDWR will also mark as "pending" any other Change of Ownership form submitted pursuant to this claim. This will give the parties an opportunity to submit additional information regarding claim ownership, may facilitate an eventual settlement, and will help IDWR to avoid further involvement in this civil matter.

Should either of you care to discuss this matter, please

call either myself or Mr. Norm Young, IDWR Water Management
Division Administrator.

Sincerely,

A handwritten signature in cursive script that reads "Charles L. Honsinger". The signature is written in dark ink and is positioned above the printed name and title.

Charles L. Honsinger
Deputy Attorney General

cc: Kent Kohring
Eugene Robertson
Norm Young
Mel Schulte

TRI-VIAL INC.
H.C. 85 Box 139E
Bruneau, Idaho 83604

Idaho Dept. of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082
Attn.: Mel Schulte

During our brief discussion in Grandview on the afternoon of August 18th we did not have a chance to get into any detail about Tri-Vial Inc,

I wish to point out one fact Mr Kent Kohring does not have now, and has never had any authority to do business of any type with Idaho Department of Water Resources for Tri-Vial Inc.

It would be appreciated if all further correspondence be directed to the company office. That is:

Tri-Vial Inc.
H.C. 85 Box 139E
Bruneau, Idaho 83604

Susan G. Robertson
President Tri-Vial Inc.



amg, Owen Hall

State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

September 17, 1998

PHILIP E. BATT
GOVERNOR

MRS SUSAN G. ROBERTSON
HC 85 BOX 139E
BRUNEAU, ID 83604

KARL J. DREHER
DIRECTOR

MR KENT KOHRING
HC 85 BOX 140
BRUNEAU, ID 83604

Re: A51-04000A, A51-04000B, A51-02214, A51-10207

Dear Mrs. Robertson & Mr. Kohring:

I am writing in response to Notices of Error and other communication we have received relating to the above referenced SRBA claims filed by Tri Vial, Inc.

It is our understanding from both parties that the ownership issue is currently pending before a district court and a decision is expected soon from that court. Because of the unresolved dispute between the principals of Tri Vial, Inc, we are reluctant to make any changes to our preliminary recommendations at this time.

As soon as the district court makes its decision and the distribution of the Tri Vial property is made clear, we will submit a Notice of Completion of Administrative Proceeding (NCAP) to the court indicating that there is a change of ownership from the original claimant, Tri Vial, to the new parties of interest. The NCAP can be filed with the court at anytime, including after the filing of a partial decree by the court. The court records, and Idaho Department of Water Resources' records would immediately be changed to reflect the proper change of ownership to the water rights.

You, of course, always have the right to file an objection to any element of the water right that you do not agree with and take that matter up with the Special Master assigned to your water right.

In summary, our recommendations for the water right claims will remain in the name of the original claimant, Tri Vial, Inc. until we receive the court order or other documents showing the dispersement of the property. At that time we will file a change of ownership with the court verifying the new allocation of the water right.

If you have questions you can call me at the number below or Susan Hamlin, IDWR attorney at 327-7900.

September 17, 1998

Page 2

Sincerely,

A handwritten signature in cursive script that reads "Mel Schulte". The signature is written in dark ink and is positioned below the word "Sincerely,".

Mel Schulte

ADJUDICATION BUREAU

Department of Water Resources

Western Region Office

(208) 334-2190

of officers. Whereupon, the following officers were nominated and unanimously elected:

President Susan G Robertson
Vice President Kent G Kohring
Secretary Eugene F Robertson
Treasurer Eugene F Robertson

The Chairman presented to the meeting a form of plan to offer shares of common stock for sale so that any loss sustained by a stockholder on the sale or exchange of stock of the corporation may qualify for an ordinary loss deduction treatment on the stockholder's personal income tax return.

Upon Motion duly made, seconded and carried, it was RESOLVED,

WHEREAS, it is deemed advisable and in the best interests of the corporation and its stockholders that the Board of Directors of the corporation approve and adopt a plan to offer shares of common stock for sale so that in the hands of qualified stockholders such shares of stock will receive the benefits of Section 1244 of the Internal Revenue Code of 1954, as amended, and

WHEREAS, the corporation is a "small business corporation," as defined in Section 1241(c)(2), and there is not now outstanding any prior offering of the corporation to sell and issue any of its stock,

NOW THEREFORE, IT IS HEREBY RESOLVED that the Board of Directors hereby approve and adopt the plan to offer shares of common stock for sale in the form of the plan presented to this

The Chairman announced the next order of business was the election of Directors pursuant to the By-Laws, whereupon the following persons were unanimously elected Directors of the Corporation:

President - Susan Robertson
Vice President - Kent Kohring
Secretary - Eugene Robertson
Treasure - Eugene Robertson

There being no further business to come before the meeting, the same was, upon motion duly made, seconded and carried, adjourned.

Eugene I. Robertson
Temporary Secretary

APPROVED:

Kent Kohring
Temporary Chairman

Tri-Nat. Meeting

Sept. 25, 1995

A meeting was held on above date to elect
officer, (this a late meeting due to unavoidable
circumstances)

present at the meeting were

Susan G. Robertson pres.

Kent Kohring vice pres.

Eugene F. Robertson Sec./Treas

Meeting was called to order and Kent Kohring
made the motion that the officers remain
as previous year motion was seconded by
Eugene F. Robertson and all at meeting
agreed to the motion. Therefore the following
are officers for 95/96

Susan G. Robertson Pres.

Kent Kohring Vice Pres.

Eugene F. Robertson Sec./Treas

Eugene F. Robertson

majority of the whole Board of Directors.

ARTICLE VII.

PRESIDENT

The President shall be the chief executive officer of the corporation. He shall preside at all meetings of the Stockholders and Directors. He shall have general and active management of the business of the corporation and see that all orders and resolutions of the Board are carried into effect.

He shall execute all bonds, mortgages and other contracts in writing made or executed in the name of and for and on behalf of the corporation, and may require the Secretary to attest the same under the seal of the corporation.

He shall be ex-officio a member of all standing committees and shall have the general powers and duties of supervision and management usually vested in the office of the President of a corporation.

ARTICLE VIII.

VICE-PRESIDENT

The Vice-President, in the absence or disability of the President, shall perform the duties and exercise the powers of the President and shall perform such other duties as the Board of Directors shall prescribe. Any resolution of the Board of

Directors declaring or reciting such absence or disability shall be conclusive evidence of the fact so declared or recited, as to any act done or omitted by the Vice-President in pursuance of such resolution.

ARTICLE 17.

SECRETARY

The Secretary shall attend all sessions of the Board of Directors and all meetings of stockholders and record all votes and minutes of all meetings of all proceedings in a book to be kept by him for that purpose, and shall perform like duties for standing committees when required by them.

He shall give or cause to be given notice of all meetings of the stockholders and of the Board of Directors required to be given.

He shall have in his custody and shall keep safely the seal of the corporation and when authorized by the Board or requested by the President, shall affix the same to any instrument requiring it, and attest the same by his signature.

He shall perform such other duties as may be prescribed by the Board of Directors or by the President, under whose supervision he shall be.

ARTICLE 18.

TREASURER

DATE: 10/06/98
PAGE: 1

Stage: BENEFICIAL USE

OWYHEE County
OWYHEE County

[illegible]

Misc:

Water District Number:

Field Inspection Flag:

Presumption Flag:

AJ0749NP
No. R51-10207

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

DATE: 10/06/98
PAGE: 2

Comments: Date: 07/15/1998 User-ID: MSCHULTE Subject: COPIED FROM REMARKS
OWNERSHIP CHANGE BROUGHT IN 07/29/94, KOHRING FARMS TO TRI VIAL,
INC., 08/03/94 SS.

Date: 10/06/1998 User-ID: MSCHULTE Subject: NOTICE OF ERROR
A NOTICE OF ERROR WAS FILED 8/24/1998 CONCERNING THE NUMBER OF
HOMES RECOMMENDED.

Audit: 10/06/98 MSCHULTE

**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:**

Water right number: R51-10207

Daytime Telephone Number: 1-208-845-2926

Evening Telephone Number: 1-208-845-2926

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source): Non-irrigation Uses (3 homes)

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

4 homes as originally filed 1/17/1989

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

Some years, in addition to owner and lease quarters, we also need separate living quarters for family and single workers.

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

DATE: 8/23/98

SIGNATURE: Kent Kohring
Please print your name: Kent Kohring

: See enclosed letter

AJ0749NP
No. R51-10207

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

DATE: 07/15/98
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	TRI VIAL INC HC 85 BOX 139E BRUNEAU ID 83604 (208) 845-2106	03/01/1963	STOCKWATER DOMESTIC	01-01 12-31 01-01 12-31	0.03 CFS 0.08 CFS	1.10
TOTAL DIVERSION:					0.11 CFS	1.13

Water Source: GROUNDWATER

Tributary to:

Stage: BENEFICIAL USE

Point(s) of Diversion: T06S R04E S25 S36 SHMSH

OMYHEE County
OMYHEE County

Place of use Legal Description for: STOCKWATER

NE	NW	SW	SE
T R S : Lt Ac Lt Ac Lt Ac Lt Ac	NESE	NWSE	SESE
06S 04E 25 :	:	:	:
06S 04E 36 :	:	:	:

Place of use Legal Description for: DOMESTIC

NE	NW	SW	SE
T R S : Lt Ac Lt Ac Lt Ac Lt Ac	NESE	NWSE	SESE
06S 04E 25 :	:	:	:
06S 04E 36 :	:	:	:

POU County: OMYHEE

Non-Irrigation Uses: 3 HOMES

Other Water Rights With Same Point(s) of Diversion with Stage (Includes All Sources):
A51-04000A A51-04000B A51-10207

Other Water Rights Listing Overlapping Place(s) of Use:
A02-07076 A51-04000 A51-04000A A51-10207

Conditions of Approval:

- N11 - THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
- N13 - THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.

Remarks: EXP STOCKWATER, 100 RANGE CATTLE.

Dates: Exam Made Date: Verified Date: 07/15/1998 Objection Filed Date:

Misc: Water District Number:

Field Inspection Flag:
Presumption Flag:

AJ0749NP
No. R51-10207

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

DATE: 07/15/98
PAGE: 2

Comments: Date: 07/15/1998 User-ID: MSCHULTE Subject: COPIED FROM REMARKS
OWNERSHIP CHANGE BROUGHT IN 07/29/94, KOHRING FARMS TO TRI VIAL,
INC., 08/03/94 SS.

Audit: 07/15/98 MSCHULTE

AJ0749NP
No. A51-10207

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

DATE: 07/15/98
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	TRI VIAL INC HC 85 BOX 139E BRUNEAU ID 83604 (208) 845-2106	03/01/1963	IRRIGATION STOCKWATER DOMESTIC	03-15 11-15 01-01 12-31 01-01 12-31	0.03 CFS 0.05 CFS 0.10 CFS	
TOTAL DIVERSION:					0.18 CFS	

Water Source: GROUNDWATER

Tributary to:

Stage: BENEFICIAL USE

Point(s) of Diversion: T06S R04E S25 SWN4SE

OWYHEE 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	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac
06S 04E 25 :	:	:	:
TOTAL ACRES			1.0

Place of use Legal Description for: STOCKWATER

NE	NW	SW	SE
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
06S 04E 25 :	:	:	S

Place of use Legal Description for: DOMESTIC

NE	NW	SW	SE
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
06S 04E 25 :	:	:	D
06S 04E 36 :	:	:	D

POU County: OWYHEE

Non-Irrigation Uses: D/4, HOUSEHOLDS, 100 HEAD BEEF CATTLE

Other Rights: A51-04000

Other Water Rights Listing Overlapping Place(s) of Use:
A02-07076 A51-04000 A51-04000A A51-04000B

Remarks: GEN OWNERSHIP CHANGE BROUGHT IN 07/29/94, KOHRING FARMS TO TRI VIAL,
INC., 08/03/94 SS.

Dates: Exam Made Date: 05/26/1993 Verified Date: Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:

HR ELEMENT	FIELD EXAM Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	VERIFIED BY CODE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE	Y		5-26-93 B. Libbert	N	5			
POINT OF DIV	Y			Y	5			
SOURCE	Y			N	5			
PLACE OF USE	Y			Y	5			
DIV. AMOUNT CFS/VOLUME	Y			Y				
CONSUMPTIVE USE	-							
PURPOSES	Y			Y	5			
PERIOD OF USE	Y			Y				
BASIS OF CLAIM	Y			Y	5			
REMARKS								

"VERIFIED BY" CODES

TOPO MAP/ORTHO-PQ = 1
 ASCS MAP = 2
 WATERMASTER RECORDS = 3
 NAPP PHOTOS = 4
 FIELD EXAM = 5
 OTHER (SEE REMARKS) = 6

THESE CODES ARE USED TO INDICATE HOW THE FIELD EXAMINER VERIFIED THE INFORMATION
USED FOR THIS FIELD EXAMINATION. INDICATED ARE ALL CODES WHICH APPLY.

See photo in A51-04000. (photo no. 3) (photo no. 6)

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

12:31:47
05/27/93

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A51-10207

LAST: KOHRING FARMS
ADDRESS: H C 85 BOX 140
CITY: BRUNEAU
PHONE NUMBER: 208-845-2106

FIRST:
STATE: ID ZIP: 83604

OWNER CODE: C

FIELD EXAM REQUIRED?

DATABASE FIELD
N EXAMINER

VERIFICATION REQUIRED DUE TO REMARKS?

NO REMARKS IN CLAIM

FIELD EXAMINATION INFORMATION

CONTACT PERSON: _____

PHONE NUMBER: () -

DATE OF FIELD EXAM: _/ _/ _

APPOINTMENT MADE: Y() N()

TIME: : A() P()

ACCOMPANIED BY: _____

PHONE NUMBER: () -

RELATIONSHIP TO CLAIMANT: _____

DIRECTIONS TO PROPERTY / NOTES:

*See phone conversation memo in
A51-04000*

A. AJ CLAIM: # A51-10207 PRIORITY DATE: 03-01-1963 STAGE: J

B. WR RECORD: NO WATER RIGHT RECORD TO MATCH THIS AJ CLAIM

C. FIELD EXAM REQUIRED?

DUE TO PRIORITY DATE DISCREPANCY? (Y/N) DATABASE Y FIELD EXAMINER N

ARE THERE OBVIOUS REASONS TO QUESTION THE PRIORITY DATE CLAIMED? Y() N(X)
IF YES EXPLAIN.

NOTES:

RECOMMENDED PRIORITY DATE:

3-1-1963

Medelkult

7-15-93

REVIEWED BY

J Linda Warner

DATE

5-28-93

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TMP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A51-10207	06S	04E	25	SW	NW	SE		OWYHEE

OTHER AJ CLAIMS WITH SAME AJ POD
A PREFIX R PREFIX
NONE NONE
MR RECORDS IN SAME 40 ACRE TRACT
NONE

SOURCE: GROUNDWATER

TRIB:

B. MR POINT OF DIVERSION AND SOURCE:

THERE IS NO WATER RIGHT RECORD WITH THE SAME CLAIM NUMBER

SOURCE: NO SOURCE FOR RECORD

TRIB: NO TRIBUTARY FOR RECORD

C. FIELD EXAM REQUIRED?

DUE TO POD DISCREPANCY?	(Y/N)	DATABASE	FIELD EXAMINER
DUE TO SOURCE DISCREPANCY?	(Y/N)	Y	<u>Y</u>

NOTES:

The well in Sec. 36 supplies water to the 2 homes in the same section. (trailers)
This well is piped in to the well in Sec. 25 where it supplies lawn irr.
to the trailer in that section. This well can be used as back-up in-house
use if necessary. The well in Sec. 25 supplies in-house usage & lawn
irr. to the trailer ^{main}whome in same section. Domestic use for house & lawn irr. covered
under 51-4000.

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:
TMP. RGE. SEC. 1/4 1/4 1/4 LOT COUNTY DIVERSION NAME

6S 4E 25	SW	NW	SE	N/A	OWY	Well
6S 4E 36	SW	SW	SW	N/A	OWY	Well

SOURCE:

Well

TRB:

7-15-98

REVIEWED BY:

Linda Werner

DATE:

5-28-93

SYSTEM DESCRIPTION:

- * 1 hp domestic pump on irr. well in Sec. 36, ~~etc~~ low temp. well, & pipeline to 2 trailers in same section.

Ditches convey water from well in section 36 where it is picked up by small pipeline, PVC, & piped into holding tank used for domestic well in Sec. 25. This well used for inhouse for the trailer in Sec. 25. Also the house which is covered under 51-04000.

Homes are used for the employees & are under single ownership. Between all 3 trailers serviced by these wells lawn irr. is less than $\frac{1}{2}$ acres.
→ under this right,

A51-10207

POD

1. 1/2 mile

DITCH

MAINTENANCE

POD

A51-10207
TGS
R 4E
Secs. 25+30

2. 1/2 mile

Halfway

2706

A. ROOT WATER RIGHT NUMBERS: A51-10207

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
06S	04E	25	NE	SE		KOHRING FARMS	A51-10207 / A51-04000 /40.0	- / 51-04000 /40.0			40.0
06S	04E	25	NW	SE		KOHRING FARMS	A51-10207 / A51-04000 /40.0	- / 51-04000 /40.0			40.0
06S	04E	25	NW	SE		KOHRING FARMS	A51-10207 / A51-04000 /40.0	- / 51-04000 /40.0			40.0
06S	04E	36	SW	SW		KOHRING FARMS	A51-10207 / A51-04000 / A02-07076 /40.0	- / 02-07076 /40.0 A02-07076 /29.0			37.0
TOTAL ACRES							A51-10207	1.00			157.00

ARE IRRIGATED ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, Y () N ()
 IF YES SEE ATTACHED SHEET:

C. FIELD EXAM REQUIRED? DATABASE FIELD EXAMINER POU COUNTY: Owyhee
 DUE TO POU DISCREPANCY? (Y/N) Y

PRESUMPTION FLAG:

NOTES:

Place of Use:
 T6S R4E Sec. 25, NWSE - Domestic + Stock
 Sec. 36, SWSW - Domestic

Per field exam (see A51-04000A) less than 1 acre of claim is suggested.

RECOMMENDATIONS:
 TOTAL ACRES: 10/4
 REVIEWED BY: Linda Connor
 DATE: 5-28-93
 7-15-98

A. AJ CLAIMED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
A51-10207 DOMESTIC	FROM 01-01 TO 12-31	.100 CFS
A51-10207 IRRIGATION	FROM 03-15 TO 11-15	.030 CFS
A51-10207 STOCKWATER	FROM 01-01 TO 12-31	.050 CFS

TOTAL DIVERSION RATE/VOLUME CLAIMED .180 CFS

B. WR RECORDED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
----------	-----------	--------------------

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

DUE TO WATER-USE DISCREPANCY?	(Y/N)	DATABASE	FIELD EXAMINER
DUE TO DIVERSION RATE DISCREPANCY?	(Y/N)	Y	☒
DUE TO PERIOD FROM/TO DISCREPANCY?	(Y/N)	Y	☒

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y ☒ N ☐

RECOMMEND TO WR STANDARDS OR OTHER?

Y ☒ N ☐

 Explain in notes, below.

NOTES:

Domestic & Stock - 1-1 to 12-31

Domestic - 0.08 cfs

Stock - 0.03 cfs

0.11 cfs

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

AJ TOTAL CLAIMED DIVERSION RATE:
WR ROOT RIGHT TOTAL DIVERSION RATE:

0.180 CFS
CFS

*** IF NO or IF STATUTORY CLAIM or BENEFICIAL USE then flow measurement required. ***
** If an amount smaller than the original diversion rate is **
** claimed and an exam is NOT required, explain in notes. **

Y() N()

FLOW MEASUREMENT REQUIRED?

DUE TO STAGE OR DIVERSION RATE DISCREPANCY? (Y/N)

FIELD DATABASE EXAMINER
Y

B.

MEASUREMENT METHOD

N/A

FLOW MEASUREMENT

, SEE ATTACHED CALCULATIONS.

C. ARE OTHER WATER RIGHTS USED? Y() N() IF YES COMPLETE OVERLAP REVIEW.

OTHER RIGHTS LISTED IN CLAIM: A51-04000

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

CLAIM NO.	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A51-10207	GROUNDWATER	KOHRING FARMS	0.180	0.180		
A02-07076	SNAKE RIVER	BASIN MUTUAL CANAL CO.	27.200	0.020	6800.00	5.00
A51-04000	GROUNDWATER	KOHRING FARMS	6.400	0.020		

LIST ALL RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION.

CLAIM NO.	PURPOSES	NAME	MONTH/DAY	RATE	VOLUME
A51-10207	DOMESTIC	KOHRING FARMS	FROM 01-01 TO 12-31	.100 CFS	
A51-10207	IRRIGATION	KOHRING FARMS	FROM 03-15 TO 11-15	.030 CFS	
A51-10207	STOCKWATER	KOHRING FARMS	FROM 01-01 TO 12-31	.050 CFS	
A51-04000	DOMESTIC	KOHRING FARMS	FROM 01-01 TO 12-31	.100 CFS	
A51-04000	STOCKWATER	KOHRING FARMS	FROM 01-01 TO 12-31	.480 CFS	

D.

RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE
ACRES _____ x 0.02 CFS/ACRE = _____ CFS
(Taken from p/u review)

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y() N()

*** IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y() N() ***

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = _____ AF/A

ACRES _____ x CONSUMPTIVE VOL. AF/A FOR AREA _____ =

TOTAL CONSUMPTIVE USE _____ AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = _____ AF/A

ACRES _____ x DIVERSION VOL. AF/A FOR AREA _____ =

TOTAL DIVERSION VOLUME _____ AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y() N()

NOTES: (Include limitations on CONSUMPTIVE USE for combined rights.)

Per FOG: 51-02214 51-040004

EXP - 1st water

A0112N13

1b. CALCULATIONS

Flow

3 houses, in-house

.02 x 3 = .06 cfs

1/2 Acre lawn = .02 cfs

100nd cattle = .03 cfs

0.11 cfs

RECOMMENDATIONS:

REC. PURPOSES	REC. PERIOD		REC. DIV RATE CFS	REC. DIV VOL. AF/A		REC. CONS. USE
	FROM	TO		DATABASE EXAMINER	DATABASE EXAMINER	
<u>Irrigation</u>	<u>4-1</u>	<u>10-3</u>				
<u>Domestic</u>	<u>1-1</u>	<u>12-31</u>	<u>0.08</u>	<u>AF/A</u>	<u>AF/A</u>	
<u>Stockwater</u>	<u>1-1</u>	<u>12-31</u>	<u>0.03</u>	<u>AF/A</u>	<u>AF/A</u>	
			<u>0.11</u>			

TOTAL FOR THIS RIGHT

REVIEWED BY: Shonda H. Brown

DATE: 5-28-93

Don-irr. Uses: Stockwater, 100 head cattle

A. CHECK ONLY THE FOLLOWING THAT APPLY:

	ACCEPTED AS CLAIMED	NEEDS REVIEW
OWNERSHIP	(X)	()
FORFEIT/ABANDON	()	()
ADDITIONAL DIV. AMOUNT	()	()

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 51-10207
TOTAL DIVERSION RATE OF WR SPLITS

DATABASE

EXAMINER

CFS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
-	A51-10207	0.180	-	-	-	-

TOTAL CFS

0.180

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)
If NO, is the written review sheet attached? (Y/N)

DATABASE

N

FIELD
EXAMINER

NOTES:

AUTHENTICATION:

SIGNATURE:

David W. Werner

DATE:

5-28-93

7-15-98

NAME OF FIELD EXAMINER: D. Werner

TITLE:

Sr. WR Agent



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

January 28, 1993

Re: Claim No(s). A51-04000

CECIL D. ANDRUS
GOVERNOR

A51-10207

R. KEITH HIGGINSON
DIRECTOR

KOHRING FARMS
HC 85 BOX 140
BRUNEAU ID 83604

Dear Claimant(s):

In the past, you submitted the above referenced claim(s) in the Snake River Basin Adjudication. Enclosed is a computer generated print-out of the claim(s) for your reference only; this print-out is **NOT** to be returned or re-filed. You have indicated when this claim was filed that the water right(s) was based on either a "Statutory Claim" or "Beneficial Use" of the water. Water rights of this type are established by the historical use of water for a beneficial purpose, dating back to the time the water was first used, this date being the "**Priority Date**" as shown on the enclosed print-out. Your claim(s) has not been confirmed by a previous filing with the Department of Water Resources since there is no decree, license, or permit on file to verify the use of this water. For this reason, the Department is under a legal requirement to gather evidence from claimants supporting the date of priority for claims based on historical beneficial use of water. Any other claims you may have filed, that are not listed above, do not require evidence of priority.

Enclosed is a pamphlet entitled "**Evidence of Priority**" which describes why evidence of the priority date is necessary along with examples of types of evidence that can be submitted to fulfill this requirement. If no evidence is submitted, or we do not hear from you within the time limit below, your priority date, as claimed, may not be recommended to the Court for decree. This could jeopardize your water use under this right(s), if water availability problems arise in the future. It is our goal to decree the historical water rights within the Snake River Basin as accurately as possible. Field exams to verify claims in this area should be conducted this summer by Department personnel. Prior to conducting the field exams, we will contact you to discuss details and schedule a time convenient for you.

Please submit the required evidence supporting the priority date(s) by March 15, 1993, referencing all documents with the corresponding claim number(s). If you have any questions not covered by this letter, or the enclosed pamphlet, please call the toll-free number listed on the back page of the pamphlet or the Western Region office shown above.

Adjudication Section
Department of Water Resources
Western Region Office

RECEIVED

AUG 03 1994

WATER RESOURCES
WESTERN REGION

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: A51-10207
Date Received: 1/17/1989
Receipt No: C005138
Received By: _____

COPY FOR
YOUR FILES

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

COPY FOR
YOUR FILES

1. Name: TRI VIAL INC
Address: HC 85 BOX 139E
BRUNEAU ID

208-845-2106

83604

2. Date of Priority: MAR 1, 1963

3. Source: GROUNDWATER

Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
06S	04E	25	SW	NW	SE		OWYHEE

5. Description of diverting works:
WELL, 700' DEEP, 1 HP PUMP, 6" CASING

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.100		
IRRIGATION	03/15	11/15	0.030		
STOCKWATER	01/01	12/31	0.050		

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

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:

D/4 HOUSEHOLDS, 100 HEAD BEEF CATTLE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06S	04E	25	NE	SE		DOMEST	
			NW	SE		IRR	1.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06S	04E	25	NW	SE		STOCK	
						Section Acres	1.0
		36	SW	SW		DOMEST	
						Total Acres	1.0

11. Place of use in counties: OWYHEE

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

13. Other Water Rights Used:
A51-04000

14. Remarks:
OWNERSHIP CHANGE BROUGHT IN 07/29/94, KOHRING FARMS TO TRI VIAL,
INC., 08/03/94 SS.

15. Basis of Claim: BENEFICIAL USE



NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Please print or type
(see instructions on back of page)

RECEIVED

AUG 03 1994

WATER RESOURCES
WESTERN REGION

DATE OF CLOSING: _____

LEGAL DESCRIPTION OF PROPERTY: Township _____ Range _____
Section _____, 1/4 of _____ 1/4 of _____ 1/4, Govt. Lot _____, BM.
Lot _____, Block _____, Subdivision/Townsite _____.
If you have additional legal descriptions, please attach separate sheet.

[] Served Only by a Public Service Water Supply (all water is received from a city or company who maintains water supply system, owns the water right, and bills the customer on a regular basis)

[] Water Right Number(s)
Assigned by IDWR: A51-02214 A51-04000A A51-10207

[] Name and Address of Former Owner/Claimant(s)(Seller): Kohring Farms

HC 85 Box 140

[] New Owner/Claimant (Purchaser): Bruneau ID 83604

Tri Vial Inc.

[] New Mailing Address: HC 85 Box 139E

Bruneau ID 83604

[] New Telephone Number: (208) 845-2106

[] Does the change in ownership result in a splitting of the water right owned/claimed? X yes no
If yes, then describe the portion of the water right that is now owned/claimed by the new owner:

0.03 cfs of A51-04000 goes to Eugene F. Robertson

(0.02 cfs for irrigation and 0.02 cfs domestic)

P.O.D. = T6S R4E Sec 36 SWSWSW P.O.U. = T6S R4E Sec 25 NESE

Approx. 2 miles of pipe from P.O.D. to P.O.U.

[] Attach proof of ownership, describe proof attached: All other rights are unchanged and are transferred to Tri Vial Inc.

(proof of ownership must describe either the property conveyed or include the claim number. Proof of ownership is not required if this form is signed by the former owner/claimant.)

[] Signature of New Owner/Claimant(s): Tri Vial Inc. Eugene F. Robertson Date 7/29/94

[] Signature of Former Owner/Claimant(s): Kohring Farms by Kent Kohring Date July 24, 1994

(Signature of former claimant(s) is not required if proof of ownership is attached.)

FOR IDWR USE ONLY

Initial Review and Data-Entry

Date: 8-3-94 By: Sherman

Further Action Needed:

Further Action Taken

Date: _____ By: _____

Final Review and Data-Entry

Date: _____ By: _____

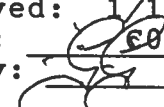
Claim Numbers of Split, if any:

Original to be mailed to Idaho Department of Water Resources
Copies to Former Owner and New Owner

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: A51-10207
Date Received: 1/17/1989
Receipt No: 6005138
Received By: 

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: KOHRING FARMS
Address: H C 85 BOX 140
BRUNEAU, ID 83604
208-845-2106

2. Date of Priority: MAR 01, 1963

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
06S	04E	25	SW	NW	SE		OWYHEE

5. Description of diverting works:
WELL, 700' DEEP, 1 HP PUMP, 6" CASING

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.100		
IRRIGATION	03/15	11/15	0.030		
STOCKWATER	01/01	12/31	0.050		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
D/4 HOUSEHOLDS, 100 HEAD BEEF CATTLE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06S	04E	25	NE	SE		DOMEST	

A51-10207

Page 1

Date: 01/17/89

MICROFILMED

AUG 11 1992

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06S	04E	25	NW	SE		IRR	1.0
			NW	SE		STOCK	
						Section Acres	1.0
		36	SW	SW		DOMEST	
						Total Acres	1.0

11. Place of use in counties: OWYHEE

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

13. Other Water Rights Used:
A51-04000

14. Remarks:

15. Basis of Claim: BENEFICIAL USE

16. Signature(s)

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

Number of attachments: _____

For Organizations:

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

Kohrwig Farms, that I have signed the foregoing
Organization

document in the space below as partner of _____
Title

Kohrwig Farms and that the statements contained in the
Organization

foregoing document are true and correct.

Eugene F. Rohlfson
Signature of Authorized Agent

partner Kohrwig Farms
Title and Organization

Jan 17 1989
Date

State of Idaho)
County of ADA) SS.

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

of Jan 19 89

M. Gene Fisher
Notary Public

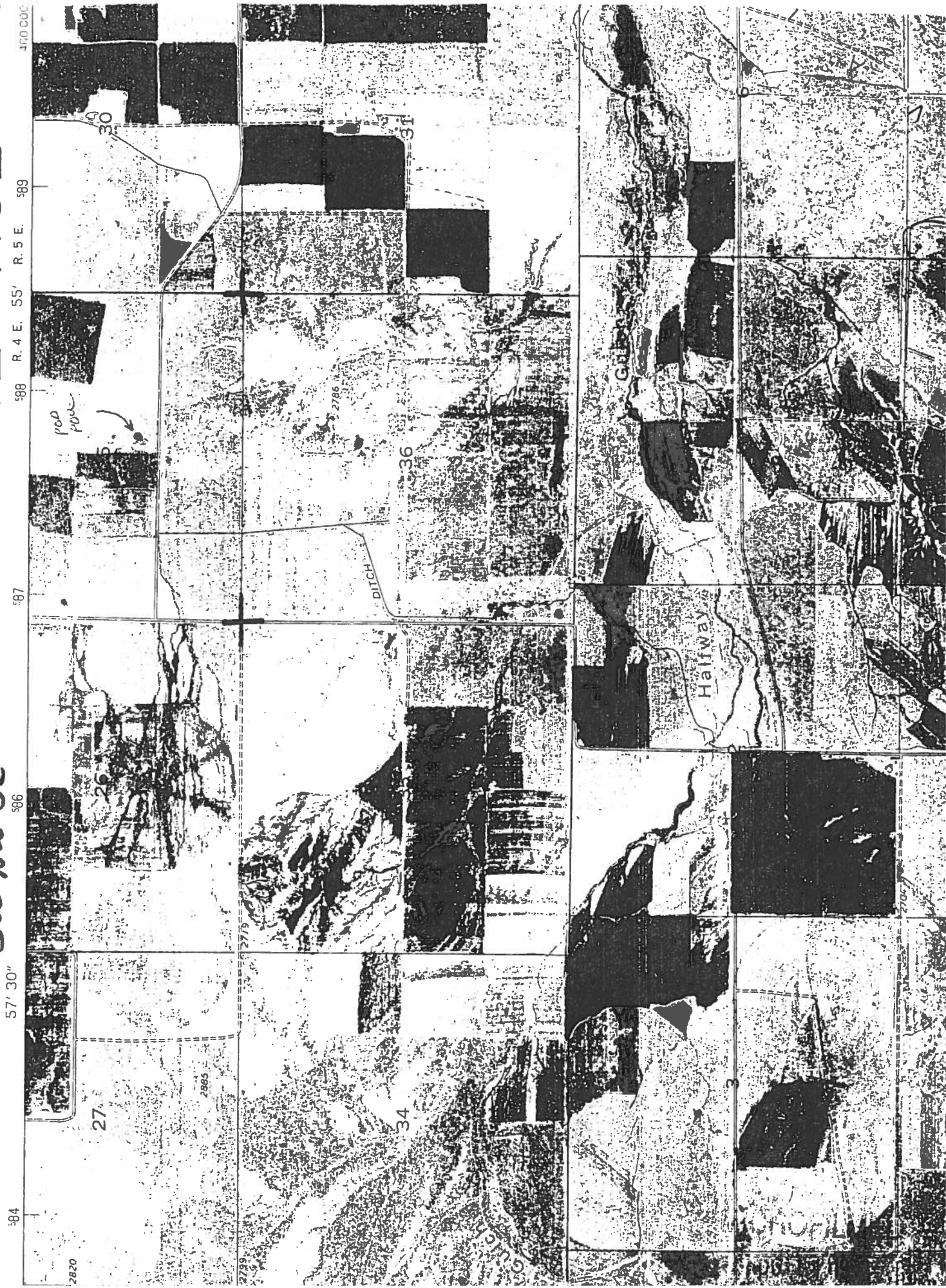
Seal

Residing at Boise, Id

My Commission Expires 9-2-1994

T6S R4E SECTION 25
SW NW SE

21M:57
R4E R5E





State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

August 3, 1994

TRI VIAL INC
HC 85 BOX 139E
BRUNEAU ID 83604

RE: Snake River Basin Adjudication (SRBA)
Owyhee County - Claims #A51-04000A, A51-02214 and
A51-10207
Change of Ownership and Identification Number Change

Dear Claimant:

IDWR has received your change of ownership of the water right claims referenced above. Our records have been changed accordingly.

The Identification Number of Notice of Claim to a Water Right #A51-04000 has been changed to A51-04000A. The suffix "A" has been added to the number in order to distinguish this claim from other claims that may claim a portion of the same original water right. This change does not affect this claim in any other way.

Enclosed are computer-generated copies of your claims. Please refer to these record numbers in any future inquiries or correspondence.

Sincerely,

Idaho Department of Water Resources
Adjudication Bureau

SS:region

Enclosures:

Copies of Notices of Claim Referenced Above
cc: Former Owner

Form 42-248/42-1408(8) July, 2000

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.
 Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
51-04000A		1/2			
51-10207					

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

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).
OR
 If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a **USDA Farm Service Agency AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s) TRI-VIAL INC.
HC 85 Box 139E Bruneau Id 83604
4. New Owner/Claimant(s) ~~BRUNEAU, OR~~ ~~BRUNEAU, ID~~
 Name Connection (Check one): ☐ and, ☐ or, ☐ and/or
Eugene F or Susan G Robertson
 New Mailing Address HC 85 Box 139E
 City, State and ZIP Code Bruneau, Id 83604
 New Telephone Number 705, 845-2106
5. Date you acquired the property Sept 13 2002

Form 41-34841-14/06 July, 2000

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number <u>51-04000 A</u>		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	<u>3.19 CFS</u>	<u>159 acres</u>
Stock	<u>.24 CFS</u>	<u>500 Cattle & 10 horses</u>
Domestic	<u>.400</u>	<u>2 Homes</u>
Other	<u>~~0.00~~</u>	<u></u>
Total	<u>~~3.83~~</u>	<u></u>
	<u>3.83 CFS</u>	

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other	_____	_____
Total	_____	_____

7. Signature of New Owner(s) or Claimant(s) Eugene F. Robertson
(Include title if applicable) Susan E. Robertson

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

For Office Use Only

Received by _____ Date _____ Fee _____
 Receipted by _____ Date _____ Receipt No. _____
 Processed by _____ AJ Date _____ WR _____ Date _____

Instrument # 240925

MURPHY, OWYHEE, IDAHO

2002-09-13

02:37:47 No. of Pages: 4

Recorded for : EUGENE ROBERTSON

CYNTHIA A. EATON

Fee: 12.00

Ex-Officio Recorder Deputy

Index to: DEED, CORRECTION

AMENDED

QUITCLAIM DEED

C. Eaton

FOR VALUE RECEIVED, TRI-VIAL, INC., an Idaho corporation, and KENT G. KOHRING and VIRGINIA KOHRING, husband and wife, hereinafter called the Grantors, hereby sell, assign, transfer and convey unto EUGENE FRANK ROBERTSON and SUSAN GAIL ROBERTSON, husband and wife, hereinafter called the Grantee, whose current address is HC 85, Box 139E, Bruneau, Idaho 83604, all of the right, title and interest of Grantors in and to that certain real property situated in Owyhee County, Idaho, described in Exhibit 1, which is attached hereto and incorporated herein by this reference.

TO HAVE AND TO HOLD the same premises, with their appurtenances, unto the said Grantee and to the Grantee's successors and assigns, forever.

DATED this 13th ^{Sept} day of ~~July~~, 2002.

TRI-VIAL, INC.

By: *Susan G. Robertson*
SUSAN GAIL ROBERTSON, President

ATTEST *Eugene Frank Robertson*
EUGENE FRANK ROBERTSON, Secretary

Kent G. Kohring
KENT G. KOHRING

Virginia Kohring
VIRGINIA KOHRING

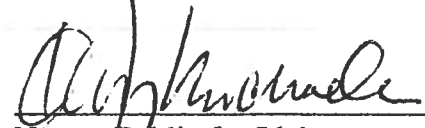
COPY

THIS DEED CORRECTS THAT CERTAIN QUIT CLAIM DEED
RECORDED 8-30-02 AS INSTRUMENT # 240751

STATE OF IDAHO)
) ss.
County of Ada Canyon)

On the 10th day of Sept, 2002, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared SUSAN GAIL ROBERTSON and EUGENE FRANK ROBERTSON, known or identified to me to be the President and Secretary, respectively, of Tri-Vial, Inc., an Idaho corporation whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same in such capacity.

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

Notary Public for Idaho
Residing at: Nampa
My Commission Expires: 9.30.02

(seal)

COPY

STATE OF IDAHO)
) ss.
County of Ada Owyhee)

On the 13th day of Sept, 2002, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared KENT G. KOHRING and VIRGINIA KOHRING, husband and wife, known or identified to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same.

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




Notary Public for Idaho
Residing at: Nampa
My Commission Expires: 9.30.03

(seal)

EXHIBIT 1

Parcel A

N $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{4}$ NE $\frac{1}{4}$, Section 25, Township 6 South, Range 4 East, Boise Meridian, Owyhee County, Idaho, together with all water and water rights appurtenant thereto;

*Kohring
portion of
51-10207*
EXCEPTING that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, Township 6 South, Range 4 East, Boise Meridian, Owyhee County, Idaho, described as follows: Commencing at the Southwest corner of said NW $\frac{1}{4}$ SE $\frac{1}{4}$; thence East a distance of 189 feet; thence North a distance of 132 feet to the TRUE POINT OF BEGINNING; thence North a distance of 306 feet; thence East a distance of 142 feet; thence South 40° East, a distance of 232 feet; thence South 52°39'25" West, a distance of 211.48 feet; thence West a distance of 123 feet to the POINT OF BEGINNING and SUBJECT to an easement for ingress, egress and utilities for the benefit of said excepted parcel over the East 20 feet of the West 209 feet of the South 132 feet of said NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 25.

Parcel B:

*Robertson
portion of
51-10207*
That portion of Section 36, Township 6 South, Range 4 East, Boise Meridian, Owyhee County, Idaho, described as: That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ commencing at the Southwest corner of Section 36, the TRUE POINT OF BEGINNING; thence North along the West boundary of said Section a distance of 361.5 feet; thence East and parallel with the South line of said Section a distance of 361.5 feet; thence South parallel with the West boundary of said Section a distance of 361.5 feet; thence West along said South boundary of said section a distance of 361.5 feet to the TRUE POINT OF BEGINNING;

Together with all water and water rights appurtenant thereto;

Reserving to Kent G. Kohring and Virginia Kohring, and their heirs and successors, a perpetual easement for access to, and maintenance of, the well pumps and panels located on said Parcel B.

Both of the above-described parcels are conveyed together with and subject to existing rights of way for ditches, irrigation works and irrigation maintenance roads for the above parcels and the adjoining properties of Kent G. Kohring and Virginia Kohring; and

Parcel A, but no part of Parcel B, is subject to a first right of refusal of Kent G. Kohring and Virginia Kohring to purchase the same in the event that Grantee sells all or any portion of the same. In the event that Grantee makes an offer to sell or receives a bona fide offer to purchase any of said property, Grantee shall give written notice of the offer and terms of sale to Kent G. Kohring and Virginia Kohring and they shall have a period of 30

COPY

days from receipt of such notice in which to purchase said property on the terms and conditions of said offer. In the event that they do not exercise said first right of refusal within such 30-day period, Grantee shall be free to proceed with such sale. In the event that such sale is not consummated or does not affect all of the property, the right of first refusal shall remain in effect for that part of the property not sold by Grantee.

Provided, however, that the first right of refusal mentioned above shall not be applicable to the home and one (1) acre more particularly described as follows:

In Township 6 South, Range 4 East, Section 25, B.M. Owyhee County, Idaho; That part of the NE1/4SE1/4, more particularly described as commencing at the Southeast corner of the NE1/4SE1/4 as the POINT OF BEGINNING; Thence West 235 feet, Thence North 215 feet, Thence East 235 feet, thence 215 feet South, back to the POINT OF BEGINNING.

Provided further that the first right of refusal mentioned above is personal to Kent Kohring and Virginia Kohring and may not be assigned to any other party without the prior written consent of Grantees.

COPY

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.
Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
<u>51-4000A (portion)</u>					
<u>51-7274</u>					
<u>51-10207</u>					
<u>51-7355</u>	<u>(permit; assignment submitted)</u>				
<u>51-7356</u>	<u>"</u>	<u>"</u>			

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

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

OR

If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. ☒ Name and Address of Former Owner/Claimant(s) Du-Vial Inc.
HC 85 Box 139 E Bruneau, Id. 83604
4. ☒ New Owner/Claimant(s) Kent Kohring
Name Connector (Check one): ☒ and, ☐ or, ☐ and/or
- ☒ New Mailing Address HC 85 Box 140
- ☒ City, State and ZIP Code Bruneau, Id. 83604
- ☒ New Telephone Number (208) 845-2926
5. ☒ Date you acquired the property Sept. 10, 2002

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number <u>51-4000A</u>		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock; homes, etc)
Irrigation	<u>3.12</u>	<u>156 acres</u>
Stock	<u>0.12</u>	<u>500 head</u>
Domestic		
Other		
Total		

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number <u>51-10307</u>		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock; homes, etc)
Irrigation		
Stock		
Domestic	<u>0.04 cfs</u>	<u>2 homes (525)</u>
Other		
Total		

7. ☒ Signature of New Owner(s) or Claimant(s) Kent Kohring
(include title if applicable)

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

For Office Use Only

Received by _____	Date _____	Fee _____
Received by _____	Date _____	Receipt No. _____
Processed by _____ AJ	Date _____	WR _____ Date _____

QUITCLAIM DEED

FOR VALUE RECEIVED, TRI-VIAL, INC., an Idaho corporation, and **EUGENE FRANK ROBERTSON** and **SUSAN GAIL ROBERTSON**, husband and wife, hereinafter called the Grantors, hereby sell, assign, transfer and convey unto **KENT G. KOHRING** and **VIRGINIA KOHRING**, husband and wife, hereinafter called the Grantee, whose current address is HC 85, Box 140, Bruneau, Idaho 83604, all of the right, title and interest of Grantors in and to that certain real property situated in Owyhee County, Idaho, described in Exhibit 2, which is attached hereto and incorporated herein by this reference.

TO HAVE AND TO HOLD the same premises, with their appurtenances, unto the said Grantee and to the Grantee's successors and assigns, forever.

DATED this 10th ^{Sept.} day of July, 2002.

TRI-VIAL, INC.

By: Susan Gail Robertson
SUSAN GAIL ROBERTSON, President

ATTEST: Eugene Frank Robertson
EUGENE FRANK ROBERTSON, Secretary

Eugene Frank Robertson
EUGENE FRANK ROBERTSON

Susan Gail Robertson
SUSAN GAIL ROBERTSON

Instrument # 240924

MURPHY, OWYHEE, IDAHO

2002-09-13

02:31:31 No. of Pages: 3

Recorded for : JIM JONES

CYNTHIA A. EATON

Fee: 9.00

Ex-Officio Recorder Deputy

Index to: DEED, QUIT-CLAIM

Correct

STATE OF IDAHO)
County of Canyon) ss.
Ada

On the 16th day of Sept., 2002, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared SUSAN GAIL ROBERTSON and EUGENE FRANK ROBERTSON, known or identified to me to be the President and Secretary, respectively, of Tri-Vial, Inc., an Idaho corporation whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same in such capacity.

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

(seal)

[Signature]
Notary Public for Idaho
Residing at: Munroe
My Commission Expires: 4.30.03

STATE OF IDAHO)
County of Canyon) ss.
Ada

On the 16th day of Sept., 2002, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared EUGENE FRANK ROBERTSON and SUSAN GAIL ROBERTSON husband and wife, known or identified to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same.

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

(seal)

[Signature]
Notary Public for Idaho
Residing at: Munroe
My Commission Expires: 4.30.02

EXHIBIT 2

The following-described real property located in Township 6 South, Ranges 4 and 5 East, Boise Meridian, Owyhee County, Idaho:

Parcel 1:

Section 25: NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, T6S, R4E.

Section 24: SE $\frac{1}{4}$ SE $\frac{1}{4}$, T6S, R4E.

Section 30: E $\frac{1}{2}$ NW $\frac{1}{4}$ and Government Lot Nos. 1 and 2, T6S, R5E.

Parcel 2:

Section 25: NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ NW $\frac{1}{4}$.

Parcel 3: (Residence)

That portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, Township 6 South, Range 4 East, Boise Meridian, Owyhee County, Idaho described as follows:

Commencing at the Southwest corner of said NW $\frac{1}{4}$ SE $\frac{1}{4}$, thence East a distance of 189 feet; thence North a distance of 132 feet to the TRUE POINT OF BEGINNING; thence North a distance of 306 feet; thence East a distance of 142 feet; thence South 40° East a distance of 232 feet; thence South 52°39'25" West a distance of 211.48 feet; thence West a distance of 123 feet to the TRUE POINT OF BEGINNING;

TOGETHER with an easement for ingress, egress and utilities over the East 20 feet of the West 209 feet of the South 132 feet of said NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 25.

TOGETHER with all water and water rights appurtenant to the above-described parcels.

TOGETHER with and subject to existing rights of way for ditches, irrigation works, and irrigation maintenance roads for the above-described parcels and adjoining properties of Eugene Frank Robertson and Gail Robertson.

Susan