

AJ0749NP
No. R51-02214

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

DATE: 11/11/98
PAGE: 1

OWNER CODE NAME & ADDRESS
C TRI VIAL INC
HC 85 BOX 139E
BRUNEAU ID 83604
(208) 845-2106

PRIORITY DATE WATER USE
04/11/1966 IRRIGATION

USE PERIOD FROM TO
03-15 11-15

DIVERSION RATE
4.04 CFS

DIVERSION VOLUME
4.04 CFS

TOTAL DIVERSION:
4.04 CFS

Water Source: GROUNDWATER
Tributary to: SWSNMW SWSWSW
Point(s) of Diversion: T06S R04E S25 S36
Stage: LICENSE
OMYHEE County
OMYHEE County

Place of Use Legal Description for: IRRIGATION

NE				NW				SW				SE					
NENE		NWNE		SWNE		SENE		NENW		NWSW		SESW		SESE			
T	R	S	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	SUM
06S 04E 24	:	38	36	40	40	:	38	39	40	40	:	40	:	39	34	:	38.0
06S 04E 25	:					:					:		:			:	424.0
06S 05E 30	:					:	40	01-40	02-40	42	:		:			:	162.0
																TOTAL ACRES	624.0

POU County: OMYHEE

Conditions of Approval:

- C03 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
- PURSUANT TO SECTION 42-1425, IDAHO CODE.
- C14 - THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER
- IN BASIN 51 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER
- RIGHTS IN BASIN 51:
- WATER RIGHT NO. SOURCE
- NONE
- THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER
- IN BASIN 51 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER
- RIGHTS IN THE SNAKE RIVER BASIN:
- WATER RIGHT NO. SOURCE
- NONE
- ALL WATER RIGHTS WITHIN BASIN 51 ARE FROM CONNECTED SOURCES
- OF WATER IN THE SNAKE RIVER BASIN AND SHALL BE ADMINISTERED
- CONJUNCTIVELY.

Remarks: QNT

USE OF THIS RIGHT WITH RIGHT NO. 51-04000A IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 10.28 CFS AND TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 3120 AF.

POD

TWO POINTS OF DIVERSION LOCATED IN T06S, R04E, S36, SWSW.

USE

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS
EARLY AS MARCH 1 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15,

Remarks:

PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE MARCH 15 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

POU1

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 312 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON. USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 624 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 51-04000A.

EXP

WATER TEMPERATURE MEASURED AT 105 DEGREES F. FROM POINT OF DIVERSION IN SWSW, S36, T06S, R04E.
THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINTS OF DIVERSION DESCRIBED ABOVE: 51-04000A.

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

Misc:

Water District Number: Field Inspection Flag:
Presumption Flag:

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: 07/31/1998 User-ID: AJU10-JS Subject: AJU10 CONDITION UPDATE
CONDITION CODE(S) C14 ADDED IF NOT ALREADY PART
OF RECORD THRU AJU10.

Audit:

11/11/98 JSHURTE

RECEIVED

AUG 24 1998

WATER RESOURCES
WESTERN REGION

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: R51-02214

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):

Stock water

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

Would like to be able to use this w/r combined with R51-04000A stock water.

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

Under some circumstances, use of well in Sec. 25 (R51-02214) might be more practical than well in Sec. 36 (R51-04000A) (e.g. fall pasturage and winter feeding).

☐ 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

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: 1-208-845-2106

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 starting "use of this right is not part of the original and must be omitted. point of diversion should only be T06S R04E S25"

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

place of use should be: Place of use [T06S R04E] (S24 SESE 38) (S25 NENE 38) NENW 38 NENE 36 [T06S R06E S30 NENW 40 Lot 1 NWNW 40 Lot 2 SWNW 40] (SENE 42) paragraph beginning use of this

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

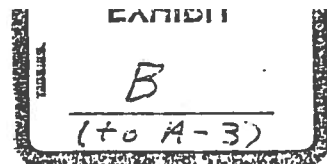
should be omitted. The water Right has been changed from the original. The user has not requested or authorized a change and the water Right # 51-02214 should be returned to its original specifications dated 1/17/89 & 8/3/94

☐ 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



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: A51-02214
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

208-845-2106

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

83604

2. Date of Priority: APR 11, 1966

3. Source: GROUNDWATER

Trib. to:

4. Point of Diversion:

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

5. Description of diverting works:
WELL, PUMP, STORAGE POND, DITCHES

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	4.040		

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

A.F.A.

8. Total consumptive use is 1092.0 Acre Feet Per Annum.

9. Non-irrigation uses:
INCIDENTAL YEAR AROUND STOCKWATER USE

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
06S	04E	24	SE	SE		IRR	38.0 — K

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	38.0
		25	NE	NE	IRR	39.0
			NW	NE	IRR	38.0
			NE	NW	IRR	37.0
					Section Acres	114.0
	05E	30	NE	NW	IRR	40.0
			NW	NW	IRR	40.0
			SW	NW	IRR	40.0
			SE	NW	IRR	40.0
					Section Acres	160.0
					Total Acres	312.0

K

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:
NONE

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

15. Basis of Claim: LICENSE

Water Right Number: 32826

LIST OF MAPS USED AND ATTACHMENTS

CLAIM NUMBER:

MAPS AND AERIAL PHOTOGRAPHS USED TO REVIEW THIS NOTICE OF CLAIM TO A WATER RIGHT

TYPE OF MAP OR PHOTOGRAPH (CHECK IF USED)

IF USED, SUPPLY APPROPRIATE DATE AND OTHER INFORMATION

COPY INCLUDED
IN FILE?

☒ ORTHOPHOTOQUAD

DATE OF PHOTO

IDWR ID NO.

Y() N()

☐ TOPOGRAPHIC

DATE FIELD CHECKED

IDWR ID NO.

Y() N()

☒ ~~MAPS~~ *GIS maps*

DATE OF PHOTO

IDWR ID NO.

Y() N()

☐ ASCS AERIAL PHOTO

DATE OF PHOTO

IDWR ID NO.

Y() N()

☐ ASCS COLOR SLIDE

DATE OF PHOTO

IDWR ID NO.

Y() N()

☐ BLM OR USFS AERIAL PHOTO

DATE OF PHOTO

IDWR ID NO.

Y() N()

☒ TOWNSHIP SURVEY (GOVERNMENT PLAT)

DATE OF SURVEY

IDWR ID NO.

Y() N()

☐ SCS SOIL SURVEY MAP

DATE ISSUED

IDWR ID NO.

Y() N()

☐ SUBDIVISION PLAT MAP

DATE OF MAP

IDWR ID NO.

Y() N()

☒ OTHER

DATE

IDWR ID NO.

Y() N()

☒ OTHER

DATE

IDWR ID NO.

Y() N()

☐ OTHER

DATE

IDWR ID NO.

Y() N()

NO. OF

PAGES

NOTES

LIST OF ATTACHMENTS (CHECK IF ATTACHED)

IF ATTACHED, SUPPLY APPROPRIATE INFORMATION

☒ LICENSING FIELD EXAM

DATE OF FIELD EXAM

NO. OF

PAGES

NOTES

☐ WATER RIGHT LICENSE

DATE LICENSE SIGNED

NO. OF

PAGES

NOTES

☐ IDWR APPROVED TRANSFER

DATE TRANSFER APPROVED

NO. OF

PAGES

NOTES

☒ SYSTEM DESCRIPTION

DATE DRAWN

NO. OF

PAGES

NOTES

☐ PHOTOGRAPHS

DATE(S) PHOTOS TAKEN

NO. OF

PAGES

NOTES

☐ SPLIT RIGHT REVIEW

DATE REVIEW COMPLETED

NO. OF

PAGES

NOTES

☐ HUBBLE ANALYSIS

DATE ANALYSIS COMPLETED

NO. OF

PAGES

NOTES

☐ CONVEYANCE LOSS ANALYSIS

DATE ANALYSIS COMPLETED

NO. OF

PAGES

NOTES

☐ FLOW MEASUREMENT CALCULATIONS

DATE SYSTEM MEASURED

NO. OF

PAGES

NOTES

☐ OTHER

DATE

NO. OF

PAGES

NOTES

☐ OTHER

DATE

NO. OF

PAGES

NOTES

5a

5b, c, d

6a

5e

Page 4a

7-14-98

GTS bottle
Overlap sheet

4-3-81
2

Water Right Number - 51-02214 Prefix Translation: WATER RIGHT Old (D) Number - 32826

*** C - CURRENT OWNER *** KOHRING
KENT G.
1 - STAR RT. B BOX 140
2 -
3 -
City- BRUNEAU State- ID Zip- 83604
Phone -

Priority Date - 04/11/1966 Region - 14 WESTERN Stage - L - LICENSE Status -
Source - Groundwater Tributary -

Twn	Rng	Sec	Tract	Lot	Rflg	County	Point of Diversion	Diversion Name	Diversion Rate	Diversion No.
06S	04E	25	SW NW			(73) OMYHEE				
Code Description Period From Period To Water Use Diversion Rate Diversion Volume										
01 - IRRIGATION 03/15 11/15 4.040 1560.00										
+ - Total Div. Rate - 4.040 + - Total Div. Volume - + - Total Div. Capacity - + - Total Consumptive Use - + - KW Usage - 0.0										

Twn	Rng	Sec	Tract	Lot	Acres	Place of Use	Description	County
06S	04E	24	SE SE		38.0	38	01 IRRIGATION	(73) OMYHEE
06S	04E	25	NE NE		39.0	38	01 IRRIGATION	(73) OMYHEE
06S	04E	25	NW NE		38.0	36	01 IRRIGATION	(73) OMYHEE
06S	04E	25	NE NW		37.0	38	01 IRRIGATION	(73) OMYHEE
06S	05E	30	NE NW		40.0	40	01 IRRIGATION	(73) OMYHEE
06S	05E	30	NW NW		40.0	40	01 IRRIGATION	(73) OMYHEE
06S	05E	30	SW NW		40.0	40	01 IRRIGATION	(73) OMYHEE
06S	05E	30	SE NW		40.0	42	01 IRRIGATION	(73) OMYHEE
Total Acres:					312.0	312		

- - - Diversion Means -
- - - Non-Irrigation Use -
- - - Other Rights for Same Use -
- - - Remarks -

GEN THIS RT. WHEN COMBINED WITH ALL OTHER RTS. SHALL PROVIDE NO MORE THAN 0.02 CFS/AC NOR MORE THAN 5.0 AFA/AC FOR THE LANDS ABOVE.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

00:00:48
02/26/93

PAGE: 11
QUICKLOOK INFORMATION

CLAIM NUMBER: A51-02214

WR 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			526-93	N	6	MS 7-15-98	MS 7-15-98	
POINT OF DIV	Y	Y	L. Werner	APP POD	5, 6			
SOURCE				N	5, 6			
PLACE OF USE	Y	Y		Y	1, 4, 5, 6			
DIV. AMOUNT CFS/VOLUME				N	6			
CONSUMPTIVE USE				NA	NA			
PURPOSES				N	6			
PERIOD OF USE				Y	Dept. Std.			
BASIS OF CLAIM				L	L			
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

Some as licensed.

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

X Recommendations regarding permissible place of use & additions
of pt. of diversion are subject to claimant contact. - N/A

See photo no. 9 in A51-04000 for picture
of irr. well in Sec. 25, SWNW.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

00:00:48
02/26/93

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A51-02214

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?

FIELD
EXAMINER

DATABASE
N

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.

*7-14-98
A split of the farm subject to this right and
51-04000A) have been part of a litigation. A court
order is expected before the end of August 1998 that
will split both tracts. Left Tract being described
the system which creates a PPU through a common system.*

A. AJ CLAIM: # A51-02214 PRIORITY DATE: 04-11-1966 STAGE: L
B. WR RECORD: # 51-02214 PRIORITY DATE: 04-11-1966 STAGE: L

C. FIELD EXAM REQUIRED?

DUE TO PRIORITY DATE DISCREPANCY? (Y/N)

DATABASE
N

FIELD
EXAMINER
RU

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

NOTES:

RECOMMENDED PRIORITY DATE:

04-11-1966

REVIEWED BY

Mel Schulte
Linda Warner

DATE

7-14-98
5-27-93

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A51-02214	06S	04E	25	SW	SW	NW		OWYHEE

OTHER AJ CLAIMS WITH SAME AJ POD
A PREFIX
NONE

WR RECORDS IN SAME 40 ACRE TRACT
NONE

SOURCE: GROUNDWATER

TRIB:

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
51-02214	06S	04E	25	SW	SW	NW		OWYHEE

OTHER WR RECORDS WITH SAME WR POD
A PREFIX
NONE

AJ CLAIMS IN SAME 40 ACRE TRACT
R PREFIX
NONE

SOURCE: GROUNDWATER

TRIB:

C. FIELD EXAM REQUIRED?

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

NOTES:

Claimant contact for the date the added well was put into use for the claim claimed & found in A51-4000, & included under permissible place of use. - * Not necessary as addition of P.O.D. will not increase total quantity & previous info. in file shows the wells & distance.

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:		1/4	1/4	1/4	LOT	COUNTY
TWP.	RGE.	SEC.	1/4	1/4	1/4	
6S	4E	25	SW	SW	11W	OWY
6S	4E	36	SW	SW	SW	OWY
---	---	---	---	---	---	---
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---	---	---	---	---	---	---

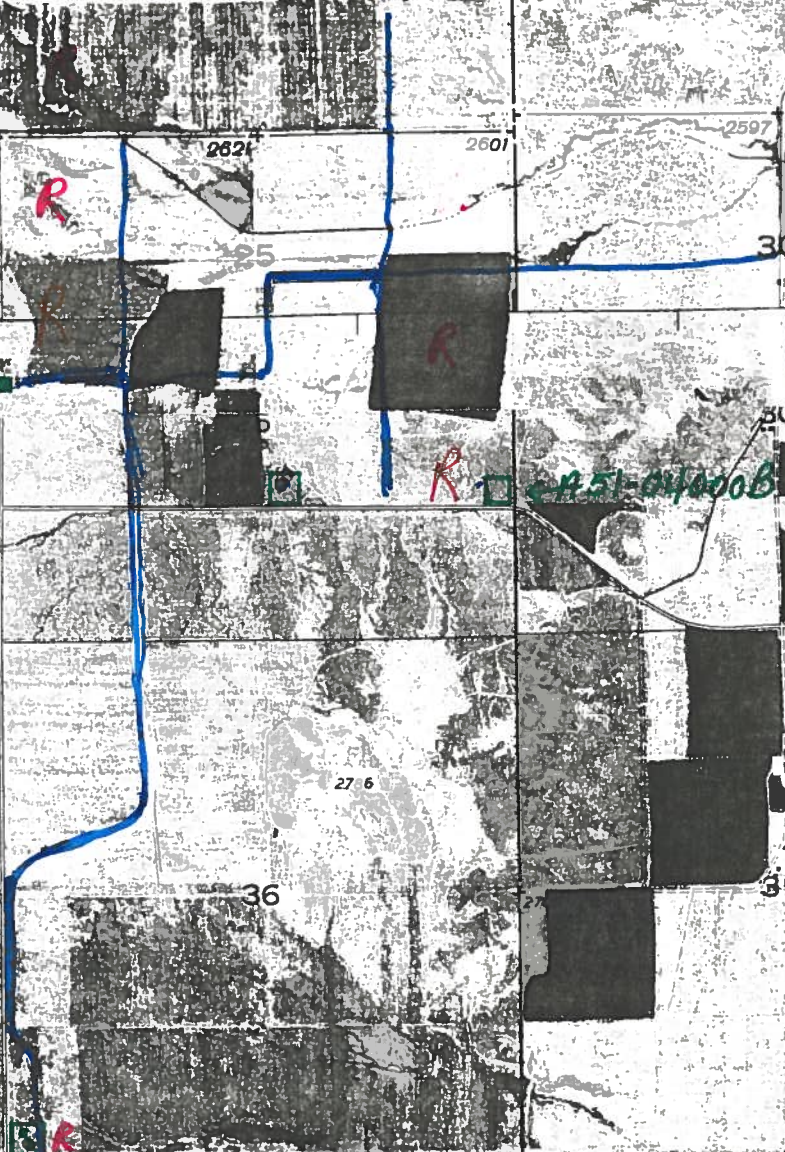
SOURCE: GROUNDWATER
 REVIEWED BY: *Mel Schulte* DATE: *7-14-98*
Sandra Curran DATE: *5-27-93*

SYSTEM DESCRIPTION:
 3 wells, 50 hp & 125 hp pumps at wells in Section 36.
 Cement 1/2 dirt ditches to holding pond, 3/4 hp pump in pond.
 Sprinkler & flood irrigation.

BM 2620

4a

System Diagram
51-03214 & 51-04000



Halfway

A. ROOT WATER RIGHT NUMBERS: A51-02214

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
06S	04E	24	SE	SE		KOHRING FARMS	A51-02214 /38.0	51-02214 /38.0			38.0
06S	04E	25	NE	NE		KOHRING FARMS	A51-02214 /39.0	51-02214 /39.0			39
06S	04E	25	NW	NE		KOHRING FARMS	A51-02214 /38.0	51-02214 /38.0			38
06S	04E	25	NE	NW		KOHRING FARMS	A51-02214 /37.0	51-02214 /37.0			37
06S	05E	30	NE	NW		KOHRING FARMS	A51-02214 /40.0	51-02214 /40.0			40.0
06S	05E	30	NW	NW		KOHRING FARMS	A51-02214 /40.0	51-02214 /40.0			40
06S	05E	30	SW	NW		KOHRING FARMS	A51-02214 /40.0	51-02214 /40.0			40
06S	05E	30	SE	NW		KOHRING FARMS	A51-02214 /40.0	51-02214 /40.0			40
TOTAL ACRES						A51-02214	312.00	312.00			237.00

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

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE Y FIELD EXAMINER

POU COUNTY: DAWYHEE

PRESUMPTION FLAG:

NOTES:

Permissible Place of Use:

T6S, R4E, Sec 25, SW1/4(36), SE1/4(40), NW1/4(40), SW1/4(40),
SE1/4(39), NW1/4(40), NE1/4(39), NW1/4(37)

Total = 308 acres

During field exam, I observed 1/2 front KOHRING the addition of permissible
place of use. He said he thought there were a good idea since

RECOMMENDATIONS:

TOTAL ACRES:

620 624

REVIEWED BY:

Donald D. Brown
Michael Brown

DATE:

5-27-93

7-15-98

that accurately reflects the way his land & wells are used.

See table
PPU -
GIS
624 ac

52

A51-2217
19
Kohring
Lohm
VARM
Tg

VABM

72-254-200

4000

4000

4000

400



30

PLICK

100

03(2)

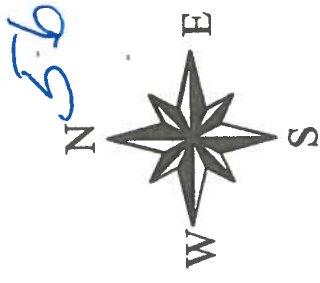
C. 31 Book

Halfway

IDAHO DEPARTMENT OF WATER RESOURCES

T6S, R4E, S24 & S25

T06S, R5E, S30



1987 NAPP PHOTO

SECTION LINES

POD

POU

1/4 1/4 LINES

ACRES

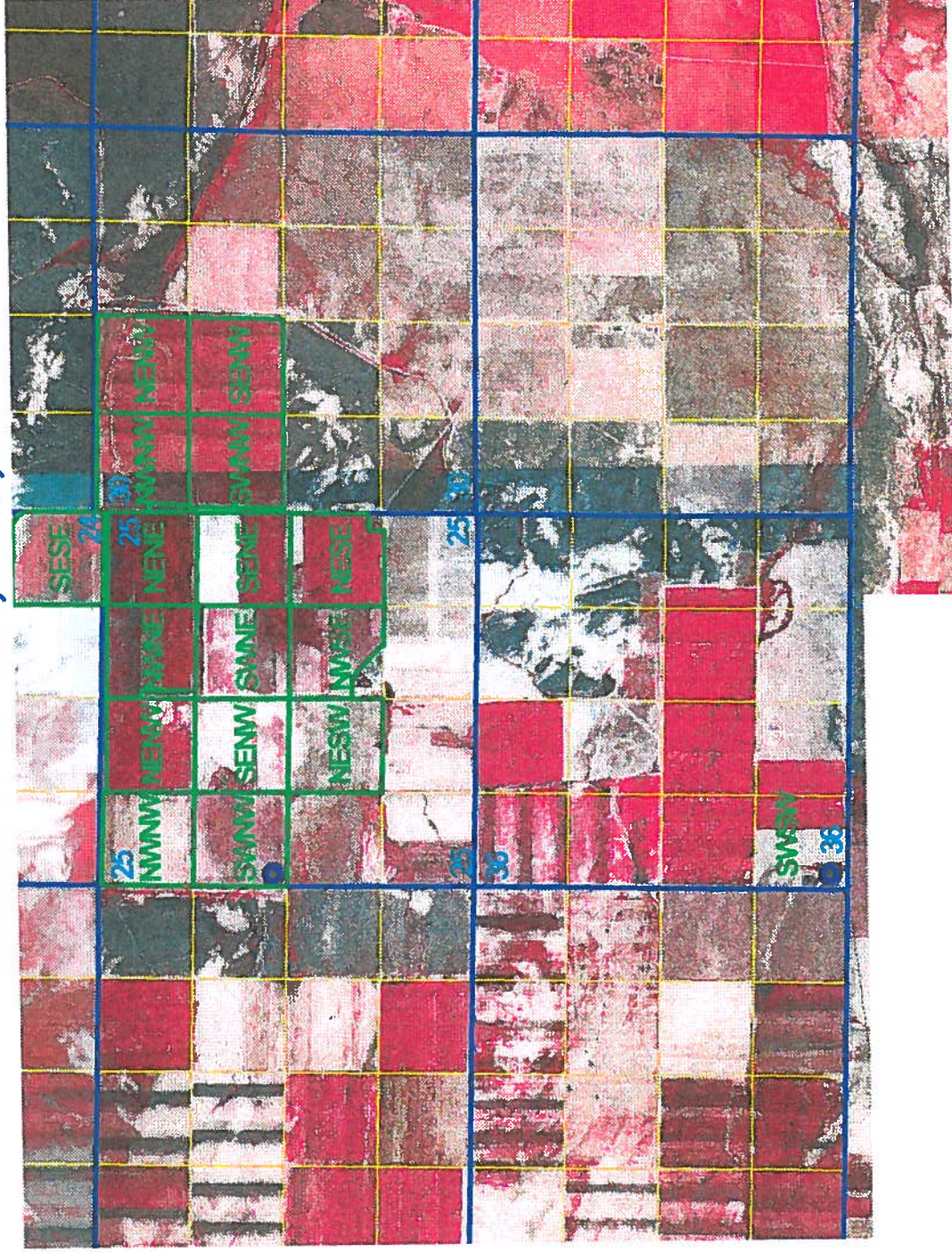
SECTION NUMBER

CLAIM(S) : 51-02214 & 51-04000A

OWNER(S): TRI VIAL INC.

Prepared by: Mel Schulte

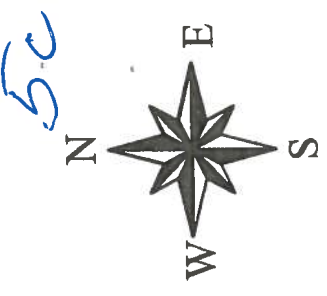
Date: 7/14/1998



IDAHO DEPARTMENT OF WATER RESOURCES

T6S, R4E, S24 & S25

T06S, R5E, S30



1987 NAPP PHOTO

SECTION LINES

POD

POU

1/4 1/4 LINES

ACRES

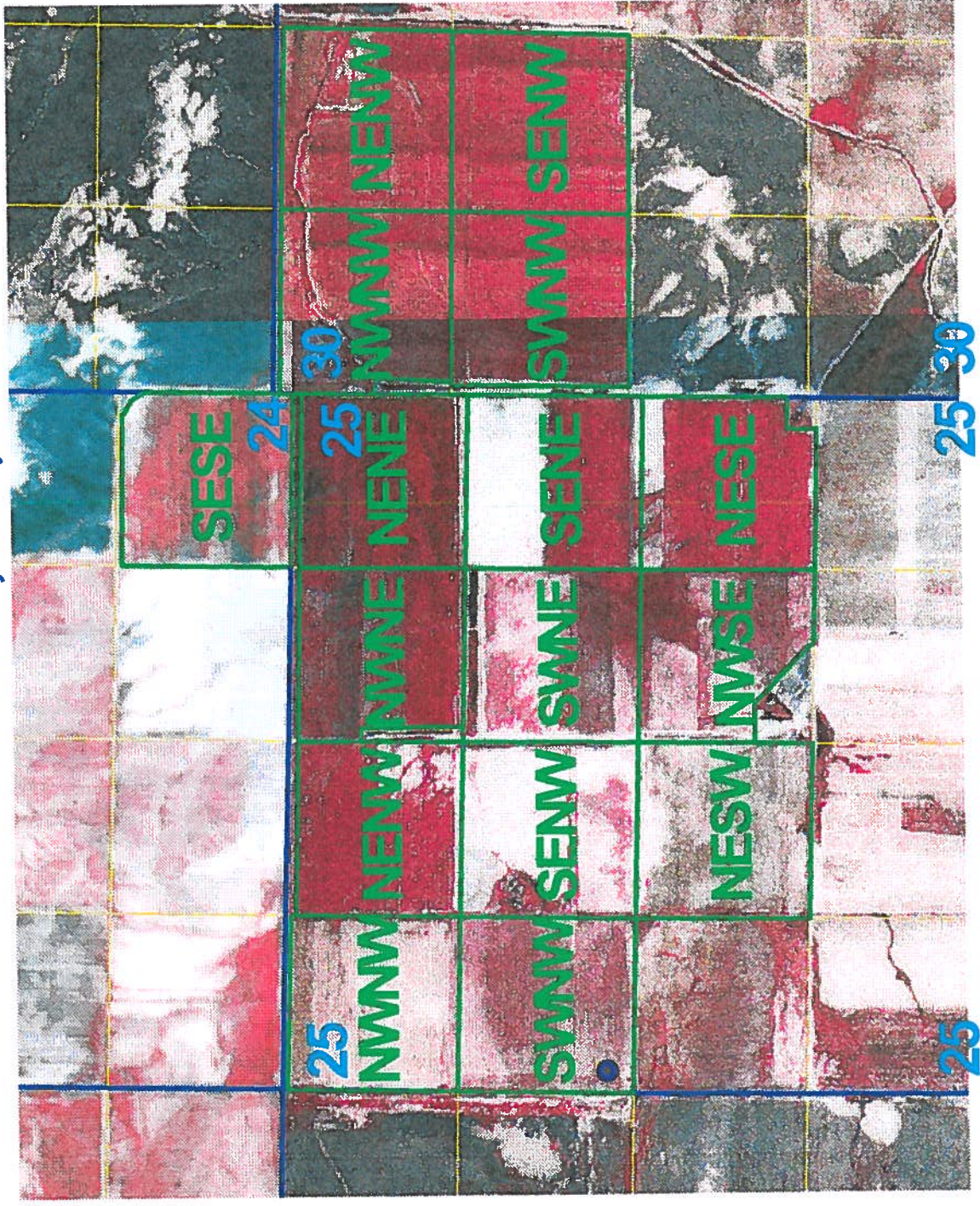
SECTION NUMBER

CLAIM(S) : 51-02214 & 51-04000A

OWNER(S): TRI VIAL INC.

Prepared by: Mel Schulte

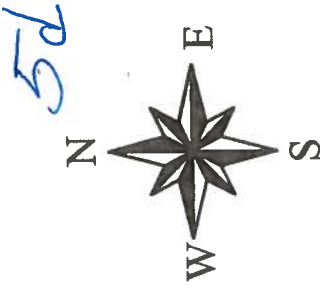
Date: 7/14/1998



IDAHO DEPARTMENT OF WATER RESOURCES

T6S, R4E, S24 & S25

T06S, R5E, S30



1987 NAPP PHOTO

SECTION LINES

POD

POU

1/4 1/4 LINES

ACRES

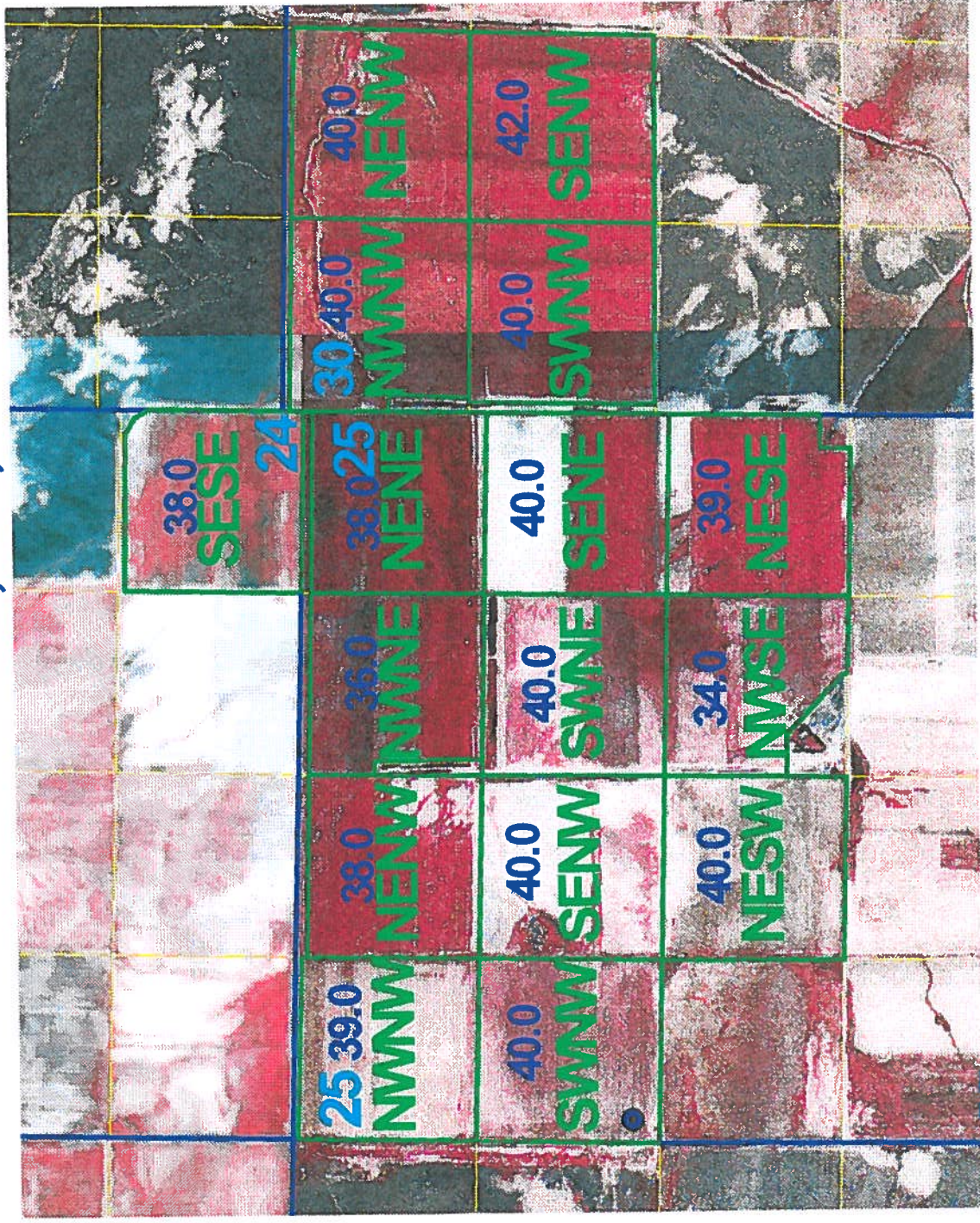
SECTION NUMBER

CLAIM(S) : 51-02214 & 51-04000A

OWNER(S): TRI VIAL INC.

Prepared by: Mel Schulte

Date: 7/14/1998



52

WESTERN REGION

CLAIM NUMBERS A51-02214 & A51-04000AAGENT MS DATE 7-14-98TOTAL ACRES FROM RECOMMENDATION 624GEOGRAPHIC INFO SYSTEM ACRES 624

READY FOR DECREE ____ (YES) SENT FOR DECREE ____ (YES)

RIGHT NO				NE				NW				SW				SE			
	TNS	RNG	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
RECOM	75	4E	24																38
GIS			25	38	36	40	40	38	39	40	40	40				39	34		424
			30					40	40	40	42								162
RECOM								41	42										624
GIS																			

POLYGON CREATED ON ~~80~~ 330

POLYGON # () () () () _____ UPDATED BY

ATTRIBUTES OF B51-POU.SHP (226) () () () ()

ATTRIBUTES OF B51-POD.SHP (238) (239) () () ()

B51-DBPOU.DBF 8-7-98 UPDATED BY MSB51-DBPOD.DBF 8-7-98 UPDATED BY MS

6A



Area resurveyed: 23,091.04 acres.

[illegible]

7
which

A. AD CLAIMED USES:

PURPOSES
A51-02214 IRRIGATION

MONTH/DAY
FROM 03-15 TO 11-15

DIVERSION QUANTITY
4.040 CFS

TOTAL DIVERSION RATE/VOLUME CLAIMED

B. WR RECORDED USES:

PURPOSES
51-02214 IRRIGATION

MONTH/DAY
FROM 03-15 TO 11-15

DIVERSION QUANTITY
4.040 CFS 1560.00 AF/A

TOTAL DIVERSION RATE/VOLUME CLAIMED

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

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

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?
RECOMMEND TO WR STANDARDS OR OTHER?

Y() N(X)
Y(X) N() Explain in notes, below.

NOTES:

WR Rec'd = 3-15 to 11-15 4-1 to 10-31

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

Y (X) N ()

AJ TOTAL CLAIMED DIVERSION RATE: 4.040 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 4.040 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. **

FLOW MEASUREMENT REQUIRED?

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

B.

FLOW MEASUREMENT

MEASUREMENT METHOD W/A, SEE ATTACHED CALCULATIONS.

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

OTHER RIGHTS LISTED IN CLAIM: NONE

NO CLAIMS FOUND WITH SAME POU AND IRRIGATION USAGE

NO RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION

A51-040004

D.

RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE
ACRES 312 x 0.02 CFS/ACRE = 6.24 CFS
(Taken from p/u review)

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y() N(X) Licensed: 404 cfs

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

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = 1092.0 A/F/A

ACRES 312 x CONSUMPTIVE VOL. A/F/A FOR AREA 30 =

TOTAL CONSUMPTIVE USE 936 A/F/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME =

ACRES 312 x DIVERSION VOL. A/F/A FOR AREA 50 =

TOTAL DIVERSION VOLUME 1560 A/F/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y() N()
THIS RT. WHEN COMBINED WITH ALL OTHER RTS. SHALL PROVIDE NO MORE
THAN 0.02 CFS/AC NOR MORE THAN 5.0 AFA/AC FOR THE LANDS ABOVE.

4.04 x 1.9835 x 214 = 1714.8

1b. CALCULATIONS

Combined rights:

A51-04000
Flow: 6.16

C.U. = 924

V(d.r.) = 308 x 4 = 1232
V(i.r.) = 6.16 cfs x 1.9835 AFA/d x 214 d = 2614.7 AF

Combined totals

Acres = 312 + 4000 = Total

Flow = 4.04 + 6.24 = 10.2

C.U. = 936 + 924 = 1860
Volume = 1248 + 1232 = 2480
1560 + 1560 = 3120

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

POD FO2: Two POD in SUSCU, S.36, T6S, R4E.

EXP BO6: H2O Temp. measured at 1050F from one POD in SUSCU, S.36, T6S, R4E

POU1 BO7: H2O is low temp geothermal well.

POU1 KOC: This right is limited to the irr. of 312 acres w/in the P.O.U.

QNT ED1: Use of this right w/51-04000's limited to: 10.2 cfs, volume of 2480 AF
CU of 1860.0 AF x 620 acres

EXP FO6: The following rights are also diverted through POD described above:
51-04000's 51-10207

Approval Condition (?) C03
Chg. in POD x POU.

RECOMMENDATIONS:

REC. PURPOSES	REC. PERIOD FROM TO	REC. DIV RATE CFS	REC. DIV VOL. AF/A	REC. CONS. USE
IRRIGATION	~~4-15~~ <u>4-15</u> ~~10-31~~ <u>11-15</u>	<u>4.040</u>	<u>4.04</u>	<u>1092.0</u>

TOTAL FOR THIS RIGHT

4.040

1092.0

REVIEWED BY:

Shirley Werner

DATE:

5-27-93

A. CHECK ONLY THE FOLLOWING THAT APPLY:

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

B. SPLIT WATER RIGHT REVIEW N/A

ROOT WATER RIGHT NUMBER: 51-02214

DATABASE 4.040

EXAMINER

CFS

CFS

SPLITS:

OLD RIGHT
NUMBERS

CURRENT
CLAIM NUMBERS

DIVERSION
RATE

CURRENT "R"
CLAIM NUM.

"R" DIV.
RATE

WR RIGHT
NUMBERS

DIVERSION
RATE

A51-02214

4.040

-

51-02214

4.040

TOTAL CFS

4.040

4.040

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
Y

FIELD
EXAMINER

NOTES:

This matter will likely be resolved in court ownership dispute is settled by litigation.

AUTHENTICATION:

SIGNATURE: *Mel Schulte*

DATE: 5-27-93

NAME OF FIELD EXAMINER: Linda Werner

TITLE: Sr. W.R. Agent

DATE OF EXAM Jan 20 1968 75-2 BY CARL E. MORLEY

ACREAGE
Found 311.78 Revised to 312 ac
Recommended 311.78

Irrigation Requirements _____

USE 1560.0
 Migration: 5-4-04 22 1558.50 AF Ann from 3/15 to 4/15
 Domestic: 0 0 AF Ann from to
 Livestock: 0 0 AF Ann from to

[illegible]

Maple School _____
 Loc. _____ N/S. Rge. _____ E/W. S. M., Sec. _____ Sub. _____ 1/2 _____

Inv. No. 145. Page 21. Date Dec. 18. 1914.

Exchange: 1 yes, 1 no

Name of order exchanged with: _____
Two: _____ N/S, Rgc _____ E/W, B.M., Sec _____ Sub _____

Two _____ N/S, Rgc _____ E/W, B/A, Sec _____ Sub _____

For. of Injection _____ County _____

10. Date Rec'd _____ 11/5 Reg# _____ E*V, B.M., 500 _____

Point of exchange		Count
h.p.	NIS, Reg. F.V.A. 1st	50

1. P. --- N/S, Rec. --- F.V. E.A. --- S. 4 --- 1.

Total Q measured 4.2415 Method of measurement 4.2415

Total Recommended _____ Meter No. 45626 Type A Cord No. 5000

Total V recommended 1560.0

Recommender: [Aprender a programar](#)

Flow of Use

None

MEASUREMENT CALCULATION

$$10^{17} \text{ g } 2H^+ H_2O = 3.85 \text{ C ES} \quad \text{Re-act} \quad 10^{17} \text{ g } 2H^+ H_2O = 1.85 \text{ C}$$

1. www.ck12.org 2. www.ck12.org 3. www.ck12.org 4. www.ck12.org 5. www.ck12.org 6. www.ck12.org 7. www.ck12.org 8. www.ck12.org 9. www.ck12.org 10. www.ck12.org 11. www.ck12.org 12. www.ck12.org 13. www.ck12.org 14. www.ck12.org 15. www.ck12.org 16. www.ck12.org 17. www.ck12.org 18. www.ck12.org 19. www.ck12.org 20. www.ck12.org 21. www.ck12.org 22. www.ck12.org 23. www.ck12.org 24. www.ck12.org 25. www.ck12.org 26. www.ck12.org 27. www.ck12.org 28. www.ck12.org 29. www.ck12.org 30. www.ck12.org 31. www.ck12.org 32. www.ck12.org 33. www.ck12.org 34. www.ck12.org 35. www.ck12.org 36. www.ck12.org 37. www.ck12.org 38. www.ck12.org 39. www.ck12.org 40. www.ck12.org 41. www.ck12.org 42. www.ck12.org 43. www.ck12.org 44. www.ck12.org 45. www.ck12.org 46. www.ck12.org 47. www.ck12.org 48. www.ck12.org 49. www.ck12.org 50. www.ck12.org 51. www.ck12.org 52. www.ck12.org 53. www.ck12.org 54. www.ck12.org 55. www.ck12.org 56. www.ck12.org 57. www.ck12.org 58. www.ck12.org 59. www.ck12.org 60. www.ck12.org 61. www.ck12.org 62. www.ck12.org 63. www.ck12.org 64. www.ck12.org 65. www.ck12.org 66. www.ck12.org 67. www.ck12.org 68. www.ck12.org 69. www.ck12.org 70. www.ck12.org 71. www.ck12.org 72. www.ck12.org 73. www.ck12.org 74. www.ck12.org 75. www.ck12.org 76. www.ck12.org 77. www.ck12.org 78. www.ck12.org 79. www.ck12.org 80. www.ck12.org 81. www.ck12.org 82. www.ck12.org 83. www.ck12.org 84. www.ck12.org 85. www.ck12.org 86. www.ck12.org 87. www.ck12.org 88. www.ck12.org 89. www.ck12.org 90. www.ck12.org 91. www.ck12.org 92. www.ck12.org 93. www.ck12.org 94. www.ck12.org 95. www.ck12.org 96. www.ck12.org 97. www.ck12.org 98. www.ck12.org 99. www.ck12.org 100. www.ck12.org 101. www.ck12.org 102. www.ck12.org 103. www.ck12.org 104. www.ck12.org 105. www.ck12.org 106. www.ck12.org 107. www.ck12.org 108. www.ck12.org 109. www.ck12.org 110. www.ck12.org 111. www.ck12.org 112. www.ck12.org 113. www.ck12.org 114. www.ck12.org 115. www.ck12.org 116. www.ck12.org 117. www.ck12.org 118. www.ck12.org 119. www.ck12.org 120. www.ck12.org 121. www.ck12.org 122. www.ck12.org 123. www.ck12.org 124. www.ck12.org 125. www.ck12.org 126. www.ck12.org 127. www.ck12.org 128. www.ck12.org 129. www.ck12.org 130. www.ck12.org 131. www.ck12.org 132. www.ck12.org 133. www.ck12.org 134. www.ck12.org 135. www.ck12.org 136. www.ck12.org 137. www.ck12.org 138. www.ck12.org 139. www.ck12.org 140. www.ck12.org 141. www.ck12.org 142. www.ck12.org 143. www.ck12.org 144. www.ck12.org 145. www.ck12.org 146. www.ck12.org 147. www.ck12.org 148. www.ck12.org 149. www.ck12.org 150. www.ck12.org 151. www.ck12.org 152. www.ck12.org 153. www.ck12.org 154. www.ck12.org 155.







SYSTEM DESCRIPTION

$$f(x) = \frac{1}{x^2} = x^{-2} \Rightarrow f'(x) = -2x^{-3} = -\frac{2}{x^3}$$
[illegible]

Phone call and not dated 11-22-64

[illegible][illegible]

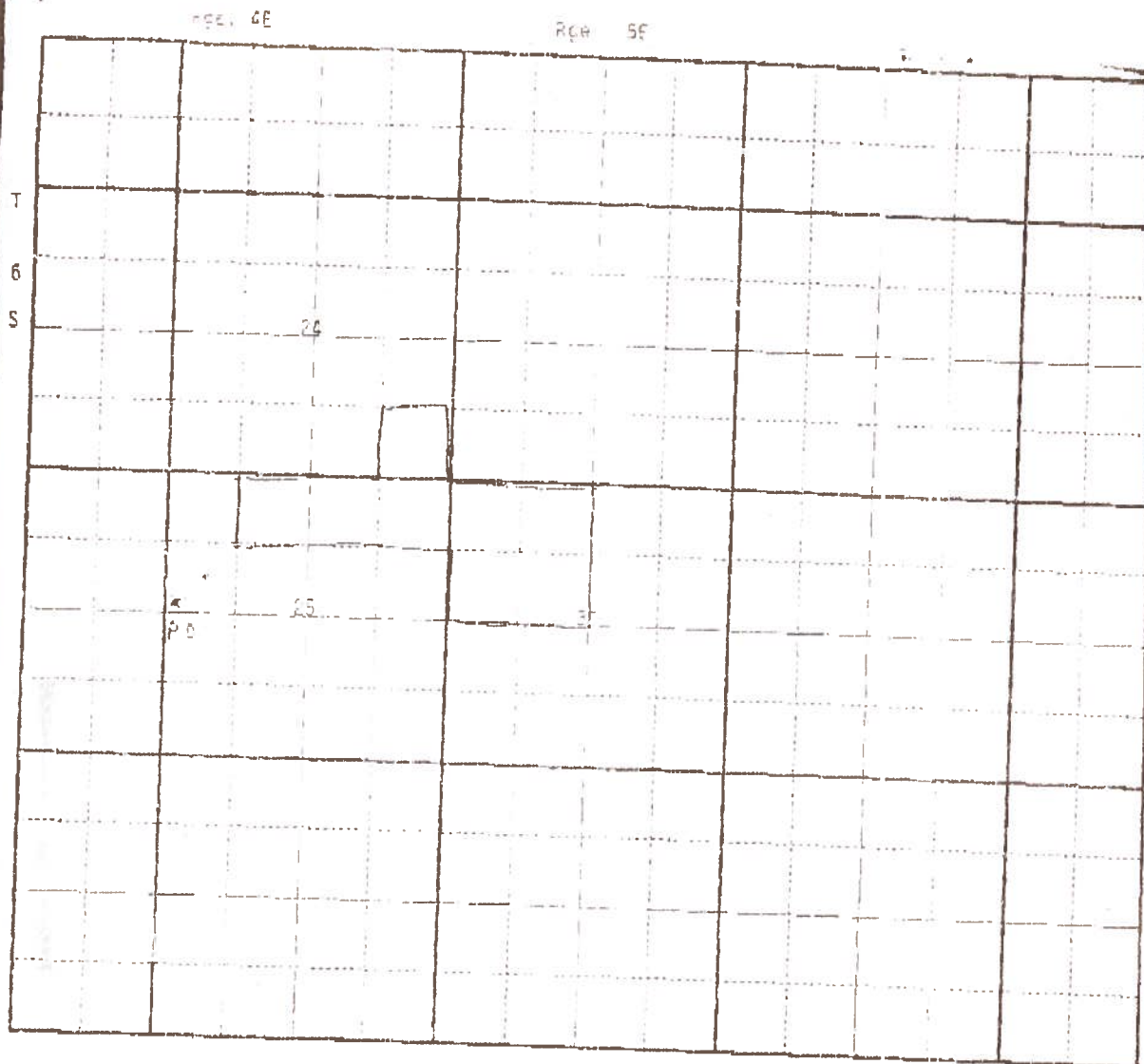
Re-commenced teaching at the 7th April 1854.

Examiner's Signature: [Signature] Date: 25 Nov 2012

Checked by: DRS Date: 10/15/80

Approved by: [Signature] 12-1-92. [Initials]

Dr. Hocking was in the office 11-27-82 & requested
we go ahead & start looking for a building to rent.



CARD NO.

Kohring Farms

Overlap sheet

TOWNSHIP

6 S

RANGE

4 E

EAST

Sec.
25

6	5	4	3	2	1				
7	8	9	10	11	12				
18	17	16	15	14	13				
19	20	21	22	23	24				
40 40								38	
40 40								40 37 38 39	
								40 39 36 40	
30	29	28	27	26				40 25 34 39	
31	32	33	34	35	36				

A51-02214 312 Ac @ 4.04 cfs

A51-04000 308 Ac @ 6.16 cfs

MEMORANDUM

January 8, 1998

TO: FILES

FROM: KAY WALKER 

RE: OWNERSHIP

Mr. Kent Kohring was in the office this afternoon to find out about the claims he had submitted. There is an ownership dispute over the lands claimed under rights A51-04000, A51-02214 and A51-10207. Apparently the parties have a court date for the end of April or first of May to resolve the ownership of the lands. Mr. Kohring would like to have copies of any and all information sent to Tri-Vial regarding these rights. Mr. Kohring is a partner in Tri-Vial but the secretary of the company is not reliable to pass on information to Mr. Kohring.

Mr. Kohring was curious as to how we were going to recommend his irrigation rights. He has 3 wells that are discharged into a pond and then used to irrigate all of the lands (480 acres). I checked Linda's field notes of her visit to this property and she had recommended that all the wells be included on each of the irrigation claims rather than just 1 well on each right as claimed. Mr. Kohring stated that the wells have historically been used in this way. There is one well in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 25, Twp. 6S, Rge. 4E that is just used for domestic and stockwater purposes. However, this well does irrigate the lawn around the house.

State of Idaho
Department of Water Resources

RECEIVED
APR 10

WATER RIGHT LICENSE

Department of Water Resources
Western Regional Office

License of Water Right No. 51-2214 Priority April 11, 1966 Amount 4.04 cfs

THIS IS TO CERTIFY, that Kent G. Kohring
of Bruneau, Idaho, has complied with the terms and conditions of Permit
No. 51-2214 issued pursuant to Application for Permit dated April 11, 1966,
and has submitted proof to the Department of Water Resources on October 14, 1974,
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 4.04 cfs of water from a groundwater source,
tributary to _____, and that the permit holder has applied to a beneficial use and
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Irrigation	from <u>March 15</u> to <u>November 15</u>	at <u>4.04</u> cfs and	<u>1560.0</u> acre feet
	from _____ to _____	at _____ cfs and	
	from _____ to _____	at _____ cfs and	

(both dates inclusive)

Subject, however, to the condition that no more than 4.04 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
1560.0 acre feet per year, said waters to be diverted within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 25, Twp.
6S, Rge. 4E in the County of Owyhee

Description and location of place of use:

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Totals
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
6S	4E	24																38	38
		25	39	38			37												114
6S	5E	30					40	40	40	40									160

Total number of acres irrigated 312

This right when combined with all other rights shall provide no more than 0.02
cfs per acre nor more than 5.0 afa per acre for the lands above.

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho
Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use
herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 4th day of
December April, 19 83.

Director

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: A51-02214
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: APR 11, 1966

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	SW	NW		OWYHEE

5. Description of diverting works:
WELL, PUMP, STORAGE POND, DITCHES

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	4.040		

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

A.F.A.

8. Total consumptive use is 1092.0 Acre Feet Per Annum.

9. Non-irrigation uses:
INCIDENTAL YEAR AROUND STOCKWATER USE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06S	04E	24	SE	SE		IRR	38.0

10. Place of Use: Continued

Township	Range	Section	1/4	of 1/4	Lot	Use	Acres
						Section Acres	38.0
		25	NE	NE		IRR	39.0
			NW	NE		IRR	38.0
			NE	NW		IRR	37.0
						Section Acres	114.0
	05E	30	NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SW	NW		IRR	40.0
			SE	NW		IRR	40.0
						Section Acres	160.0
						Total Acres	312.0

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:
NONE

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

15. Basis of Claim: LICENSE

Water Right Number: 32826



NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

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

RECEIVED

AUG 03 1994

DATE OF CLOSING: _____

LEGAL DESCRIPTION OF PROPERTY: Township _____ Range _____
Section _____, 1/4 of _____ 1/4 of _____ 1/4, Govt. Lot _____, BM. WATER RESOURCES
Lot _____, Block _____, Subdivision/Townsite _____ WESTERN REGION
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? ☒ 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: S. 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



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

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: A51-02214
Date Received: 1/17/1989
Receipt No: 0005138
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: APR 11, 1966

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	SW	NW		OWYHEE

5. Description of diverting works:
WELL, PUMP, STORAGE POND, DITCHES

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	4.040		

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

8. Total consumptive use is 1092.0 Acre Feet Per Annum.

9. Non-irrigation uses:
INCIDENTAL YEAR AROUND STOCKWATER USE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06S	04E	24	SE	SE		IRR	38.0
Section Acres							38.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06S	04E	25	NE	NE		IRR	39.0
			NW	NE		IRR	38.0
			NE	NW		IRR	37.0
					Section Acres		114.0
	05E	30	NE	NW		IRR	40.0
NW			NW		IRR	40.0	
SW			NW		IRR	40.0	
SE			NW		IRR	40.0	
					Section Acres		160.0
					Total Acres		312.0

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:
NONE

14. Remarks:

15. Basis of Claim: LICENSE
Water Right Number: 32826

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

Kohring Farms, that I have signed the foregoing
Organization

document in the space below as Partner of _____
Title

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

Eugene J. Rohatien
Signature of Authorized Agent

Partner Kohring 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

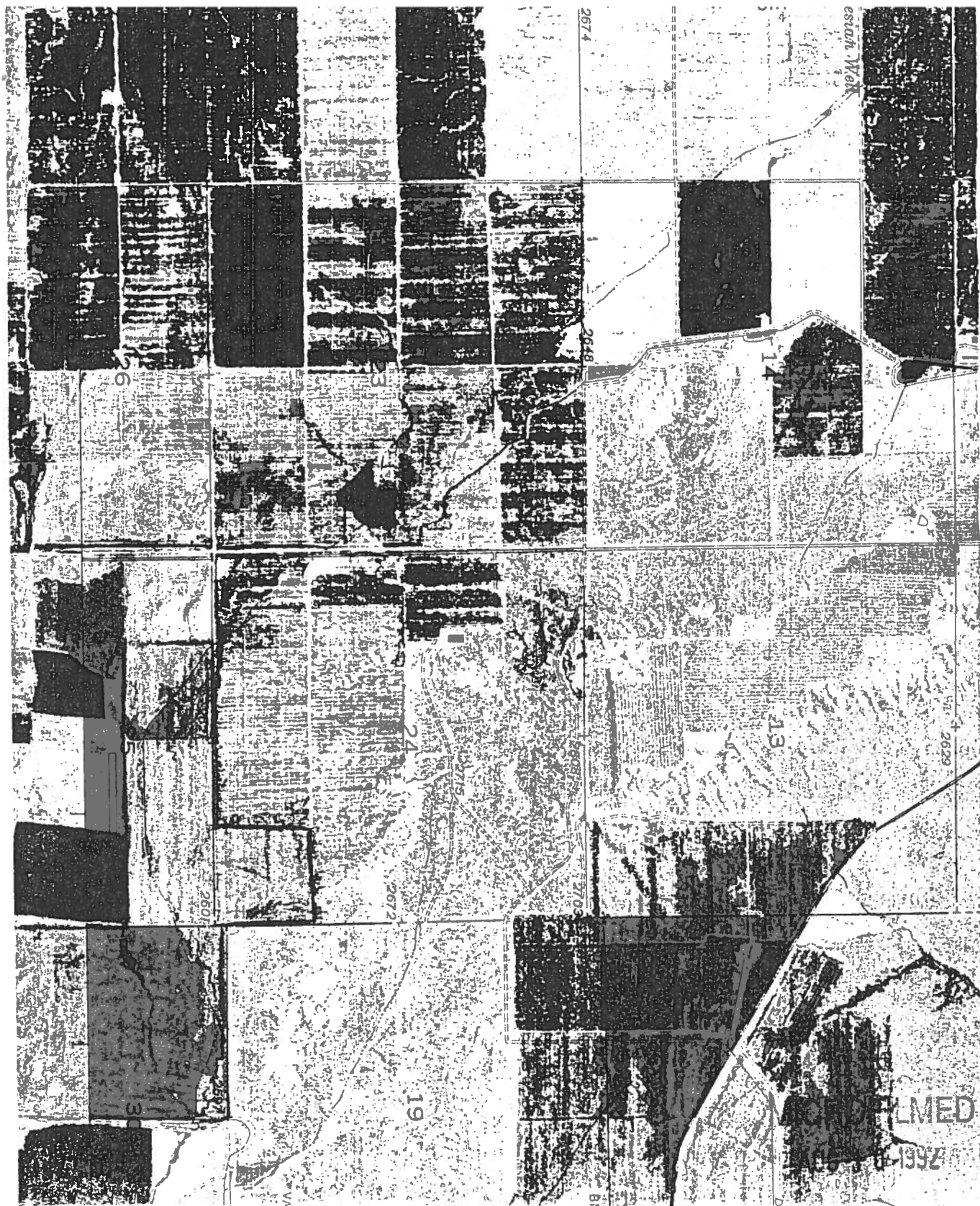
of JAN 19 89

M. J. [Signature]
Notary Public

Seal

Residing at Boise, ID

My Commission Expires 9-2-1994



SCALE 1:24 000

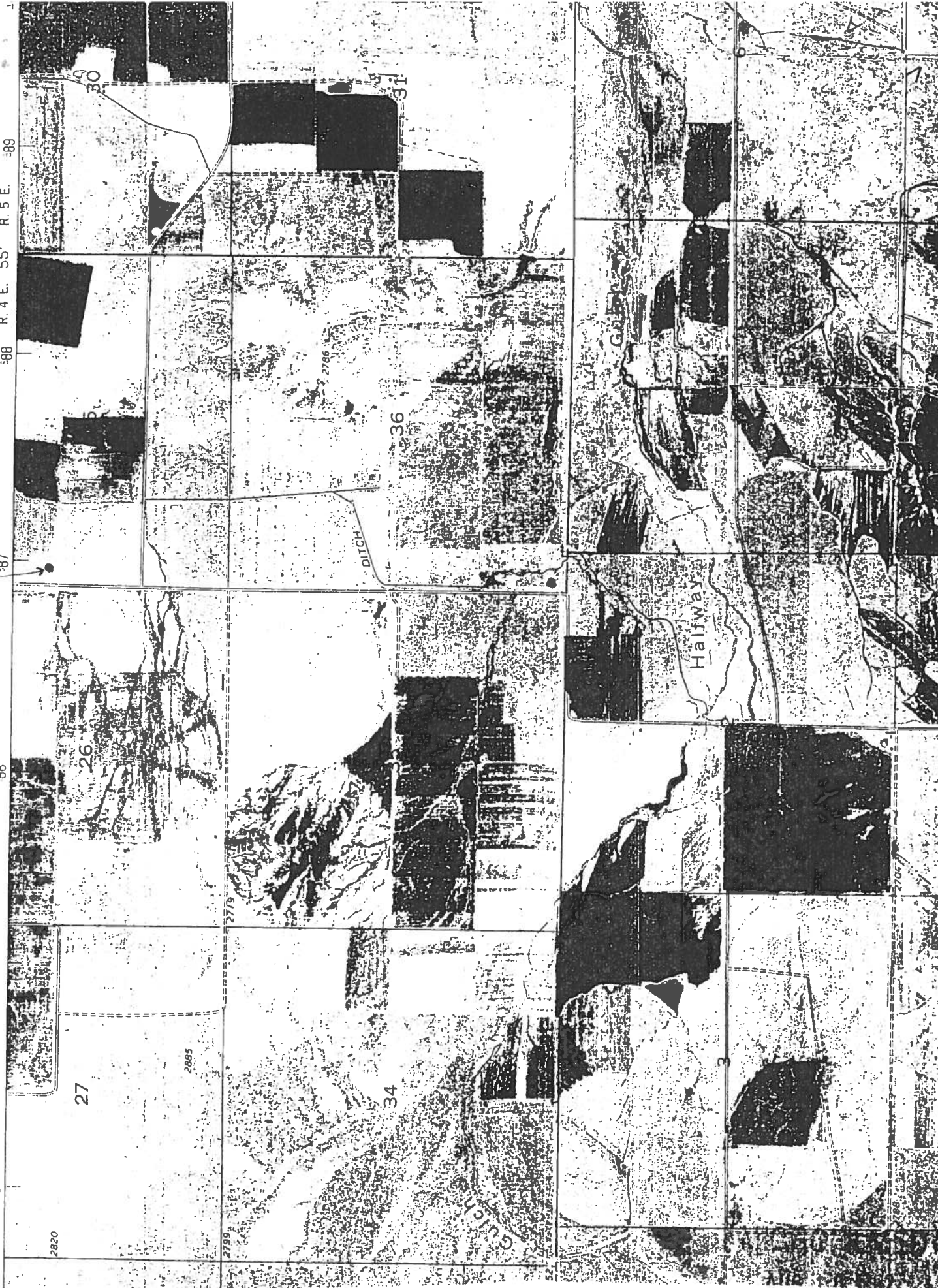
T6S R4E SECTION 25

SW SW NW

57' 30"

R4E R5E

588 R. 4 E. 55' R. 5 E. 589



Water Right Number - 51-02214

Adj. Flag Translation: Standard Water Right Number

Old (D) Number - 32826

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

*** C - CURRENT OWNER ***

KOHRING

KENT G.

1 - STAR RT. B BOX 140

2 -

3 -

City- BRUNEAU

Phone -

State- ID Zip- 83604

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - - +
04/11/1966 L - LICENSE

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

GROUNDWATER

+ - - - - - - - - - - - - - - - Point of Diversion - - - - - Stream Index (Blank if no Index Code) - - - - - +

County

Stream Index (Blank if no Index Code)

06S 04E 25 SW NW (73) OWYHEE

+ - - - - - - - - - - - - - - - Water Use - - - - - Diversion Rate - - - - - Diversion Volume - - - - - +

Code Description

Period From Period To

Diversion Rate

Diversion Volume

01 - IRRIGATION

03/15

11/15

4.040

1560.00

+ - - Total Div. Rate - + + - - Total Div. Volume - + + - - Total Div. Capacity - + + - - Total Consumptive Use - + + - - KW Usage - + +
4.040

+ - - - - - - - - - - - - - - - Place of Use - - - - - Description - - - - - County - - - - - +

Twn

Rng

Sec

Tract

Lot

Acres

Code

County

| | | | | | | | | |
|-----|-----|----|-------|------|----|------------|------|--------|
| 06S | 04E | 24 | SE SE | 38.0 | 01 | IRRIGATION | (73) | OWYHEE |
| 06S | 04E | 25 | NE NE | 39.0 | 01 | IRRIGATION | (73) | OWYHEE |
| 06S | 04E | 25 | NW NE | 38.0 | 01 | IRRIGATION | (73) | OWYHEE |
| 06S | 04E | 25 | NE NW | 37.0 | 01 | IRRIGATION | (73) | OWYHEE |
| 06S | 05E | 30 | NE NW | 40.0 | 01 | IRRIGATION | (73) | OWYHEE |
| 06S | 05E | 30 | NW NW | 40.0 | 01 | IRRIGATION | (73) | OWYHEE |
| 06S | 05E | 30 | SW NW | 40.0 | 01 | IRRIGATION | (73) | OWYHEE |
| 06S | 05E | 30 | SE NW | 40.0 | 01 | IRRIGATION | (73) | OWYHEE |

Total Acres: 312.0

+ - - Diversion Means - WELL & DITCHES.

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use -

+ - - - - - - - - - - - - - - - Remarks - - - - - +

THIS RT. WHEN COMBINED WITH ALL OTHER RTS. SHALL PROVIDE NO MORE
THAN 0.02 CFS/AC NOR MORE THAN 5.0 AFA/AC FOR THE LANDS ABOVE.

MICROFILMED

AUG 10 1992

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 |
|---------------------------|---------------------------------------|--------------------------|
| <u>51-4000A (portion)</u> | | ☐ |
| <u>51-224</u> | | ☐ |
| <u>51-10207</u> | | ☐ |
| <u>51-7355</u> | <u>(permit; assignment submitted)</u> | ☐ |
| <u>51-7356</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)

De-Vial Inc.
HC 85 Box 139E 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>3.17</u> | <u>156 acres</u> |
| Stock | <u>0.18</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>51-10207</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 _____
 Receipted 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

Ex-Officio Recorder Deputy

Index to: DEED, QUIT-CLAIM

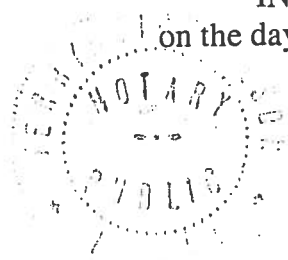
Fee: 9.00

Claret

STATE OF IDAHO)
County of Canyon) ss.
Ada

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.



(seal)

Ally McGrade
Notary Public for Idaho
Residing at: Manpa
My Commission Expires: 9.30.03

STATE OF IDAHO)
County of Canyon) ss.
Ada

On the 10th 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)

Ally McGrade
Notary Public for Idaho
Residing at: Manpa
My Commission Expires: 9.30.02

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

MEMORANDUM

TO: 51-02214 & 51-04000A

FROM: Mel Schulte
Senior Water Rights Agent
Western Region Office



DATE: February 3, 1999

RE: Case No. CV 97-01745, Kohring Vs Robertson & Tri Vial, Inc

On February 2, 1999 in answer to the subpoena served January 21, 1999, I testified at the above referenced trial in Murphy, Idaho. The subpoena was served by the firm of Hamilton, Michaelson & Hilty, the attorneys representing the Robertsons.

The primary purpose for my testimony was to describe and enter into the court records the components and historical nature of water rights 51-02214 and 51-04000A. These rights are appurtenant to the land that was the major asset of Tri Vial, Inc. The distribution of this real property asset and its related water rights in the dissolution of Tri Vial, Inc is the basis for the suit referenced above.

In response to examination questions of Terry Michaelson, I described the main components of license 51-02214 and statutory claim 51-04000. I used as aids copies of the license and statutory claim and a GIS map I prepared prior to my appearance in court. All three of these documents were entered into the court records as an exhibit and copies were provided to all of the parties. During his questioning, Mr. Michaelson also requested that I describe for the court the amount of water per acre that each right provided. I responded by describing the approximated diversion rate in inches per acre for each right.

Terry Michaelson also inquired as to the position the department has taken in its recommendations of rights 51-02214 and 51-04000 as they relate to the above referenced suit. I responded that the department is neutral in its position and has been waiting for several years for a court order or contractual agreement that would provide some direction on the ownership of the SRBA claims and the land to which they are appurtenant. I also explained the status of the claim review process and advised the court that the ultimate disposition of our recommendations is now with the SRBA court and the only thing the department will address at this time is the claim's ownership issue.

Jim Jones, attorney for the Kohrings, cross examined. He presented me with copies of profile reports of the "R" records for 51-02214 and 51-04000A that had already been entered as exhibits in the case. He requested that I describe the components of the profile reports and explain why they describe a total of 624 acres for both rights when the original water right documents describe only 312 and 320 acres each. I explained that the profile reports describe our recommendations to the SRBA court based on evidence in our files. The reports and evidence indicate that historically the water used under both rights has been combined into one delivery system that allowed water from all wells to be used on any and all acres in the place of use. When Jim Jones and Terry Michaelson made additional inquiries about the recommendations in the "R" records, I responded that I could not answer any questions about our recommendations because the disposition of the water rights is under the jurisdiction of the SRBA court. Neither attorney challenged my response concerning this jurisdictional issue.

Terry Michaelson also asked if our recommendations allowed for "water spreading". I responded that the term "water spreading" as I have heard it used related to the use of water in Federal water rights on land not authorized by the water rights. I explained that we use the terms expansion or enlargement rather than "water spreading" to mean the same thing. I explained that our recommendations do not provide for expansion or enlargement of the water rights 51-02214 and 51-04000A.

MTS

MAIL



RECEIVED

FEB 04 1999

WATER RESOURCES
WESTERN REGION

RECEIVED

JAN 15 1999

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

Case No. 39576

A: Subcase A 51-02214

(insert water right number)

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: _____

4. ☐ Priority Date

Should be: _____

5. ☒ Point(s) of Diversion

Should be: T06S R04E S25 SWSWNW Within 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: T06S R04E S24 SESE 38 T06S R04E S25 NENE 39
NWNE 38 NENW 37 T06S R05E S30 NENW 40 lot 1 (NWNW) 40
lot 2 (SWNW) 40 SENW 40

11. I object because:

☐ This water right should not exist.

☒ This water right ~~was not recommended by~~ should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION(S):** This water right has been combined with water right 51-04000A. This change has not been requested by or authorized by the owner TRI-VIAL Inc. and severely limits the ability of TRI-VIAL Inc. to assign these water rights to the owners of the land associated with the original water right.

SEE ATTACHED REASONS SUPPORTING OBJECTIONS

This water right ,51-02214, has been combined with water right, 51-04000A. This change has not been requested by or authorized by the owner of these water rights, TRI-VIAL Inc. TRI-VIAL Inc. rights have been violated and this combining of water rights severely limits the ability of TRI-VIAL Inc. to assign these water rights to the new owners of the land which has been deeded out of the corporation. TRI-VIAL Inc. has never received a copy of any written request for any modification or alteration of the original water rights that were transferred to the corporation on August 3, 1994. These rights had been in effect since the priority dates of the issued water rights and should not have altered or modified with out a written notice.

TRI-VIAL Inc. received from the Department of Water Resources the copies of the revised water rights in August of 1998 within a Notice of Error reply attached. TRI-Vial Inc. returned to the Department of Water Resources the completed Notice of Error forms . The completed forms described the errors found in the revised water rights, included with the Notice of Error forms was a copy of a letter from Charles L. Honsinger giving the reasons that the Department of Water Resources would not become involved until pending legal actions were completed. These documents were returned to the Department of Water Resources in August of 1998

The Department of Water Resources completely ignored the Notice of Error forms, as TRI-Vial Inc. did not receive any correspondence concerning these errors. TRI-VIAL Inc. was told several times during phone conversations that there would not be any changes made in the water rights until after all litigation was completed. TRI-VIAL Inc. request for information on who requested and when request were made for changes in the original water right has been completely ignored.

In August of 1998 the president of TRI-VIAL Inc. sent a letter to the Department of Water Resources clearly stating that Mr. Kohring had no authority from TRI-VIAL Inc. to request any changes to TRI-VIAL Inc. water rights.

In September of 1998 Mrs. Susan G. Robertson received a letter addressed to her and Kent Kohring stating that the recommendations of August 1998 and the modified water rights would remain in effect, again TRI-VIAL Inc. did not receive any correspondence.

The addition of the Bruneau Snail to the endangered species list is also very important reason not to combine these water rights. If a reduction in ground water rights was to be put into action, on a basis of priority dates, the rights of the holders of water rite 51-04000A would be reduced as the water right would then apply to 640 acres and would seriously effect use on the original 320 acres.

TRI-VIAL Inc. objections to these changes are supported by Idaho Code, book 8, under the following sections. 42-101, 42-105,42-108,42-203A (para. 4,5), 42-222, 42-226, 42-1402,42-2502,42-2509 and possibly others. The above mentioned sections and copies of the Notice of Error forms from August 1998 are included with these objection forms. Also included are Mr. Honsinger's letter of July 1996, the president of TRI-VIAL INC. letter of August 1998, Mr. Shulte's letter of September 1998, excerpts from TRI-VIAL INC. books showing the election of officers and directors, last meeting of TRI-VIAL INC. for officer election, and excerpts of the by-laws of TRI-VIAL INC.. Copies of the by-laws are available on request.

January 10, 1999

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 13, 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

Awan M. 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

Bob Langley
Notary Public for Bonneville & Blaine County
Residing at: Bonneville, Idaho
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. *Beker 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

1. 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 TOB5 RO4E S36
Quantity has been changed from 6.38 cfs to 6.47 cfs*
 2. Describe the changes you wish to make in the proposed recommendation:
*for irrigation
place of use should be only: TOB5 RO4E S25
NESW 40 NESE 39 SWNW 40 SENE 40
NWNW 39 SWNE 40 NWSE 40 SENW 40
328 acres total*
 3. 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*
- 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 1946 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 starting "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:

Place of use [T06S R04E] (S24 SESE 38) (S25 NENE 3S) NENE 38 NENE 36 [T06S R06E S30 NENE 40 Lot 1 NENE 40] (Lot 2 SWNW 40) (SENE 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 water has not requested or authorized a change and the water Right # 51-02214 should be returned to its original specifications dated 1/17/89 & 8/3/91.

☐ 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. Hansinger, 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).

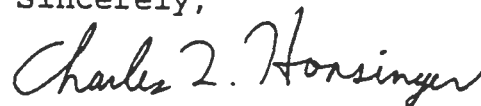
Because of the nature of this dispute, IDWR has found that any decision it makes regarding a change of claim ownership will be met with resistance by one of the parties. Therefore, IDWR has arrived at a solution it believes will be acceptable to both parties.

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".

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, Tri Vial



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.

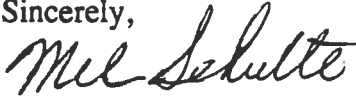
In summary, our recommendations for the water right claims will remain in the name of the original claimant, Tri Vial, Inc. until we receive the court order or other documents showing the dispersement of the property. At that time we will file a change of ownership with the court verifying the new allocation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