

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
MAR 01 2004
Department of Water Resources

Notice of Security Interest in a Water Right

And Request for Notification of a Change in Ownership or Any Proposed
Or Final Action to Amend, Transfer, or Otherwise Modify a Water Right

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

1. Water Right No(s): P.D. 43-10245, P.D. 43-10250, P.D. 43-10251, 43-4150, 43-4089, 43-4090, P.D. 43-2556,
43-7130, P.D. 43-327 AND 43-47A
Adjudication Claim No(s): _____

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

A) Evidence of the security interest. This may be a copy of a **DEED of TRUST, MORTGAGE, CONTRACT OF SALE** or other legal document indicating your interest in the property and water rights or claims in question, **WITH ATTACHED LEGAL DESCRIPTION.**

B) A **FEE** of \$25.00 per water right or adjudication claim.

3. Name and Mailing Address of Person or Company holding Security Interest

WESTERN AGCREDIT, FLCA

P.O. BOX 95850

SOUTH JORDAN, UT 84095

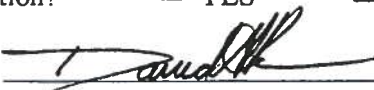
4. Name of Water Right Owner/Claimant(s)

SPENCER LAND AND LIVESTOCK CO., a Utah Corporation and
SPENCER BROTHERS, a Utah Partnership

5. Expiration Date of Notification Period 05/01/2023

6. Is this a Renewal of Request for Notification? ☐ YES ☒ NO

7. Signature(s) (and title if applicable)



ASSISTANT VICE PRESIDENT

For Office Use Only

Received by <u></u>	Date <u>3-1-04</u>	Fee <u>\$250.00</u>
Received by <u></u>	Date <u>3-1-04</u>	Receipt No. <u>1072806</u>
Processed by <u>D. Dhermat AJ</u>	Date <u>3-9-04</u>	WR <u>KLT did</u> Date _____

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MAR 09 2004

NOTICE OF PLEDGE

STATE OF IDAHO
Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

RECEIVED

OCT - 6 2003

Loan No. 6201040501 and 6201040502

Department of Water Resources

Attention: State Engineer

Please be notified that

SPENCER LAND AND LIVESTOCK CO., a Utah Corporation
SPENCER BROTHERS, a Utah Partnership

have this date executed a Real Estate Mortgage in favor of the Western AgCredit, FLCA, covering certain land in Cassia County, State of Idaho, together with all of the Mortgagor's right to use the following:

WATER USER NO. AND PURPOSE OF WATER USE

WUC #(s) 43-10245, 43-10250, 43-10251, 43-4150, 43-4089, 43-4090, 43-2556, 43-7130, 43-327 and 43-47A for irrigation and stock watering.

The said Real Estate Mortgage, given to secure promissory notes (2) of even date, was recorded

October 2, 2003, in the office of the County Recorder of the above referenced County, as

Instrument No. 291772.

Please file this notice with your records of the above referenced and direct notice of any intended change of the place of use or other change which materially affects the beneficiary's security interest in the said rights to the Western AgCredit, FLCA, 406 West South Jordan Parkway (Suite 500), South Jordan, Utah 84095.

Dated: September 12, 2003

Western AgCredit, FLCA

By: David G. Brown

David G. Brown
Assistant Vice President

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MAR 09 2004

Recording Requested by:

29177~

WHEN RECORDED MAIL TO:

WESTERN AgCREDIT, FLCA
BOX 95850
SOUTH JORDAN UT 84095-0850

COPY

Loan No. 6201040501 and 6201040502

**REAL ESTATE MORTGAGE,
FIXTURE FILING AND SECURITY AGREEMENT**

THIS MORTGAGE is made this 12th day of September, 2003 between

**SPENCER LAND AND LIVESTOCK CO., a Utah Corporation
SPENCER BROTHERS, a Utah Partnership**

hereinafter called "Mortgagor", and WESTERN AgCREDIT, FLCA hereinafter called "Mortgagee", a corporation, existing and operating under the Farm Credit Act of 1971, as amended, having its principal place of business in South Jordan, Utah.

WITNESSETH: That Mortgagor IRREVOCABLY GRANTS, BARGAINS, SELLS, CONVEYS AND ASSIGNS unto Mortgagee together with right of entry and possession the following described real property situated in the County of Cassia, State of Idaho:

FOR DESCRIPTION OF REAL PROPERTY SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

TOGETHER WITH: all buildings, structures, equipment, fixtures (including trees, vines and shrubs) and improvements of every kind and description now or hereafter constructed or placed thereon; all standing timber and timber to be cut located thereon; all existing and future water rights, however evidenced, including irrigation and watering equipment and systems, ditches, laterals, conduits, and rights-of-way used to convey such water or to drain the above-described property, all of which rights are hereby made appurtenant to the property, and all pumping plants, electrical generators, wind machines, and fencing and storage tanks, now or hereafter used in connection with the property, all of which are hereby declared to be fixtures; all existing and future grazing rights, leases, permits and licenses; all oil, gas, and mineral leases, permits and rights used with the property; all tenements, hereditaments, easements, rights-of-way and appurtenances to the property; and all right, title, and interest at any time of Mortgagor (or any of its bailees, agents, or instrumentalities), whether now existing or hereafter arising or acquired, whether direct or indirect, whether owned legally, of record, equitably or beneficially, whether constituting real or personal property (or subject to any other characterizations), whether created or authorized under existing or future laws or regulations, and however arising in, including without limitation, the water, water rights and other assets and items described below in subparagraphs (a) through (h) which shall collectively be called "Water Assets" (hereafter collectively referred to as the "Property"). References to "water" and "water rights" are used herein in the broadest and most comprehensive sense of the term(s). The term "water" includes water rights and right to water or whatever rights to money, proceeds, property or other benefits are exchanged or received for or on account of any Water Assets or any conservation or other nonuse of water, including whatever rights are achieved by depositing one's shares of any Water Assets in any water bank or with any water authority, or any other water reallocation rights:

a. All water (including any water inventory in storage), water rights and entitlements, other rights to water and other rights to receive water or water rights of every kind or nature whatsoever including (i) the groundwater on, under, pumped from or otherwise available to the Property, whether as the result of groundwater rights, contractual rights or otherwise, (ii) Mortgagor's right to remove and extract any such groundwater including any permits, rights or licenses granted by any governmental authority or agency or any rights granted or created by any use, easements, covenant, agreement or contract with any person or entity, (iii) any rights to which the Property is entitled with respect to surface water, whether such right is appropriative, riparian, prescriptive, decreed or otherwise and whether or not pursuant to permit or other governmental authorization, or the right to store any such water, (iv) any water, water right, water allocation, distribution right, delivery right, water storage right, or other water-related entitlement appurtenant or otherwise applicable to the Property by virtue of the Property being situated within the boundaries of any district, agency, or other governmental entity or within the boundaries of any private water company, mutual water company, or other non-governmental entity;

b. All stock, interest or rights (including any water allocations, voting or decision rights) in any entity, together with any and all rights from any entity or other person to acquire, receive, exchange, sell, lease, or otherwise transfer any water or other Water Assets, to store, deposit or otherwise create water credits in a water bank or similar or other arrangement for allocating water, to transport or deliver water, or otherwise to deal with any Water Asset;

c. All licenses, permits, approvals, contracts decrees, rights and interest to acquire or appropriate any water or other Water Assets, water bank or other credits evidencing any right to water or other Water Assets, to store, carry, transport or deliver water or other Water Assets, to sell, lease, exchange, or otherwise transfer any water or other Water Asset, or to change the point for diversion of water, the location of any water or Water Asset, the place of use of any water or Water Asset, or the purpose of the use of any water or Water Asset;

d. All rights, claims, causes of action, judgments, awards, and other judicial, arbitral or administrative relief in any way relating to any water or Water Asset;

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e. All storage and treatment rights for any water or any other Water Asset, whether on or off the Property or other property of Mortgagor, together with all storage tanks, and other equipment used or usable in connection with such storage and any water bank deposit credits, deposit accounts or other rights arising on account of the storage or nonuse of any water or any other Water Asset;

f. All rights to transport, carry, allocate or otherwise deliver water or other Water Assets by any means wherever located;

g. All guaranties, warranties, marketing, management or service contracts, indemnity agreements, and water right agreements, other water related contracts and water reallocation rights, all insurance policies regarding or relating to any Water Asset;

h. All rents, issues, profits, proceeds and other accounts, instruments, chattel paper, contract rights, general intangibles, deposit accounts, and other rights to payment arising from or on account of any use, nonuse, sale, lease, transfer or other disposition of any Water Asset.

Absolute Assignment of All Revenue From Water Assets - Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all proceeds, rents, issues and profits from any use (apart from watering plants on the Property or other ordinary use on the Property), nonuse, sale, lease, transfer or disposition of any kind of any water or any other Water Asset subject to a lien in favor of Mortgagee. That assignment shall be perfected automatically without appointment of a receiver or Mortgagee becoming a mortgagee in possession and Mortgagee shall have the right, before or after the occurrence of any default or event of default, to notify any account debtor to pay all amounts owing with respect to those proceeds, rents, issues and profits directly to Mortgagee. Except as otherwise agreed in writing by Mortgagee, Mortgagee may apply any such collection (and any rents, issues, profits and proceeds) to any indebtedness owed to Mortgagee in any order, priority or manner desired by Mortgagee.

MORTGAGOR ABSOLUTELY AND UNCONDITIONALLY ASSIGNS, transfers, conveys and sets over to Mortgagee all the rents, royalties, issues, profits, revenue, income and other benefits of the property arising from the use or enjoyment of all or any portion thereof or from any lease, mineral lease, or agreement pertaining thereto (collectively the "Rents"); **SUBJECT, HOWEVER**, to the right, power and authority given to and conferred upon Mortgagor by Paragraph B.3 hereof.

PERSONAL PROPERTY SECURITY AGREEMENT – All of the Property will be considered to the fullest extent of the law to be real property for purposes of this Mortgage. To the extent that any of the Property, (including without limitation any Water Assets or fixtures), is deemed to constitute, is adjudicated to be, or declared to be personal property, this Mortgage shall also be deemed to be a security agreement. Mortgagor does hereby create and grant to Mortgagee a security interest in all such personal property described herein; and further, grants to Mortgagee all of the rights and remedies of a secured party under the Uniform Commercial Code and other applicable state law, which rights are cumulative.

FIXTURE FILING – This Mortgage shall also be deemed to be a fixture filing under the Uniform Commercial Code and is to be recorded in the county real estate records.

FOR THE PURPOSE OF SECURING: (1) payment of the indebtedness or obligations evidenced by the following promissory note(s) and/or guaranties executed by Mortgagor and/or others to the Mortgagee at the times, in the manner and with interest as therein set forth (notes may contain variable or adjustable rate provisions):

Dated	Maturity	Face Amount	Dated	Maturity	Face Amount
9/12/2003	5/1/2023	\$500,000.00			
9/12/2003	5/1/2023	\$500,000.00			

(2) The payment of such additional loans or advances, including advances under a revolving line of credit, with interest thereon, as hereafter may be made to Mortgagor, or Mortgagor's successors or assigns, and/or to parties whose obligation Mortgagor is guaranteeing, evidenced by a promissory note or otherwise and any obligations evidenced by any guaranties executed by Mortgagor in favor of Mortgagee; **PROVIDED HOWEVER, THAT**, such additional loans advances guaranty obligations shall be secured by this Mortgage only if the promissory note, guaranty, or other document evidencing such loans or advances shall recite that it is to be secured by this Mortgage; (3) the payment of any substitute notes, renewals, reamortizations, and extensions of all indebtedness secured by this Mortgage; (4) the performance of every obligation and agreement of Mortgagor whether contained or incorporated by reference in this Mortgage, or contained in any loan document or guaranty executed by Mortgagor in favor of Mortgagee, with respect to any loan, advance, or guaranty secured by this Mortgage; and (5) the payment of all sums expended or advanced by Mortgagee under or pursuant to the terms of this Mortgage, together with interest thereon as herein provided. The continuing validity and priority of this Mortgage as security for future loans, advances, or guaranties shall not be impaired by the fact that at certain times hereafter there may exist no outstanding indebtedness from Mortgagor to Mortgagee or no commitment to make loans or advances.

A. TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR AGREES:

1. To use loan proceeds solely for the purposes set forth in the loan application(s) or agreements; to comply with the Farm Credit Act of 1971, as amended, and/or the regulations of the Farm Credit Administration, now existing or as hereafter amended.
2. To keep the Property in good condition, working order and repair; care for the Property in accordance with standards of good husbandry and to keep all trees, vines and crops on said land properly cultivated, irrigated, fertilized, sprayed, and fumigated; not to remove, destroy or suffer the removal or destruction of any building, fence, canal, well or other improvements or fixtures thereon; not to remove, replace or alter any horticultural or viticultural tree, vine or shrub planted thereon without the prior written consent of Mortgagee, except in the ordinary course of business; to complete or restore promptly and in good and workmanlike manner any building which may be

constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting the Property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law; to do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general; to observe and perform all obligations of Mortgagor under any lease of the Property.

3. To provide, maintain and deliver to Mortgagee fire and all other types of insurance of the type and in amounts as Mortgagee may require, with loss payable clauses solely in favor of Mortgagee. In the event of loss, the insurance proceeds, or any part thereof, may be applied by Mortgagee, at its option, to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In the event that the Mortgagor shall fail to provide satisfactory hazard insurance, Mortgagee may procure, on Mortgagor's behalf, insurance in favor of Mortgagee alone. If insurance cannot be secured by Mortgagor to provide the required coverage, such inability shall constitute an event of default hereunder.
4. To appear in and litigate any action or proceeding purporting to affect the security hereof, the title to the Property, or the rights or powers of Mortgagee; Mortgagee may appear in and litigate any such action or proceedings, including any bankruptcy, partition or condemnation proceeding, affecting the Property, or Mortgagee's interest therein, in which event Mortgagor agrees to pay all costs and expenses thereof, including attorney's fees and costs of securing evidence of title.
5. To pay on or before the due date all taxes and assessments affecting the Property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with the Property; to pay, when due, all encumbrances, charges, and liens, on the Property or any part thereof, which at any time appear to be prior or superior hereto.
6. In case of any suit to foreclose this Mortgage or to collect any charge arising out of the debt hereby secured, or of any suit which the Mortgagee may deem necessary to prosecute or defend to effect or protect the lien herein, including any proceeding in bankruptcy, or if Mortgagee retains an attorney to advise Mortgagee in connection with this Mortgage or any other agreement related to the indebtedness secured by this Mortgage, Mortgagor agrees to pay a reasonable sum as attorney's fees and all costs and legal expenses in connection with said suit, and further agrees to pay the reasonable costs of searching the records and abstracting or insuring the title, and such sums, costs and expenses shall be secured hereby and shall be included in any decree of foreclosure. The fees and costs described herein and elsewhere in this Mortgage shall be in addition to those set forth in the loan agreement or any other written agreement between Mortgagor and Mortgagee.
7. Should Mortgagor fail to make any payment or to do any act as provided for in this Mortgage, then Mortgagee, but without obligation to do so and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the Property, Mortgagee being authorized to enter upon the Property for such purposes; commence, appear in and litigate any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee, including any bankruptcy proceeding affecting the Property; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefore, including attorney's, accountant's, and appraisal fees, environmental fees, and costs of securing evidence of title, and all amounts so expended shall be obligations of Mortgagor secured by this Mortgage. Nothing contained herein shall prohibit Mortgagee from entering the Property, at a reasonable time and upon reasonable notice to Mortgagor, without incurring or assuming any obligations or liabilities whatsoever, for the sole purpose of inspecting the Property.
8. To pay immediately and without demand all sums expended by Mortgagee pursuant to the provisions hereof, with interest from date of expenditure at the same rate as is provided for in the note or notes secured by this Mortgage. In the event that such sums are not immediately paid, they shall be added, along with the appropriate amount of capital stock or participation certificates, to the principal balance of the indebtedness secured hereby and shall accrue interest as herein set forth. All such sums shall be secured hereby.
9. Environmental Representations, Warranties and Covenants.
 - (a) Except as disclosed in writing to Mortgagee, or except as otherwise provided in any loan agreement between Mortgagee and Mortgagor which specifically refers to the Property, to the best knowledge of Mortgagor after due inquiry, Mortgagor hereby further represents, warrants and covenants as follows:
 - (i) No pollutants, contaminants (including oil or other petroleum products), toxic or hazardous substances, or solid or hazardous wastes, as such terms are defined under any federal, state or local Environmental Law, regulation or ordinance (hereinafter "Contaminants") have been, are being or will be generated, manufactured, produced, stored, disposed of, discharged, released threatened to be released, or otherwise allowed to migrate or escape on, under or from the Property in such quantities or concentrations as would violate any federal, state or local Environmental Law, regulation or ordinance or as would require Mortgagor to report such condition to any governmental authority or to undertake removal or remedial action to clean up such contaminants;
 - (ii) No Contaminants are located on, in or under any property located adjacent to the Property in such quantities or concentrations as would constitute a violation of any Environmental Law or as would require the owner of the adjacent property to report such condition to any governmental authority or to undertake removal or remedial action to clean up such Contaminants;
 - (iii) Neither the Property, nor any portion thereof, nor any adjacent property or portion thereof, has been or is proposed to be listed under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.), or any analogous state law. Mortgagor shall immediately notify Mortgagee if Mortgagor acquires any information concerning the listing

or proposed listing of the Property or any adjacent property and shall provide Mortgagee with any documents in Mortgagor's possession relative thereto;

(iv) No hazardous wastes, as defined under the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.), or any analogous state law ("Hazardous Wastes"), have been, are being or will be stored or treated in surface impoundments or other structures or facilities located on the Property that are partially or entirely below the ground surface;

(v) No litigation, investigation, administrative order, consent order, agreements, or other action, proceeding or settlement (hereinafter "Action") has previously been brought, is now pending, or to the best knowledge of Mortgagor threatened against or anticipated by Mortgagor, with respect to Mortgagor's use or management of Hazardous Materials or Hazardous Wastes or the environmental condition of the Property, including any underlying groundwater. Upon learning thereof, Mortgagor shall immediately notify Mortgagee of any such Action or threatened Action and provide Mortgagee with copies of all documentation relative thereto; and

(vi) Except as disclosed in writing to Mortgagee, no underground tanks, wells (except domestic water wells), septic tanks, ponds, pits or any other storage tanks ("Tanks") (whether currently in use or abandoned) are or were located on or under the Property and no Tanks are or were serving the Property described herein. With respect to any Tanks disclosed in writing to Mortgagee, Mortgagor shall comply with all federal, state and local laws, regulations and ordinances and any requirements of city or county fire departments, applicable to the maintenance and use of such Tanks, including, without limitation, Title 40 of the Code of Federal Regulations Part 112.

(b) Nothing herein shall be deemed to prohibit Mortgagor from (i) using, handling or storing hazardous materials or substances, as defined under any federal, state or local law, regulation or ordinance ("Hazardous Materials") or (ii) storing or treating non-hazardous wastes, so long as such activities are carried out (a) in a good and husbandlike manner in the ordinary course of business, and (b) in compliance with all applicable environmental laws, regulations, permits, orders or other requirements.

(c) In the event that Mortgagor is in breach of any of its representations, warranties or covenants as set forth above, Mortgagor, at its sole expense, shall take all action required, including environmental cleanup of the Property, to comply with the representations, warranties and covenants herein or applicable legal requirements and, in any event, shall take all action deemed necessary by appropriate governmental authorities. Mortgagee shall have the right, but not the obligation, to advise appropriate governmental authorities of any environmental condition on or affecting the Property that constitutes or may constitute a breach of Mortgagor's obligations hereunder:

(d) Mortgagor and its successors and assigns shall indemnify, defend, protect, and hold harmless Mortgagee, its directors, officers, employees, agents, shareholders, successors and assigns and their officers, employees or agents, from and against any and all claims, suits, damages, liens, losses, liabilities, interest, judgments, response and cleanup costs, demands, actions, causes of action, injuries, administrative proceedings and orders, consent agreements and orders, penalties, costs and expenses (including any fees and expenses incurred in enforcing this indemnity, any out-of-pocket litigation costs and the reasonable fees and expenses of counsel) of any kind whatsoever ("Claims") paid, incurred or suffered by, or asserted against Mortgagee, including but not limited to Claims arising out of loss of life, injury to persons, trespass or damages to or contamination of property or natural resources, or injury to business, in connection with or arising out of the activities of Mortgagor on the Property, Mortgagor's predecessors in interest, third parties who have been invited, permitted or trespassed on the Property, or parties in a contractual relationship with Mortgagor, or any of them, or which directly or indirectly arise out of or result from or in any way connected with the Property, whether or not caused by Mortgagor or within the control of Mortgagor, including without limitation: (i) the presence, use, generation, treatment, storage, disposal, release, threatened release, or discharge of any Hazardous Material or Contaminant at or from the Property and/or the cleanup of Hazardous Materials or Contaminants within, on or under the Property; (ii) Mortgagor's breach of any of the representations, warranties and covenants contained herein; and (iii) Mortgagor's violation or alleged violation of any applicable Environmental Law, regulation or ordinance.

(e) Mortgagor's representations, warranties, covenants and indemnities contained herein shall survive the occurrence of any event whatsoever, including without limitation the payoff of any promissory note(s) secured hereby, the release or foreclosure of this Mortgage, the acceptance by Mortgagee of a deed in lieu of foreclosure, or any transfer or abandonment of the Property.

(f) The term "Environmental Law" shall mean any federal, state or local law, statute, ordinance, or regulation, now in effect or hereinafter enacted, pertaining to health, industrial hygiene, or the environmental conditions on, under or about the Property, including but not limited to enactments requiring the removal or containment of asbestos-containing materials in private buildings.

(g) Mortgagor shall permit, or cause any tenant of Mortgagor to permit, Mortgagee or its agents, or independent contractors to enter and inspect the Property at any reasonable time for purposes of determining, as Mortgagee deems necessary or desirable: (i) the existence, location and nature of any Hazardous Materials or Hazardous Wastes on, under or about the Property, (ii) the existence, location, nature, magnitude and spread of any Hazardous Materials or Hazardous Waste that has been spilled, disposed of, discharged or released on, under or about the Property, or (iii) whether or not Mortgagor and any tenant of Mortgagor is in compliance with applicable Environmental Law. If Mortgagor or its tenants fail to comply fully with the terms of this subdivision (g), Mortgagee may obtain affirmative injunctive relief to compel such compliance.

10. **Grazing Rights.** If any portion of the Property described in this Mortgage is used by Mortgagor as the basis for obtaining grazing permits or other grazing rights issued by any governmental agency, including without limitations the Forest Service, U.S. Department of Agriculture or the Bureau of Land Management, U.S. Department of Interior, Mortgagor covenants and agrees as follows:

(a) Said grazing permits or other rights are in good standing and have not been modified, reduced or limited in any other respect, except as fully disclosed in writing to Mortgagee:

(b) Mortgagor will perform all obligations imposed as a requirement of exercise of said grazing permits or other rights and will comply with all laws, rules and regulations applicable thereto;

(c) Mortgagor will take such timely action as may be required to cause the renewal or reissuance of said grazing permits or other rights from time to time as they expire during the term thereof. Mortgagor agrees and acknowledges that the failure to renew or cause the reissuance of any said permits for any reason, whether the result of an act or omission of Mortgagor or for reasons beyond Mortgagor's control, is an event of default hereunder and Mortgagee shall have the right to exercise the rights hereinafter set forth in this Mortgage; and

(d) Mortgagor agrees to pay all fees, charges, rents or other payments accruing under said permits or any renewals thereof prior to delinquency. In the event Mortgagor fails to pay any such payment, the amount unpaid shall become a part of the indebtedness secured by this Mortgage and shall be immediately due and payable.

B IT IS MUTUALLY AGREED THAT:

1. Any award of damages in connection with any taking or condemnation or injury to the Property by reason of public use, or for damages resulting from private trespass or injury to the Property, is absolutely and unconditionally assigned and shall be paid to Mortgagee, under the terms and conditions of this Mortgage pertaining to Rents. Upon receipt of such money Mortgagee may apply the same on the indebtedness secured hereby. Mortgagor agrees to execute such further documents as may be required to effect the assignments herein made as Mortgagee may require.
2. At any time, without affecting the liability of any person for the payment of the indebtedness secured hereby, and without otherwise affecting the security hereof, Mortgagee may (a) consent to or join in the making of any map or plat of the Property; (b) grant any easement or create any restriction thereof; (c) subordinate this Mortgage; (d) extend or modify the term of the loan or loans secured hereby; and (e) release without warranty, all or any part of the Property.
3. Prior to any default by Mortgagor in the payment, observance, performance and discharge of any condition, obligation, covenant, or agreement of Mortgagor contained herein, Mortgagor may, for collection and distribution purposes only, collect and receive the Rents as they come due and payable; the Rents are to be applied by Mortgagor to the payment of the principal and interest and all other sums due or payable on any promissory note or guaranty secured by this Mortgage and to the payment of all other sums payable under this Mortgage and, thereafter, so long as the aforesaid has occurred, the balance shall be distributed to the account of Mortgagor. Upon any such default, Mortgagee may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in his own name, sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine; also perform such acts of repair, cultivation, irrigation or protection, as may be necessary or proper to conserve the value of the Property; also lease the same or any part thereof for such rental, term, and upon such conditions as its judgment may dictate; also prepare for harvest, remove, and sell any crops that may be growing upon the Property, and apply the proceeds thereof upon the indebtedness secured hereby.
4. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking of or damage to the Property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
5. Upon default by Mortgagor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Mortgagee and in accordance with applicable state law. In the event of default, Mortgagee may employ counsel to enforce payment of the obligations secured hereby, may foreclose and, if applicable, sell the Property by advertisement and sale, and in accordance with other applicable state law, and may exercise such other rights and remedies granted by law and equity, which rights and remedies shall be cumulative and not exclusive. Mortgagee may resort to and realize upon the security hereunder and any other real or personal property security now or hereafter held by Mortgagee for the obligations secured hereby in such order and manner as Mortgagee may, in its sole discretion, determine. Resort to any or all such security may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawful nonjudicial proceedings, or both. If the obligation secured by this Mortgage is also secured by personal property, fixtures or crops, Mortgagee may enforce its security interest in the personal property, fixtures and crops and its lien under this Mortgage in any manner and in any order or sequence permitted by applicable law. All remedies are cumulative and none are exclusive; no election by Mortgagee to pursue one remedy or item of collateral shall be deemed to be a release or waiver of any other item of collateral or a release or modification of the liability of Mortgagor or any guarantor to pay and perform in full all obligations to Mortgagee. The procedures governing the enforcement by Mortgagee of its foreclosure and provisional remedies against Mortgagor shall be governed by the laws of the state in which the Property is located. Nothing contained herein shall be construed to provide that the substantive law of the state in which the Property is located shall apply to Mortgagee's rights and Mortgagor's obligations hereunder or under the promissory note(s) or guaranties described herein, which are and shall continue to be governed by the substantive law of the state in which the promissory note(s) or guaranties were executed.
6. The failure on the part of the Mortgagee to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Mortgagee of any default shall not constitute a waiver of any other subsequent defaults. Subsequent acceptance of any

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payment by the holder hereof shall not be deemed a waiver of any default by Mortgagor, or of Mortgagee's rights hereunder as the result of any sale, agreement to sell, conveyance, or alienation, regardless of holder's knowledge of such default, sale, agreement to sell, conveyance, or alienation at the time of acceptance of such payment.

7. This Mortgage applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Mortgagee shall mean the holder and owner of any note secured hereby; or, if the note has been pledged, the pledgee thereof. In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Mortgagor hereunder are joint and several.
8. (a) In the event the herein-described Property, or any part thereof, or any interest therein, is sold, agreed to be sold, conveyed, alienated or transferred, including any water transfer as defined in subsection (b) below, by Mortgagor, or by operation of law or otherwise, except by inheritance, without Mortgagee's prior written consent, all obligations secured hereby, irrespective of the maturity dates, at the option of the holder hereof, and without demand or notice, shall immediately become due and payable. Failure to exercise such option shall not constitute a waiver of the right to exercise this option in the event of subsequent sale, agreement to sell, conveyance or alienation.
- (b) A water transfer is any transfer, assignment, sale, exchange, gift, encumbrance, pledge, hypothecation, alienation, grant of option to purchase, or other disposition of, directly, indirectly or in trust, voluntarily or involuntarily, by operation of law or otherwise, or the entry into a binding agreement to do any of the foregoing with respect to all or any part of (i) the groundwater on, under, pumped from or otherwise available to the Property, (ii) Mortgagor's right to remove and extract any such groundwater including any permits, rights or licenses granted by any governmental authority or agency and any rights granted or created by any easement, covenant, agreement or contract with any person or entity, (iii) any rights to which the Property is entitled with respect to surface water, whether such right is appropriative, riparian, prescriptive or otherwise and whether or not pursuant to permit or other governmental authorization, or the right to store any such water, (iv) any water, water right, water allocation, distribution right, delivery right, water storage right, water allocation, or other water-related entitlement appurtenant or otherwise applicable to the Property by virtue of the Property's being situated within the boundaries of any district, agency, or other governmental entity or within the boundaries of any private water company, mutual water company, or other non-governmental entity, or (v) any shares (or any rights under such shares) of any private water company, mutual water company, or other non-governmental entity pursuant to which Mortgagor or the Property may receive any rights.
9. In the event any one or more of the provisions contained in this Mortgage or in any promissory note(s) hereby secured shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage or said promissory note(s), but this Mortgage and said promissory note(s) shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

Signature(s):

SPENCER LAND AND LIVESTOCK CO., a Utah Corporation

By: Michael O. Spencer
MICHAEL O. SPENCER, President

By: Stanley A. Spencer
STANLEY A. SPENCER, Secretary

SPENCER BROTHERS, a Utah Partnership

By: Stanley A. Spencer
STANLEY A. SPENCER, Partner

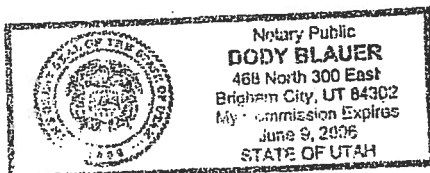
By: Michael O. Spencer
MICHAEL O. SPENCER, Partner

By: Carl W. Spencer
CARL W. SPENCER, Partner

Notary Acknowledgment:

STATE OF Utah)
COUNTY OF Box Elder ss.

On this 1st day of Oct, 2008, before me, the undersigned Notary Public in and for said County and State, personally appeared MICHAEL O. SPENCER and STANLEY A. SPENCER [] personally known to me [X] proved to me on the basis of satisfactory evidence to be the person(s) who executed the within instrument as PRESIDENT and SECRETARY on behalf of the corporation therein named and acknowledged to me that the corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

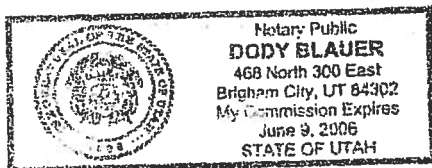


WITNESS my hand and official seal

Dody Blauer
Notary Public in and for said County and State

STATE OF Utah)
COUNTY OF Box Elder ss.

On this 1st day of Oct, 2008, before me, the undersigned Notary Public in and for said County and State, personally appeared STANLEY A. SPENCER; MICHAEL O. SPENCER; CARL W. SPENCER [] personally known to me [X] proved to me on the basis of satisfactory evidence to be the person(s) who executed the within instrument as PARTNERS of the partnership therein named, on behalf of the partnership, and acknowledged to me that the partnership executed it.



WITNESS my hand and official seal

Dody Blauer
Notary Public in and for said County and State

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EXHIBIT "A"

PARCEL NO. 1:

TOWNSHIP 15 SOUTH, RANGE 24 EAST OF THE BOISE MERIDIAN
CASSIA COUNTY, IDAHO

- Section 34: SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$
- Section 35: NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$
- Section 35: NW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$,
EXCEPTING a Right-of-Way 2 rods wide for a road on the
South section line.

TOWNSHIP 15 SOUTH, RANGE 25 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

- Section 11: NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$
- Section 12: S $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$

TOWNSHIP 15 SOUTH, RANGE 26 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

- Section 4: N $\frac{1}{2}$ SW $\frac{1}{4}$
- Section 5: N $\frac{1}{2}$ S $\frac{1}{2}$
- Section 7: NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, Lots 2, 3, and 4
- Section 8: W $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$

TOWNSHIP 16 SOUTH, RANGE 24 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

- Section 2: Lot 2
- Section 12: NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, EXCEPTING THEREFROM the following described
tracts:

Tract No. 1:

Beginning at the N $\frac{1}{4}$ section corner of said Section 12, said corner marked by
a U.S. Bureau of Land Management iron pipe with brass cap; thence

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MAR 08 2001

North 89°08'29" East along the North line of Section 12 for a distance of 1327.81 feet to the Northwest corner of the NE¼NE¼; thence South 00°01'23" West along the West line of the NE¼NE¼ for a distance of 587.74 feet; thence South 44°43'40" East for a distance of 176.14 feet; thence South 57°10'07" East for a distance of 159.24 feet to the Point of Beginning;

Thence North 31°22'34" East for a distance of 68.34 feet to a ½ inch rebar;
Thence North 74°28'31" East for a distance of 278.25 feet to a ½ inch rebar;
Thence North 25°59'08" West for a distance of 36.62 feet to a ½ inch rebar;
Thence North 64°47'22" East for a distance of 60.28 feet to a ½ inch rebar;
Thence South 23°19'14" East for a distance of 131.64 feet to a ½ inch rebar;
Thence South 26°17'47" West for a distance of 258.06 feet to a ½ inch rebar;
Thence North 78°30'57" West for a distance of 343.24 feet to a ½ inch rebar;
Thence North 31°22'34" East for a distance of 108.34 feet to the Point of Beginning.

Tract No. 2:

An Easement for ingress for the benefit of Tract No.1 described above, more particularly described as follows:

Beginning at the North ¼ section corner of said Section 12, said corner marked by a U.S. Bureau of Land Management iron pipe with brass cap; thence North 89°08'29" East along the North line of Section 12 for a distance of 1327.81 feet to the Northwest corner of the NE¼NE¼ which shall be the Point of Beginning;

Thence North 89°08'29" East along the North line of Section 12 for a distance of 20.00 feet;

Thence South 00°01'23" West for a distance of 479.81 feet;

Thence South 44°43'41" East for a distance of 165.73 feet;

Thence South 57°10'07" East for a distance of 157.24 feet;

Thence South 31°22'34" West for a distance of 20.01 feet;

Thence North 57°10'07" West for a distance of 159.92 feet;

Thence North 44°43'41" West for a distance of 176.14 feet to the West line of the NE¼NE¼;

Thence North 00°01'23" East along the West line of the NE¼NE¼ for a distance of 587.74 feet to the Point of Beginning.

Tract No. 3:

Easement for access to a domestic well together with a 50% interest in all water produced from the well for the benefit of Tract No. 1 described above, more particularly described as follows:

Beginning at the North ¼ section corner of said Section 12, said corner marked by a U.S. Bureau of Land Management iron

SCANNED

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pipe with brass cap; thence North 89°08'29" East along the North line of Section 12 for a distance of 1327.81 feet to the Northwest corner of the NE¼NE¼; thence South 00°01'23" West along the West line of the NE¼NE¼ for a distance of 587.74 feet; thence South 44°43'40" East for a distance of 176.14 feet; thence South 57°10'07" East for a distance of 159.92 feet; thence North 31°22'34" East for a distance of 68.34 feet to a ½ inch rebar; thence North 74°28'31" East for a distance of 83.53 feet to the Point of Beginning;

Thence North 35°15'00" West for a distance of 26.90 feet;
Thence North 53°00'37" East for a distance of 20.00 feet;
Thence South 35°15'00" East for a distance of 34.67 feet;
Thence South 74°28'31" West for a distance of 21.24 feet to the Point of Beginning.

TOWNSHIP 16 SOUTH, RANGE 25 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 6: Lots 1, 2, 3 and 4

Section 7: NW¼NE¼, NE¼NW¼, Lots 1 and 2

PARCEL NO. 2:

TOWNSHIP 16 SOUTH, RANGE 25 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 19: W½SE¼

Section 30: W½E½

Section 31: W½E½, SE¼NW¼, SW¼

PARCEL NO. 3:

TOWNSHIP 16 SOUTH, RANGE 25 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 31: E½NE¼ and E½SE¼

Section 32: W½SW¼, EXCEPTING THEREFROM two and one-half (2½) acres in the Southwest corner of said Section 32.

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MAR 08 2004

Section 32: E½E½

Section 33: W½

TOGETHER WITH the following water rights registered with the State of Idaho
Department of Water Resources: WUC(s): 43-10245, 43-10250, 43-10251, 43-4150, 43-
4089, 43-4090, 43-2556, 43-7130, 43-327 and 43-47A;

ALSO TOGETHER WITH all U.S. Bureau of Land Management grazing privileges
within the JOHNSON CREEK Allotment, CLEAR CREEK Allotment, ALMO FLAT
Allotment, YOST PASTURES Allotment, JIM SAGE Allotment, and GULLY
Allotment;

ALSO TOGETHER WITH all U.S. Forestry grazing privileges within the WEST END
Allotment and ONE MILE Allotment in the SAWTOOTH NATIONAL FOREST.

291772

CASSIA COUNTY, IDAHO
LARRY A. MICKELSEN

RECORDER
FEE 33.05 DEPUTY AB

'03 OCT 2 PM 4 25

RECORDED AT THE REQUEST OF

LAND TITLE & ESCROW

SCANNED

MAR 09 2004

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: **A43-04150**
Date Received: 5/25/1989
Receipt No: C007062
Received By: _____

**COPY FOR
YOUR FILES**

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

**COPY FOR
YOUR FILES**

1. Name: SPENCER BROTHERS
Address: HC 72 BOX 2418
MALTA ID

435-827-5573

83342

2. Date of Priority: MAR 15, 1882

3. Source: CIRCLE CREEK

Trib. to: RAFT RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
16S	24E	12	SE		NW		CASSIA

5. Description of diverting works:
DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	10/15	3.000		

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

8. Total consumptive use is 1096.5 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
15S	25E	31	SE	SW		IRR	15.0
			SW	SE		IRR	30.0
			SE	SE		IRR	5.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	50.0
16S	24E	12	NE	NE	IRR	24.0
			NW	NE	IRR	4.0
			SW	NE	IRR	32.0
			SE	NE	IRR	40.0
					Section Acres	100.0
	25E	6	SW	SW	4 IRR	3.0
			SE	SW	3 IRR	26.0
			SW	SE	2 IRR	23.0
			SE	SE	1 IRR	10.0
					Section Acres	62.0
		7	NW	NE	IRR	40.0
			NE	NW	IRR	40.0
			NW	NW	1 IRR	37.5
			SW	NW	2 IRR	36.0
					Section Acres	153.5
					Total Acres	365.5

11. Place of use in counties: CASSIA

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

13. Other Water Rights Used:

43-02556, 43-04089, 43-00327, 43-00047A, 43-04090, 43-07130

14. Remarks:

THIS RIGHT WAS ESTABLISHED UNDER BENEFICIAL USE. THE SOURCE CIRCLE CREEK WAS NOT INCLUDED IN THE LIST OF TRIBUTARY STREAMS FOR THE JOB ADAMS DECREE, AND WAS NOT DECREED AT THAT TIME. WE CLAIM A PERMISSABLE PLACE OF USE FOR THIS RIGHT BECAUSE WE CO-MINGLE ALL OF OUR SOURCES OF WATER. THIS WATER WHEN AVAILABLE HAS ALWAYS BEEN COMBINED WITH THE RAFT RIVER WATER TO IRRIGATE THE LANDS DESCRIBED AS THE PLACE OF USE. THE TOTAL ACRES CLAIMED INCLUDE TWO EXPANSIONS IN THE NUMBER OF IRRIGATED ACRES. THESE EXPANSIONS ARE COVERED BY LICENSED RIGHT 43-02556 AND PERMIT 43-07130. SEE MAP DETAILING THE AREAS OF EXPANSION. WE HAVE CLAIMED THE PERMISSABLE PLACE OF USE DUE TO OUR SYSTEM WHERE THE WATER FOR ALL SOURCES IS CO-MINGLED.

14. Remarks: Continued

4-5-2000: OWNERSHIP CHANGE WARD TO SPENCER PER WD SUBMITTED. NOTE
LAND IN POU NOT CONVEYED IS BLM. SPENCER BROTHERS ARE: STANLEY A.
SPENCER, CARL W. SPENCER AND MICHAEL O. SPENCER. - VH

15. Basis of Claim: STATUTORY CLAIM

RECEIVED

STATE OF IDAHO
IDAHO DEPARTMENT OF WATER RESOURCES

APR 22 1999

NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Department of Water Resources

Southern Region

Please print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.Initial Review:
4/22/99 sec
OK

UNDIVIDED INTEREST:

A43-10185

1. Water Right No(s): (same)
 - Adjudication Claim No(s): A43-00327, A43-00047A, -02556, -04089, -04090, -04150
ALL DAs DELETED → A43-10251, A43-10250, A43-10245 (& A43-07130)
(Dad matches claims) will file Assignment for P
 2. The following REQUIRED information must be submitted with this form:
 - A. A copy of the most recent DEED, TITLE POLICY, CONTRACT OF SALE or other legal document indicating your ownership of the property and water rights or claims in question, WITH ATTACHED LEGAL DESCRIPTION.
(Map on file w/claim AND → A43-00327)
 - B. PLAT OF PROPERTY or SURVEY MAP for parcel of ten acres or less. (These are usually attached to your deed or on file with the county.)

OR

 - C. For water rights or adjudication claims involving ten or more irrigated acres, a USDA Farm Service Agency AERIAL PHOTO with irrigated acres outlined and point(s) of diversion clearly marked.
3. Name and Address of Former Owner/Claimant HAROLD OLEN & LORRAYNE B WARD
4. New Owner/Claimant(s) SPENCER BROTHERS STANLEY A. SPENCER
New Mailing Address HC 72 BOX 2418 MICHAEL O. SPENCER
Name Connector (Check one): [] and, [] or, [] and/or CARL W. SPENCER
City, State and ZIP Code MALTA, ID 83342
New Telephone Number 435 (208) 827-5573
5. Date you acquired the property April 1, 1999
6. If you have acquired only a portion of the former owner's property, IDWR may need to split the water right(s) or adjudication claim(s). If this applies, describe in detail your portion of each water right or adjudication claim in the spaces below. If necessary, attach additional pages.

Number of acres you irrigate _____ Number and type of stock 433 head BEEF CATTLE

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

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

7. Signature of New Owner or Claimant(s)

Spencer Brothers by Stanley A. Spencer

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

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

REAL ESTATE PURCHASE AND SALE AGREEMENT

HAROLD OLEN WARD AND LORRAYNE B. WARD, as co-trustees of THE HAROLD AND LORRAYNE WARD TRUST, under trust agreement dated April 23, 1991, (hereinafter "Seller"), agrees to sell, and SPENCER BROTHERS, a Utah general partnership consisting of STANLEY A. SPENCER, MICHAEL O. SPENCER AND CARL W. SPENCER, as partners, (hereinafter collectively "Buyer") agrees to purchase the real properties (hereinafter "Properties") more fully described in Exhibit A, attached hereto and incorporated herein, on the following terms and conditions:

1. **Purchase Price.** The purchase price for the Properties shall be *Six Hundred Fifty-Five Thousand Dollars (\$655,000)*, of which *One Hundred Sixty-Eight Thousand Seven Hundred Fifty Dollars (\$168,750)* shall be payable in cash at closing. The remainder shall be paid to Seller by Buyer in the form of a Promissory Note (hereinafter "Note"), attached hereto as Exhibit B and incorporated herein. Upon the termination of the Note, all amounts still owed to Seller shall be paid by Buyer in one cash payment. Said Note shall be secured by a Mortgage on the Properties, attached hereto as Exhibit C and incorporated herein.
2. **Escrow.** Within five (5) days of execution of this Agreement by Buyer and Seller, the parties agree to open an escrow with Cassia County Abstract Company (hereinafter "Closing Agent") at an office selected by Seller. In the event of any alleged or apparent conflict or contradiction between the terms of this Agreement and any escrow agreement, this Agreement will govern.
3. **Closing.** The following provisions shall govern the closing of this transaction:
 - 3.1 **Closing Date.** The sale and purchase of the Properties shall be closed at the offices of Closing Agent within ten (10) days after the date of this Agreement or such earlier date as is mutually agreed upon in writing by the parties. The closing date may be extended by mutual agreement of the parties, not to exceed thirty (30) days.
 - 3.2 **Seller's Obligations at Closing.** On or before the closing date, the Seller shall: (a) deliver to the Closing Agent a warranty deed covering the Properties, duly executed and acknowledged in recordable form conveying to Buyer fee simple interest in the Properties; (b) convey by appropriate instrument all grazing rights, subject to escrow waiver; (c) execute and deliver to the Closing Agent a closing and disbursement statement in a form acceptable to Seller; and (d) take such further action and deliver such other documents necessary to close this transaction in accordance with the terms of this Agreement.

3.3 Buyer's Obligations at Closing. On or before the closing date, Buyer shall: (a) deliver or cause to be delivered to the Closing Agent guaranteed funds in the amount Buyer is obligated to pay on the closing date pursuant to the terms of this Agreement; (b) execute and deliver to the Closing Agent a closing and disbursement statement in a form acceptable to Buyer; and (c) take such further action and deliver whatever documents are necessary to close the transaction in accordance with the terms of this Agreement.

3.4 Escrow Fees and Other Costs. Costs of title insurance (described below) and all real property taxes against the Properties for 1998 and prior years shall be borne by Seller. Taxes for 1999 and all utility, irrigation, or water district charges or fees shall be prorated as of the date of closing. There will be no further proration of taxes, utilities, or assessments between Buyer and Seller after the closing. All prorations will be final at closing and not subject to change. Buyer shall pay recording costs for the deed and any appraisal fees. All other escrow fees and other costs of Closing Agent to close this transaction shall be borne equally between Buyer and Seller, except Buyer is responsible for all costs associated with financing. Other expenses incurred by Buyer or Seller with respect to this transaction, including attorney's fees or other professional fees, shall be borne and paid exclusively by the party incurring the same without reimbursement.

3.5 Closing Agent Obligations. The Closing Agent is instructed as follows: (a) prepare closing statements for execution by Seller and Buyer in accordance with the terms of this Agreement; (b) collect all funds to be received from the parties at closing and disburse and pay the same to the parties or other persons entitled to the same in accordance with the terms of this Agreement and approved on the closing statements; and (c) collect the various instruments and documents and information to be provided by the parties, secure the required signatures and acknowledgments, record such instruments and documents where necessary and in proper sequence, and deliver the same to the respective parties, as required to close this transaction in accordance with the terms of this Agreement.

4. Seller's Representations and Warranties. Seller represents and warrants to Buyer that:

4.1 Seller has received no notice from any governmental agency that the Properties is in violation of any statute, law, ordinance, deed restriction, rules or regulations affecting the Properties.

4.2 Seller is not aware of any pending or threatened litigation or condemnation proceeding affecting the Properties, nor are there any agreements to convey any portion of the Properties to any party other than Buyer.

4.3 Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986 and will execute an affidavit to this effect to be delivered to Buyer at closing and include Seller's tax identification number.

4.4 Seller has not received any notice of default or breach by Seller of any covenant, condition, restriction, right-of-way or easement affecting the Properties.

5. **Condition of Properties.** Buyer acknowledges for Buyer and Buyer's successors, heirs, and assigns, that Buyer has been given a reasonable opportunity to inspect and investigate the Properties. In purchasing the Properties, Buyer is not relying on any representations by Seller, or its agents or employees concerning the condition or safety of the Properties and/or any improvements thereon. Buyer is advised to obtain and pay for the services of one or more qualified specialists to inspect the Properties on Buyer's behalf.

Buyer further states that it is relying solely upon its own inspection of the Properties and not upon any representation made to it by any person whomsoever who is an agent or employee of Seller, and is purchasing the Properties in the condition in which it now is without any obligation on the part of Seller to make any changes, alterations, or repairs thereto.

6. **Due Diligence.** Buyer shall conduct any studies or reviews deemed necessary by Buyer to conduct Buyer's due diligence. All reviews and studies shall be at Buyer's sole cost and expense, and Buyer shall defend, indemnify and hold Seller and Seller's tenant(s) harmless from all claims arising out of Buyer's actions and those of his employees or agents hereunder. Buyer is responsible to conduct all studies on the Properties.

7. **Title Insurance.** At closing, the Seller shall furnish to Buyer a standard owner's title insurance policy in the amount of the purchase price of the Properties showing marketable and insurable title. Within ten (10) days after this Agreement is signed, the Seller shall furnish to the Buyer a commitment for a title insurance policy showing the condition of the title to said Properties. The title shall be free and clear of all liens and encumbrances excepting only the accruing taxes, levies and assessments and any clouds suffered or incurred against the property by Buyer. Buyer shall have fifteen (15) days from receipt of the commitment within which to object in writing to the condition of the title as set forth in the report. If the Buyer does not so object, the Buyer shall be deemed to have accepted the condition of the title. Otherwise, Seller shall, so far as reasonably possible, cure all defects objected to by Buyer before closing. If Seller does not remove objections to Buyer's satisfaction, Buyer may terminate this Agreement without further obligation to Seller.

8. **Grazing Rights.** All Forest (West End C&H Allotment) and Bureau of Land Management grazing permits (Clear Creek Allotment, Jim Sage Allotment, Gully Allotment, and Almo Seeding Allotment) associated with the Properties sold/purchased are to be attached to the land parcels designated as the "Base Property" which is listed below:

NE 1/4 NE 1/4, S 1/2 NE 1/4 of Section 12, Township 16 South,
Range 24, E.B.M.

Lots 1, 2, 3, & 4 Section 6, Township South, Range 25 E.B.M.

NW 1/4 NE 1/4, NE 1/4, NW 1/4, Lots 1 & 2 Section 7, Township
16 South, Range 25, E.B.M.

Appropriate documents listing the Seller as the lien holder of the first mortgage on the Base Property will be initiated and filed, with the appropriate federal agencies with a copy to the Buyer and the Seller.

9. **Appraisal.** Buyer may obtain an appraisal of the Properties at Buyer's cost.

10. **Notice.** Any notice under this Agreement shall be deemed given and delivered on the date when personally delivered, or if mailed, on the same date it is deposited in the United States mail in a sealed envelope by registered or certified mail, return receipt requested, postage prepaid and properly addressed. Until change by notice in writing, notices to Seller shall be addressed as follows:

The Harold and Lorraine Ward Trust
7209 Kingston Dr.
Boise, ID 83704

Notices to Buyer shall be addressed as follows:

Spencer Brothers
HC 72, Box 2418
Malta, ID 83342

Buyer and Seller may change their addresses by notice given as required above.

11. **Broker.** Buyer and Seller represent that no broker was involved in this transaction, and no broker is entitled to any compensation for this transaction. If any broker claims any compensation for this transaction, the party allegedly responsible for the acts giving rise to the claim will defend and indemnify the other innocent party.

12. **Default.** If either party shall fail to comply with the terms of this Agreement, the nondefaulting party shall send written notice and provide a thirty (30) day period to cure. If the default is not cured within the time allowed, the defaulting party agrees to pay all attorney's fees and costs incurred by the nondefaulting party. If suit is filed to interpret or enforce this Agreement, the unsuccessful party to such litigation agrees to pay the prevailing party all costs and expenses, including attorney's fees, incurred by the prevailing party whether incurred in district court, on appeal or in bankruptcy court.

13. **No waiver of Breach.** No waiver of any provision hereof shall be effective unless in writing and signed by the waiving party. No such waiver shall be effective as to any subsequent breach of the same or another provision of this Agreement. The failure of Seller to exercise its rights upon default by Buyer shall not constitute or be construed as a waiver of the right to insist upon strict performance by the Buyer of all the terms and provisions of this Agreement.

14. **Like-Kind Exchange.** Seller and Buyer may elect to effect the purchase or sale of the Properties pursuant to the tax-free exchange provisions of Section 1031 of the Internal Revenue Code, and each party agrees to reasonably cooperate with the other to effect such a tax-free exchange; provided, however, that the party requesting the tax free exchange shall bear all costs arising out of any tax-free exchange it may elect to undertake, and that the Closing shall not be extended in order to accommodate any such exchange. Buyer agrees that any cash that may become available to it as a result of such an exchange shall be immediately applied to reduce the Note, but such payment shall not reduce the payment schedule.

15. **Survival.** All the terms and conditions hereof and all instruments referred to herein and contemplated hereby shall survive closing and the transfer of title to Buyer and shall remain in full force and effect in accordance with their terms.

16. **Successors and Assigns.** This Agreement shall bind each of the parties and their respective heirs, personal representatives, successors, and assigns; provided, however, this Agreement shall not be assigned by any party without the other's prior written consent, which will not be unreasonably withheld. However, Seller is not required to approve any assignee who in Seller's opinion does not have the same or better qualifications and financial backing as Buyer.

17. **Entire Agreement.** This Agreement, with any exhibits incorporated by reference, constitutes the final expression of the parties' agreement and is a complete and exclusive statement of the terms of that agreement. This Agreement supersedes all prior or contemporaneous negotiations, discussions and understandings, whether oral or written or otherwise, all of which are of no further effect. This Agreement may not be changed, modified, explained or supplemented by any extrinsic evidence outside of this Agreement, including, but not limited to, usage of trade, course of dealing and course of performance. This Agreement may only be modified or amended by a writing signed by each party.

18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho.

DATED as of this 1 day of Apr. 1, 1999.

SELLER:

THE HAROLD AND LORRAYNE WARD TRUST

By Harold Olen Ward
Harold Olen Ward, Trustee

By Lorrayne B. Ward
Lorrayne B. Ward, Trustee

BUYER:

SPENCER BROTHERS

By Stanley A. Spencer
Stanley A. Spencer, Partner

By Michael O. Spencer
Michael O. Spencer, Partner

By Carl W. Spencer
Carl W. Spencer, Partner

EXHIBIT A

File Number: 14466

The land referred to is described as follows:

PARCEL #1:

TOWNSHIP 15 SOUTH, RANGE 24 EAST, BOISE MERIDIAN, CASSIA COUNTY, IDAHO

Section 34: SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ Section 35: NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{4}$ SE $\frac{1}{4}$ Section 35: NW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$,
Excepting a Right-of-Way 2 rods wide for a
road on the South section line.

TOWNSHIP 15 SOUTH, RANGE 25 EAST, BOISE MERIDIAN, CASSIA COUNTY, IDAHO

Section 11: NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12: S $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$

TOWNSHIP 15 SOUTH, RANGE 26 EAST, BOISE MERIDIAN, CASSIA COUNTY, IDAHO

Section 4: N $\frac{1}{2}$ SW $\frac{1}{4}$ Section 5: N $\frac{1}{2}$ S $\frac{1}{2}$ Section 7: NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, Lots 2, 3 & 4Section 8: W $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$

TOWNSHIP 16 SOUTH, RANGE 24 EAST, BOISE MERIDIAN, CASSIA COUNTY, IDAHO

SECTION 12: NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$

TOWNSHIP 16 South, RANGE 25 EAST, BOISE MERIDIAN, CASSIA COUNTY, IDAHO

Section 6: Lots 1, 2, 3 & 4

Section 7: NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Lots 1 & 2PARCEL #2:

TOWNSHIP 16 SOUTH, RANGE 24 EAST, BOISE MERIDIAN, CASSIA COUNTY, IDAHO

Section 2: Lot 2

PARCEL #3: An undivided one-half interest in

TOWNSHIP 16 SOUTH, RANGE 25 EAST, BOISE MERIDIAN, CASSIA COUNTY, IDAHO

Section 19: SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 20: W $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29: NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 30: E $\frac{1}{2}$ E $\frac{1}{2}$

SUBJECT TO Road Right-of-Way along the South side.

ALL IN CASSIA COUNTY, STATE OF IDAHO

EXHIBIT A

Legal Description of Property
Located in Box Elder County, Utah

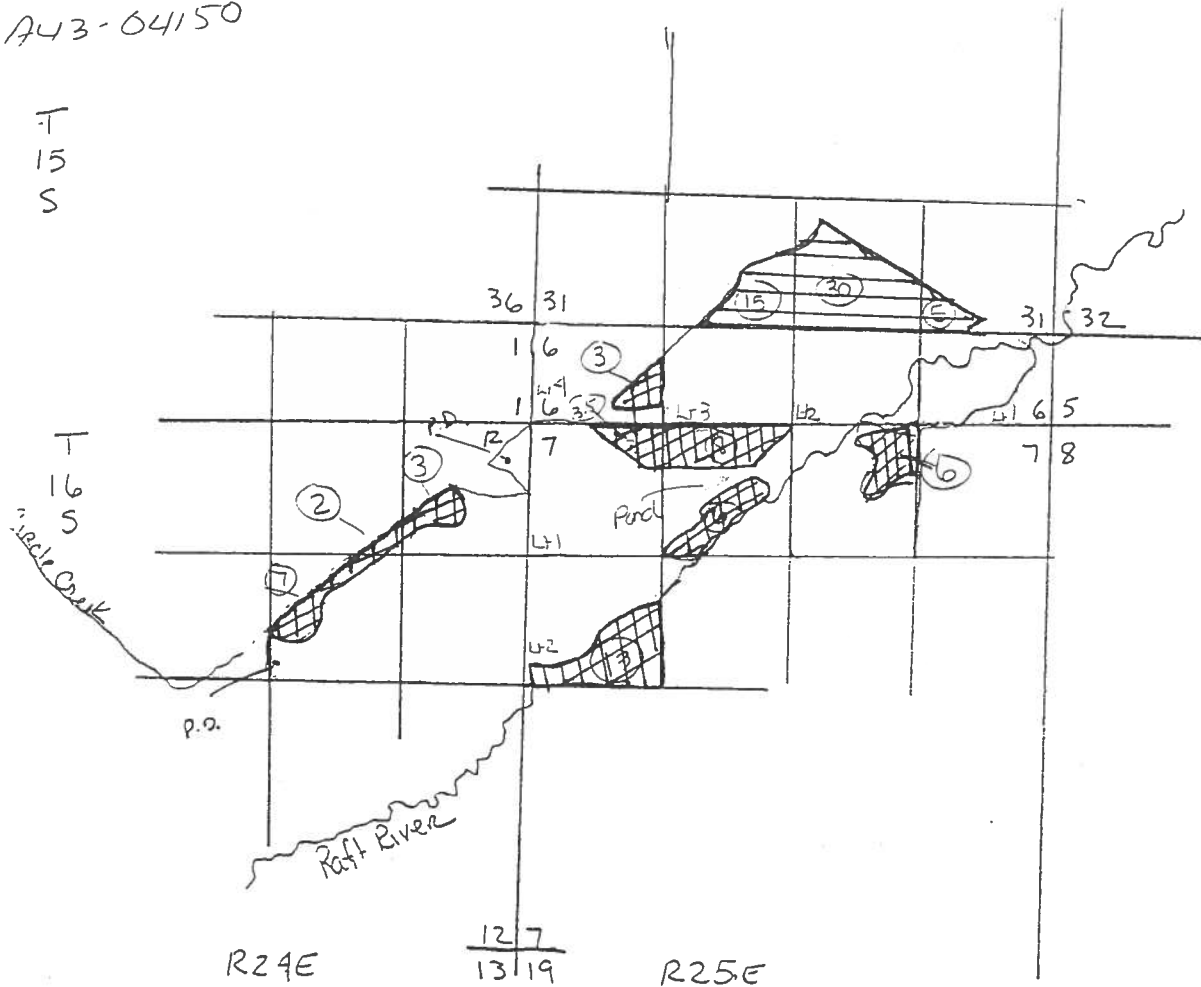
TOWNSHIP 14 NORTH, RANGE 16 WEST, SALT LAKE MERIDIAN

Section 20: E1/2 of NW1/4; SW1/4 of NE1/4; NW1/4 of SE1/4; W1/2 of NW1/4 and N1/2 of SW1/4

ALL IN BOX ELDER COUNTY, STATE OF UTAH

A43-07130
 A43-02556
 A43-04089
 A43-00047A
 A43-00327
 A43-04150

Copied from Harold Olsen used original
 4/22/99 scw
cc: to all claims
 (also: A43-4090)

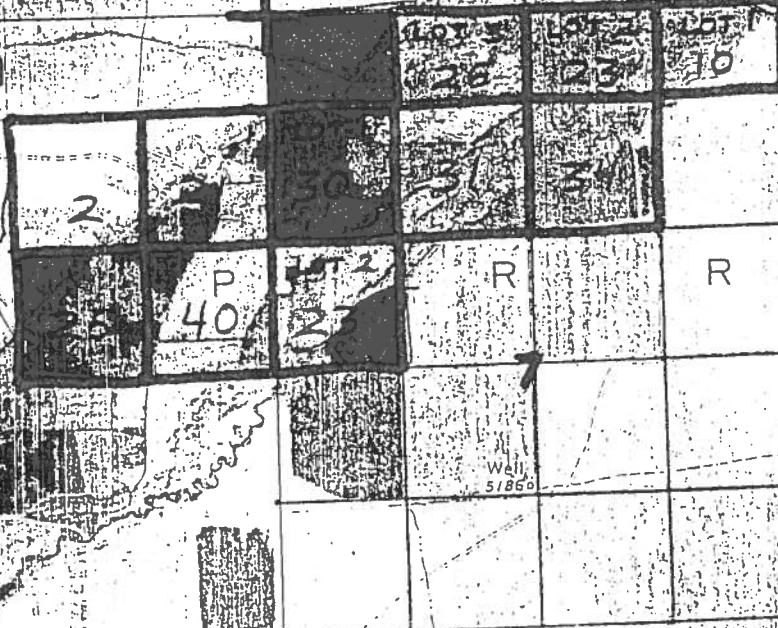


R24E R25E

A43-00327

T15S

T16S



Change of Ownership¹⁸ Co
4/22/99
SCU

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A43-04150
Date Received: 5/25/1989
Receipt No: C007062
Received By: _____

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: LORRAYNE B. WARD 208-334-1079
Address: 7209 KINGSTON DR.
BOISE ID 83704

AND/OR

Name: HAROLD OLEN WARD 208-334-1079
Address: 7209 KINGSTON DR.
BOISE ID 83704

2. Date of Priority: MAR 15, 1882

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
16S	24E	12	SE	NW			CASSIA

5. Description of diverting works:
DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	10/15	3.000		

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

8. Total consumptive use is 1096.5 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
15S	25E	31	SE	SW		IRR	15.0

A43-04150

Page 1

Date: 01/09/92

COPY

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MAR U 4 1993

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
15S	25E	31	SW	SE		IRR	30.0
			SE	SE		IRR	5.0
Section Acres							50.0
16S	24E	12	NE	NE		IRR	24.0
			NW	NE		IRR	4.0
			SW	NE		IRR	32.0
			SE	NE		IRR	40.0
Section Acres							100.0
	25E	6	SW	SW	4	IRR	3.0
			SE	SW	3	IRR	26.0
			SW	SE	2	IRR	23.0
			SE	SE	1	IRR	10.0
Section Acres							62.0
		7	NW	NE		IRR	40.0
			NE	NW		IRR	40.0
			NW	NW	1	IRR	37.5
			SW	NW	2	IRR	36.0
Section Acres							153.5
Total Acres							365.5

11. Place of use in counties: CASSIA

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

13. Other Water Rights Used:

43-02556, 43-04089, 43-00327, 43-00047A, 43-04090, 43-07130

14. Remarks:

THIS RIGHT WAS ESTABLISHED UNDER BENEFICIAL USE. THE SOURCE CIRCLE CREEK WAS NOT INCLUDED IN THE LIST OF TRIBUTARY STREAMS FOR THE JOB ADAMS DECREE, AND WAS NOT DECREED AT THAT TIME. WE CLAIM A PERMISSABLE PLACE OF USE FOR THIS RIGHT BECAUSE WE CO-MINGLE ALL OF OUR SOURCES OF WATER. THIS WATER WHEN AVAILABLE HAS ALWAYS BEEN COMBINED WITH THE RAFT RIVER WATER TO IRRIGATE THE LANDS DESCRIBED AS THE PLACE OF USE. THE TOTAL ACRES CLAIMED INCLUDE TWO EXPANSIONS IN THE NUMBER OF IRRIGATED ACRES. THESE EXPANSIONS ARE COVERED BY LICENSED RIGHT 43-02556 AND PERMIT 43-07130. SEE MAP DETAILING THE AREAS OF EXPANSION. WE HAVE CLAIMED THE PERMISSABLE PLACE OF USE DUE TO OUR SYSTEM WHERE THE

14. Remarks: Continued
WATER FOR ALL SOURCES IS CO-MINGLED.

15. Basis of Claim: STATUTORY CLAIM

16. Signature(s)

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

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): Harold Menard Date: 1/9/92

Date: _____

State of Idaho)
County of Ada) SS.

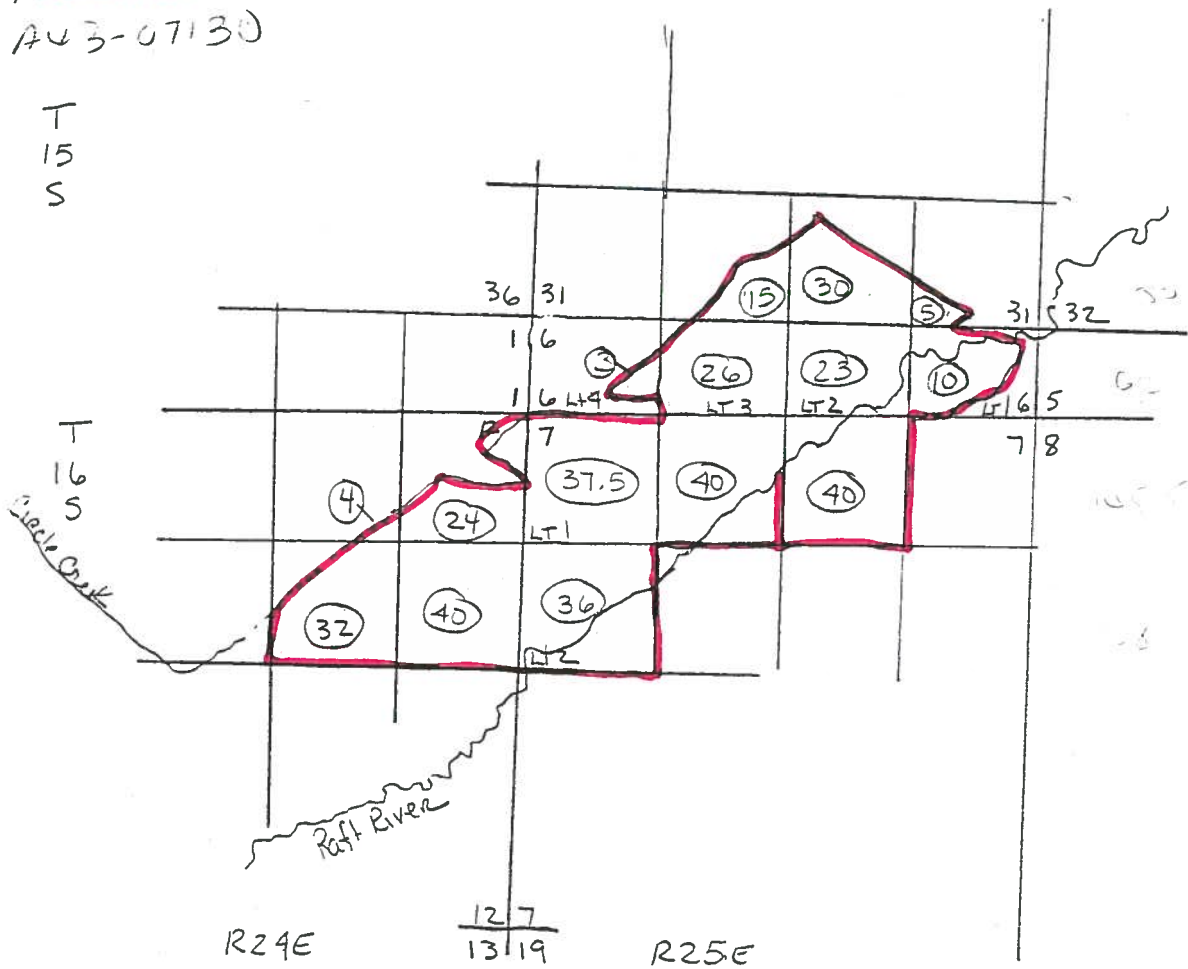
Subscribed and sworn (or affirmed) before me this 9th day
of January 19 92

Anna Baumhoff
Notary Public

Seal

Residing at _____
Anna Baumhoff, Notary Public
My Commission Expires _____
Residing at Boise, Idaho
My Commission Expires December 7, 1994

A43-00047A
 A43-00327
 A43-02556
 A43-04089
 A43-04150
 A43-07130



TOTAL ACRES = 365.5 AC

1962 expansion = 50 AC (43-02556)

1978 Expansion = 51.5 AC (43-07130)

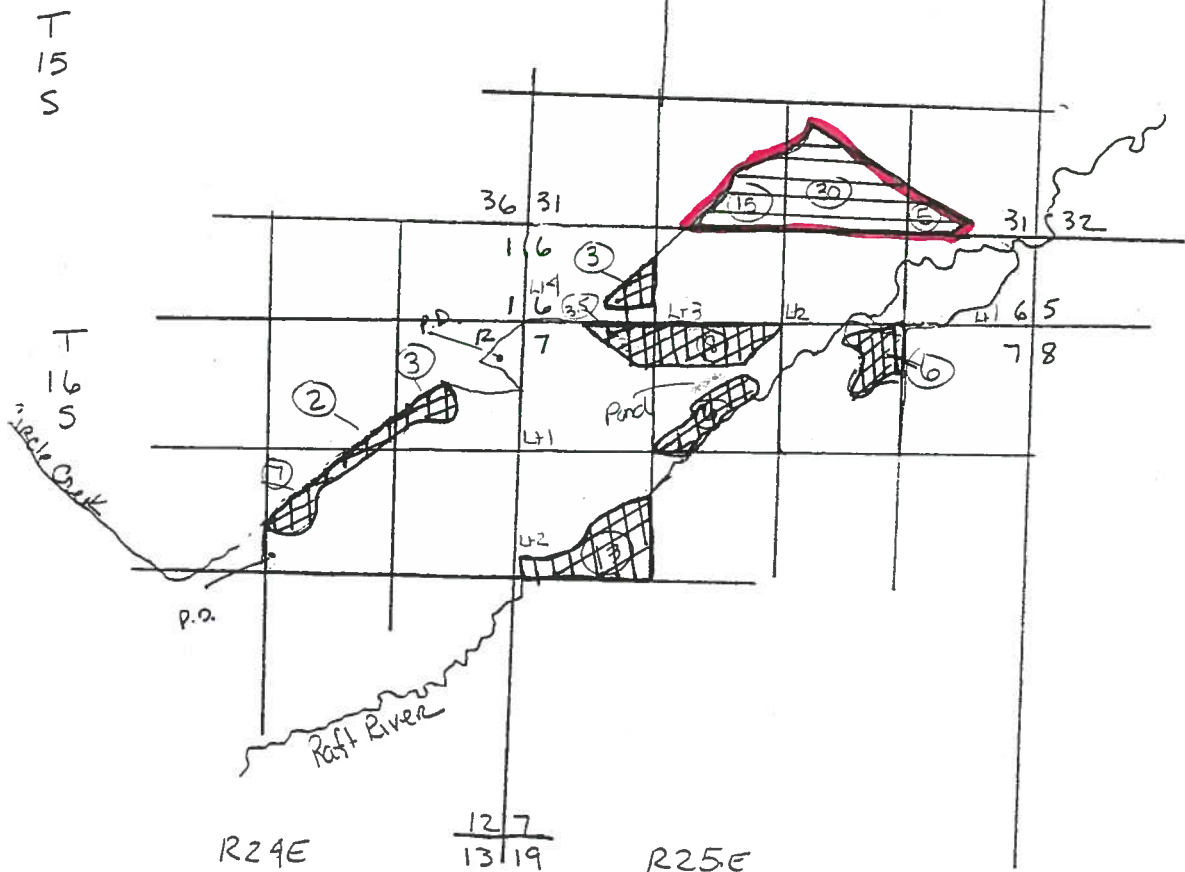
original orig acres = 264. itc

A43-00047A	A43-04150
A43-00327	A43-04089

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MAR 04 1993

A43-07130
 A43-02556
 A43-04089
 A43-00047A
 A43-00327
 A43-04150



2 phases of Expansion:

1962 = Red = 50.5 ac covered under license 43-035
 1978 = Blue = 51.5 ac covered under Permit 43-0713

Total Expansion
 acres = 101.5
 ==

MICROFILMED

MAR 04 1993

IN THE MATTER OF)
NOTICE OF CLAIM TO)
A WATER RIGHT NO. (S))

AFFIDAVIT

A43-04150)
)
State of Idaho)
County of CASSIA)

Harold Olen Ward being first duly sworn, deposes and says: The property; E1/2NE1/4, SW1/4NE1/4, Section 12, Twp. 16 South, R. 24 E.B.M and Lots 1 and 2, NE1/4NW1/4, NW1/4NE1/4, Section 7, Twp. 16 South, R. 25 E.B.M., and Lots 1, 2, 3, and 4, Section 6, Twp 16 South, R. 25, E.B.M; was originally owned by David Hubbard who sold the property to Charles Robert Ward and subsequently quitclaim deeded to John Charles Ward. The Albion-Idaho Land Company vs. Jobe Adams, et al establishes the priority date of the Raft River water right for this land as 1882; the date David Hubbard began irrigating the land. In the Jobe Adams case, the land is listed under John C. Ward and Nellie Ward on page 38.

Circle Creek, an intermittent stream, was not identified as a tributary to Raft River because of the irregularity of Circle Creek actually contributing to the Raft River flows. Attached is a copy of my findings.

A recorded deed in Book 7, 628 shows the sale of the property from David Hubbard to Charles Robert Ward which references the water rights of Raft River, Circle Creek and Fish Springs. A copy of the deed is attached.

A recorded quitclaim deed from Clarence T. Ward to John C. Ward also references the water rights of Raft River, Circle Creek and Fish Springs. A copy of the quitclaim deed is attached.

Harold Olen Ward

Subscribed and sworn to before me this
day 3rd of January, 1992

Anna Baumeister
(Notary Public)

Residing at Boise Idaho
My Commission Expires 12-7-1994

MICROFILMED

MAR 04 1993

1918

7-16-25

B26000

(1)

#37053

QUITCLAIM DEED.

THIS INSTRUMENT, Made the 26th day of October, in the year of our Lord one thousand nine hundred and eighteen, between Clarence T. Ward and M. Iva Ward, his wife, both of Boise, County of Ada, State of Idaho, the parties of the first part, and John. C. Ward of Almo, County of Cassia, State of Idaho, the party of the second part,

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of SixtyThree Hundred and no/100 (\$6300.00) Dollars, Lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents remise, release and forever QUIT CLAIM unto the said party of the second part, and to his heirs and assigns forever, all those certain tracts, lots, pieces or parcels of land, situate, lying and being in Almo, County of Cassia, State of Idaho, bounded and particularly described as follows, to wit:

Lots 1 and 2 and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 7 T 16 S. Range 25 E.B.M. in the County of Cassia, State of Idaho, containing 155.39 acres, with all the water rights thereunto belonging described as follows, A full and undivided one-fourth of the water decreed by the Court of said State unto John Whitaker, James Bronson and J.W. Hubbard and David Hubbard combined and whose water is conveyed through a Company ditch by them and the E $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 12 T. 16 S. R. 24 E.B.M. in the County of Cassia, State of Idaho, containing 120 acres, with all water rights thereunto belonging from Raft River Circle Creek and Fish Springs.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, All and singular the said premises together with the appurtenances unto the said party of the second part, and to his heirs and assigns forever.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in the Presence of:

Clarence T. Ward (SEAL)
M. Iva Ward, (SEAL)

Revenue cancelled
\$6.50

STATE OF IDAHO }
COUNTY OF ADA } ss.

On this 26th day of October, in the year 1918, before me, E.C. Kiersted, a Notary Public in and for said State, personally appeared Clarence T. Ward, and M. Iva Ward, his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

(SEAL)

E.C. Kiersted,
Notary Public residing at Boise,
Idaho.

Filed for record at the request of John. C. Ward, Almo, at 5:50 P.M. Nov. 16th, 1918.

Ray W. Anderson, County Recorder.

MICROFILMED

MAR 04 1993

lawfully claiming or to claim the same
shall and will warrant and to
these five years to forever defend himself
whereof the said parties of the first
have herunto set their hands and
seals the day and year first above
written
Signed sealed and delivered in
presence of
M. G. Taylor
R. H. Parisk
David Hubbard
Ida Hubbard
DAVID HUBBARD

State of Idaho } ss.
County of Cassia }

On this twenty third day of
August 1902 before Edmund R. Power
a Justice of the Peace for said
County personally appeared
David Hubbard and Ida Hubbard
his wife known to me to be the persons
whose names are subscribed to the
within instrument and known
to me that they executed the same
and on this 23rd day of August 1902
before me the officer above described
David Hubbard and Mrs. Ida Hubbard

RECORDED

Aug 24 1902

Decree # 792

A-ILC (Plaintiff) vs. Jobe Adams, et al, (Defend)

1. Almo Creek and all or part of Clear Creek are not subject to the Raft River decree
2. Circle Creek is not identified as a Tributary to Raft River to be reckoned with as a part of the Raft River decreed waters. In reviewing the depositions and appeals and etc. on this case it seems apparent that the irregularity of Circle Creek actually contributing to the Raft River flows is the main reason it was not included in the decree.
3. There did not appear to be any reference to Circle Creek or to any users on the Circle Creek being included in the Jobe Adams vs. A-ILC adjudication.
4. I obtained the case file from the
N. W. R. R. & P. R. Co. They had

MICROFILMED

MAR 04 1993

Lorenzo Twitchell
 1887-Apr. 30 30.7 0.325 .5 S.F. 1.95
 1894-Apr. 1 43 0.226 2.7 S.F. 0.195

To be diverted from Cassia Creek
 for the irrigation of
 SW $\frac{1}{4}$ Sec. 20, Twp. 13 S. R. 25 E. B. M.
 Sec. 20, Twp. 13 S. R. 25 E. B. M.

John C. Ward
Nellie Ward
 1882-Apr. 30 4.3 0.222 R. 5 S.F. 0.10

To be diverted from Raft River
 for the irrigation of 12.1 Twp. 16
 E. B. M. Sec. 12, Twp. 16
 S. H. 24 E. B. M. Lots 1 and 2,
 NE $\frac{1}{4}$ Sec. 7, Lots 1, R.
 2, 3 and 4, Sec. 6, Twp. 16 S. R.
 25 E. B. M. Twp. 16 S. R. 25 E. B. M.

W. A. Ward and
Mrs. W. A. Ward
 1874-Dec. 31 1.6 S.F.
 1877-Apr. 30 1 S.F.
 1880-Apr. 30 0.4 S.F.
 1894-Apr. 30 0.48 S.F.

1
 .4
 .48

To be diverted from Cassia Creek
 for the irrigation of 12.1 Twp. 16
 E. B. M. Sec. 12, Twp. 16
 S. H. 24 E. B. M. Lots 1 and 2,
 NE $\frac{1}{4}$ Sec. 7, Lots 1, R.
 2, 3 and 4, Sec. 6, Twp. 16 S. R.
 25 E. B. M. Twp. 16 S. R. 25 E. B. M.

To be diverted from Cassia Creek
 for the irrigation of 12.1 Twp. 16
 E. B. M. Sec. 12, Twp. 16
 S. H. 24 E. B. M. Lots 1 and 2,
 NE $\frac{1}{4}$ Sec. 7, Lots 1, R.
 2, 3 and 4, Sec. 6, Twp. 16 S. R.
 25 E. B. M. Twp. 16 S. R. 25 E. B. M.

To be diverted from Cassia Creek
 for the irrigation of 12.1 Twp. 16
 E. B. M. Sec. 12, Twp. 16
 S. H. 24 E. B. M. Lots 1 and 2,
 NE $\frac{1}{4}$ Sec. 7, Lots 1, R.
 2, 3 and 4, Sec. 6, Twp. 16 S. R.
 25 E. B. M. Twp. 16 S. R. 25 E. B. M.

MICROFILMED
 MAR 6 4 1953

That the First National Bank of Brigham City, Utah, is a corporation organized and existing under the laws of Congress relating to banks and banking, having its principal place of business at Brigham City, Utah.

XII.

That the plaintiff, Albion-Idaho Land Company is a corporation duly organized and existing under and by virtue of the laws of the State of California, having its principal place of business at San Francisco, California.

XIII.

That this is an action between citizens of different states and that the amount involved herein exceeds the sum of \$3000.00, exclusive of interest and costs.

XIV.

That Raft River is an inter-state stream arising in the Raft River Mountains, having its primary sources in certain springs near Lind, Utah, and near Moulton, Idaho, meandering through the southern part of Cassia County, Idaho, and the northern part of Box Elder County, Utah, and thence flowing in a northerly direction through Cassia County and emptying into the Snake River near Bonanza Bar. That those creeks in Box Elder County, Utah, known as Basin Creek, Mahogany Creek, Johnson Creek, George Creek, Oliver Creek, together with the following named creeks in Cassia County, Idaho, known as Long Creek, Short Creek, Pole Creek, Granite Creek, Cottonwood Creek, Kane Creek, Eibs Creek, Darby Creek, Coe Creek, Meadow Creek, Point Springs, Jim Sage Creek, Stinson Creek, Connor Creek, Green Canyon Creek, Antelope Springs Creek, Warm Springs Creek, North Fork of Cassia Creek, Upper South Fork of Cassia Creek, Lower South Fork.

?

..., to place of beginning,
containing 80 acres.

42

MICROFILMED

MAR 04 1993

of Cassia Creek, Blacksmith Fork Creek, Rock Springs Gulch Creek, Middle Fork of Cassia Creek, Red Rock Creek, Parke Creek, and Cassia Creek, are the tributaries of Raft River, and the waters of said creeks together with the waters of various and divers springs near and along said Cassia Creek and Raft River, contribute, furnish and supply the waters of, and are tributary to, and are in truth and in fact a part of said Raft River.

IV.

That a certain stream commonly known as Clear Creek, which said stream has been separately decreed in an action in this court in the case of Albion-Idaho Land Company vs. Settlers Land & Water Company, et al, at times contributes to the flow of Raft River and that the tributaries of said Clear Creek are West Black Pine or Kelso Creek, Round Mountain Creek and Water Canyon; that a certain creek known as Almo Creek, in its natural state, at times contributes some water to Raft River, but that said Almo Creek and its tributaries, to-wit, Grape Creek, Sythe Creek, Clyde Creek and Edwards Creek, by the terms of the decree of the state court, has been set off as a separate water district, and is separately referred to in this decree, its priorities being specifically mentioned in that portion of the decrees having to do with Almo Creek.

XVI.

That the said tributaries of Raft River above named and set out, subject to the limitations mentioned as to Clear Creek and Almo Creek, together with the waters of certain springs arising in the bed or Raft River and adjacent thereto, constitute the water supply of said Raft River, and that any and all appropriations made and water diverted from said creeks and springs heretofore mentioned constitute an appropriation and diversion.

MICROFILMED
MAR 14 1993

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A43-04150
Date Received: 5/25/89
Receipt No: 6027062
Received By: JP

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: HAROLD OLEN WARD 208-334-1079
Address: 7209 KINGSTON DR.
BOISE, ID 83704

AND/OR

Name: LORRAYNE B. WARD 208-334-1079
Address: 7209 KINGSTON DR.
BOISE, ID 83704

2. Date of Priority: MAR 15, 1882

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
16S	24E	12	SE	NW			CASSIA

5. Description of diverting works:
DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	10/15	3.000		

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

8. Total consumptive use is 350.0 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

A43-04150

Page 1

Date: 05/25/89

MICROFILMED
MAR 04 1993

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
16S	24E	12	NE		NE		IRR	21.0
			SW		NE		IRR	25.0
			SE		NE		IRR	40.0
							Section Acres	86.0
	25E	7	NW		NW	1	IRR	30.0
			SW		NW	2	IRR	23.0
							Section Acres	53.0
							Total Acres	139.0

11. Place of use in counties: CASSIA

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

13. Other Water Rights Used:
A43-02556, A43-04089, A43-00327

14. Remarks:

15. Basis of Claim: STATUTORY CLAIM

16. Signature(s)

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

Number of attachments: 1

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): Harold Otton Ward Date: 5/25/89

Date: _____

State of Idaho)
County of ADA) SS.

Subscribed and sworn (or affirmed) before me this 25TH day
of MAY 19 89

Jeff Peppersack
Notary Public

Seal

Residing at _____

My Commission Expires _____

Jeff Peppersack, Notary Public
Residing at Boise, Idaho
My Commission Expires Nov. 8, 1994

A43-04150

	21 20	LOT 1 30 35
25 31	P 40	LOT 2 14 25

MAP

MICROFILME
MAR 04 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

December 5, 1991

R. KEITH HIGGINSON
Director

A43-04150
HAROLD OLEN WARD
LORRAYNE B. WARD
7209 KINGSTON DR.
BOISE

ID 83704

RE: Evidence of Priority

RESPONSE DEADLINE

FEBRUARY 3, 1992

Dear Claimant:

The Notice(s) of Claim identified with the number shown above your name on the mailing label has been filed in the Snake River Basin Adjudication (SRBA). The Notice(s) indicate your water usage is based on "Beneficial Use" or a "Statutory Claim". Water rights of this type are established by the historical use of water, dating back to when water was first used for the purpose claimed. **The date of first use, known as the priority date**, has not been confirmed by a License, Decree or Permit. The Department will soon conduct reviews &/or field exams for the claims in your area. Since the priority date of a beneficial use water right can not be confirmed by field examination, **proof must be provided supporting the priority date you have claimed.**

The Department will not recommend the Notice(s) be decreed by the court as claimed if no evidence of a priority date is submitted.

Please find enclosed a computer printout of your Notice(s) and the pamphlet entitled "Evidence of Priority". The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement. I direct your attention to the two sections entitled "What Kind of Evidence is Required" and "Some Examples of Documents Which May Be Evidence of the Priority Date".

Please submit the required evidence supporting the priority date(s) by **February 3, 1992**, referencing all documents with the corresponding Notice number(s). If you have any questions not covered by this letter or the enclosed pamphlet, please contact this office.

Respectfully submitted,

Allen Merritt, P.E.
Water Rights Supervisor

Enclosures

MICROFILMED

MAR 4 1993

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

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

In Re SRBA)
Case No. 39576)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 43-04150

SEP 16 2002

By _____ Clerk
Deputy Clerk

NAME AND ADDRESS: SPENCER BROTHERS
HC 72 BOX 2418
MALTA, ID 83342

SOURCE: CIRCLE CREEK TRIBUTARY: RAFT RIVER

QUANTITY: 2.80 CFS

THIS RIGHT WHEN COMBINED WITH RIGHT NOS. 43-47A, 43-327,
43-2556, 43-4089, 43-4090 AND 43-7130 SHALL PROVIDE NO MORE THAN
.02 CFS PER ACRE.

PRIORITY DATE: 03/15/1882

POINT OF DIVERSION: T16S R24E S12 NESW Within Cassia County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	2.80 CFS

PLACE OF USE:	Irrigation	Within Cassia County
	T16S R24E S12	NENE 18.0 SENE 40.0
	R25E S06 LOT 4	(SWSW) 1.2 LOT 3 (SESW) 29.0
	LOT 2	(SWSE) 29.0 LOT 1 (SESE) 13.0
	S07	NWNE 40.0 NENW 40.0
	LOT 1	(NWNW) 38.0 LOT 2 (SNNW) 38.0
	318.2 Acres Total	

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 260 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 43-47A, 43-327.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 318.2 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 43-47A, 43-327, 43-2556,
43-4089, 43-4090, 43-7130.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 140 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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

THIS RIGHT IS SUBJECT TO REGULATION BY THE WATERMASTER OF
WATER DISTRICT 43B.

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

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

RECEIVED

SEP 17 2002

Department of Water Resources

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

SEP 16 2002

By _____
Clerk
Deputy Clerk

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

)
) ORDER OF PARTIAL DECREE

)
) For Water Right 43-04150
)

On July 29, 2002, a *Special Master's Report and Recommendation* was filed for the above water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own.

Therefore, IT IS ORDERED that water right 43-04150 is hereby decreed as set forth in the attached *Partial Decree* Pursuant to I.R.C.P. 54(b).

DATED September 16, 2002



ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

ORDER OF PARTIAL DECREE

CERTIFICATE OF SERVICE

I certify that on _____, 2002, I caused to be served true and correct copies of this Standard Form 5, to the following persons, in the manner indicated and addressed as follows:

1. Original to:

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

☐ Overnight Mail
☐ Regular Mail
☐ Hand-Delivered
☐ Facsimile

2. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

☐ Overnight Mail
☐ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Spencer Brothers
HC 72 Box 2418
Malta, ID 83342

☐ Overnight Mail
☐ Regular Mail
☐ Hand-Delivered
☐ Facsimile

U.S. Dept. of Justice
Environment & Nat'l Resources Div.
550 W. Fort St. MSC 033
Boise, ID 83724

☐ Overnight Mail
☐ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Signature of person or attorney mailing the form

07/12/2002

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

RIGHT NUMBER: 43-4150

NAME AND ADDRESS: SPENCER BROTHERS
HC 72 BOX 2418
MALTA ID 83342

SOURCE: CIRCLE CREEK

TRIBUTARY: RAFT RIVER

QUANTITY: 2.80 CFS

THIS RIGHT WHEN COMBINED WITH RIGHT NOS. 43-47A, 43-327, 43-2556, 43-4089, 43-4090 AND 43-7130 SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE.

PRIORITY DATE: 03/15/1882

POINT OF DIVERSION:

T16S R24E S12 NESW Within CASSIA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 10/31	2.800 CFS

PLACE OF USE: IRRIGATION Within CASSIA County

~~T15S R25E S31~~	~~SESW~~	~~13.0~~	~~T15S R25E S31~~	~~SWSE~~	~~28.0~~
~~T6S6 R25E S31~~	~~SESE~~	~~5.6~~	~~T16S R25E S12~~	~~NWNE~~	~~1.3~~
T16S R24E S12	NENE	18.0	T16S R24E S12	SWNE	32.0
T16S R24E S12	SENE	40.0	T16S R25E S06 Lot 4	SWSW	1.2
T16S R25E S06 Lot 3	SESW	29.0	T16S R25E S06 Lot 2	SWSE	29.0
T16S R25E S06 Lot 1	SESE	13.0	T16S R25E S07	NWNE	40.0
T16S R25E S07	NENW	40.0	T16S R25E S07 Lot 1	NWNW	38.0
T16S R25E S07 Lot 2	SWNW	38.0			

~~365.2~~ 318.2 ACRES TOTAL

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF ~~365~~ 318 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 43-47A, 43-327, 43-2556, 43-4089, 43-4090, 43-7130.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 260 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 43-47A, 43-327.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 140 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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

THIS RIGHT IS SUBJECT TO REGULATION BY THE WATERMASTER OF WATER DISTRICT 43B.
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

EXPLANATORY MATERIAL: Beneficial Use

RECEIVED

FEB 19 2002

Department of Water Resources
Southern RegionIN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

A. Subcase 43-04150

(Insert water right number)

Case No. 39576

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: United States of America acting through the Department of Interior, Bureau of
Land Management, Idaho State OfficeAddress: 1387 South Vinnell Way
Boise, Idaho 83709-1657Daytime Phone: see below

Name & Address of Attorney, if any:

Larry A. Brown (202) 305-0435 phone, (202) 305-0274 faxUnited States Department of Justice: Environment and Natural Resource Division; General Litigation Section
550 West Fort Street, MSC 033; Boise, Idaho 83724

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

Name: Spencer BrothersAddress: HC 72 Box 2418; Malta, Idaho 83342

Name:

Address: ;

Name:

Address: ;

Name:

Address: ;

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: _____

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: See attached

11. **I object because:**

☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S):

The United States of America, through the Bureau of Land Management, is the owner of the land upon which use is claimed. The claimant's use of Federal land is unauthorized. See attached POU. Claimant's water right should not include this POU.

F.

VERIFICATION (Must be Completed)

State of Idaho)

) ss.

County of Ada)

Gary A. Madenford, Water Rights Team Leader, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

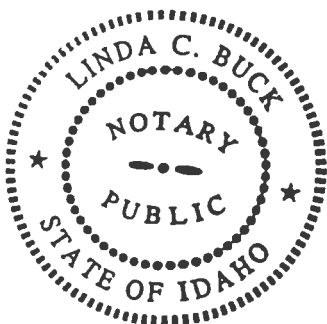
That I am the party/claimant filing this objection, as defined by I.C. § 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Gary A. Madenford
(Signature of person filing objection)

Larry C. Brown
(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

February 7, 2002



Linda C. Buck

Notary Public for Idaho

Residing at: Mountain Home

My Commission Expires: 12-21-2005

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 Feb. 8, 2002, 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
P.O. Box 2707
Twin Falls, ID 83303-2707

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

Name: Spencer Brothers
Address: HC 72 Box 2418; Malta, Idaho 83342

Name:
Address: ;

Name:
Address: ;

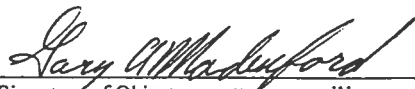
Name:
Address: ;

3. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

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

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



Signature of Objector or attorney mailing on Objector's behalf

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 43-4150
NAME AND ADDRESS: SPENCER BROTHERS
HC 72 BOX 2418
MALTA ID 83342

**-POUs ON BLM
-CLAIMANT IS NOT AUTHORIZED
TO FARM PUBLIC LAND**

SOURCE: CIRCLE CREEK

TRIBUTARY: RAFT RIVER

QUANTITY: 2.800 CFS

THIS RIGHT WHEN COMBINED WITH RIGHT NOS. 43-47A, 43-327, 43-2556, 43-4089, 43-4090 AND 43-7130 SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE.

PRIORITY DATE: 03/15/1882

POINT OF
DIVERSION:

T16S R24E S12 NESW Within CASSIA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	04/01 10/31	2.800 CFS

PLACE OF USE: IRRIGATION Within CASSIA County

T15S R25E S31	BLM SESE	13.0	T15S R25E S31	BLM SWSE	28.0
T15S R25E S31	BLM SESE	5.6	T16S R24E S12	NENE	18.0
T16S R24E S12	BLM NWNE	1.3	T16S R24E S12	SWNE	32.0
T16S R24E S12	SENE	40.0	T16S R25E S06 Lot 4	SWSW	1.2
T16S R25E S06 Lot 3	SESE	29.0	T16S R25E S06 Lot 2	SWSE	29.0
T16S R25E S06 Lot 1	SESE	12.0	T16S R25E S07	NWNE	40.0
T16S R25E S07	NENW	40.0	T16S R25E S07 Lot 1	NWNW	38.0
T16S R25E S07 Lot 2	SNNW	38.0			

365.1 ACRES TOTAL

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 260 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 43-47A, 43-327.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 365 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 43-47A, 43-327, 43-2556, 43-4089, 43-4090, 43-7130.

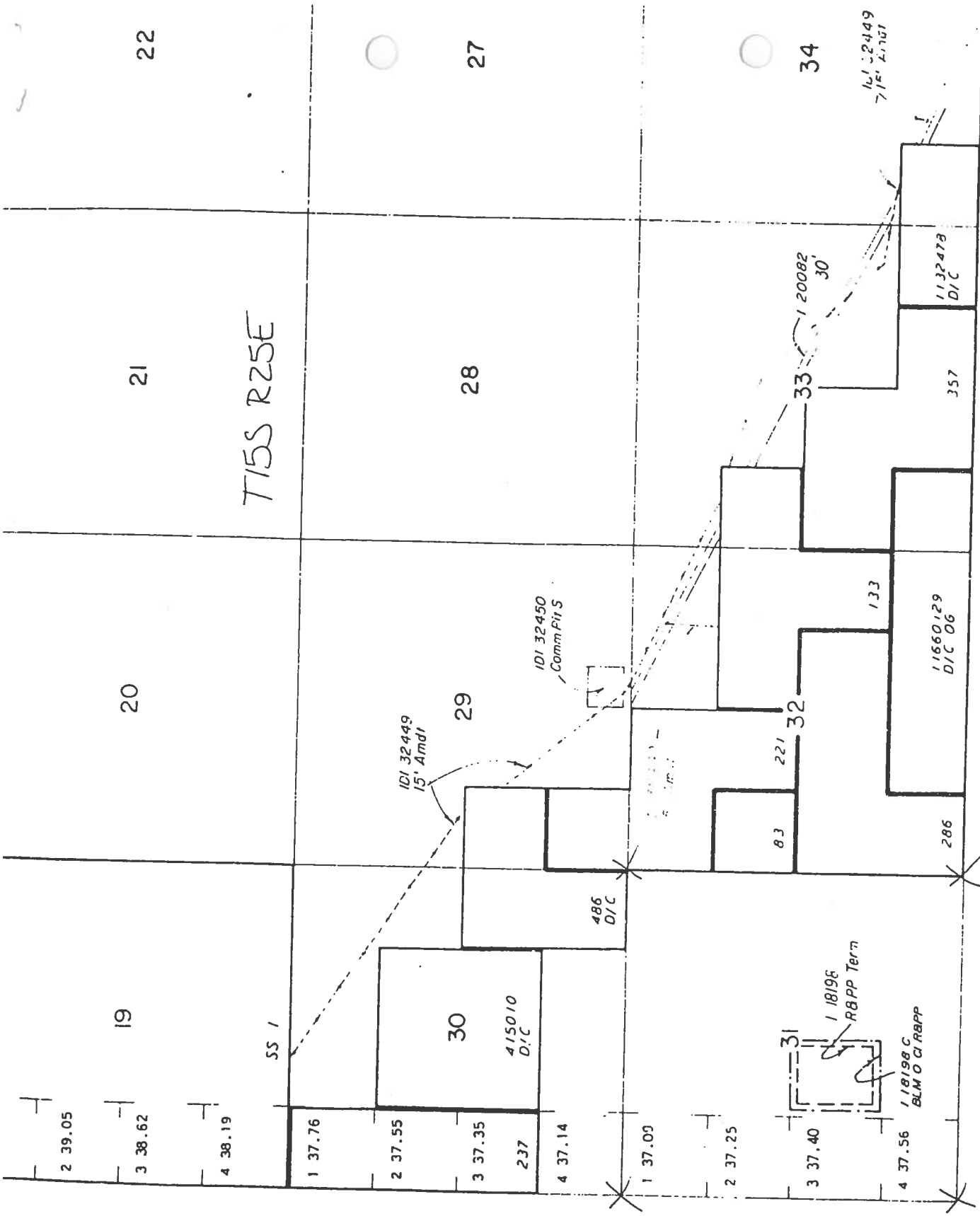
THIS RIGHT IS LIMITED TO THE IRRIGATION OF 140 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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

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

THIS RIGHT IS SUBJECT TO REGULATION BY THE WATERMASTER OF WATER DISTRICT 43B.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use



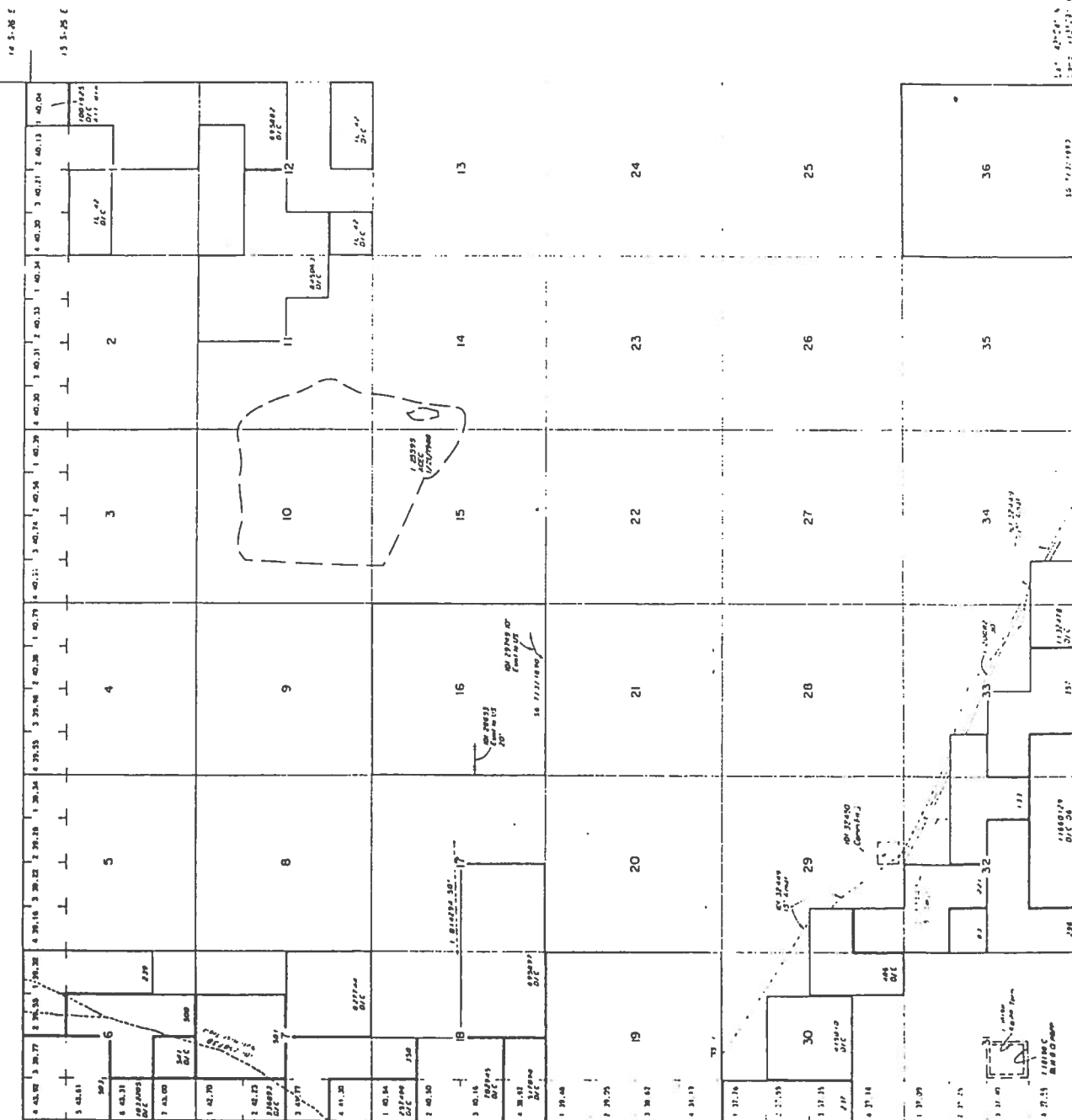
SCALE in Chinese

STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES

CASSIA COUNTY

BUFILE DISTRICT SEC 3

MT PLAT

[illegible]

THE NOTATION SHOWN ON WITHDRAWALS REPRESENT THE LAST ACTION TAKEN BUT MAY NOT BE THE EFFECTIVE DATE. SEE THE HISTORICAL INDEX FOR THE DATE OF THE ORIGINAL WITHDRAWAL ORDER

These plots in the University Herbarium at Yale, and elsewhere, are intended as a graphic display of the concept of a species. They represent the extreme of the "typical" view of a species, which is that a species is a group of individuals that are more similar to each other than to individuals of any other species. This view of a species is based on the idea of a "typical" individual, which is an individual that is most similar to the other individuals of the same species. This view of a species is based on the idea of a "typical" individual, which is an individual that is most similar to the other individuals of the same species.

SCALE 10 China

[illegible]

T16S R24E

[illegible]

11/25/50 N

Historical

Public Access

01 258730 N

Historical i

Public acci

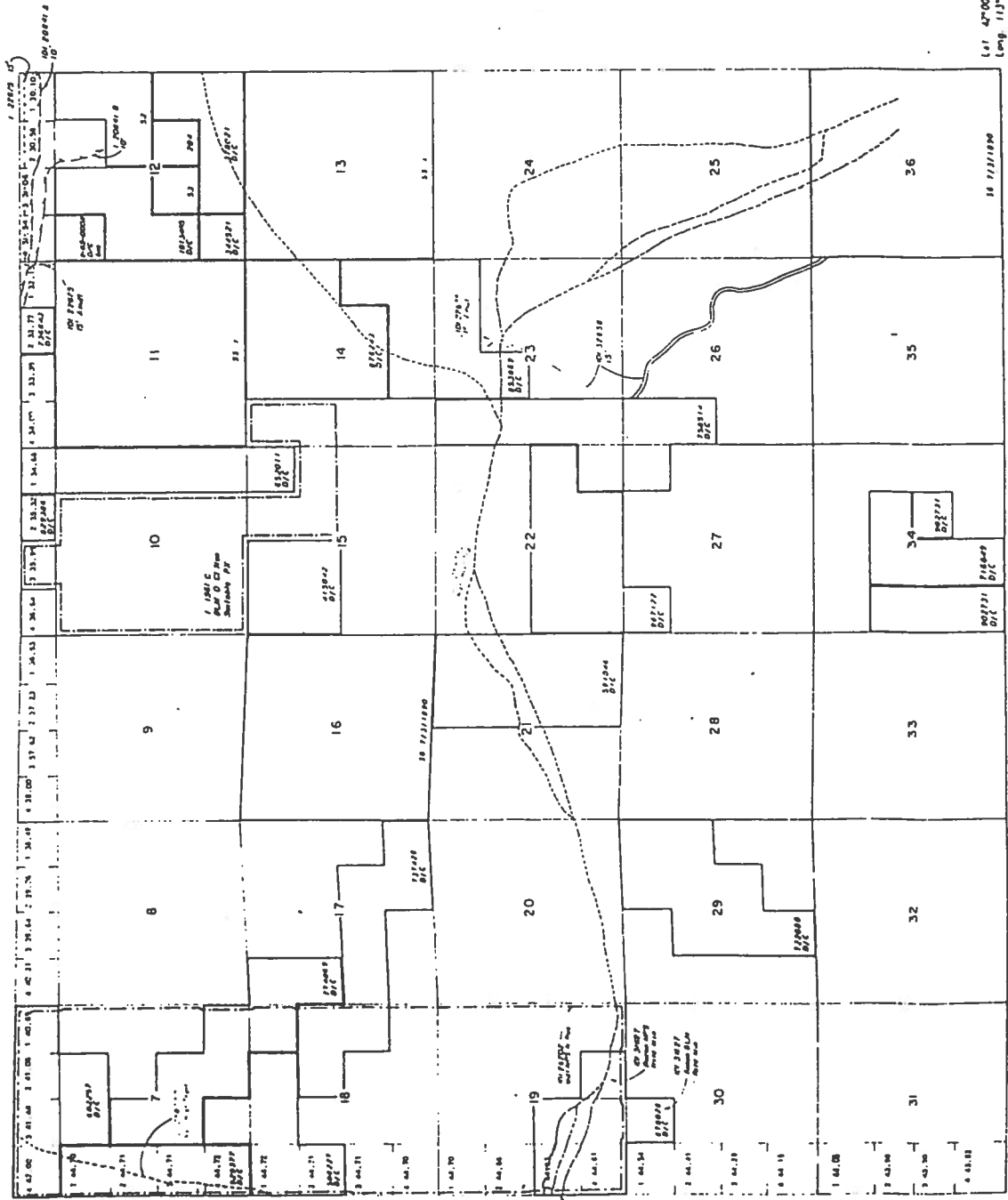
DI 316c, PX

Sec 30: N

065113

STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES

CASSIA COUNTY
BURNER DISTRICT SEC 3

MT PLAT[illegible]

THE NOTATION SHOWN ON WITHDRAWALS REPRESENT THE LAST ACTION TAKEN BUT MAY NOT BE THE EFFECTIVE DATE. SEE THE HISTORICAL INDEX FOR THE DATE OF THE ORIGINAL WITHDRAWAL ORDER

WARNING: STAGNANT

This plot to the Bureau's Record of Title, and should be used only as a graphic display of the locality survey data. There are reasons for not reflect title abstracts which have been obtained by lateral instruments of record as other means of water matter to the enclosed surveys for official survey information.

A horizontal scale bar labeled "SCALE IN CM" with markings from 0 to 50.

2



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 29, 2002

William T. Goodman
Goodman and Boller
PO Box D
Rupert, Idaho 83350

RE: Snake River Basin Adjudication (SRBA)
Claim No: 43-4173, Michael Nicholson

Dear Mr. Goodman:

As requested, please find enclosed copies of documents that were submitted by Mr. Olen Ward to substantiate his claim to the use of Circle Creek. These are copies from our files and may or may not be sufficiently readable. To assist you, I am also sending a copy of Mr. Ward's affidavit, which identifies where the original documents may be found. Also, please note that the referred-to David Hubbard is a party in the superceded 1893 Lee Kirk -v- Bartholomew Decree of Raft River and Almo Creek, if you wish to review the associated papers.

I have read the typed transcript of the 1995 interview of Hosea Jones, conducted by Mr. Nicholson's sister, Jean Elwell. As you know, Mr. Jones states that his father may have filed on 160 acres prior to Lunsford, and mentions a date of 1882. Since the Abstract of Title that your client submitted November 28, 2000 includes an 1890 patent to George Lunsford, I would think that a recorded document that could in any way substantiate development on Nicholson's Circle Ranch prior to Lunsford would be helpful. However, I respectfully defer to you to review the papers submitted up to this date and determine whether sufficient evidence exists to show development on Nicholson's property before my recommended 1885 priority date. You should be in receipt of the SF1 Objection form that I sent Friday January 25th.

Sincerely,

Vikie Hancock
Sr. Water Resource Agent
Southern Regional Office, Twin Falls

Encl.

Cc: Michael Nicholson

WILLIAM T. GOODMAN
ALAN GOODMAN
RICK BOLLAR
NICOLE L. ARBOGAST

LAW OFFICE
Goodman and Bollar

CHARTERED
717 7TH STREET
BOX D
RUPERT, IDAHO 83350-0020

AREA CODE 208
TELEPHONE NO.
436-4774
FAX
(208) 436-4837

January 25, 2002

RECEIVED
JAN 28 2002
Department of Water Resources
Southern Region

Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

ATTENTION: Vickie Hancock

Re: Michael Nicholson 43-4173

Dear Ms. Hancock:

I will look forward to receipt of the Standard Objection Form for filing concerning the recommended Water Rights of Mr. Nicholson.

As I advised you I am enclosing an interview Jean Elwell had with Hosea Jones in 1995 concerning the property and ownership in 1882 and before.

I would hope that this interview with Mr. Jones would be of use in establishing an 1882 priority date. Let me know before we file the objections please.

Mr. Nicholson also requested that I see if you would send me a copy of the letter upon which the priority date for Wards was established. He indicated you read him this letter.

Thank you for your attention to our concerns.

Very truly yours,

GOODMAN & BOLLAR



William T. Goodman

WTG/tj
Enclosures

**NOTICE OF ERROR
REPLY**

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

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

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

Water right number: 43-4150

SPENCER BROTHERS

HC 72 BOX 2418

MALTA ID 83342

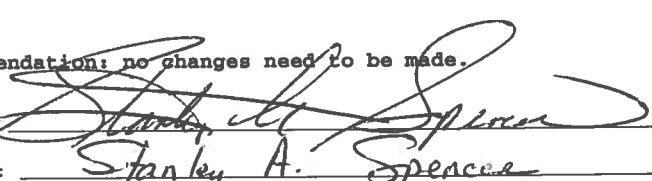
Telephone Number: (435)827-5573

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

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

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

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

DATE: 6/4/2001 SIGNATURE: 

Please print your name: Stanley A. Spencer

IDWR Regional Office, 1341 Fillmore St, Suite 200, Twin Falls, ID 83301, (208)736-3033

12/18/2000

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

RIGHT NUMBER: 43-4150

NAME AND ADDRESS: SPENCER BROTHERS
HC 72 BOX 2418
MALTA, ID 83342

SOURCE: CIRCLE CREEK TRIBUTARY: RAFT RIVER

QUANTITY: 2.8 CFS

THIS RIGHT WHEN COMBINED WITH RIGHT NOS. 43-47A, 43-327, 43-2556, 43-4089, 43-4090 AND 43-7130 SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE.

PRIORITY DATE: 03/15/1882

POINT OF DIVERSION: T16S R24E S12 NESW Within CASSIA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04-01 10-31	2.80 CFS

PLACE OF USE:

IRRIGATION Within CASSIA County

T15S R25E S31	SESW	13	T15S R25E S31	SWSE	28
T15S R25E S31	SESE	5.6	T16S R24E S12	NENE	18
T16S R24E S12	NWNE	1.3	T16S R24E S12	SWNE	32
T16S R24E S12	SENE	40	T16S R25E S6	LOT 4	SWSW 1.2
T16S R25E S6	LOT 3	SES	T16S R25E S6	LOT 2	SWSE 29
T16S R25E S6	LOT 1	SESE	T16S R25E S7		NWNE 40
T16S R25E S7		NENW	T16S R25E S7	LOT 1	NWNW 38
T16S R25E S7	LOT 2	SWNW			

365.1 ACRES TOTAL

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 260 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 43-47A, 43-327.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 365 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 43-47A, 43-327, 43-2556, 43-4089, 43-4090, 43-7130.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 140 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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

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

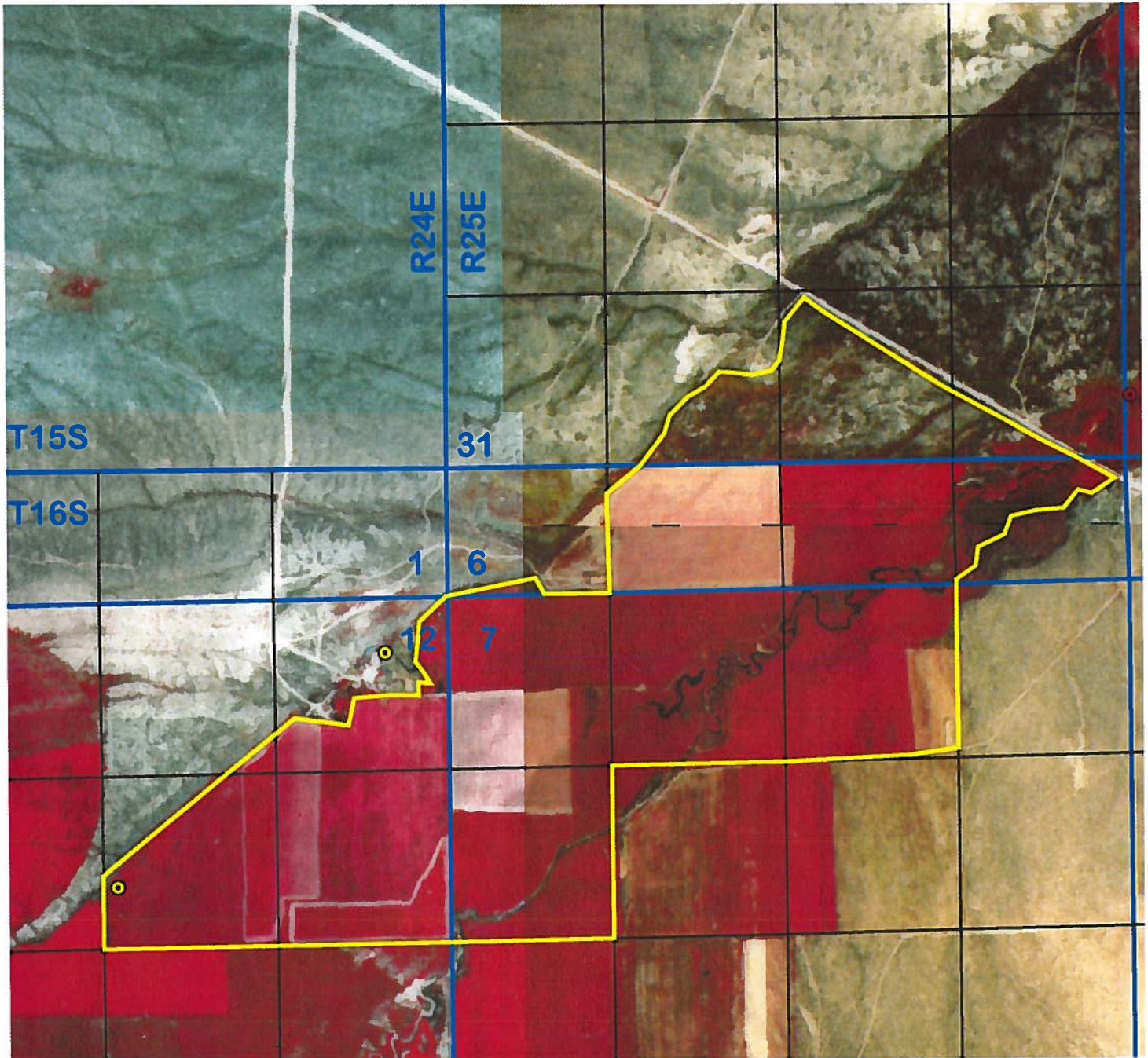
THIS RIGHT IS SUBJECT TO REGULATION BY THE WATERMASTER OF
WATER DISTRICT 43B.

EXPLANATORY MATERIAL: BASIS OF CLAIM - BENEFICIAL USE

Idaho Department of Water Resources

**RIGHTS: 43-47A, 43-327, 43-2556,
43-4089, 43-4090, 43-4150, 43-7130**

RECOMMENDED PLACE OF USE
TWP 15S, RNG 25E, Sec 31
TWP 16S, RNG 24E, Sec 1, 12
TWP 16S, RNG 15E, Sec 6, 7
Data entry on December 14, 2000



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



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

CLAIM NUMBER: A43-04150

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	LORRAINE B WARD	03/15/1882	IRRIGATION	03-15 10-15	3.00 CFS	2.8
C	HAROLD OLEN WARD			4-1 10-31	3.00 CFS	
TOTAL DIVERSION:						1096.50 AFA
CONSUMPTIVE USE:						3.00 CFS

Water Source: CIRCLE CREEK
Tributary to: RAFT RIVER
Stage: STATUTORY CLAIM
CASSIA County

Point(s) of Diversion: T16S R24E S12

Place of use Legal Description for: IRRIGATION

NE		NW		SW		SE		SUM
T	R	S	Ac	Ac	Ac	Ac	Ac	
15S	25E	31	:	:	:	:	:	50.0
16S	24E	12	:	:	:	:	:	100.0
16S	25E	6	:	:	:	:	:	62.0
16S	25E	7	:	:	:	:	:	153.5
TOTAL ACRES								365.5

POU County: CASSIA

Other Rights: 43-02556, 43-04089, 43-00327, 43-00047A, 43-04090, 43-07130

Remarks: THIS RIGHT WAS ESTABLISHED UNDER BENEFICIAL USE. THE SOURCE CIRCLE CREEK WAS NOT INCLUDED IN THE LIST OF TRIBUTARY STREAMS FOR THE JOB ADAMS DECREE, AND WAS NOT DECREED AT THAT TIME. WE CLAIM A PERMISSIBLE PLACE OF USE FOR THIS RIGHT BECAUSE WE CO-MINGLE ALL OF OUR SOURCES OF WATER. THIS WATER WHEN AVAILABLE HAS ALWAYS BEEN COMBINED WITH THE RAFT RIVER WATER TO IRRIGATE THE LANDS DESCRIBED AS THE PLACE OF USE. THE TOTAL ACRES CLAIMED INCLUDE TWO EXPANSIONS IN THE NUMBER OF IRRIGATED ACRES. THESE EXPANSIONS ARE COVERED BY LICENSED RIGHT 43-02556 AND PERMIT 43-07130. SEE MAP DETAILING THE AREAS OF EXPANSION. WE HAVE CLAIMED THE PERMISSIBLE PLACE OF USE DUE TO OUR SYSTEM WHERE THE WATER FOR ALL SOURCES IS CO-MINGLED.

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

Comments
period
C-18
combined limits
add 345 ac
140 ac
101 ac
104 43B
104

RECOMMENDATION NOTES

From: Vikie Hancock

12/18/00

Regarding: 43-4150

This claim is for irrigation from Circle Creek, an intermittent stream that flows into Raft River. It is based upon beneficial use with ample evidence in the file to substantiate the 1882 priority date.

During my field exam for the Bruce Durfee claims on property to the West and upstream of Spencer's property along Raft River, I looked at Circle Creek. Durfee described the creek as very unreliable - but did show me his seldom-used diversion, which is upstream of Spencer's on Circle Creek. Circle Creek was dry at the time of my field exam, but it did look like it had flashed through in the spring, which is what Durfee says it does, if it runs at all. During my conversation with Durfee, he mentioned the new owners of Olen Ward's place (Spencer) and that their rights to Circle Creek pre-dated his. Durfee's are based upon a license from 1915.

The historical Spencer/Ward point of diversion for Circle Creek is just inside Bruce Durfee's boundary which is now directly below his pivot in the NE1/4 of Section 12. I did not visit this site but it is visible on 1976 OPQ, 1978 ASCS and 1987 NAPP aerial photos. It appears, in fact, that the diversion probably changed the course of Circle Creek to flow northeast and stay above the irrigated fields, as the natural course of the creek would have most likely been to continue east into Raft River.

The number of acres and diversion rate recommended is based upon the 1983 Statutory Claim. Also note that, based upon the map of expansion submitted by Olen Ward in 1992, irrigation from surface water could not have exceeded 260 acres prior to the implementation of sprinkler irrigation in the 1970's.

43 - 04150 Circle Creek

Proof of Priority -

- 1893 Findings of Lee Kirk - v - Bartholomew decree identifies David Hubbard on claimed property with use of Raft River from 1882 (50 inches) E $\frac{1}{2}$ NE, SW $\frac{1}{4}$ Sec
- 1902 David Hubbard Sells place of use to Charles Ward along with water rights to Raft River, Circle Creek & Fish Springs
- 1906 ~~Charles~~ Clarence Ward sells land to John C. Ward along with Raft River, Fish Springs & Circle Creek water Rights
- 1926 John C. Ward Decreed Raft River water rights to POU with 1882 ~~ward~~ priority. (140 inches)

→ Circle Creek is not included in either the Lee Kirk - v - Bartholomew Decree or in the Superseding Jobe Adams decree.

→ Location of Circle Creek in relation to property owned & irrigated by David Hubbard in 1882 would indicate that it was most likely used in conjunction with Raft River in development of farm.

Should questions arise during
the processing of this applica-
tion please contact:

SHERL L. CHAPMAN
410 S. Orchard, Suite 144
Boise, ID 83705
344-6690

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CLAIM TO A WATER RIGHT

Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that Harold Olen and Lorraine B. Ward

(Name of Claimant)

7209 Kingston Drive, Boise, Idaho 83704

(Mailing Address)

(Zip Code)

Telephone No. 376-7815

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

- (1) Date of priority: (When was the water first applied to a beneficial use) March 15, 1882

A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

- (2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

Circle Creek tributary to Raft River

- (3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

	(cfs, gpd, AFA)	[Domestic, Irrigation, Stock, Etc.]	(Both dates inclusive)	
			(Mo., Day)	(Mo., Day)
Quantity	<u>3.0 cfs</u>	Use <u>Irrigation</u>	Period of Use From <u>3-15</u>	To <u>10-15</u>
Quantity		Use	Period of Use From	To
Quantity		Use	Period of Use From	To
Quantity		Use	Period of Use From	To
Quantity		Use	Period of Use From	To

- (4) 3.0 cfs TOTAL QUANTITY USED.
(cfs, gpd, AFA)

- (5) A) Point of diversion: (Location of point where water is diverted from its source)

SE 1/4 NW 1/4, Sec. 12 Twp. 16S Rge. 24E B.M., County of Cassia

Additional points of diversion:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. Irrigation ditch intercepting flow of Circle Creek.

- (6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTAL
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
16S	24E	12	20		31	40													91
16S	25E	7						35	14										49

No. of acres 140

B) If water is used for other than irrigation, fully describe that use, being as specific as possible: N/A

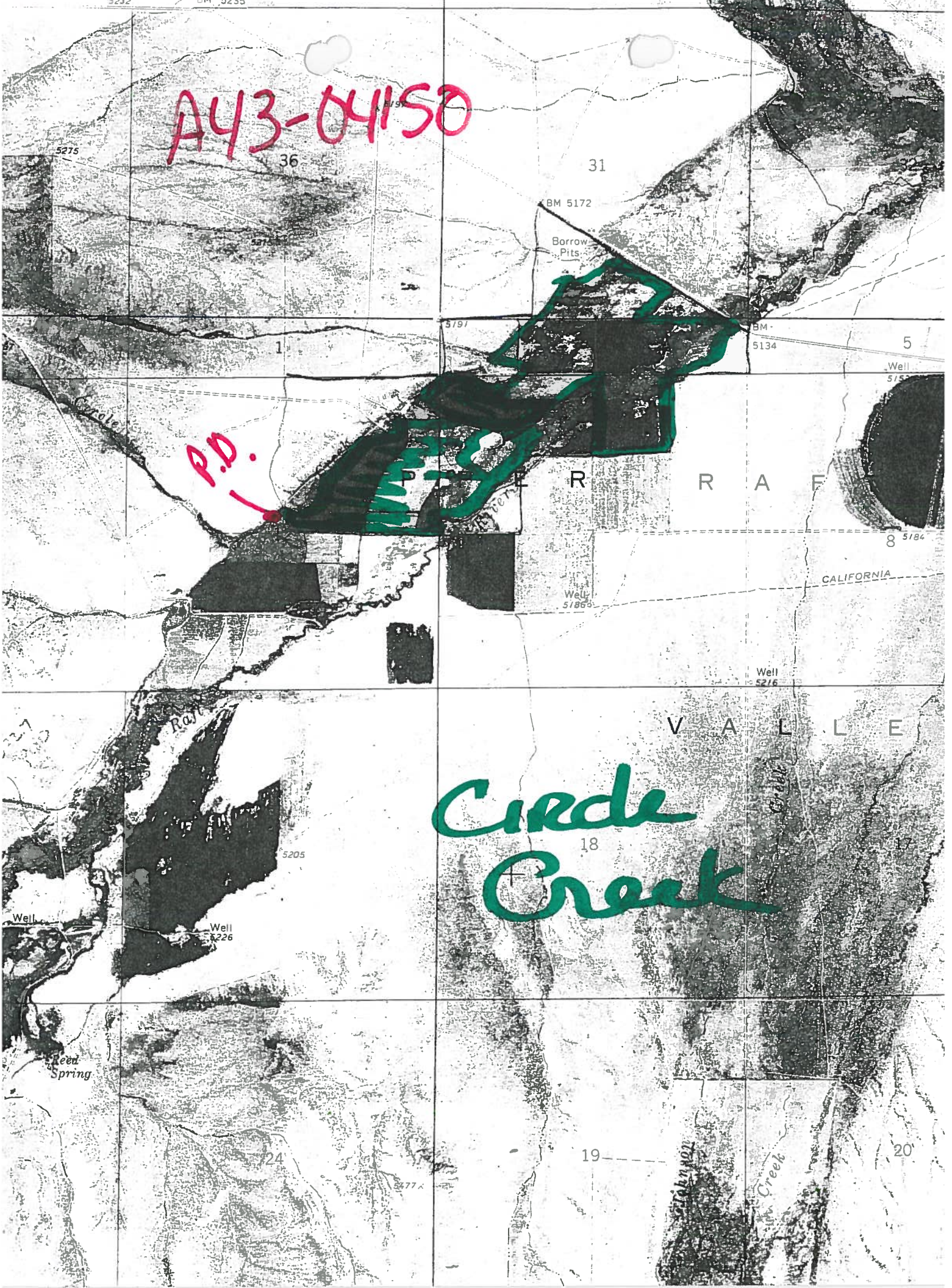
(7) E: Include here the type and number of stock watered: -----

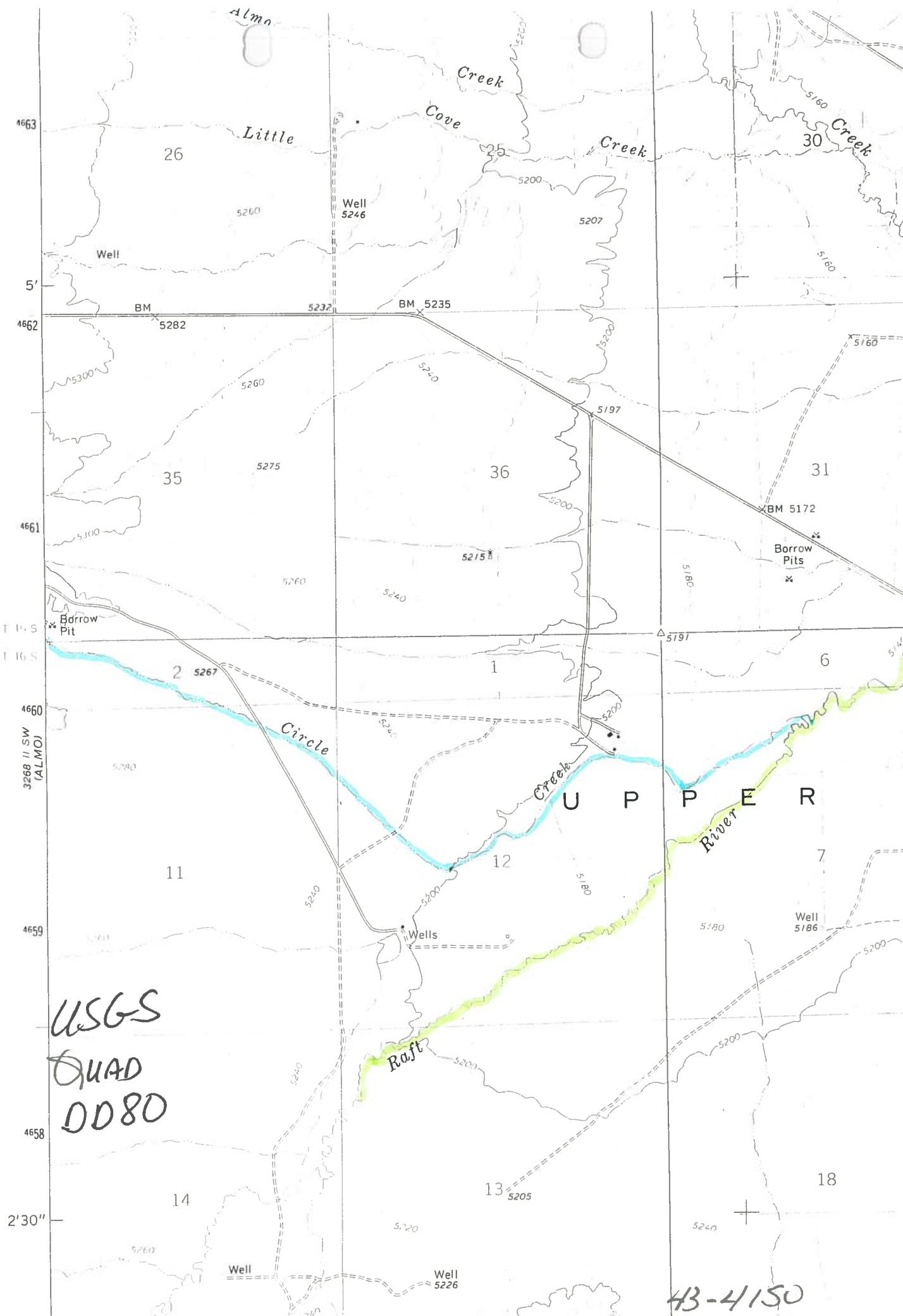
(7) If you are claiming water as a member of an organization, list name of organization: -----

A43-04150

P.D.

Cirde Creek





-12-

of Boise Meridian. That said James Bronson was, on the 30th day of April 1882, the owner and since has been and now is the owner & in possession of the said lands.

I find that David Hubbard appropriated for the irrigation of the lands hereinafter described from the waters of said Raft River for the entire season, from April 1st to October 1st, 50 inches of water. That said David Hubbard used the above amount of said water during the time mentioned each year from April 30th, 1882, down to the date of this decree. That said lands on which said water was used as aforesaid are particularly described as follows, to wit: The East 1/2 of the North East 1/4 and South West 1/4 of the North East 1/4 of Sec. 12, Township 16 South of Range 24 East of Boise Meridian. David Hubbard aforesaid was on the 30th day of April 1882, the owner and since has been and now is the owner in possession of said lands.

I find that J. W. Hubbard has appropriated for the irrigation of the lands hereinafter described, from the waters of said Raft River for the entire season from April 1st to October 1st, 75 inches of water. That said J. W. Hubbard used the above amount of said water during the time mentioned each year from April 30th 1882 down to the date of this decree. That said lands on which said water was used as aforesaid are particularly described as follows, to wit: The North East 1/4 of the North West 1/4, the North West 1/4 of the North East 1/4 and Lots 1 & 2 Sec. 7, Township 16 South of Range 24 East of Boise Meridian. That said J. W. Hubbard was on the 30th day of April 1882, the owner, and since has been and now is the owner in possession of said lands.

I find that William Holt appropriated for the irrigation of the lands hereinafter described from the waters of said Raft River for the entire season from April 1st to October 1st, 75 inches of water. That said William Holt used the above amount of said water during the time mentioned each year from April 30th 1882 down to the date of this decree. That said lands on which said water was used as aforesaid are particularly described as follows, to wit: The North East 1/4 of the North West 1/4, the North West 1/4 of the North East 1/4 and Lots 1 & 2 Sec. 7, Township 16 South of Range 24 East of Boise Meridian. That said William Holt was on the 30th day of April 1882, the owner, and since has been and now is the owner in possession of said lands.

FROM 1893 Decree
LEE Kiek v Bartholomew

43-4150

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. STEED HEARING

A43-04150

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

IDWR Employee/Agent Frank Hitchcock

September 8, 1997 1:34pm

NAME:

OLEN WARD-UPPER RAFT RIVER

RE:

RECORDS FOR USAGES RELATED
STEED/REEDSPRINGS-HEARING.

WALK-IN AT 9:20-CW-WANTED ALL USAGES "LICENSES" FOR BRUCE DURFEE,
KENT DURFEE, BRENT JONES AND BILL JONES.

DISCUSSED HIS PROTEST RE: STEED USAGES AND FLOWS FROM THE STEED
ACRES.

REVIEWED BASIN 43 SEL/ALPHA CLAIMS RECORDS FOR UPPER RAFT RIVER
CLAIMS ASSIGNED TO FH AND DID AN AJS58 QUERY FOR THE CLAIMS OF THE
NOTED PEOPLE. COLLATED BY NUMBER AND PUT COPIES OF THE NAME LISTS
USED WITH EACH SET.

WARD CALLED BACK AT 11:42 TO CONFIRM THE JONES CLAIMS BEING PULLED.
HE STOPPED IN SHORTLY AFTER NOON TO PICK UP THE PROOFS LEFT FOR HIM
AT THE FRONT DESK.

lawfully claiming or to claim the same
shall and will, warrant and by
these presents to forever defend the same
writings of the said parties of the first
have, hereto set their hands and
seals the day and year first above
written.

^{Signed sealed and delivered in}
^{presence of}
W. E. Taylor
R. H. Harris

David Hubbard
Ida Hubbard
DAVID HUBBARD

State of Idaho } ss.
County of Cassia }

On this Twenty third day of
August 1902 before Edmund Flower
a Justice of the Peace in and for said
County personally appeared
David Hubbard and Ida Hubbard
his wife known to me to be the persons
whose names are subscribed to the
within instrument and acknowledged
to me that they executed the same
and on this 23rd day of August 1902
before me the officer above described
personally appeared Mrs. Ida Hubbard
known to me to be the person whose
name is subscribed to the within
instrument described as a married
woman; and upon examination
without the hearing of the husband I
made her acquainted with the contents
of the instrument and thereupon
she acknowledged to me that she
executed the same and that she does
not wish to retract such execution
In witness whereof I have hereunto set
my hand and affixed my official seal
the day and year in this certificate first
above mentioned

Edmund Flower
Justice of the Peace

Filed for record at request of B. P. Ward at 12 10 P. M.
Oct. 15. 1902

John F. Hanson Clerk
By B. M. Hanson
Deputy

Decree # 792

A-ILC (Plaintiff) vs. Jobe Adams, et al, (Defend)

1. Almo Creek and all or part of Clear Creek were not subject to the Raft River decree

2. Circle Creek is not identified as a tributary to Raft River to be reckoned with as a part of the Raft River decreed waters. In reviewing the depositions and appeals and etc. on this case it seems apparent that the irregularity of Circle Creek actually contributing to the Raft River flows is the main reason it was not included in the decree.

3. There did not appear to be any reference to Circle Creek or to any users on the Circle Creek being included in the Jobe Adams vs. A-ILC adjudication.

4. I obtained the case file from the United States District Court, Boise. They had to retrieve the file from the archives in Seattle, Wn. The file has many depositions from early settlers giving dates when people arrived, where they lived, what they did with the water diverted, etc.

5. A list of all the water tributary to Raft River that was adjudicated in this case is given in the write up. A copy is on file with the Idaho Department of Water Resources in Boise and I would imagine in Twin Falls.