

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: A43-10236
Date Received: 5/24/1989
Receipt No: 5007309
Received By: AD

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: ART WHITAKER 208-645-2292
Address: P.O. BOX 64
MALTA, ID 83342
AND/OR
Name: LARENE WHITAKER 208-645-2292
Address: P.O. BOX 64
MALTA, ID 83342
2. Date of Priority: JUN 30, 1985
3. Source: GROUNDWATER Trib. to:
4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
13S	26E	12	SE	NE			CASSIA
5. Description of diverting works:
WELL & 50 H.P. PUMP DELIVERING TO POND TO BOOSTER TO SPRINKLERS
6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.220		
7. Total Quantity Appropriated is:
0.220 C.F.S. (and/or) A.F.A.
8. Total consumptive use is 33.0 Acre Feet Per Annum.
9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
13S	26E	12	SW	NE		IRR	3.0
			SE	NE		IRR	5.0
			SE	NW		IRR	3.0
						Section Acres	11.0
						Total Acres	11.0

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:
A45-00297, 00298 & 00299

14. Remarks:
THIS CLAIM IS FOR THE EXPANDED ACRES IN A CRITICAL GROUNDWATER
AREA WHICH WAS DEVELOPED AROUND 1981 WHEN LIC. 43-02530B WAS
EXPANDED.

15. Basis of Claim: BENEFICIAL USE

16. Signature(s)

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

Number of attachments: See Map A43-00297

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): *John W. Hatcher* Date: 5/24/89

Date: _____

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 24th day
of May 19 89

John D. V. Hatcher
Notary Public

Seal

Residing at Kimberly, ID
My Commission Expires 6/30/92



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

A43-10236
ART WHITAKER
LARENE WHITAKER
P.O. BOX 64
MALTA

ID 83342

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

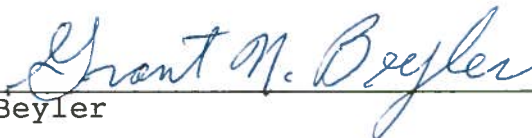
MAR 04 1993

A43-10236

CONCERNING THE MATTER OF:
Adjudication claim for expanded acres
Water Right #A43-10236
Art & Larene Whitaker

I Grant Beyler am a resident of Cassia County and have been for a long time. Having been a brother-in-law of Art Whitaker for the past 25 years and owning ground next to his for the past 10 years, I have seen the irrigation improvements made on his property in Malta. Since 1981 I have seen him irrigate and raise crops on 91 acres with the water he has from the well. At that time the new pump, pipeline and sprinklers were installed.

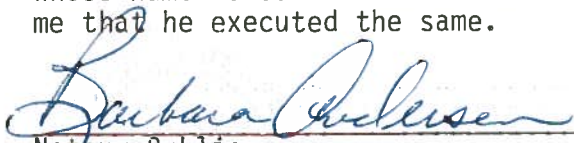
Dated this 29 day of January, 1992.



Grant Beyler

State of Idaho
County of Cassia

On this 29th day of January 1992, before me a notary public in and for said State, personally appeared Grant N. Beyler known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.



Notary Public
Residing at Albion, Idaho
My commission Expires 7/23/93

MICROFILMED
MAR 04 1993

**Idaho Dept of Water Resources
Claims review notes and narrative**

Date: 7-20-2001

File:

Prepared by Kelly K Christensen

DALAN SPENCER FILED A NOTICE OF ERROR FOR HIS CLAIMS (43-12969 THRU 43-12975). I CHANGED THE PLACE OF USE BOUNDARY FOR ARTS CLAIMS IN THE SWNW OF SEC 12 BASED UPON THE PLAT MAP SUBMITTED BY DALAN. THIS CHANGE DID NOT CHANGE THE ACRE RECOMMENDATION FOR ART.

KC
05/11/2001

**NOTICE OF ERROR
REPLY**

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

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

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

Water right number: 43-10236

ART WHITAKER

PO BOX 64

MALTA ID 83342

Telephone Number: (208)645-2292

LARENE WHITAKER

PO BOX 64

MALTA ID 83342

Telephone Number: (208)645-2292

RECEIVED

JUN 20 2001

**Department of Water Resources
Southern Region**

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

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

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

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

DATE: June 15, 01

SIGNATURE: Art D Whitaker

Please print your name: ART D WHITAKER

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

10/18/2000

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

RIGHT NUMBER: 43-10236

NAME AND ADDRESS: ART WHITAKER
LARENE WHITAKER
PO BOX 64
MALTA, ID 83342

SOURCE: GROUND WATER

VERIFIED BY *KKC*
10-18-00

QUANTITY: 0.08 CFS

WHEN COMBINED THE FOLLOWING RIGHTS SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE. COMBINED RIGHT NOS. 43-297A, 43-298B, 43-299B, 43-2530, AND 43-10263.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 1.60 CFS AND A COMBINED DIVERSION VOLUME OF 320 AF. COMBINED RIGHT NOS: 43-2530B AND 43-10236.

PRIORITY DATE: 06/30/1985

POINT OF DIVERSION: T13S R26E S12 SESENE Within CASSIA County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03-15 11-15	0.08 CFS

PLACE OF USE:

IRRIGATION Within CASSIA County			
T13S R26E S12	SENE	38	T13S R26E S12 SWNE 38
T13S R26E S12	SENE	10	
86 ACRES TOTAL			

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 86 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS. 43-297A, 43-298B, 43-299B, 43-2530B, AND 43-10263

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 6 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 AN EXPANSION OF RIGHT NO. 43-2530B PURSUANT TO SECTION 42-1416B, IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

CLAIM NUMBER 43-2530 } GW DATE 10-17-00 TRANSFER NUMBER _____
43-10263 AGENT KKC CLAIMED ACRE TOTAL _____

43-297A } Surface GIS ACRE TOTAL _____
43-298B } Water Claims

	TWP	RNG	SEC	NE				NW				SW				SE			
				NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
43-2530	13S	26E	12			37	34				9								
43-10236			12			3	5				3								
Surface Claims			12			40	39				12								
GIS						38.3	38.2				10.2								
RECOM			12			38	38				10								
43-10236						1	4				1	(6 ac within PPU)							
CLAIM																			
GIS																			
RECOM																			

B43-POU.SHP 43-2530 per transfer 2627 the P/U is as claimed 80 Ac; Found 86 Ac
 SHAPE NOS. Recom 80 Ac within PPU of 86 Ac, transfer recognizes standard in season

43-10263 is an exp claim in a crit GW area (42-1416B) of Lou
 B43-POD.SHP 6 Acres more than licensed. Recommend this right

NOS. DESCRIPTION for 6 Ac within the 86 PPU. condition as an exp right
Sec 12 SESENE according to 42-1416B.

(P/D is very close to the 10 tract line)
Site tag A0004891

Sec 12 NW SWSW. P/D location as of 1987. this is the recom P/D
abandoned in 1998

Cassia Creek P/D in use since 1998
Sec 14 NENENE the P/U for the surface water rights match the

SITE tag A0007924
 DBF TABLES UPDATED GW right P/U.

B43-DBPOU.DBF _____

B43-DBPOD.DBF _____

JPEG LAYOUT _____

Photos, layouts & field notes in 43-297A

**43-297A, 43-298B, & 43-299B CASSIA CREEK RIGHTS
43-2530B & 43-10236 GROUNDWATER RIGHTS**

The decreed place of use is owned by three separate individuals and claimed by each one. The split between Beyler (43-298A, 43-299A, and a portion of 43-10794 {split into 43-11263 and 43-11264})

Beyler has claimed 22/120ths of the decreed rights

Whitaker has claimed the entire decreed rate for each right on his portion of the decreed place of use

Loock has claimed 0.10 cfs of 43-00297

I am recommending Beyler's claims for 20 acres and 22/120ths of the decreed rates.

I am recommending Whitaker claims for 86 acres and 98/120ths of the decreed rates of 43-298 and 43-299 rates. I am recommending Whitaker's claim 43-279A at 98/120ths less Loock's share of that right.

I am recommending the Loock claim for 4.6 acres and 0.10 cfs (this is less than the legal limit of 1.5 inches per acre for parcels less than 5 acres.

Whitaker Analysis Surface water Rights

The claimed place of use is entirely within the decreed place of use. There is some indication that a portion of the decreed place of use was not always irrigated. However, as of 1987 the place of use was fully farmed and irrigated. Currently there is a small feedlot located in the southeast corner of the recommended place of use. It does not appear on the 1987 NAPP photography and is only an acre or so in size. I am not excluding this ground from my recommendation.

I am recognizing the diversion rates for each claim as follows;

43-297A	1.20 cfs * (98/120) = 0.98 cfs.	.98 cfs – 0.10 cfs (Loock portion) = .88 cfs
43-298B	0.60 cfs * (98/120) = 0.49 cfs	
43-299B	1.40 cfs * (98/120) = 1.14 cfs	
	total	2.51 cfs

The three rights are limited to 1 inch per acre when used together on the 86 acres which is;
86 acres * 0.02 cfs/acre = 1.72 cfs

Whitaker Analysis Ground Water Rights

There are two claims from one well for the irrigation of the same ground. Transfer 2627 for 43-02530B was approved in 1981 to add a point of diversion and split off a portion of the licensed place of use based upon the sale of a portion of that ground. The license covered all but 6 of the currently irrigated acres. As irrigation of the additional 6 acres occurred after the establishment of the critical groundwater management area those 6 acres are being recommended under 43-10236 as an expansion in a critical groundwater area (42-1416B).

43-2530B is limited to the transferred acre total of 80 acres within the PP/U at the licensed rate of 1.60 cfs.

By Kelly K Christensen Date: October 17, 2000 File: 43-297 beyler whitaker loock analysis.doc

43-10236 is also limited to the same diversion rate of 1.60 cfs and is limited to 6 acres within the PP/U.

When the two rights are combined, they are limited to a total diversion volume of;
 $80 \text{ acres} * 4 \text{ afa} = 320 \text{ afa}$.

Beyler Analysis Surface water Rights

The surface water rights are diverted in Sec 14 NENENE and delivered through the Harper ditch. This ditch is shared with other users. The ditch enters the property in the southwest corner and splits with one ditch going north and the other one going east. There is no farmstead on the property.

The original decreed rights have been split through property sales and the proportionate split for Beyler was calculated on a 22/120 ratio based upon ownership of his respective portion of the decreed place of use. The claimed place of use is entirely within the decreed place of use. Based upon the currently available information, it appears that all or nearly the entire place of use is irrigated. The claim was for 22 acres, however I found 20 acres after excluding the highway right of way, the well site, and a small portion of ground around Cassia Creek.

I am recommending the Cassia Creek rights as follows;

43-11264	1.20 cfs * (22/120) =	0.22 cfs
43-298A	0.60 cfs * (22/120) =	0.11 cfs
43-299A	1.40 cfs * (22/120) =	<u>0.256 cfs</u>
	total	0.586 cfs

The three rights are limited to 1 inch per acre when used together on the 20 acres which is;
 $20 \text{ acres} * 0.02 \text{ cfs/acre} = 0.40 \text{ cfs}$

Beyler Analysis Ground Water Right

Beyler filed 43-4162 as a beneficial use right. The evidence of priority supports a 'dug' well in 1926 which was eventually replaced by the current 'drilled' well in 1957. This water has been used to supplement the surface water on that ground. Grant Beyler stated that the 22 acres was owned by the Church for a long period of time and that he had leased the property and farmed the ground. He indicated that the groundwater was used on the 20 acres only. It did not go to the ground now owned by Loock and claimed under 43-10370. He did state that surface water did enter the property in the southwest corner and flow either north or east from that point and that Loock did receive surface water at times from the ditch going east.

Mr Beyler submitted data to Scot King (Sr. Dept Agt.) and he analyzed the information and determined that the well has the capacity to deliver in excess of 1 inch to the acre. Therefore I am recommending this right for the irrigation of the same 20 acres described above and for a diversion rate of 0.40 cfs ($20 \text{ acres} * 0.02 \text{ cfs/acre}$).

Loock Analysis Surface Water Right

Loock claimed 43-297B for the irrigation of 5 acres. The 5 acres were irrigated in 1987 per the NAPP photography. After visiting with Art Whitaker, I am recognizing this right as valid for 4.6 acres and at the claimed rate of 0.10 cfs as an unrecorded transfer. Art had indicated that it was his intent at the time of the original sale that the property would be 'dry'. However the buyer and his predecessors irrigated the property with Cassia Creek water. Art decided that he would not contest Loock's filing for this water so long as it was delivered according to the 1894 priority date.

By Kelly K Christensen Date: October 17, 2000 File: 43-297 beyler whitaker loock analysis.doc

The point of diversion recommended is a 'dug hole' next to Cassia Creek. The water level in the hole is directly related to the flows in Cassia Creek and is therefore recognized as the point of diversion for this right. The exact date that this was constructed but based upon currently available information it was in existence prior to 1987.

Loock Analysis Ground Water Right

The point of diversion recommended above was the claimed point of diversion for the groundwater right 43-10370. I visited with Grant Beyler and he stated that the well water was never used on the 5 acres under the claim. This contrasts with the affidavit submitted by Grant. The other elements of the history indicate that the well water was not used on the 5 acres. Therefore, I am recommending the claim for disallowal; No Beneficial Use Found.

By Kelly K Christensen
Date: October 17, 2000
File: 43-297 beyler whitaker loock analysis.doc

Log for claim A43-10236

Spatial Dynamics LRR

1/31/00

T	R	SEC	QQ	Acres Claimed	Acres Found	COMMENT
13	26	12	SWNE	3	40	Permissible place of use?
13	26	12	SENE	5	40	Permissible place of use?
13	26	12	SENW	3	12	Permissible place of use?
Totals:				11	92	