

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

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

CIVIL CASE NUMBER: 39576

Ident. Number 43-11250
Date Received: 9/22/00
Receipt No: 5023402
Received By: DH

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

LARRY HENSON Phone: (208)824-5543
PO BOX 183
ALMO ID USA 83312

JACKIE HENSON Phone: (208)824-5543
PO BOX 183
ALMO ID USA 83312

2. Date of Priority: 12/31/1878

3. Source: SPRINGS Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County
15S	24E	22	SE SE NE	CASSIA

5. Description of diverting works:

OPEN DITCHES TO PLACE OF USE.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/01	10/31	0.4	

7. Total Quantity Appropriated is:
0.4 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
15S	24E	23	SW	NW	IRRIGATION	24
Section Acres						24
Total Acres						24

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:

14. Remarks:

THIS SOURCE IS SHARED BETWEEN OTHER WATER USERS. THESE HAVE FILED SEPERATELY.
THE STREAM OF WATER IS ALTERNATED BACK AND FORTH EACH WEEK BETWEEN JONES AND HENSON.

15. Basis of Claim: Beneficial Use

16. Signature(s)

(

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):

James Henson

Date:

9/22/00

Date:

State of Idaho

County of

Adams

SS.

Subscribed and sworn (or affirmed) before me this *22nd*

of *September* 20*00*

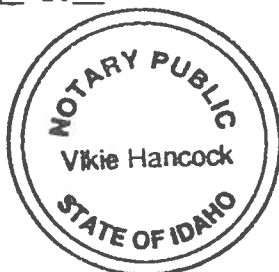
Notary Public

Residing at

Buhl, Idaho

My commission Expires

5-7-2003



09/26/2000

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

RIGHT NUMBER: 43-11250

NAME AND ADDRESS: JACKIE HENSON
LARRY HENSON
PO BOX 183
ALMO, ID 83312

SOURCE: SPRINGS TRIBUTARY: SINKS

QUANTITY: 0.16 CFS

USE OF THIS RIGHT WITH RIGHT NO. 43-10032 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 0.16 CFS.

PRIORITY DATE: 12/31/1878

POINT OF DIVERSION: T15S R24E S22 SESENE Within CASSIA County
T15S R24E S22 SESENE 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	0.16 CFS

PLACE OF USE:

IRRIGATION Within CASSIA County
T15S R24E S23 SWNW 24
24 ACRES TOTAL

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

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

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

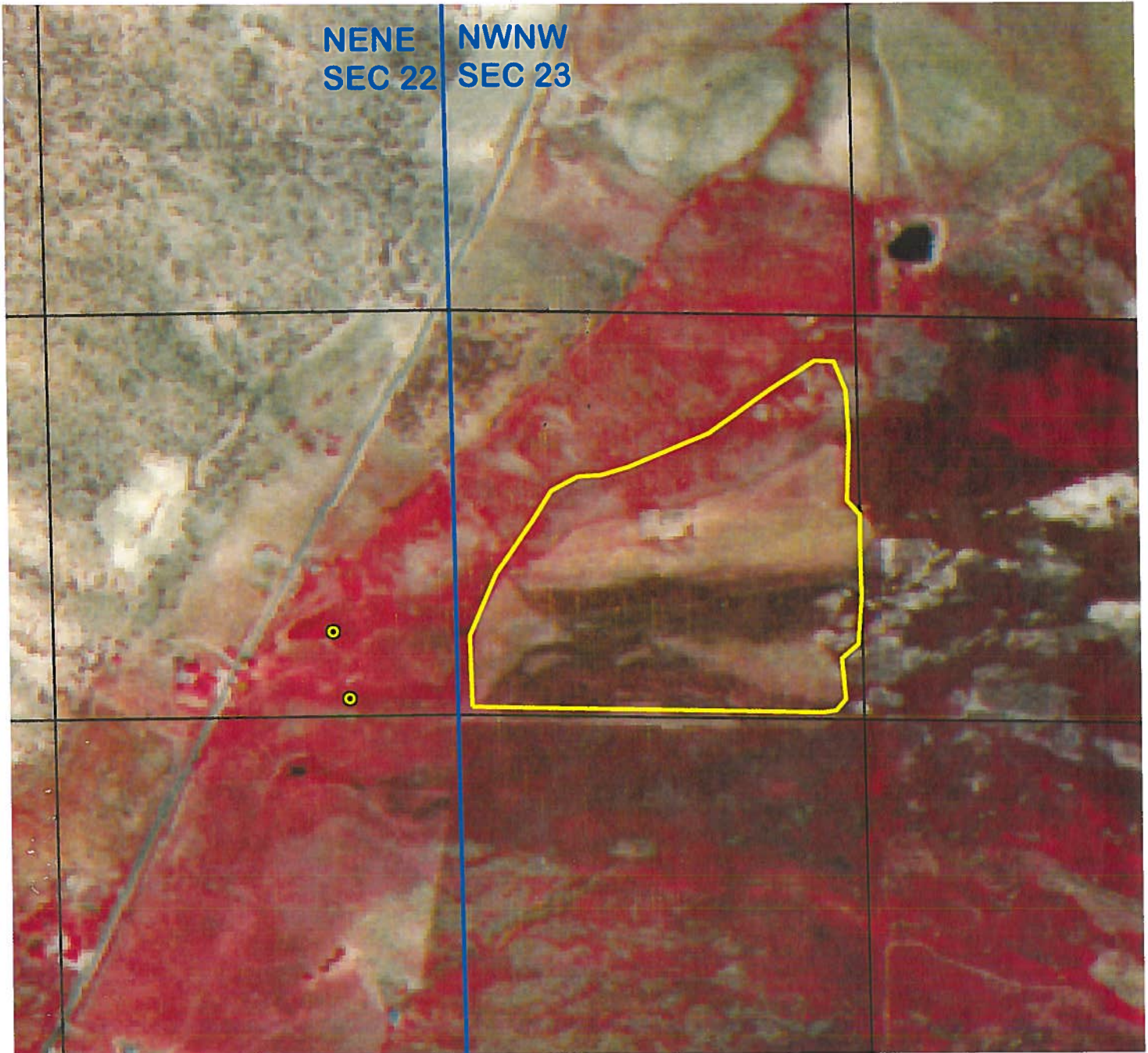
EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

USE OF THIS RIGHT IS COMBINED WITH WATER FROM ALMO WATER
COMPANY.

Idaho Department of Water Resources

RIGHTS: 43-11250

RECOMMENDED PLACE OF USE
TWP 15S, RNG 24E,
Data entry on September 25, 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

RECOMMENDATION NOTES

From: Vikie Hancock *WV*

9/25/00

Regarding: Claims 43-11250 and 43-10164

These claims are for water from two warm springs located just east of the Almo Elba highway in the SESENE Section 22, T15S, R24E. They are locally known as "Middle" and "North" Springs. "Bath" Spring is close by, but at this time not associated with these springs. **43-01064** is for .4 cfs for irrigation and .07 cfs for stockwater claimed by Brent Jones. **43-11250** is for .4 cfs for irrigation by Larry Henson. There are two other claims on this source: **43-10032** for 0.07 cfs for stockwater by Harold Durfee and **43-10081** for stockwater by R.O. Jones.

The beneficial use of these springs for irrigation is evidenced by an entry in the Lee Kirk - v- Bartholomew Decree of 1893. *See file*. This/these uses were not included in the Jobe Adams Decree, which did not systematically include all spring sources. A subsequent decision by the Water Resource Board in Cassia County in 1962 re-substantiated the beneficial use of this water and also quantified the water, referencing measurements done in 1947 that showed a production capacity of 0.32 cfs of Middle and North Springs. That documentation is not in the file. The water resource board also referenced later measurements that were presented to show injury to the springs by pumping from a newly constructed well. Those measurements are in the file and show a diminished capacity of .21 cfs.

Evidence in the file indicates that claimants, and their predecessors in interest, continuously diverted the water from these springs and made attempts to divert what had historically been available to them from the springs, for irrigation and stockwater, since 1878. From the information available to me, I believe that claimants have a right to 0.32 cfs of water from the North and Middle warm springs, as stated in the Lee Kirk - v- Bartholomew Decree. I believe that Brent Jones, as successor in interest to Glen Jones, has a right to 50% of the springs, or 0.16 cfs. I believe that Harold Durfee, and his son-in-law Larry Henson as successor to a portion of Harold Durfee's right, have a combined right to 50% of the springs, or 0.16 cfs.

Brent Jones claimed his portion of the springs in one claim for irrigation and stockwater. Although he claimed 0.07 cfs for stockwater and 0.40 cfs for irrigation, I am recommending his claim **43-10164** for 0.07 cfs for year round stockwater and 0.16 cfs for irrigation with a combined total diversion rate of 0.16 cfs.

Harold Durfee claimed his portion of the springs, **43-10032**, as 0.07 cfs of year-round stockwater. Larry Henson claimed his portion, **43-11250**, as 0.40 cfs

for irrigation. I am recommending 43-11250 for .16 cfs for irrigation and limiting the combined totals of 43-10032 and 43-11250 to a combined total diversion rate of 0.16 cfs.

R.O. Jones and Sons also claimed the springs as source for winter-only stockwater with a diversion rate of 0.12 cfs, as claim **43-10081**, which has already been partially decreed in the SRBA with no objection filed. This use is outside the irrigation season, and the total of the three stockwater rights do not exceed the decreed capacity of the springs. The 1880 priority date of 43-10081 is two years junior to the claims made by Glen & Brent Jones and Harold Durfee and Larry Henson, which may avoid injury to them. It is noted, however, that this use of the springs was not mentioned in the Board's decision in 1962. A more in-depth investigation of this stockwater right may have resulted in an adjustment of the priority date.

North & Middle Springs
Sec 22, SESENE, T15S R24E

IRRIGATION SEASON

Jones

0.32 cfs

Durfee

43-10164 0.07 stock

.16 irr

Total .16

43-10032 (stock) 0.1

43-11250 (irr) 0.1

Combined total 0.1

0.32

Total available / historically available
split between Jones & Durfee in
decision from 1962. Durfee successor
for irrigation right is Larry Hanson.
Jones successor is son Brent Jones

NON-IRRIGATION SEASON

0.32 cfs

Total

R.O. Jones

43-10081 (stock)

0.12

Brent Jones

43-10164 (stock)

0.07

H. Durfee

43-10032 (stock)

0.07

=

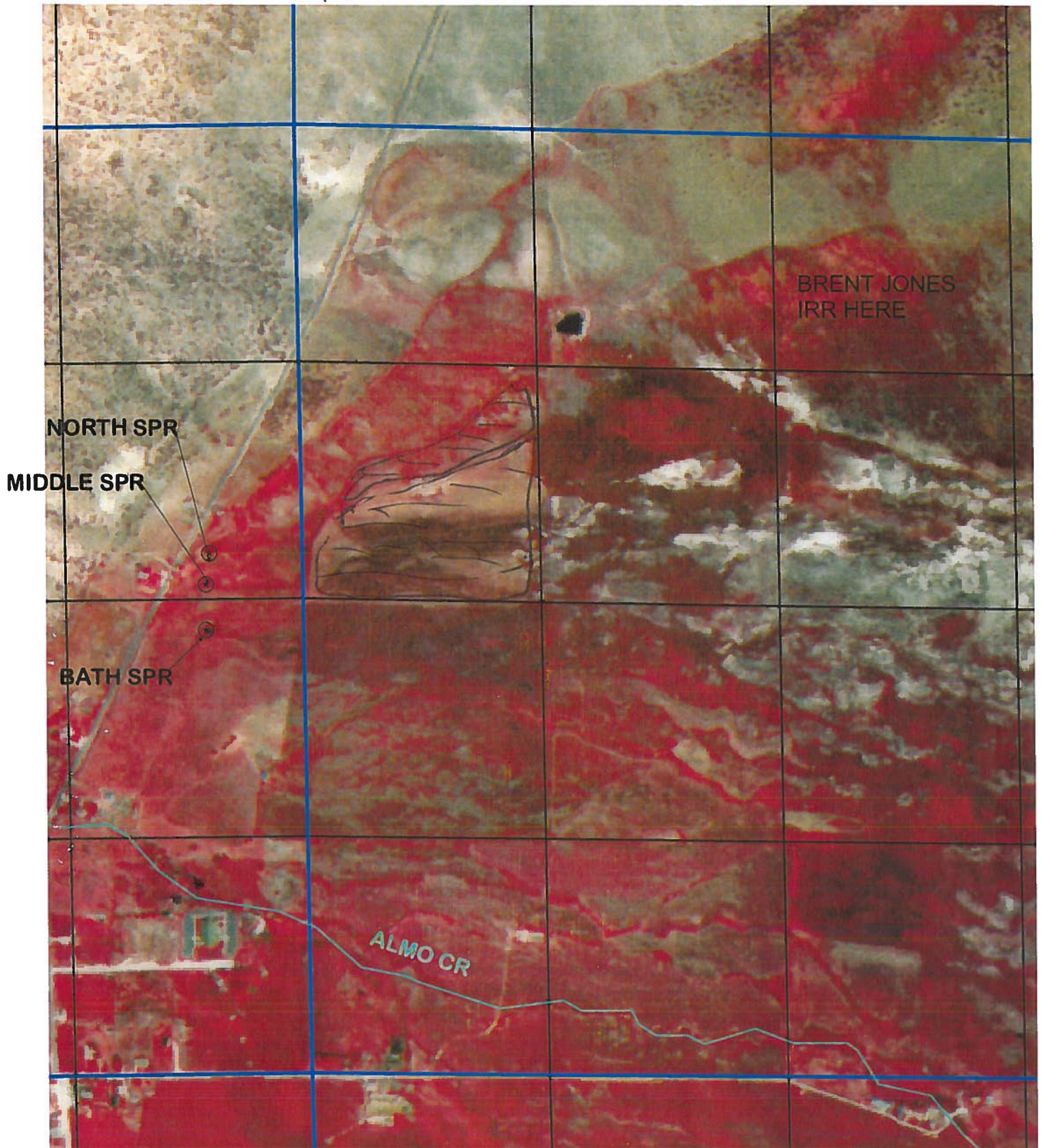
0.26 cfs

FILE NOTES

TWP 15S RNG 24E

CLAIM NO(S):

Hansen



V. HANCOCK

per claimant 9/22/00

1987 NAPP AERIAL PHOTOGRAPHY

AJ5808NP
(00-26)

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT

06/06/00 09:22:58
Page 1

Water Right Number - 43-10032

Prefix Translation: WATER RIGHT

Old (D) Number -

*** C - CURRENT OWNER ***
DURFEE

BEATRICE

DURFEE

HAROLD

1 -
2 -
3 -
City- ALMO
Phone - 208-824-5565
State- ID Zip- 83312
1 -
2 -
3 -
City- ALMO
Phone - 208-824-5565
State- ID Zip- 83312

+ - - Priority Date - - +
12/31/1878 ✓

+ - - Region - - - +
ERROR IN REGION

+ - - Stage - - - +
D - DECREED

+ - - Status - - - +

Source - - - - - +
THREE SPRINGS

+ - - - - Tributary - - - - - +
SINKS

Twn	Rng	Sec	Tract	Lot	Rflg	County	Point of Diversion	Diversion Name
15S	24E	22	SE NE			(31)	CASSIA	

Code	Description	Period From	Period To	Water Use	Diversion Rate	Diversion Volume
04 - STOCKWATER		01/01	12/31 ✓		0.070	
+ - Total Div. Rate - +		+ - Total Div. Volume - +		+ - Total Div. Capacity - +		+ - Total Consumptive Use - +
D.070						0.0

Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County
15S	24E	22	SE NE			04	STOCKWATER	(31) CASSIA

+ - - Diversion Means - NONE - STOCK DRINKS DIRECTLY FROM THE CHANNEL FROM THE SPRINGS.
+ - - Non-Irrigation Use -
+ - - Other Rights for Same Use - NONE.

EXP PARCEL NO. 15S24E221800
STOCKWATER, 200 BEEF STOCK

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

Stockwater Claim

Water right number - 43-10032

Prefix Translation: WATER RIGHT

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

+ - - - - Decree Plaintiff - - - - + - - - - Decree Defendant - - - - +
STATE OF IDAHO UNITED STATES, ET AL 07/24/1998

+ - - Audit Fields - 04/14/92 SMITH 03/30/95 POST-STD 09/05/97 KCHRISTE 09/11/97 AJU3-DJO 02/17/98 KCHRISTE
03/04/98 CPDSHAFF 03/04/98 ADT-DSHA 08/07/98 ADT-DSHA

+ - - - - Comments - - - - -
No Comments Found

+ - - - - Adjudication Rights Dates and Flags Area - - - - -
Court Report Filing - 03/02/1998
Objection Filed Date - 00/00/0000
Response Filed Date - 00/00/0000
Claim Received Date - 03/07/1989
Proof Due Date - 00/00/0000
Licensed Date - 00/00/0000
Field Inspection Made - 00/00/0000
Verified Date - 00/00/0000
Last Amended Date - 00/00/0000
Proof Made Date - 00/00/0000
Receipt Number - S006471
POU Ownership Flag - Y
Name Connector - AND/OR
Civil Case Number - 39576
Old Case Number -
Old Judicial District -
Temporary Right - P
Water District -
Federal/State Indicator - S
Presumption Flag -
Notice of Error Flag -

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

EDWIN R. DURFEE and GLEN JONES

Claimants

vs.

H. E. KING, J. E. TRACY, Inc.
and HAROLD K. WARD,

Respondents

FINDINGS, DECISION AND ORDER
OF THE
LOCAL GROUND WATER BOARD
FOR
CASSIA COUNTY, IDAHO

The above entitled matter came on regularly for hearing before a local ground water board consisting of Carl E. Tappan, Chairman, Joel E. Kasmissen and Thomas R. Newell, established according to statute, at 10 o'clock, A. M. on June 28, 1962, at Almo, County of Cassia, State of Idaho

Claimants Edwin R. Durfee and Glen Jones were represented by Herman H. Badke, Attorney at Law. The respondents H. E. King, J. E. Tracy, Inc., and Harold K. Ward were represented by Adonis H. Nielson, of the firm of Nielson and Nielson, Attorneys at Law. Both legal representatives main offices at Burley, Idaho.

FINDINGS

THE BOARD FINDS THAT:

1. The claimants, Edwin R. Durfee and Glen Jones, own lands within the basin of Almo Creek and tributaries in Sections 22 and 23, Township 15 South, Range 24 East of the Boise Meridian.

2. The claimant, Edwin R. Durfee appropriates ground water by pumping from a household well at his residence. The household well is 18 feet deep and has been equipped with a small electric motor and pump to provide water under pressure for domestic use.

3. The claimants, Edwin R. Durfee and Glen Jones, appropriate spring waters by diversion of the so-called "North and Middle Springs" issuing on the farmed owned by the said Edwin R. Durfee and located in the NE 1/4, Section 22

SE 1/4 NE 1/4

Township 15 South, Range 24 East of the Boise Meridian. The spring waters diverted are used on claimants lands, as above described, for irrigation and stock water purposes. The channels leading from the "North and Middle Springs" to the fields where the water is used have not been improved nor cleaned by the claimants.

4. The yield of the household well is reported to have been sufficient to furnish the Edwin R. Durfee residence with domestic and culinary water supply for years.

5. The "North and Middle Springs" were measured September 18, 1947, as flowing 9.5 and 6.5 miners inches, respectively, thus providing a total flow of 16.0 miners inches (0.32 cubic feet per second). The evidence indicates that these spring flows have continued without noticeable change in volume for many years prior to June, 1961.

6. The claimants, Edwin R. Durfee and Glen Jones, their grantors or predecessors have put to beneficial use for irrigation and stock water purposes sixteen (16.0) miners inches (0.32 cubic feet per second) of the waters issuing as the "North and Middle Springs" on the lands above described.

7. The respondents, H. E. King, J. E. Tracy, Inc., and Harold K. Ward, own lands within the basin of Almo Creek and tributaries in sections 22, 23, 25 and 26, Township 15 South, Range 24 East of Boise Meridian. These lands are located south and east from the claimants lands and down country from the "North and Middle Springs".

8. The respondents, H. E. King, J. E. Tracy, Inc., and Harold K. Ward made application June 15, 1961, for permit to appropriate three hundred fifty (350) miners inches (7.0 cubic feet per second) of ground water by means of a well located in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 22, Township 15 South, Range 24 East of the Boise Meridian to supplement existing irrigation water rights on lands owned by them. This irrigation well is about one-fourth mile south of the "North and Middle Springs" and has been drilled to a depth of 500 feet (20-inch casing for 200 feet, 16-inch casing for 150 feet, and uncased for 150 feet) See Permit No. G-30035.

9. The respondents irrigation well, when completed, flowed under artesian pressure. Soon thereafter a large capacity electric motor and pump was installed over the well with a view to increase its discharge by pumping. The well is not capped, has no control valve and flows freely to the atmosphere when the pump is not running.

10. The artesian flow from the respondents irrigation well, when first opened during June of 1961, was twenty (20) miners inches (0.40 cubic feet per second). The electric pump operated for 9 days during October, 1961. The pump discharge was estimated as one hundred twenty five (125) miners inches (2.50 cubic feet per second) with an incident drawdown of 156 feet. The pump was then shut down and the artesian flow from the well continued thereafter at about eighteen (18.0) miners inches (0.36 cubic feet per second).

11. The respondents, after pumping their irrigation well for only 9 days in October, 1961, voluntarily shut down the pump when the effects of its operation on the domestic supply of the Edwin R. Durfee household well and on the flow of the "North and Middle Springs" came to their attention. Lacking control facilities at the irrigation well the artesian flow therefrom has continued.

12. The ground waters appropriated are warm waters under artesian pressure with piezometric surfaces below the ground level at the household well, which does not flow, and above the ground level at the irrigation well, which does flow. The spring waters appropriated are also warm waters and issue from the ground at an intermediate elevation as compared with the higher ground level at the household well and the lower ground level at the irrigation well.

13. The potentials of the sources of these ground waters and springflows have been sufficient to serve the domestic and culinary uses of the Edwin R. Durfee household and to maintain the flow the claimants springs at a uniform rate for many years prior to the opening of the respondents irrigation well. The intermingling of waters from other and independent sources precludes the declaration that the decrease in artesian pressure on the household well and the spring flows has been caused solely by the operation of the irrigation well.

of the respondents, yet it is evident that the primary sources of water are interconnected and of common origin.

14. The artesian pressure or pressures of the underground waters supplying the household well, flowing at the springs and tapped by the respondents well or by other wells unknown or unlisted represent a common potential to the water users concerned. The said pressure or pressures is/are not deemed a necessary condition to the use of waters appropriated by means of wells but is/are deemed a necessary condition to the use of spring waters which have been appropriated for beneficial uses.

15. The records of the State Department of Reclamation include a copy of the water decree issued by the District Court of Cassia County (Kirk vs. Bartholomew) and signed by Judge C. O. Stockslager October 5, 1893. This decree includes among the priorities established to the use of the waters of Almo Creek and tributaries those applying to tracts of lands then belonging to M. B. Durfee and Jacob Paden. Each is represented as owning 200 acres and entitled to a diversion based on one inch per acre. The priorities decreed to the Paden tract are junior to those decreed to the Durfee tract. The Paden right to the use of creek waters is shown in this decree as inclusive of 10 inches of Warm Springs water. Information is lacking as to which of the several warm springs was to be tapped and as to which particular parcel of the Jacob Paden tract was to be served or if issuing on lands owned by the appropriator or other. The evidence presented at the subject hearing indicates that part of the Paden tract is now owned by claimant Glen Jones (40 acres) and part by J. E. Tracy, Inc. (120 acres). The present ownership of the remaining part (40 acres) was not indicated. The extent and continuity of use under this right is in controversy as to the specific spring source and the manner in which the water may have been diverted and/or applied.

DECISION AND ORDER

THE BOARD ORDERS THAT: I.

The right of claimant, Edwin R. Durfee to one (1.0) miners inch (0.02 cubic feet per second) of ground water for domestic and culinary purposes for use in the house in which he has resided 66 years, located in the NE¹/₄,

Section 22, Township 15 South, Range 24 East of Boise Meridian be confirmed as representing a superior use of long standing.

II.

The right of claimants, Edwin R. Durfee and Glen Jones, to sixteen (16.0) miners inches (0.32 cubic feet per second) of spring water issuing as the "North and Middle Springs" for agricultural uses on lands in NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 22, and W $\frac{1}{2}$ NE $\frac{1}{4}$, Section 23, all in Township 15 South, Range 24 East, of Boise Meridian be confirmed with a priority date of April 30, 1878. 32

III.

The right of present owners (respondent J. E. Tracy, Inc., claimant Glen Jones and unlisted John Doe) of the Jacob Paden tract of 240 acres as described in the decree of the District Court of Cassia County, dated October 5, 1893 (see Kirk vs. Bartholomew) to ten (10.0) inches of "Warm Springs" waters of priority date of April 30, 1880, be confirmed subject to clarification of the intent of the Court as to the particular spring source or sources to be tapped, the specific parcel of Paden lands to be served and further proof that title to the said right has been conveyed to the present landowner or owners and beneficial use of the waters made for agricultural purposes. 20

IV.

The water rights of respondents, H. E. King, J. E. Tracy, Inc., and Harold K. Ward, as may obtain through proof of completion of works and beneficial use as defined in Permit No. G-30035 for the irrigation well be recognized as of junior priority date to those rights as set forth heretofor (see I, II, and III).

V.

In administration of the water rights as confirmed in the foregoing paragraphs, due recognition shall be given to the provisions of the Idaho ground water statutes to the end that the respondents may exercise the junior rights defined under Permit No. G-30035.

(a) By supplementing the diminished flow of the "North and Middle Springs" with water in place and in kind to maintain a total constant flow

of 16 miners inches (0.32 cubic feet per second) or to such lesser amount as may be mutually agreed upon between said claimants and respondents, their assigns and/or successors;

(b) By providing other suitable substitute supply to maintain a constant flow of one (1.0) miners inch (0.02 cubic feet per second) in the event that the domestic water supply of the E. R. Durfee household well, as described in Item I above, is not thus restored or cannot be recovered through deepening of the said well within reasonable limits to be set by the State Reclamation Engineer.

VI

Further in the administration of the foregoing water rights due cognizance shall be given to the increased drafts here authorized from the source tapped by the respondents well to the end that the senior or superior rights shall not be impaired through the dissipation of the ground-water supply and the consequent inability of the respondents to supplement the diminished spring flows or the domestic supply at any future time.

THE BOARD FURTHER ORDERS THAT:

VIII.

The claimant E. R. Durfee and Glen Jones clean and keep clean the channels leading from the "North and Middle Springs" to the end that water issuing from these two springs flow freely and without saturating the adjacent immediate surrounding ground, to the fields where the water is used.

VIII

The respondents H. E. King, J. E. Tracy, Inc., and Harold K. Ward equip their irrigation well with capping and/or control devices meeting the specifications of the State Reclamation Engineer

Signed at Boise and Oakley, Idaho, this _____ day of December, 1962.

Chairman

DATED AT ALMO, IDAHO THIS 4th. DAY OF JANUARY 1964

TO WHOM IT MAY CONCERN

We, the undersigned, do hereby certify that we were witnesses to the water measurements herein specified and on the dates herein specified and that they were measured by Mr. O. J. Lloyd, the Almo Water Company Watermaster at this time.

On October 30, 1963, the Bath Spring stream measured $15/16$ inch over a 1 foot weir.

On October 30, 1963, the Middle Spring did measure $1 3/16$ inch over a 1 foot weir which is 5.35 miner inches.

On October 30, 1963, the North Spring did measure $1 1/8$ inch over a 1 foot weir which is 5.00 miner inches.

On December 4, 1963, the Bath Spring stream measured $12/16$ inch over a 1 foot weir.

On December 4, 1963, the Middle Spring did measure $1 1/4$ inch over a 1 foot weir which is 5.50 miner inches.

On December 4, 1963, the North Spring did measure $1 1/4$ inch over a 1 foot weir which is 5.50 miner inches.

On January 4, 1964, the Bath Spring stream measured $12/16$ inch over a 1 foot weir.

On January 4, 1964, the Middle Spring measured $1 3/16$ inch over a 1 foot weir which is 5.35 inches.

On January 4, 1964, the North Spring measured $1 1/4$ inch over a 1 foot weir which is 5.50 miner inches.

The King, Ward, and Tracy Co. flow measured 2 inches over a 1 foot weir on October 30, 1963 and the well was capped November 4, 1963. The flow at this is still capped.

Orlo

O. J. LLOYD, WATERMASTER

1/17/73

W This is the measurements of Durfee springs in the pasture east across the road from Durfee house. There was and all concrete wall foundation they called Bath Spring and 2 other springs.

This is the results of a ground water board hearing over a well drilled by King, Ward and someone else (I've forgotten name now) and Durfee. This is a flowing well and is supposed to be