

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 43-11263
Date Received: 10/16/2000
Receipt No:
Received By:

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

1. Name of Claimant(s)

TED HIGLEY Phone: (208)645-2444
HANK HIGLEY
BETTY ANN HIGLEY
2200 RODOCKER LANE BOX 57
MALTA ID USA 83342

2. Date of Priority: 04/01/1894

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

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
13S	26E	14	NE NE NE	CASSIA	

5. Description of diverting works:

CHECK DAM WITH HEADGATE TO DITCHES

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	03/15	11/15	2.04	

7. Total Quantity Appropriated is:
2.04 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
13S	26E	12	NE SW	IRRIGATION	33
			SE SW	IRRIGATION	38
				Section Acres	71
				Total Acres	71

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:

43-10794 split into 43-11263 and 43-11264. This claim represents 80/640 of 43-103 and for the E1/2SW1/4 of Sec 12. This is irrigated under a separate system from the ground recognized under 43-11264. This ground has been sold to Ted Higley.

claim amended to increase the diversion rate to reflect 2/5ths of the entire right.

15. Basis of Claim: Decreed

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.

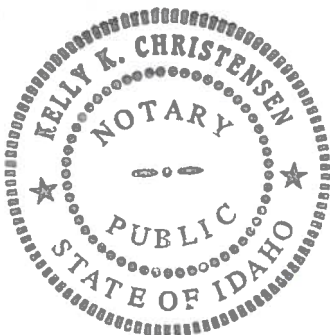
Signature of Claimant(s): *Ted Higley* Date: 9-17-01

Date: _____

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 17th day of Sept 2001
Kelly K. Christensen
Notary Public

Residing at Twin Falls
My commission Expires 3-7-04



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 43-11263
Date Received: 10/16/00
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**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

HANK HIGLEY Phone: (208)645-2444
TED HIGLEY
BETTY ANN HIGLEY
2200 RODOCKER LN BOX 57
MALTA ID USA 83342

2. Date of Priority: 04/01/1894

3. Source: CASSIA CREEK Trib. to: Raft River

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County
13S	26E	14	NE NE NE	CASSIA

5. Description of diverting works:

CHECK DAM WITH HEADGATE TO DITCHES

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	03/15	11/15	0.64	

7. Total Quantity Appropriated is:
0.64 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
13S	26E	12	NE SW	IRRIGATION	33
			SE SW	IRRIGATION	38
				Section Acres	71
				Total Acres	71

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14. Remarks:

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15. Basis of Claim: Decreed

RECEIVED

SEP 26 2003

Department of Water Resources

Albert P. Barker, ISB #2867
BARKER ROSHOLT & SIMPSON LLP
205 N. 10th Street, Suite 520
P. O. Box 2139
Boise, Idaho 83701
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Gray A. Young
Associate General Counsel
J.R. SIMPLOT COMPANY
999 Main Street, Suite 1300
P. O. Box 27
Boise, Idaho 83707
Telephone: (208) 389-7318
Facsimile: (208) 389-7464

Attorneys J.R. Simplot Company

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

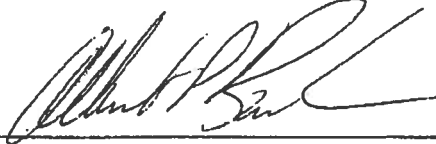
In Re SRBA	)	Subcase Numbers: 43-103B and 43-11263
	)	
	)	
	)	NOTICE OF APPEARANCE
Case No. 39576	)	
_____	)	

**TO: CLERK OF THE ABOVE-ENTITLED COURT AND TO ALL COUNSEL
OF RECORD:**

YOU ARE HEREBY NOTIFIED that Albert P. Barker, of Barker Rosholt &
Simpson LLP, hereby enters an appearance as attorney of record for and on behalf of J.R.
Simplot Company in the above-referenced action.

DATED THIS 24th day of September, 2003.

BARKER ROSHOLT & SIMPSON LLP



Albert P. Barker

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of September, 2003, I caused to be served a true and correct copy of the foregoing NOTICE OF APPEARANCE by the method indicated below, and addressed to the following:

US Department of Justice
General Litigation Section
Environmental & Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, Postage Prepaid
☐ Overnight
☐ Hand Delivered
☒ Facsimile

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83720-0098

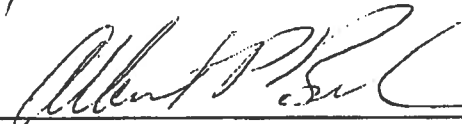
☐ U.S. Mail, Postage Prepaid
☐ Overnight
☐ Hand Delivered
☒ Facsimile

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

☒ U.S. Mail, Postage Prepaid
☐ Overnight
☐ Hand Delivered
☒ Facsimile

Ted Higley
2200 Rodocker Lane, Box 57
Malta, ID 83342

☒ U.S. Mail, Postage Prepaid
☐ Overnight
☐ Hand Delivered
☒ Facsimile



Albert P. Barker

10/16/2003

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

RIGHT NUMBER: 43 11263

NAME AND ADDRESS: HANK HIGLEY
2200 RODOCKER LN BOX 57
MALTA ID 83342

TED HIGLEY
2200 RODOCKER LN BOX 57
MALTA ID 83342

BETTY ANN HIGLEY
2200 RODOCKER LN BOX 57
MALTA ID 83342

SOURCE: CASSIA CREEK

TRIBUTARY: RAFT RIVER

QUANTITY: ~~2.040~~ 1.60 CFS

WHEN COMBINED THE FOLLOWING RIGHTS SHALL PROVIDE NO MORE THAN
.02 CFS PER ACRE. COMBINED RIGHTS 43-11263, AND 43-2355.

PRIORITY DATE: 04/01/1894

POINT OF DIVERSION:

T13S R26E S14 NENENE Within CASSIA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03/15 11/15	~~2.040~~ 1.60 CFS

PLACE OF USE: IRRIGATION Within CASSIA County

T13S R26E S12	NESW	32.0	T13S R26E S12	SESW	29.0
---------------	------	------	---------------	------	------

71 ACRES TOTAL

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 71 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHTS 43-11263, AND 43-2355.

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.

EXPLANATORY MATERIAL: Decreed

Water Right 43-11263

1

SF-15

AFFIDAVIT OF KELLY K. CHRISTENSEN

STATE OF IDAHO)
) S.S.
Twin Falls County)

The undersigned being duly sworn upon his oath, hereby states and avers as follows:

1. My name is Kelly K. Christensen. I am a Senior Water Resource Agent for the State of Idaho Department of Water Resources ("IDWR") Southern Regional Office, which is located at 1341 Fillmore Street, Suite 200, Twin Falls, ID 83301.
2. I was first hired at this location on June 1, 1991. Since that time it has been my responsibility to evaluate claims to water rights filed in the Snake River Basin Adjudication ("SRBA"). This involves working directly with claimants, field-verifying claims, utilizing IDWR records, county real property and assessor records, aerial photography, and any other available documentation to verify claims and to assist in preparing the Director's Recommendations to be filed with the SRBA Court for water rights including, but not limited to those located in IDWR administrative basin no. 43.
3. I am familiar with the facts circumstances and records used in preparing the Director's Recommendations for SRBA Claim Nos. 43-103B, 43-103C and 43-11263. These claims were based upon portions of the original water right decreed in the 1928 Jobe Adams Decree (Federal District Court Decree No. 992) as water right no. 43-103 with a decreed quantity of 5.10 cfs.
4. My original preliminary recommendation allocating 1.10 cfs under 43-103C was based partly on a proportional split of the decreed rights located on properties owned by J.R. Simplot Co. ("Simplot"), Ted Higley and Grant and Clara Beyler and on the quantity contained in Simplot's original claim filed in the SRBA.
5. However, I changed by preliminary recommendation and recommended in the Director's Report to the SRBA the following quantities of water under the relevant water rights: 43-103C – disallowed; 43-103B for 3.06 cfs and 43-11263 for 2.04 cfs.
6. In preparing the recommendations for the Director's Report for claim nos. 43-103B, 43-103C and 43-11263, I concluded that all of the water originally decreed under 43-103 should be recommended under SRBA Claim nos. 43-103B and 43-11263. I also concluded that Claim no. 43-103C filed by Simplot was not entitled to receive any portion of the water right 43-103. This conclusion was recently discovered to be in error based upon a closer reading of the deeds conveying the property.
7. Although the Director's Report contained an allocation of all of the water under right no. 43-103 to right nos. 43-103B and 43-11263, it is now my conclusion after reviewing and

analyzing the recorded deed conveyances, that Simplot is entitled to receive 1.10 cfs under claim no. 43-103C.

8. In order to accurately allocate water under claim no. 43-103, the partial decrees entered under 43-103B and 43-11263 would have to be set aside and reduced accordingly to allow 1.10 cfs of the water to be allocated to Simplot under claim no. 43-103C. Setting aside these partial decrees is necessary if 43-103C is to be recognized as a valid water right with a quantity of 1.10 cfs in order to prevent an expansion of the original decreed water right no. 43-103.

Further the affiant sayeth not.

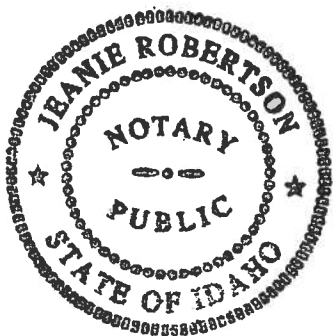
AFFIANT:

Kelly K. Christensen
Kelly K. Christensen

STATE OF IDAHO)
) S.S.
COUNTY OF Twin Falls)

On this 23rd day of September, 2003, before me, a Notary Public in and for said State, personally appeared **Kelly K. Christensen**, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he 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.



Jeanie Robertson
Notary Public for Idaho
Residing at: Twin Falls, Id.
My Commission Expires: 9-23-06



RECEIVED

SEP 19 2003

Department of Water Resources
Southern Region

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

September 17, 2003

JR Simplot Company
Gray A. Young
Vic Conrad
PO Box 27
Boise, ID 83707

Re: SRBA Subcase Nos. 43-103B, 103C and 11263

Dear Mssr. Young and Conrad:

I received an email message September 16, 2003, from Mr. Conrad stating that you believe IDWR should file Motions to Set Aside Partial Decree Nos. 43-103B and 43-11263. However, as discussed with you previously, because IDWR is not a party to the SRBA, IDWR does not have the authority to file motions with the Court. See I.C. § 42-1401B (Director of IDWR's role is limited to an independent expert and technical assistant and the Director "shall not be a party to an adjudication.")

In our previous conversations, I offered to review an affidavit prepared by Simplot for IDWR Senior Water Resource Agent Kelly Christensen's signature to accompany any motion(s) filed by Simplot. The affidavit would acknowledge that 1.1 cfs could have been recommended to Simplot under water right number 43-103C pursuant to the deeds conveying the property.

You are also welcome to copy and use any documents from the claim files to include with your motion. You may be interested in a copy of a table in the water rights claim file for 43-99A. I believe that Mr. Conrad is familiar with this table and has reviewed it before, including during the notice of error period last summer, and earlier this spring. It shows that 43-103 was split into 43-11263 and may be helpful to you.

Again, IDWR will not be filing any motion to set aside partial decrees with the SRBA Court. My offer to review an affidavit prepared by Simplot for Mr. Christensen's signature to accompany any motion Simplot may file is still open. This is common

practice with all claimants in the SRBA and IDWR extends this courtesy to Simplot as it would any claimant in the SRBA.

Very Truly Yours,


Candice M. McHugh

cc: Phillip J. Rassier
Susan E. Hamlin Nygard
David R. Tuthill, Jr.
Kelly Christensen

**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: 43-11263

HANK HIGLEY
2200 RODOCKER LANE BOX 57
MALTA ID 83342
Telephone Number: (208)645-2444

TED HIGLEY
2200 RODOCKER LANE BOX 57
MALTA ID 83342
Telephone Number: (208)645-2444

BETTY ANN HIGLEY
2200 RODOCKER LANE BOX 57
MALTA ID 83342
Telephone Number: (208)645-2444

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: 6-6-01 SIGNATURE: Ted Higley

Please print your name: Ted Higley

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

09/17/2001

BETTY ANN HIGLEY
2200 RODOCKER LANE BOX 57
MALTA ID 83342

1

11/06/2000

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

RIGHT NUMBER: 43-11263

NAME AND ADDRESS: BETTY ANN HIGLEY
HANK HIGLEY
TED HIGLEY
2200 RODOCKER LANE BOX 57
MALTA, ID 83342

VERIFIED BY. KKC
11-6-00

SOURCE: CASSIA CREEK TRIBUTARY: RAFT RIVER

QUANTITY: 0.64 CFS

WHEN COMBINED THE FOLLOWING RIGHTS SHALL PROVIDE NO MORE THAN .02
CFS PER ACRE. COMBINED RIGHTS 43-99A, 43-100A, 43-101A, 43-11263, AND
43-2355.

PRIORITY DATE: 04/01/1894

POINT OF DIVERSION: T13S R26E S14 NENENE Within CASSIA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03-15 11-15	0.64 CFS

PLACE OF USE:

<u>IRRIGATION Within CASSIA County</u>			
T13S R26E S12	NESW	32	T13S R26E S12
71 ACRES TOTAL		SESW	39

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION
OF A COMBINED TOTAL OF 71 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHTS 43-99A, 43-100A, 43-101A, 43-11263, AND 43-2355.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

Idaho Dept of Water Resources
Claims review notes and narrative

Date: 10-30-2000

File: 43-99 thru 104 recom analysis

Prepared by Kelly K Christensen

SPLIT ANALYSIS FOR 43-99, 43-100, 43-101, 43-102, 43-103, AND 43-104
These rights were decreed to Deardorff and are collectively referred to as the
DEARDORFF RIGHTS

DECREED RIGHTS	SIMPLOT	BEYLER	HIGLEY
43-99	43-99C	43-99A	43-99B
43-100	43-100C	43-100A	43-100B
43-101	43-101C	43-101A	43-101B
43-102	43-102C	43-102A	43-102B
43-103	43-103C	43-11263	43-103B
43-104	43-104C		43-104A

Two different parties now own the decreed property. When claims were filed there were three different owners. Higley now owns the Beyler property but for narrative purposes the two parcels will be analyzed individually and be referred to as either the Beyler property or the Higley property. (see table above)

There are two arguments concerning how the rights are to be split.

Argument 1. Simplot Rights should be 'unstacked'

Simplot's argument is that 43-99 thru 43-103 are appurtenant to the property currently owned by Simplot and that 43-104 is appurtenant to the ground claimed by Beyler and Higley. This is based upon wording in the warranty deed when the property was first split.

Argument 2, All rights should be delivered proportionately

The Beyler-Higley argument was that the rights have been historically delivered on a proportionate basis and should continue to be delivered in such manner.

A conflict concerning the delivery surfaced and the department was contacted. The department's decision was that the rights should be delivered according to the decree (proportionally) until as such time as Simplot filed a transfer and supported the delivery of the rights as unstacked and appurtenant to the parcels as described above. That transfer was never filed. Throughout the 1980's and 1990's the rights have been delivered proportionately. As this is the historic practice and it has been supported by the department in administrative action I am recommending these rights based upon the proportionate splitting of the original decreed rights based upon a percentage of each claimant's ownership of a portion of the original decreed place of use. See the excel spreadsheet printout that documents the proportionate split rates. (File: 43-99 to 104 proportional rate table.xls)

HIGLEY PLACE OF USE ANALYSIS

Found irrigated place of use = 116 acres. Total of surface water rights.2.39 cfs. One ground water right exists, 43-2310. This right was licensed for 2.40 cfs on 120 acres. I am recommending a 116-acre place of use with the rights limited to 0.02 cfs/acre when combined.

BEYLER PLACE OF USE ANALYSIS

There was a change of ownership from Beyler to Higley in 1997, however this property will be referred to as the Beyler property for analysis purposes.

The place of use is 71 irrigated acres within the original decreed place. The total claimed diversion rate for the Cassia Creek rights is 1.50 cfs. No individual right exceeds 1 inch to the acre or $(71 * 0.02 \text{ cfs/acre} = 1.42 \text{ cfs})$.

One ground water right (43-2355) is also appurtenant to this property. I located the well during my field exam on 9-20-2000 and found that there was no motor or pump installed at that location. I talked with the current owner's daughter-in-law and she indicated that the pump had been pulled for several years. She did not know how many years. As the system was in operation as of 1987 I am recommending this right as valid for the licensed rate of 1.42 cfs and the 71-acre place of use.

SIMPLOT PLACE OF USE ANALYSIS

Simplot owns that portion of the decreed place of use for the Deardorf property that lies west of highway 81. I am recommending that ground with the proportionate rate that is appurtenant to that ground. I found approximately 416 irrigated acres within the decreed place of use. The combined proportional diversion rate is less than one inch per acre when applied to the 416 acres (combined rate = 4.74 cfs). This system overlaps with other decreed Cassia Creek rights and a ground water right.

SPLIT RIGHT ANALYSIS FOR 43-00103

SD-0611-2 Basin: 43 Starting Water Right: 00103

SE L	Water Right No.	Name Last, First	OWN	Priority Date	STG/ STS	Source	Use Desc	SY S
-	43-00103	DEARDORFF, H. F.	C	04/01/1894	D/	CASSIA CREEK	IRR	WR
-	A43-00103	RENUMBERED CLAIM SPLIT RIGHT COMBINED RIGHT	C C C	04/01/1894	/Z	CASSIA CREEK SPLIT RIGHT COMBINED RIGHT	IRR	AJ
-	A43-00103A	RENUMBERED CLAIM	C	04/01/1894	/Z	CASSIA CREEK RENUMBERED CLAIM	IRR	AJ
-	A43-00103B	HIGLEY, TED HIGLEY, BETTY ANN	C C	04/01/1894	D/	CASSIA CREEK	IRR	AJ
-	A43-00103C	J R SIMPLOT COMPANY	C	04/01/1894	D/	CASSIA CREEK	IRR	AJ
-	R43-00103B	HIGLEY, TED	C	04/01/1894	D/	CASSIA CREEK	IRR	AJ
-	R43-00103C	HIGLEY, BETTY ANN J R SIMPLOT COMPANY	C C	04/01/1894	D/	CASSIA CREEK	IRR	AJ

* Decreed copied to Water Right Database (G6=Print Profile Rpt) (G8=Cancel)
 (Enter=Continue) (G1=Print Screen Query) (G7=This Query) (Menu _____)
 Natural 2.1/7U OUR Help available LIB=PRODLIBS Last key was ENTR

GENERATED -- Wednesday, March 24, 1999

