

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 43-12990

Date Received: 3/15/01

Receipt No:

Received By:

5023666
[Signature]

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

LYNN HEWARD Phone: (208)678-0680

295 EAST 300 SOUTH
BURLEY ID USA 83318

2. Date of Priority: 06/30/1985

3. Source: GROUND WATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
11S	26E	12	NW NW NE	CASSIA	

5. Description of diverting works:

280 FT WELL AND 150 HP CENTR. PUMP STATIC WATER AT 160 FT.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	03/15	11/15	2.47	

7. Total Quantity Appropriated is:
2.47 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
11S	26E	12	NW	SE		IRRIGATION	32.5
			NE	SE		IRRIGATION	32.5
			SW	SE		IRRIGATION	32.5
			SE	SE		IRRIGATION	32.5
						Section Acres	130
						Total Acres	130

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:

43-2492

14. Remarks:

THIS CLAIM IS AN EXPANSION OF CLAIM 43-2492 PURSUANT TO IC 42-1416B. THE ACRES DESCRIBED IN THE SE 1/4 OF SECTION 12 WERE BEING IRRIGATED WHEN CLAIMANT PURCHASED THE PROPERTY IN 1996.

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): Lynn Howard Date: 3-16-01

Date:

State of Idaho)
County of Twins Falls) SS.

Subscribed and sworn (or affirmed) before me this
of March 2001

15th Day
[Signature]

Notary Public

Residing at Bull, Idaho

My commission Expires 5-7-2003



Idaho Department of Water Resources Receipt

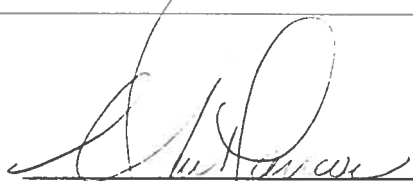
Receipt ID S023666

Payment Amount Date Received Region Status
Payment Type Check Number

Payer Comment

Fee Detail

Amount	Description	Fund	FD	PCA	SO
\$50.00	ADJUDICATION FILING FEE	0337	44503	1155	



Signature Line (Dept. Representative)

03/16/2001

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

RIGHT NUMBER: 43-12990

NAME AND ADDRESS: LYNN HEWARD
295 EAST 300 SOUTH
BURLEY, ID 83318

SOURCE: GROUND WATER

QUANTITY: 2.33 CFS

USE OF THIS RIGHT WITH RIGHT NO. 43-2492 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 3.59 CFS AND TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 736 AF.

PRIORITY DATE: 06/30/1985

POINT OF DIVERSION: T11S R26E S12 NWNWNE Within CASSIA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03-15 11-15	2.33 CFS

PLACE OF USE:

<u>IRRIGATION Within CASSIA County</u>					
T11S R26E S12	NENE	40	T11S R26E S12	NWNE	35
T11S R26E S12	SWNE	39	T11S R26E S12	SENE	40
T11S R26E S12	NESE	33	T11S R26E S12	NWSE	32
T11S R26E S12	SWSE	31	T11S R26E S12	SESE	32
T11S R27E S7	LOT 1 NWNW	12	T11S R27E S7	LOT 2 SWNW	12

306 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 122 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.

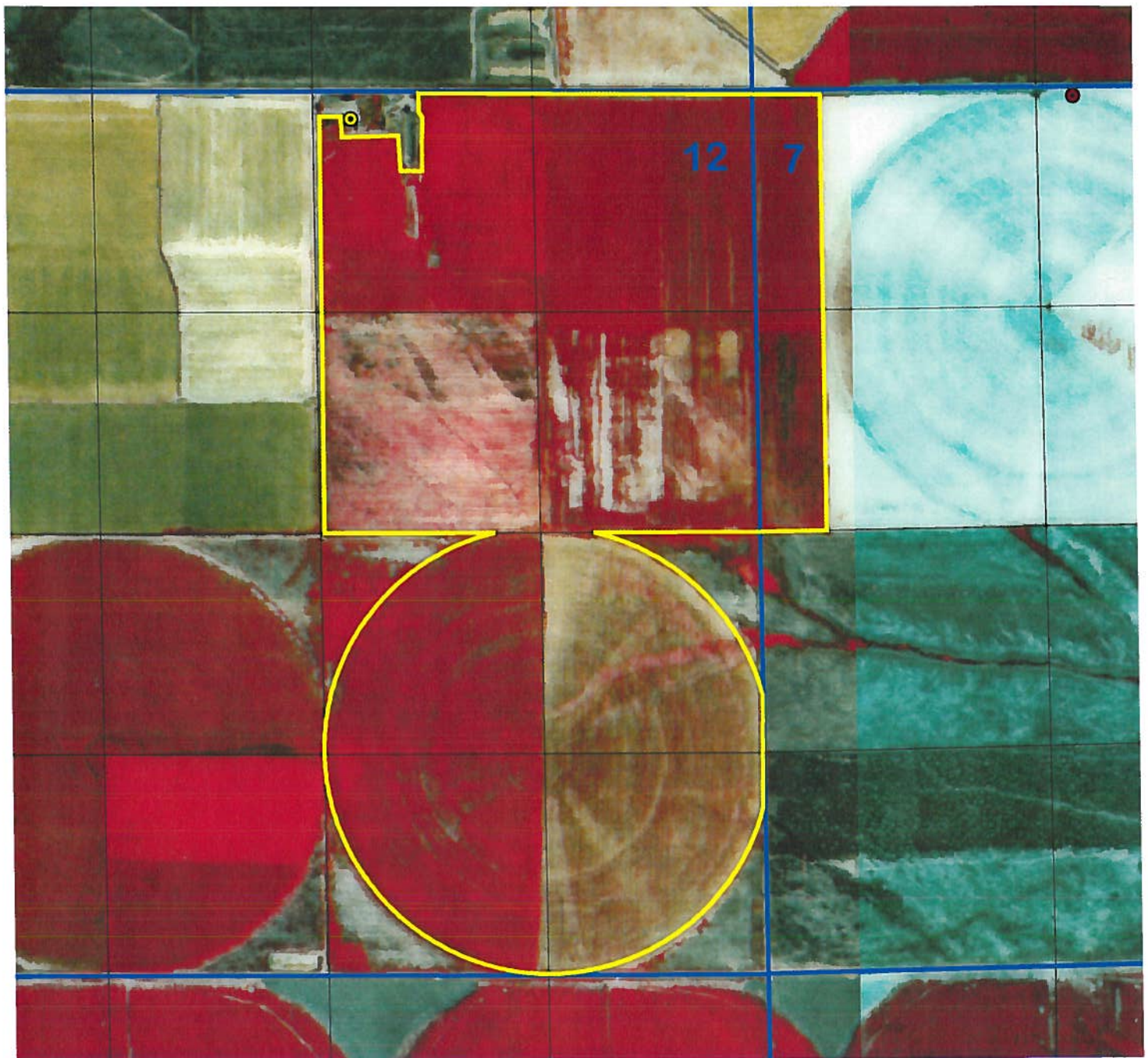
THIS RIGHT IS AN EXPANSION OF RIGHT NO. 43-2492 PURSUANT
TO SECTION 42-1416B, IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Idaho Department of Water Resources

RECOMMENDED PLACE OF USE
TWP 11S, RNG 26E, Sec 12
TWP 11S, RNG 27E, Sec 7
Data entry on March 14, 2001

RIGHTS: 43-2492, 43-12990



0 1320 2640 3960 5280 Feet

- | | |
|---|---------------------------------------|
|  | 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

COMMUNICATION DOCUMENTATION

From: Vikie Hancock

March 15, 2001

Regarding:

Customer:

43-12990, 43-2492, 43-2492A and 43-2396A

Lynn Heward

[illegible]

Mr. and Mrs. Heward came to the office to discuss the need for filing an expansion claim on the SE ¼ Section 12. They filed claim 43-12990 for an expansion of licensed right 32-2492 for 130 acres. I explained that they would be limited to their portion of the licensed diversion rate and volume, and that the expansion acres would have a priority date of 6-30-1985. I told them that their rights would be recommended as two claims with a permissible place of use in the E½ of Section 12.

I also briefly explained the future of expansion rights in a CGWA if the aquifer was not brought into equilibrium within a set amount of time. They also (as partners in Heward Bros) farm the N½ Section 7. The entire farm is currently being irrigated with four pivots. I mentioned that if they had corners that had been irrigated at any time in the past five years and were available for transfer into the SE ¼ of Section 12 they may want to think about doing that. At this time the N ½ Section 7 is owned by Northwest Farm Credit. If at any time the entire farm goes under one ownership, a permissible place of use for all four quarters would also be advantageous to them.

Mr. Heward did not know off hand how many gpm his pivots ran. He said all he know was that he pumped enough water from the well in Section 12 to do both pivots in the E½ of that section, and pumped enough water from the well in Section 7 to run both pivots there. I told him that it was very possible that he was pumping more than his water right onto the property in Section 12. The wells are not connected. According to the licensing exams, the well in Section 12 had a capacity of 6.24 cfs and the well in Section 7 a capacity of 3.83 cfs.

We discussed the ownership of the claims. Mr. Heward talked to Farm Credit, and Wayne Dennis subsequently called me to say that he was going to find out their policy on putting the Hewards on the water rights as co-owners. At any rate, Farm Credit would not object to Hewards receiving any copies of correspondence or documents from IDWR regarding the water right claims.

**ANALYSIS OF LICENSED AND EXPANSION ACRES
T11S, R26E SECTIONS 11 & 12, AND T11S, R27E, SECTION 7**

From: V. Hancock

3-14-2001

HISTORY

1949 Permit for License 43-2338 is issued. 1956 FE finds 320 acres irrigated in the S½ Section 12, POD well located in NWSE Section 12. 6cfs allowed. Licensee = G T Matthews

1953 Permit for license 43-2396 is issued. 1955 field exam finds 464 acres irrigated in N½ Section 7 and N½ NE & SENE Section 12. 6 cfs allowed. POD well in NWN Sec 12. Licensee = H C Matthews

1967 H C Matthews is granted a DLE patent for the SWNE Sec 12. Transfer 894 adds this 40 acres to the licensed place of use making it 504 acres. No change in diversion amt. Div Rate = 0.012 per acre.

1960 Permit for license 43-2492 issued for 400 acres in the NE ¼ and N½ NW Sec 7 and the NW ¼ Section 8. Application stated that 160 inches were for new lands and 140 inches were supplemental to existing rights. Permit later amended to remove 160 acres in the NW¼ section 8 and add the E½ SW Section 7 making a total of 320 acres. FE in 1965 found 240 acres irrigated in the NE¼ and E½ NW Section 7 and allowed 3.83 cfs. The POU entirely overlapped license 43-2396, which was not mentioned. The supplemental right increased the diversion rate per acre to 0.026 cfs on the appurtenant 240 acres. POD well in NENW Sec 7. Licensee = estate of G.S. Matthews.

1968 Aerial photos show irrigation of the SE¼ Section 11 with no associated water right. Land is assumed to be owned by Matthews at this time.

1971 HC Matthews sells NE ¼ Sec 12 and N ½ Section 7 to Burton Anderson.

1975 Anderson applies for a transfer to add a point of diversion to 43-2396. He adds the well in NENW Section 7 that was licensed to 43-2492. Reason for the transfer states the land has been split by ownership and a point of diversion is needed on included lands.

1975 Anderson sells to Fridel the N½ Section 7 except the west 24 acres. This parcel includes 320 acres.

1976 Anderson sells to Matthews the NE¼ section 12 and 24 acres in the W½ W½ NW¼ Section 7 (portions of lots 1 and 2). This parcel includes 184 acres.

1980 Matthews installs two pivots in the S½ Section 12 and transfers the corner acres to the NE ¼ Section 11.

1987 Farm Credit forecloses on Fridel acquiring his property in the N½ Section 7.

1987 Claims are filed in the SRBA:

- Matthews files claim based upon 43-2338 on 264 acres in the S½ section 12 (the original licensed place of use) and 294 acres in the E½ section 11. (Total 558 ac). This would be an expansion of 238 acres over 1980 transfer 2382, all in the E½ section 11. 416 acres are paid for under this claim.
- Matthews files claim based upon 43-2492 on 344 acres in the E½ Section 12 asserting that the claim is based upon a contract agreement giving 3.83 cfs under license 43-2492 to him for use in Section 12. This claim overlaps 132 acres in the SE ¼ Sec 12 also claimed under 43-2338. 344 acres are paid for with this claim.
- Farm Credit files claim A43-2492A based upon license 43-2492 for 3.83 cfs on the original 240 acre place of use in Section 7.
- Farm Credit files claim based upon 43-2396 for 6 cfs on 344 acres in the N½ Section 7. It is later found that they have an ownership/security interest only on the 320 acres that had been owned by Fridel. A total of 344 acres are paid for by Farm Credit on the two claims.
- No claim is filed on lands irrigated in the SE ¼ Section 11.

1990 Heward purchases the Fridel land in N½ Section 7. Farm Credit holds security interest.

1995 Matthews transfers 132 acres of the POU of 43-2338 entirely off the SE¼ of section 12 onto various places in Section 11 including the SE¼. Remarks included in transfer #4490 state that this administrative action acknowledges changes in POU that occurred after 1980 transfer #2382 but were not recorded with IDWR. Overlapping POU of claim 43-2492 is addressed only indirectly by "pending Adjudication review". Expansion claim 43-11132 for 106 acres in conjunction with the transfer is filed at this time by Matthews.

1996 Matthews sells SE¼ and also the NE¼ Section 12 plus 24 acres of W½NW¼ Section 7 to Heward. Water right adjudication claim 43-2492 is referenced in both deeds conveying the individual parcels.

ANALYSIS

43-2492, 43-2492A & 43-2396A The contract agreement between Anderson, Matthews and Fridel that is referenced in claim 43-2492, and which pertains to the split of property originally covered by License 43-2396 and the overlapping license 43-2492, is not in our files. It appears that the agreement awards license 43-2492 to Matthews for use in Section 12 and on 24 acres in the W½ NW ¼ Section 7. It is supposed that license 43-2396 for 6 cfs was to be used on the remaining 320 acres in N½ Section 7.

Matthews SRBA claim 43-2492 is on 344 acres which includes the SE ¼ section 12 as an accomplished transfer. Any use of this right in the SE¼ of section 12 would be an un-stacking of overlapping licensed rights and would not be allowed by IDWR, despite the private contract agreement. If both licensed rights must stay within the original 504 acres, awarding the entire claim based on 43-2492 to either Farm Credit or Heward would unevenly distribute water on the place of use, therefore a portion of 43-2492 should be owned by Farm Credit, or a portion of 43-2396 should be owned by Heward.

A total of 504 acres were irrigated under the combined licenses 43-2492 and 43-2396, with a combined diversion rate of 9.83 cfs. It seems that the fair thing to do would be to combine the diversion rates of the two licenses, calculate the rate per acre on 504 acres (0.019 cfs) and divide by ownership. I believe this was the intent of the parties who split ownership of the property when Anderson sold to Matthews and Fridel.

$9.83/504 \times 184 = 3.59 \text{ cfs}$ $9.83/504 \times 320 = 6.24 \text{ cfs}$

43-2492 represents 184 of the licensed acres and should be awarded to Heward with a diversion rate of 3.59 cfs. POD NWN Sec 12.

43-2492A, filed by Farm Credit, would represent the remaining acres and diversion rate awarded under the original overlapping license. $240 - 184 = \underline{56 \text{ acres}}$. $3.83 - 3.59 = \underline{0.24 \text{ cfs}}$. Combined POU limits with 43-2396A would apply. POD NENW Sec 7.

43-2396A was also filed by Farm Credit for 6 cfs on 344 acres in the N½ Section 7. It has been determined that they only own 320 acres exempting the West 24 acres of the NW¼. Nevertheless, they have a valid claim on 320 acres based upon license 43-2396 for 6 cfs. Combined POU limits with 43-2492A apply. POD NENW Sec 7.

43-12990 Because it has been determined that 43-2338 was transferred from the SE¼ of Section 12 prior to the adjudication (see below), an expansion of license 43-2492 may be filed by Heward to

cover those acres irrigated by the well in the NE Section 12 in 1987, but not included in the recommendation for claim 43-2492. It appears that there are approximately 127 acres irrigated by pivot in * the SE $\frac{1}{4}$ Section 12. These acres were paid for by Matthews at claim filing. Expansion claim was filed by Heward for 130 acres on 3-15-01. **43-2338** Matthews' original claim included the licensed POU, which overlapped his SRBA claim 43-2492 on the SE $\frac{1}{4}$ of Section 12. When he transferred the POU from the SE $\frac{1}{4}$ section 12 to the SE $\frac{1}{4}$ section 11 he stated that this represented a transfer that had been accomplished prior to 1987. It is possible that he was given direction at the time of claims filing to identify this right as licensed and not how it was currently being used, as when the claim was amended in 1994 remarks were added that the acres in SE Sec 12 were served by the well on claim 43-2492. This claim should be recommended as described in transfer 4490 which included 320 acres in sections 11 and 12. And pods in NWSW 12 and SWNW 11. Expansion claim **43-11132** was also filed in conjunction with transfer 4490 and included 106 acres, listing both pods described above. 43-2338 and 43-11132 should be recommended as filed which is a PPU of 426 acres.

* 306 Total PPU less 184 Licensed = 122 Exp a.

OK
3-16-01