

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 43-13318
Date Received: 5/30/2003
Receipt No:
Received By:

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

1. Name of Claimant(s)

DELIA L LOVINGFOSS
HC 61 BOX 1020
MALTA ID USA 83342

Phone: (208)645-2421

WALTER JEAN LOVINGFOSS
HC 61 BOX 1020
MALTA ID USA 83342

Phone: (208)645-2421

2. Date of Priority: 10/19/1928

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
12S	27E	31	SW	SW	NW	CASSIA	

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	03/15	11/15	0.46	

7. Total Quantity Appropriated is:
0.46 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
12S	27E	31	SW	NE	IRRIGATION	33
			NE	NW	IRRIGATION	41

NW	NW	1	IRRIGATION	47
SW	NW	2	IRRIGATION	49
SE	NW		IRRIGATION	40
NW	SE		IRRIGATION	39
			Section Acres	249
			Total Acres	249

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 CLAIM IS A COMBINATION OF CLAIMS 43-303 & 43-304.

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 _____ 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): _____ Date: _____

_____ Date:

State of Idaho)
) SS.
 County of _____)

Subscribed and sworn (or affirmed) before me this
 of _____ 20__

Notary Public

Residing at _____

My commission Expires _____

ORIGINAL

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 43-303
Date Received: 8/19/2002
Receipt No:
Received By:

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

WALTER JEAN LOVINGFOSS
HC 61 BOX 1020
MALTA ID USA 83342

Phone: (208)645-2421

DELIA L LOVINGFOSS
HC 61 BOX 1020
MALTA ID USA 83342

Phone: (208)645-2421

2. Date of Priority: 04/01/1880

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
12S	27E	31	SW SW NW 2	CASSIA	

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	03/15	11/15	0.06	

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

8. Total consumptive use:

ORIGINAL

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
12S	27E	31	SW	NE	IRRIGATION	33
			NE	NW	IRRIGATION	41
			NW	NW	1 IRRIGATION	47
			SW	NW	2 IRRIGATION	49
			SE	NW	IRRIGATION	40
			NW	SE	IRRIGATION	39
					Section Acres	249
					Total Acres	249

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:

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.

ORIGINAL

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):

Walter Jean Lingle

Date: 8-19-02

Date: _____

State of Idaho)

County of

Twin Falls

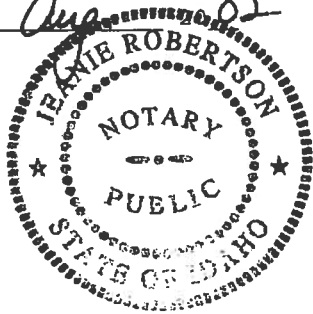
) SS.

Subscribed and sworn (or affirmed) before me this

19th.

of

Aug. 02



Jeanie Robertson

Notary Public

Residing at

Twin Falls, Id.

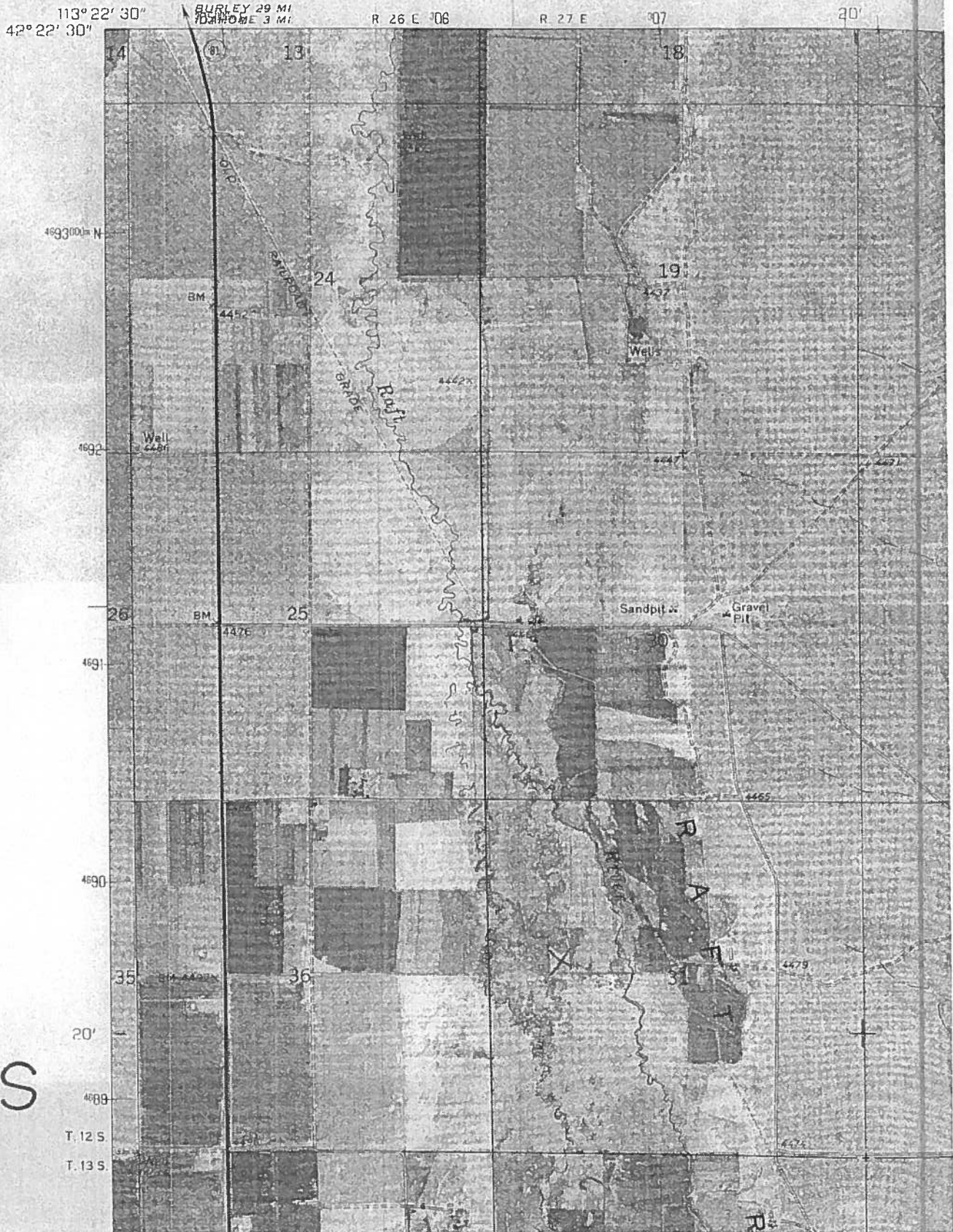
My commission Expires

9-23-06



State of Idaho
DEPARTMENT OF WATER RESOURCES
R26E R27E

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY



T12S

ORIGINAL

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 43-304
Date Received: 8/19/2002
Receipt No:
Received By:

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

DELIA L LOVINGFOSS
HC 61 BOX 1020
MALTA ID USA 83342

Phone: (208)645-2421

WALTER JEAN LOVINGFOSS
HC 61 BOX 1020
MALTA ID USA 83342

Phone: (208)645-2421

2. Date of Priority: 04/01/1881

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
12S	27E	31	SW SW NW 2	CASSIA	

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	03/15	11/15	0.4	

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

8. Total consumptive use:

ORIGINAL

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
12S	27E	31	SW	NE	IRRIGATION	33 ✓
			NE	NW	IRRIGATION	41 ✓
			NW	NW	1 IRRIGATION	47 ✓
			SW	NW	2 IRRIGATION	49 ✓
			SE	NW	IRRIGATION	40 ✓
			NW	SE	IRRIGATION	39 ✓
Section Acres						249
Total Acres						249

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:

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.

ORIGINAL

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): Walter James Singleton Date: 8-19-02

Date: _____

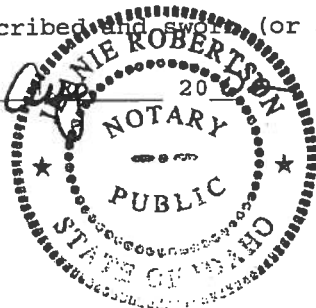
State of Idaho)

County of Twin Falls)

SS.

Subscribed and sworn (or affirmed) before me this 19th

of _____



Jeanie Robertson

Notary Public

Residing at Twin Falls, ID

My commission Expires 9-23-06

Memorandum

To: Candace McHugh
CC: Files 43-303, 43-304, 43-10363, 43-13318
From: Jeanie Robertson
Date: 5/30/2003
Re: Recommendations

I visited the Lovingfoss property yesterday and GPS'd the points where Raft River (two locations) and Cassia Creek water enter the property. The area is very braided and the channels are not well defined. They enter the ditch (or what may be considered the Raft River channel) and can flow either west, which eventually leaves the Lovingfoss property and serves other users as Raft River water, or east to a pond where it can be co-mingled and pumped on the Lovingfoss place. Water only *very occasionally* makes it to the property and the upstream users of Cassia Creek water in this area divert at a point well above this property. According to Watermaster records and conversations, this property has not been delivered Cassia Creek water in over 30 years and neither Mr. Lovingfoss, nor his predecessors, is a dues paying member of the Cassia Creek Water Users. The rights as decreed have probably been forfeited for non-use and it seems that any water in this ditch or channel may be considered return flows or wastewater from upstream users that then makes it back into the channel.

43-13318
43-303 was decreed in the Jobe Adams Decree to this property as 0.06 cfs with a 4/1/1880 priority date and 43-304 was decreed as 0.4 cfs with a 4/1/1881 priority date. Since the rights on Cassia Creek have already been determined and allowing these rights would likely cause injury to others, I propose disallowing these two rights and recommending them as one beneficial use right for 0.46 cfs from Cassia Creek with a priority date of 10/19/1928, one day after the decree was signed. This will prevent injury yet allow water to be used if and when it makes to the Lovingfoss property.

As far as 43-10363, which claims 1.4 cfs of Raft River water with a 4/1/1882 priority date, there was no 1882 Raft River water decreed to this property. Mr. Lovingfoss obtained copies of the deeds clear back to when the place was homesteaded. In 1968 the 70 inches of 1882 Raft River water first appeared on the deeds through a quitclaim deed from Wilbur and Bernice Schaner to Floyd and Laura Bonge. I propose recommending this right as a beneficial use right from Raft River with a priority date of ~~4/5/1968~~, when the quitclaim was recorded.

(10/19/1928)
- essentially high water claims

Water Right Report 43-304

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	FRANK G SCHODDE
	, ID

Status: Active

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	/ to /	0.400 CFS	
	<u>Total Diversion:</u>	0.400 CFS	

[illegible]

Dates and Other Information:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 43-304

Dates and Other Information:

Licensed Date:
Decreed Date: 10/18/1928
Water Supply Bank Enrollment Accepted:
Water Supply Bank Enrollment Removed:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal:
Owner Name Connector:
Water District Number: 43C
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Decree Defendant:
Decree Plaintiff:
Civil Case Number:
Judicial District:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

05/30/2003

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

RIGHT NUMBER: 43-13318

NAME AND ADDRESS: DELIA L LOVINGFOSS
HC 61 BOX 1020
MALTA ID 83342

WALTER JEAN LOVINGFOSS
HC 61 BOX 1020
MALTA ID 83342

SOURCE: CASSIA CREEK

TRIBUTARY: RAFT RIVER

QUANTITY: 0.460 CFS

THE RIGHTS LISTED BELOW SHALL PROVIDE NO MORE THAN .02 CFS PER
ACRE. COMBINED RIGHT NOS.: 43-307, 43-10363, 43-10799, 43-13237,
43-13239, 43-13241, & 43-13318.

PRIORITY DATE: 10/19/1928

POINT OF DIVERSION:

T12S R27E S31 SWSWNW Within CASSIA County Source: CASSIA CREEK

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/15 11/15	0.460 CFS

PLACE OF USE: IRRIGATION Within CASSIA County

T12S R27E S31	SWNE	33.0	T12S R27E S31	NENW	41.0
T12S R27E S31 Lot 1	NWNW	47.0	T12S R27E S31 Lot 2	SWNW	49.0
T12S R27E S31	SENW	40.0	T12S R27E S31	NWSE	39.0

249 ACRES TOTAL

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 249 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 43-307, 43-10363, 43-10799, 43-13237, 43-13239,
43-13241, & 13318.

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: Beneficial Use

Decreed water right numbers 43-303 and 43-304 are forfeited for non-use
from 1970 to 1989. This water right is based on beneficial use and
combines claim numbers 43-303 and 43-304.

RECEIVED

AUG 6 2003

Department of Water Resources

2003 AUG -4 PM 3:49

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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

) Subcases 43-10363 and 43-13318 (late
) claims 43-00303 and 43-00304)
) (Lovingfoss)
)
) AMENDED SPECIAL MASTER
) REPORT AND RECOMMENDATION

Findings of Fact

Loa and Lyle Nelson filed a *Notice of Claim to a Water Right* under 43-10363 on June 6, 1989, claiming 1.4 cfs from the Raft River to irrigate 260 acres in Cassia County from March 15 to November 15 with a priority date of April 1, 1882, based on a decree. The Director of the Idaho Department of Water Resources filed his *Director's Reports for Irrigation and Other, Reporting Area 7, IDWR Basin 43* on September 28, 2001. The Director recommended claim 43-10363 to Walter and Delia Lovingfoss, HC 61, Box 1020, Malta, Idaho 83342 as filed, but for irrigation of 249 acres within a 259 acre place of use with a priority date of April 1, 1886. The Director also noted: "This right is a combination of old right nos. 43-00303, & 43-00304."

The United States of America, Department of Interior, Bureau of Land Management filed an *Objection* on February 8, 2002, objecting to place of use. The Lovingfosses and the United States filed a *Standard Form 5* on August 14, 2002, agreeing to .46 cfs and on August 15, 2002, the Special Master entered a *Special Master Report and Recommendation* recommending that claim 43-10363 be adjudicated as agreed.

However, on August 19, 2002, the Lovingfosses filed a *Motion to Alter or Amend* because they agreed to the wrong amount (cfs) which should have been 1.4 cfs instead of .46 cfs. They also filed *Motions to File Late Notices of Claims* in subcases 43-00303 and 43-00304 which were granted by Presiding Judge Roger Burdick on November 21, 2002.

IDWR filed its *Amended Director's Report, Subcase 43-10363* on May 30, 2003, recommending 43-10363 for 1.4 cfs from the Raft River to irrigate 249 acres from March 15 to November 15 with a priority date of October 19, 1928, based on beneficial use. The same date, IDWR filed its *Director's Report, Subcase Nos. 43-00303 & 43-304 (Recommended as 43-13318)* recommending that late claims 43-00303 and 43-00304 be disallowed and combined into 43-13318 for .46 cfs from Cassia Creek to irrigate 249 acres from March 15 to November 15 with a priority date of October 19, 1928, based on beneficial use.

Conclusions of Law

Walter and Delia Lovingfoss are entitled to partial decrees adjudicating water rights for claims 43-10363 and 43-13318 as recommended by IDWR and as described in the attached *Amended Special Master Recommendation for Partial Decree for Water Right 43-10363* and *Special Master Recommendation for Partial Decree for Water Right 43-13318*.

Recommendation

THEREFORE, IT IS RECOMMENDED that 43-00303 and 43-00304 **not** be decreed as water rights because they were combined and recommended as 43-13318.

DATED August 4, 2003.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

2003 AUG -4 PM 3: 49

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

looks ok
8-22-03

QUANTITY: 0.46 CFS

PRIORITY DATE: 10/19/1928

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.46 CFS

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 249 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 43-307, 43-10363, 43-10799, 43-13237, 43-13239, 43-13241 AND 43-13318.

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).

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

Thomas A. Olson
SPECIAL MASTER

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

AMENDED

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 43-10363

2003 AUG -4 PM 3:49

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: DELIA L LOVINGFOSS
WALTER JEAN LOVINGFOSS
HC 61 BOX 1020
MALTA, ID 83342

SOURCE: RAFT RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 1.40 CFS

THIS RIGHT WHEN COMBINED WITH RIGHTS LISTED BELOW SHALL
PROVIDE NO MORE THAN .02 CFS PER ACRE. COMBINED RIGHT NOS.:
43-00307, 43-10363, 43-10799, 43-13237, 43-13239, & 43-13241 AND
43-13318.

PRIORITY DATE: 10/19/1928

POINT OF DIVERSION: T12S R27E S31 NWNES Within Cassia County
NWNWE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	1.40 CFS

PLACE OF USE:	Irrigation	Within Cassia County
	T12S R27E S31	SWNE 33.0 NENW 41.0
	LOT 1 (NWNW) 47.0	LOT 2 (SWNW) 49.0
	SENW 40.0	NWSE 39.0
	249.0 Acres Total	

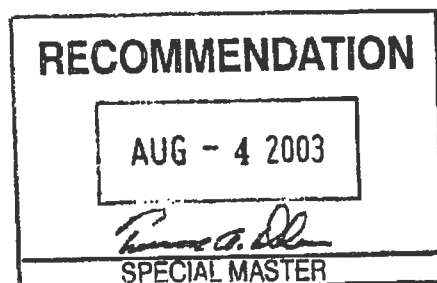
USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION
OF A COMBINED TOTAL OF 249 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 43-00307, 43-10363, 43-10799, 43-13237,
43-13239, & 43-13241 AND 43-13318.

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. 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 no further motion 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

2003 AUG -4 PM 3:49

2003 AUG -4 PM 3:49
TWIN FALLS CO., IDAHO
FILED

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)
_____)

CERTIFICATE OF MAILING

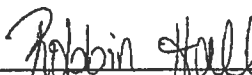
Water Right(s): 43-00303
43-00304 43-10363 43-13318

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on August 04, 2003, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

DELIA L LOVINGFOSS
WALTER JEAN LOVINGFOSS
HC 61 BOX 1020
MALTA, ID 83342
Phone: 208-645-2421



ROBBIN HALL
Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1
08/04/03

2003 AUG -4 PM 3: 49

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 43-00303
43-00304 43-10363 43-13318

On August 04, 2003, Special Master TERRENCE A. DOLAN issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED August 04, 2003.



ROBBIN HALL
Deputy Clerk

05/30/2003

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

RIGHT NUMBER: 43-13318

NAME AND ADDRESS: DELIA L LOVINGFOSS
HC 61 BOX 1020
MALTA ID 83342

WALTER JEAN LOVINGFOSS
HC 61 BOX 1020
MALTA ID 83342

SOURCE: CASSIA CREEK

TRIBUTARY: RAFT RIVER

QUANTITY: 0.460 CFS

THE RIGHTS LISTED BELOW SHALL PROVIDE NO MORE THAN .02 CFS PER
ACRE. COMBINED RIGHT NOS.: 43-307, 43-10363, 43-10799, 43-13237,
43-13239, 43-13241, & 43-13318.

PRIORITY DATE: 10/19/1928

POINT OF DIVERSION:

T12S R27E S31 SWSWNW Within CASSIA County Source: CASSIA CREEK

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/15 11/15	0.460 CFS

PLACE OF USE: IRRIGATION Within CASSIA County

T12S R27E S31	SWNE	33.0	T12S R27E S31	NENW	41.0
T12S R27E S31 Lot 1	NWNW	47.0	T12S R27E S31 Lot 2	SWNW	49.0
T12S R27E S31	SENW	40.0	T12S R27E S31	NWSE	39.0

249 ACRES TOTAL

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 249 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 43-307, 43-10363, 43-10799, 43-13237, 43-13239,
43-13241, & 13318.

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: Beneficial Use

Decreed water right numbers 43-303 and 43-304 are forfeited for non-use
from 1970 to 1989. This water right is based on beneficial use and
combines claim numbers 43-303 and 43-304.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 43-13318 V1

WATER RIGHT NUMBER: 43-13318 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	DELIA L LOVINGFOSS HC 61 BOX 1020 MALTA, ID 83342 (208)645-2421
Current Owner	WALTER JEAN LOVINGFOSS HC 61 BOX 1020 MALTA, ID 83342 (208)645-2421

Priority Date: 10/19/1928

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
CASSIA CREEK	RAFT RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	03/15 to 11/15	0.460 CFS	
	<u>Total Diversion:</u>	0.460 CFS	

Location of Point(s) of Diversion

CASSIA CREEK	SW1/4SW1/4NW1/4	Sec. 31, Twp 12S, Rge 27E, B.M.
CASSIA County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12S	27E	31			33.0		41.0	47.0	49.0	40.0							39.0		249.0
								L 1	L 2										

Total Acres: 249

Conditions of Approval:

1. C18 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.

Remarks:

1. Explanatory Decreed water right numbers 43-303 and 43-304 are forfeited for non-use from 1970 to 1989. This water right is based on beneficial use and combines claim numbers 43-303 and 43-304.
2. Place of Use - Irrigation USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 249 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 43-307, 43-10363, 43-10799, 43-13237, 43-13239, 43-13241, & 13318.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 43-13318 V1

3. Quantity THE RIGHTS LISTED BELOW SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE.
COMBINED RIGHT NOS.: 43-307, 43-10363, 43-10799, 43-13237, 43-13239, 43-13241, &
43-13318.

Comments:

1. jroberts 5/30/2003 Basis of Recommendation

Comment: This claim is a combination of claim numbers 43-303 (0.06 cfs) and 43-304 (0.4 cfs). They were originally decreed to the property but were not delivered for at least 30 years according to the water master on Cassia Creek, so the decreed rights have been forfeited for non-use. I am recognizing a beneficial use right with a priority date of 10/19/1928, one day after the Jobe Adams decree was signed.

Dates and Other Information:

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Defendant:

Plaintiff:

Civil Case Number:

Judicial District:

Notice of Error Flag:

State or Federal:

Owner Name Connector: OR

Water District Number:

Generic Max Rate Per Acre:

Generic Max Volume Per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Carey Act Number:

Mitigation Plan: False

Memorandum

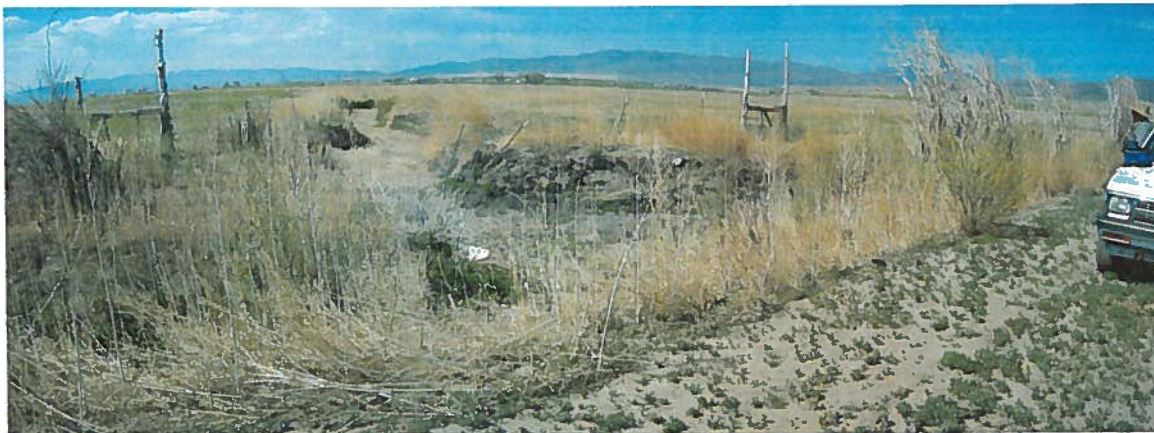
To: Candace McHugh
CC: Files 43-303, 43-304, 43-10363, 43,133/8
From: Jeanie Robertson
Date: 5/30/2003
Re: Recommendations

I visited the Lovingfoss property yesterday and GPS'd the points where Raft River (two locations) and Cassia Creek water enter the property. The area is very braided and the channels are not well defined. They enter the ditch (or what may be considered the Raft River channel) and can flow either west, which eventually leaves the Lovingfoss property and serves other users as Raft River water, or east to a pond where it can be co-mingled and pumped on the Lovingfoss place. Water only *very occasionally* makes it to the property and the upstream users of Cassia Creek water in this area divert at a point well above this property. According to Watermaster records and conversations, this property has not been delivered Cassia Creek water in over 30 years and neither Mr. Lovingfoss, nor his predecessors, is a dues paying member of the Cassia Creek Water Users. The rights as decreed have probably been forfeited for non-use and it seems that any water in this ditch or channel may be considered return flows or wastewater from upstream users that then makes it back into the channel.

43-133/8
43-303 was decreed in the Jobe Adams Decree to this property as 0.06 cfs with a 4/1/1880 priority date and 43-304 was decreed as 0.4 cfs with a 4/1/1881 priority date. Since the rights on Cassia Creek have already been determined and allowing these rights would likely cause injury to others, I propose disallowing these two rights and recommending them as one beneficial use right for 0.46 cfs from Cassia Creek with a priority date of 10/19/1928, one day after the decree was signed. This will prevent injury yet allow water to be used if and when it makes to the Lovingfoss property.

As far as 43-10363, which claims 1.4 cfs of Raft River water with a 4/1/1882 priority date, there was no 1882 Raft River water decreed to this property. Mr. Lovingfoss obtained copies of the deeds clear back to when the place was homesteaded. In 1968 the 70 inches of 1882 Raft River water first appeared on the deeds through a quitclaim deed from Wilbur and Bernice Schaner to Floyd and Laura Bonge. I propose recommending this right as a beneficial use right from Raft River with a priority date of ~~4/5/1968~~, when the quitclaim was recorded.

(10/19/1928)
- essentially high water claims

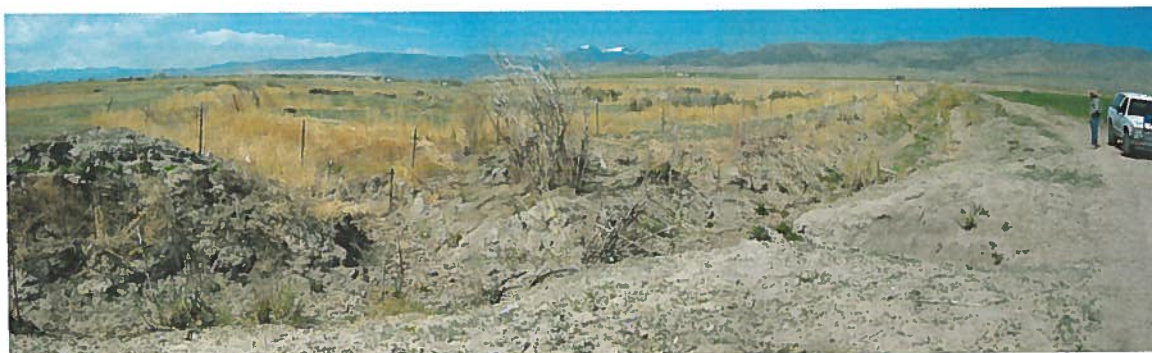


Lovingfoss Cassia Creek Div.

5/29/03

43-13318

Lat. 553441
Long. 137480



Lovingfoss Raft River Div. (West)

5/29/03

43-10363

Lat. 553792
Long. 137483



Lovingfoss Raft River Div. (East)

5/29/03

43-10363

Lat. 553876
Long. 137479

[Send To Printer](#)

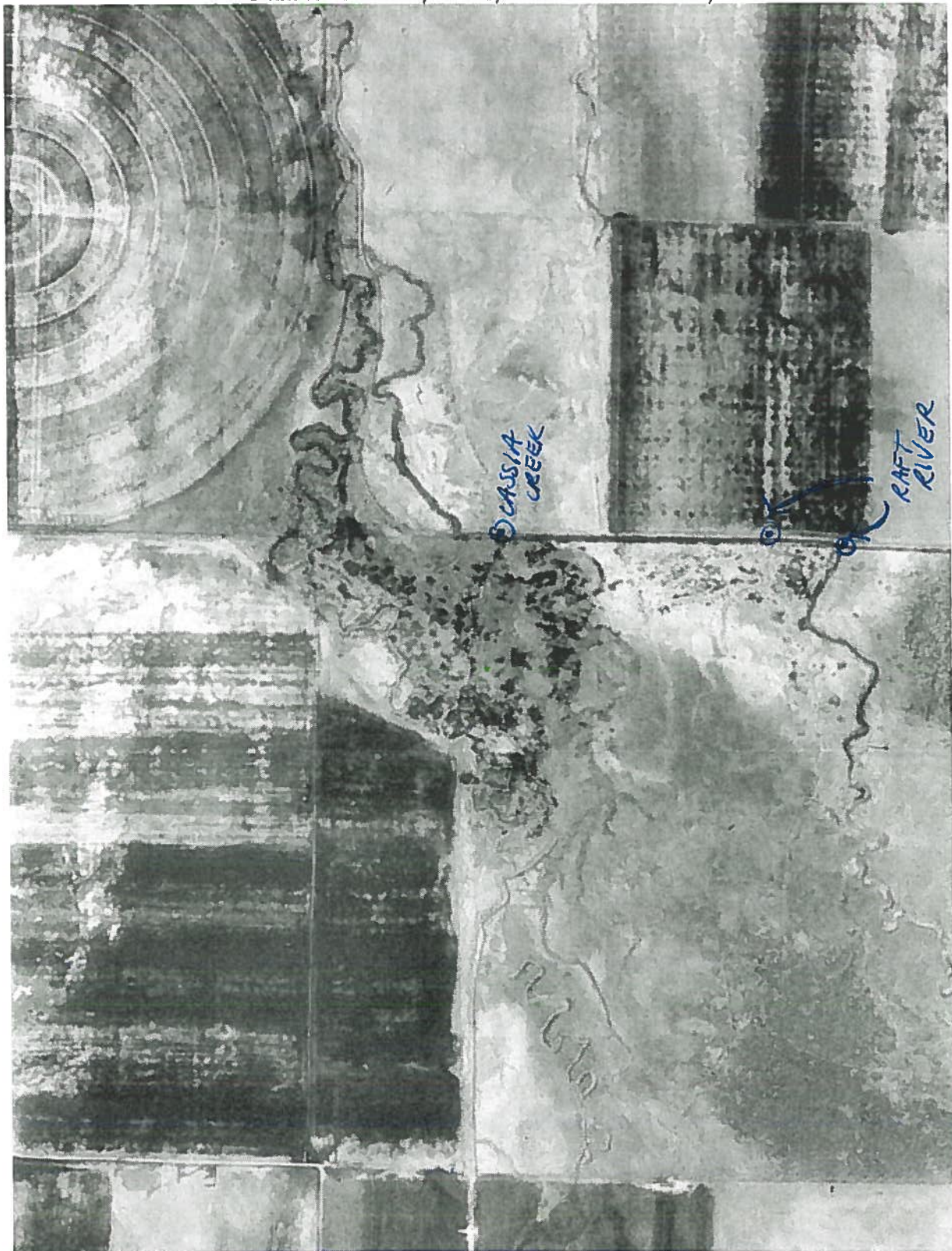
[Back To TerraServer](#)

[Change to 11x17 Print Size](#)

[Show Grid Lines](#)

[Change to Landscape](#)

USGS 3 km NE of Malta, Idaho, United States 24 May 1992



0 200M

0 200yd

Image courtesy of the U.S. Geological Survey
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Willis Sears
Lulu Sears

Charles L. Sears
Sadie Sears

43-0288 1874-Apr. 30 298 .3 s.f. c18
43-0289 1874-Apr. 30 299 .5 s.f. c18
43-0290 1882-Apr. 30 300 1.2 s.f. c100
43-0291 1886-Apr. 30 301 .6 s.f. c117
43-0292 1892-Apr. 30 302 .4 s.f. c117

thence West 13 1/12 rods, thence
South 1 mile, to place of beginning.

To be diverted from Warm Springs
To be diverted from Cassia Creek
for the irrigation of
SW1/4, SE1/4, Lot 4, Sec. 31,
Twp. 12 S. R. 25 E.B.M., Lot 4, Sec.
6, Twp. 14 S. R. 25 E.B.M.

Harry Shaw

1880-Apr. 30 293 2.8 s.f. c58

To be diverted from Cassia Creek
for the irrigation of
E1/4, Sec. 25, Twp. 12 S. R. 26
E.B.M., Lots 3 and 4, Sec. 30,
Twp. 12 S. R. 27 E.B.M.

43-0294 1880-Apr. 30 294 .4 s.f. c58
43-0295 1885-Apr. 30 295 2 s.f. c117

To be diverted from Cassia Creek
for the irrigation of
N1/4, SE1/4, Sec. 36, Twp. 12 S.
R. 26 E.B.M.

42-0302 1885-Apr. 30 302 1.2 s.f. c117

To be diverted from Cassia Creek
for the irrigation of
W1/4, Sec. 25, Twp. 12 S. R. 26
E.B.M.

43-0296 1894-Apr. 30 296 2.8 s.f. c117

Appurtenant to all of the land above
described.

Frank G.

Charles Shaw

43-0297 1894-Apr. 30 297 1.2 s.f. c216
43-0298 1893-Apr. 30 298 .6 s.f. c116
43-0299 1895-May 31 299 1.4 s.f. c177

To be diverted from Cassia Creek
for the irrigation of
SE1/4, S1/4, Sec. 12, Twp. 13 S.
R. 26 E.B.M.

Jesse Shill

Laville Shill

43-0300 1906-Apr. 30 300 .8 s.f. c117

To be diverted from Middle Fork
Cassia Creek for the irrigation of
SW1/4, Sec. 24, Twp. 13 S. R. 26
E.B.M.

43-0301 1913-Apr. 30 301 .8 s.f. c117

To be diverted from Cassia Creek
for the irrigation of
NW1/4, NE1/4, Sec. 24, Twp. 13 S.
R. 26 E.B.M.

Frank G. Schodde, Fred
Schodde, George Schodde

23" 43-0303 1880-Apr. 30 303 .06 s.f. c44
2 43-0304 1881-Apr. 30 304 .4 s.f. c44
77" 43-0305 1884-Apr. 30 305 1.54 s.f. c116
115" 43-0306 1886-Apr. 30 306 2.3 s.f. c184
45" 43-0307 1894-Apr. 30 307 .9 s.f. c117

To be diverted from Cassia Creek
for the irrigation of -

To be diverted from Raft River,
for the irrigation of
SW1/4, NW1/4, E1/4, Lots 1 and 2,
Sec. 31, Twp. 12 S. R. 27 E.B.M.

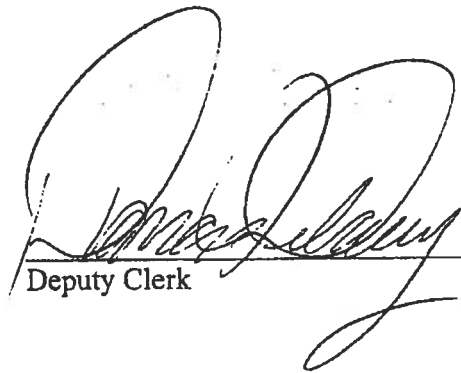
23" CC
237" RR

CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER GRANTING MOTION TO FILE LATE NOTICE OF CLAIM** was mailed on November 21, 2002, with sufficient first-class postage to the following:

Walter Jean Lovingfoss
Delia L Lovingfoss
HC 61 Box 1020
Malta, ID 83342

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098



Deputy Clerk

RECEIVED

AUG - 6 2003

Department of Water Resources

2003 AUG -4 PM 3: 49

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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

) Subcases 43-10363 and 43-13318 (late
) claims 43-00303 and 43-00304)
) (Lovingfoss)
)
) AMENDED SPECIAL MASTER
) REPORT AND RECOMMENDATION

Findings of Fact

Loa and Lyle Nelson filed a *Notice of Claim to a Water Right* under 43-10363 on June 6, 1989, claiming 1.4 cfs from the Raft River to irrigate 260 acres in Cassia County from March 15 to November 15 with a priority date of April 1, 1882, based on a decree. The Director of the Idaho Department of Water Resources filed his *Director's Reports for Irrigation and Other, Reporting Area 7, IDWR Basin 43* on September 28, 2001. The Director recommended claim 43-10363 to Walter and Delia Lovingfoss, HC 61, Box 1020, Malta, Idaho 83342 as filed, but for irrigation of 249 acres within a 259 acre place of use with a priority date of April 1, 1886. The Director also noted: "This right is a combination of old right nos. 43-00303, & 43-00304."

The United States of America, Department of Interior, Bureau of Land Management filed an *Objection* on February 8, 2002, objecting to place of use. The Lovingfosses and the United States filed a *Standard Form 5* on August 14, 2002, agreeing to .46 cfs and on August 15, 2002, the Special Master entered a *Special Master Report and Recommendation* recommending that claim 43-10363 be adjudicated as agreed.

However, on August 19, 2002, the Lovingfosses filed a *Motion to Alter or Amend* because they agreed to the wrong amount (cfs) which should have been 1.4 cfs instead of .46 cfs. They also filed *Motions to File Late Notices of Claims* in subcases 43-00303 and 43-00304 which were granted by Presiding Judge Roger Burdick on November 21, 2002.

IDWR filed its *Amended Director's Report, Subcase 43-10363* on May 30, 2003, recommending 43-10363 for 1.4 cfs from the Raft River to irrigate 249 acres from March 15 to November 15 with a priority date of October 19, 1928, based on beneficial use. The same date, IDWR filed its *Director's Report, Subcase Nos. 43-00303 & 43-304 (Recommended as 43-13318)* recommending that late claims 43-00303 and 43-00304 be disallowed and combined into 43-13318 for .46 cfs from Cassia Creek to irrigate 249 acres from March 15 to November 15 with a priority date of October 19, 1928, based on beneficial use.

Conclusions of Law

Walter and Delia Lovingfoss are entitled to partial decrees adjudicating water rights for claims 43-10363 and 43-13318 as recommended by IDWR and as described in the attached *Amended Special Master Recommendation for Partial Decree for Water Right 43-10363* and *Special Master Recommendation for Partial Decree for Water Right 43-13318*.

Recommendation

THEREFORE, IT IS RECOMMENDED that 43-00303 and 43-00304 **not** be decreed as water rights because they were combined and recommended as 43-13318.

DATED August 4, 2003.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

2003 AUG -4 PM 3: 49

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

SOURCE: CASSIA CREEK TRIBUTARY: RAFT RIVER

THE RIGHTS LISTED BELOW SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE. COMBINED RIGHT NOS.: 43-307, 43-10363, 43-10799, 43-13237, 43-13239, 43-13241, AND 43-13318.

POINT OF DIVERSION: T12S R27E S31 SWSWNW Within Cassia County

PLACE OF USE:	Irrigation		Within Cassia County
	T12S R27E S31	SWNE 33.0	NENW 41.0
	LOT 1 (NWNW) 47.0	LOT 2 (SNNW) 49.0	
		SENW 40.0	NWSE 39.0
	249.0 Acres Total		

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

RULE 54 (b) CERTIFICATE

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

PAGE 1
• Aug-04-2003

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

AMENDED

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 43-10363

2003 AUG -4 PM 3:49

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: DELIA L LOVINGFOSS
WALTER JEAN LOVINGFOSS
HC 61 BOX 1020
MALTA, ID 83342

SOURCE: RAFT RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 1.40 CFS

THIS RIGHT WHEN COMBINED WITH RIGHTS LISTED BELOW SHALL
PROVIDE NO MORE THAN .02 CFS PER ACRE. COMBINED RIGHT NOS.:
43-00307, 43-10363, 43-10799, 43-13237, 43-13239, & 43-13241 AND
43-13318.

PRIORITY DATE: 10/19/1928

POINT OF DIVERSION: T12S R27E S31 NWNES Within Cassia County
NWNWE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	1.40 CFS

PLACE OF USE:	Irrigation	Within Cassia County
	T12S R27E S31	SWNE 33.0 NENW 41.0
	LOT 1 (NWNW) 47.0	LOT 2 (SWNW) 49.0
	SENW 40.0	NWSE 39.0
	249.0 Acres Total	

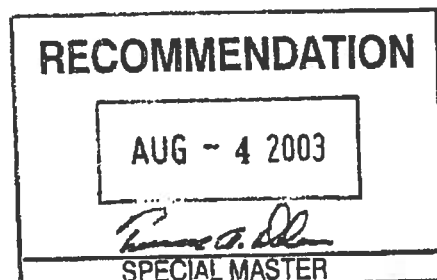
USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION
OF A COMBINED TOTAL OF 249 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 43-00307, 43-10363, 43-10799, 43-13237,
43-13239, & 43-13241 AND 43-13318.

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. 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 no further motion 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

2003 AUG -4 PM 3:49

MAILED
TWIN FALLS CO., IDAHO
FILED

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)
_____)

CERTIFICATE OF MAILING

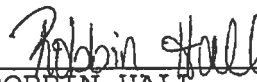
Water Right(s): 43-00303
43-00304 43-10363 43-13318

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on August 04, 2003, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

DELIA L LOVINGFOSS
WALTER JEAN LOVINGFOSS
HC 61 BOX 1020
MALTA, ID 83342
Phone: 208-645-2421



ROBBIN HALL
Deputy Clerk

2003 AUG -4 PM 3: 49

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

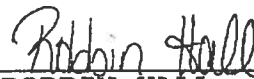
Water Right(s): 43-00303
43-00304 43-10363 43-13318

On August 04, 2003, Special Master TERRENCE A. DOLAN issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED August 04, 2003.



ROBBIN HALL
Deputy Clerk

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

2002 NOV 21 AM 11 01

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 43-303 AND 43-304
)

Case No. 39576

) ORDER GRANTING MOTION TO FILE
) LATE NOTICE OF CLAIM
)

On August 19, 2002, Claimants Walter Jean Lovingfoss and Delia L Lovingfoss filed *Motions to File Late Notice of Claim*. Hearing was held on the *Motions* November 19, 2002. These *Motions* complied with all procedural requirements under *SRBA Administrative Order 1*, and no objections were made to the late Notice of Claim.

THEREFORE, IT IS ORDERED, that the *Motions to File a Late Notice of Claim* to water rights 43-303 and 43-304 is **granted**.

The original Notices of Claim, as well as any attached filing fees, and a copy of this **Order** will be forwarded to the Idaho Department of Water Resources for further action.

IT IS SO ORDERED.

Dated November 21, 2002.



ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication