

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 the Rights to the Use of Water
from the Snake River Basin
Water System

Case No. 36-11060 -0002

The State of Idaho, ex rel.
R. Keith Higginson in his
official capacity as Director
of the Idaho Department of
Water Resources,

RESPONSE TO OBJECTION

Petitioner,

36-11060 -0002/
93-08-0471

vs.

The United States; the State
of Idaho; and all Claimants to
the use of water from the Snake
River Basin Water System,

Respondents.

I. GENERAL INFORMATION

1. Person responding to objection:

Name: R. KEITH HIGGINSON, DIRECTOR

Address: IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711-4449

Briefly describe your interest in this water right:

IDWR is required to file a response to an objection to part
I of the director's report pursuant to I.C. section 42-1412(2).

(Over)

2. Person who filed objection:

Name: JOHN W JONES JR
Address: PO BOX 265
HAGERMAN ID 83332

3. If this response is filed by an attorney:

Attorney Name(s): NICHOLAS B. SPENCER

Attorney Address: DEPUTY ATTORNEY GENERAL(S)
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711-4449

Attorney Phone No.: (208) 327-7900

II. STATEMENT OF THE RESPONSE

3. ☒ Quantity: I respond to the objection concerning:
- 3a. ☒ The total quantity of water used in cubic feet per second.
10. ☒ Consumptive Use: I respond to the objection concerning the annual volume of consumptive use.
11. ☒ Remarks: I respond to the objection concerning the "remarks" listed with the water right.

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection items 3, 3a., and 11, all allegations of the objection regarding these items, IDWR responds as follows: There is an error in the remarks in the description of this water right in the director's report. The recommendation should be corrected as shown in the attachment entitled "Recommended Water Rights Acquired Under State Law." While the claimant may be using the same flow of water under the three rights, the three rights are recommended for different uses with different priority dates. The additional remark in the revised recommendation clarifies that the claimant is using the

same flow of water under all these rights.

In response to Statement of the Objection item 10 and all allegations of the objection regarding that item, IDWR responds as follows: (1) Idaho Code Sec. 42-1411(2)(i) requires the director to determine the annual volume of consumptive use for each water right acquired under state law and recommended in the director's report. (3) Idaho Code Sec. 42-1401A(2) provides that the quantification of consumptive use "is included as a rebuttable presumption in a decree only for the purpose of transfers pursuant to section 42-222, Idaho Code"; therefore, the consumptive use recommended for this water right is included solely for use in future transfer proceedings. (4) The annual volume of consumptive use recommended for this right is 3 acre feet per acre. This is the maximum volume of water consumed by the most water consumptive crop (pasture) that can be grown in the area during the period of year when water is used for irrigation, as provided for by Idaho Code Sec. 42-1401A(2). (5) The consumptive use volume is not derived from the flow rate, but rather from the number of acres irrigated. Even the diversion rate suggested by this objection is sufficient to produce the recommended consumptive use volume over the course of the recommended irrigation season. The consumptive use volume is not a limitation on the quantity of water that the claimant may divert pursuant to this recommended right.

CHANGES TO THE DIRECTOR'S REPORT

See attached List of Recommended Water Rights Acquired under State Law.

☒ Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary:

(Over)

No. of
Pages

The notice of claim is attached to IDWR's response
to Objection No. 36-11060-0001
Recommended Water Rights Acquired Under State Law

1

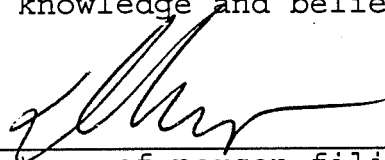
VERIFICATION (Must be Completed)

State of IDAHO

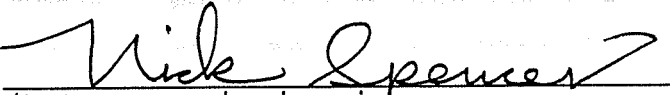
County of ADA

David B. Shaw, being first duly sworn, upon oath, deposes and says:

That R. Keith Higginson, in his official capacity as director of the Idaho Department of Water Resources, is a party to this proceeding, as defined by I.C. 42-1401A(1) and (7); that I am the Adjudication Bureau Chief for IDWR and am authorized by R. Keith Higginson, in his official capacity as director of IDWR, to verify this response; and that I have read the foregoing response, know its contents and that the statements contained therein are true to the best of my knowledge and belief.


Signature of person filing response

By:


(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 10th day of September,
1993.


Notary Public for Idaho

Residing at:

My Commission expires

Danni Smith, Notary Public
Residing at Boise, Idaho

My Commission Expires December 5, 1994

(Over)

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of September, 1993, I mailed the original and copies of the foregoing response, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepared and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

2. One copy to the owner of the water right, and you must fill in the following information:

Name: BILLINGSLEY CREEK RANCH
Address: 2726 S 1050 E
HAGERMAN ID 83332

3. One copy to the party who filed the objection, or if represented by an attorney, to their attorney; and you must fill in the following information:

Name: HEPWORTH NUNGESTER & LEZAMIZ
Address: PATRICK D BROWN
& PENELOPE PARKER
PO BOX 389
TWIN FALLS ID 83303

4. One copy to:

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 33
Boise, Idaho 83734


Signature of Respondent or attorney
mailing on Respondent's behalf

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: SEP-3-1993
PAGE: A-1

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
36-11060	BILLINGSLEY CREEK RANCH 2726 S 1050 E HAGERMAN ID 83332	03/01/1971	RECREATION	01-01 12-31	2.04 CFS 1476.0 AFY	BENEFICIAL USE
			RECREATION STORAGE	01-01 12-31	12.0 AFY 2.04 CFS 1476.0 AFY	
			TOTAL QUANTITY:		16.0 AFY	
			CONSUMPTIVE USE:		16.0 AFY	
			TRIBUTARY: BILLINGSLEY CREEK			

NON-IRRIGATION-USES:
RECREATION, FISHING, BOATING, AESTHETICS, SWIMMING, WILDLIFE

POINT OF DIVERSION:
T07S R14E S18 NWSW
S30 SENW

PLACE OF USE: RECREATION
T07S R14E S24 NESE

PLACE OF USE: RECREATION STORAGE
T07S R14E S24 NESE

REMARKS: RIGHT NO. 36-15462 IS AN EXPANSION OF THIS RIGHT PURSUANT TO
IDAHO CODE 42-1416B.
USE OF THIS RIGHT WITH RIGHT NO. 36-15462 IS LIMITED TO A
COMBINED DIVERSION RATE OF 2.04 CFS.
USE OF THIS RIGHT WITH RIGHT NOS. 36-00046 AND 36-15462 IS
LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 5.7 CFS.

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: 39576Ident. Number A36-11060Date Received 9-1-88Receipt Number 0002209

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED

SEP 1 1988

Department of Water Resources
Southern Region Office

Please type or print clearly

- Name of Claimant (s) BUCKEYE LAND COMPANY Phone (208) 837-6174
Mailing Address RT. #1, Hagerman ID Zip 83332
- Date of Priority (Only one (1) per claim) March 1, 1971
- Source of water supply (a) BIG SPRINGS WATER USERS ASSN. -- THREE SPRINGS
which is tributary to (b) BILLINGSLEY CREEK
- a. Location of existing point of diversion is: Township 7S Range 14E Section 18,
BIG SPRING
1/4 of NW 1/4 of SW 1/4, Govt. Lot, B.M., County of GOODING
Additional points of diversion if any: THREE SPRINGS -- SE1/4 NW1/4, Sec. 30, T. 7 S., R. 14 E.B.M.
b. If instream flow, beginning point of claimed instream flow is:
Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,
Govt. Lot _____ B.M., County of _____
ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____
_____ 1/4, Govt. Lot _____ B.M., County of _____
- Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. EXISTING PIPELINES CONVEYING WATER TO
APPLICANT FROM BIG SPRINGS USERS ASSN. (154 shares) AND THREE SPRINGS CONVERGE
AT PONDS. AFTER PROPAGATION USE, WATER GOES TO IRRIGATION, OR TO BILLINGSLEY
CREEK WHEN NOT NEEDED FOR IRRIGATION.

FEB 07 1993

6. Water is claimed for the following purposes:

(both dates are inclusive) (cfs) (acre feet)

For FISH PROPAGATION purposes from Jan 1 to Dec 31 amount 7.7 or 5621

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 7.7 (cfs) and/or (b) 5621 (acre feet)

8. Total consumptive use claimed is 0 acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) _____

10. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
7S	14E	24													H				

Total number of acres irrigated _____

11. In which county (ies) are lands listed above as place of use located? GOODING

12. Do you own the property listed above as place of use? Yes XXXX No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above. _____ or None ()

14. Remarks:

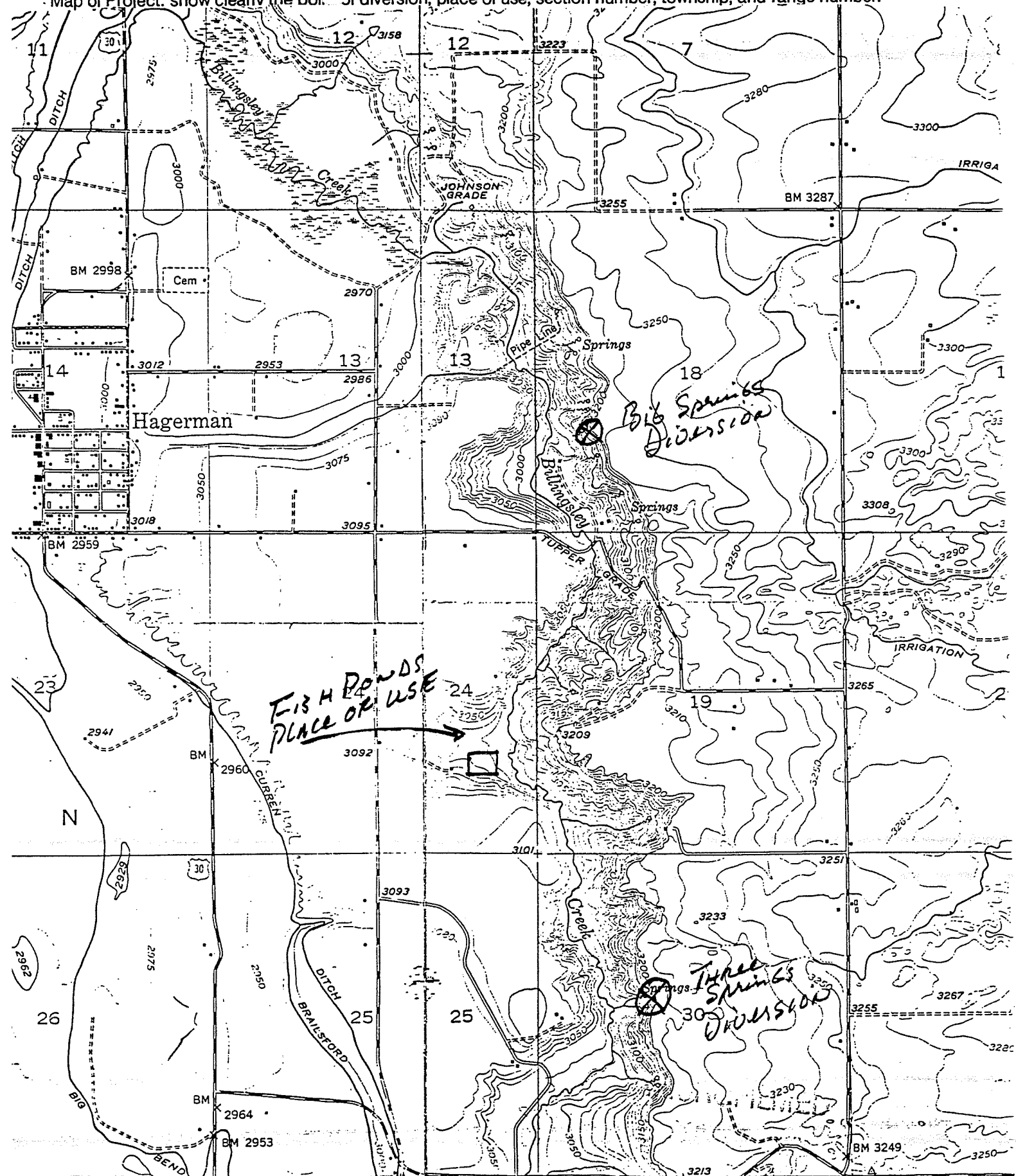
12 RACEWAYS, 8' x 100" each

RECEIVED
FEB 07 1993

Last Name BUCKEYE LAND CO. Ident No. _____

Copies: White -State, Yellow-Claimant

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.



Last Name

BUCKEYE LAND COMPANY

Ident No.

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) ☒ Special Use ☒ Posted Notice ☐ License ☐ Permit ☐

Decree ☐

If applicable provide IDWR Water Right Number

Court Case Number Decree Date

Plaintiff vs Defendant

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 1

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) Date

Date

For Organizations: I do solemnly swear or affirm that I am PRESIDENT

Title

of BUCKEYE LAND COMPANY, that I have signed the foregoing

Organization

document in the space below as PRESIDENT of BUCKEYE LAND COMPANY

Title

Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent *Donna M. Kessler*

Title and Organization PRESIDENT, BUCKEYE LAND COMPANY Date 9/1/88

State of Idaho/or)
County of TWIN FALLS) SS.

Subscribed and sworn (or affirmed) before me this 1st day of SEPTEMBER 19 88

SEAL

Notary Public *Sherry R. Cull*

Residing at *Twin Falls, Idaho*

My Commission Expires *3/19/92*

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, JOHN A. ROSHOLT will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature *John A. Rosholt*

Address P.O. Box 1906, Twin Falls ID 83303-1906

Date 9/1/88

RECEIVED
FEB 07 1993

Last Name BUCKEYE LAND CO. Ident. Number

Copies White-State, Yellow-Claimant

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE
DISTRICT OF IDAHO, SOUTHERN DIVISION.

NEW INTERNATIONAL MORTGAGE
BANK, a corporation,

Plaintiff,

-vs-

IDAHO POWER COMPANY, a
corporation, et al,

Defendants.

In Equity No. 1602

D E C R E E U. S. DISTRICT COURT
DISTRICT OF IDAHO

FILED MAR 23 1932

Wm. B. McLaughlin
W. B. McLaughlin, Jr., Clerk

By _____ Deputy

WHEREAS, The above entitled action having heretofore been submitted to the court upon pleadings and stipulations of fact, on file herein, and WHEREAS, the court being duly advised in the premises, and having made its findings of fact and conclusions of law;

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, That all of the land described in the complaint of the plaintiff, and in the answers, cross-complaints, and counter-claims of the defendants and intervenors, and each of them, is semi-arid in character and requires the artificial application of water or irrigation in order to produce thereon ordinary agricultural crops; that said land is situate in what is known as the Hagerman Valley, east of and adjacent to the Snake River, and that the same lies between the rim rock, or canyon wall, to the east of the Snake River and said Snake River; that the subsoil of said valley underlying said valley and all of the same is shattered, fissured lava flow, upon which has been deposited layers of clay and gravel, interspersed with water worn boulders, fragments of rock, and the soil is composed mainly of decomposed lava rock, oxidized lava rock and sand, and that owing to the nature of the soil and subsoil, the coarse texture and the mechanical composition of the soil and its free drainage, the said land and all of the land

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE
DISTRICT OF IDAHO, SOUTHERN DIVISION.

NEW INTERNATIONAL MORTGAGE
BANK, a corporation,

Plaintiff,

-vs-

IDAHO POWER COMPANY, a
corporation, et al,

Defendants.

In Equity No. 1602

D E C R E E S. DISTRICT COURT
DISTRICT OF IDAHO

FILED MAR 23 1932

W. D. McCreary
U. S. District Court, Clerk

By _____ Deputy

WHEREAS, The above entitled action having heretofore been submitted to the court upon pleadings and stipulations of fact, on file herein, and WHEREAS, the court being duly advised in the premises, and having made its findings of fact and conclusions of law;

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36-0022
-0023

NAME	AMOUNT OF WATER SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
BIG SPRING WATER USERS ASSOCIATION, a corporat- ion	12.9 Spring 5 Spring	March 21, 1901 April 1, 1911	Big Spring; (Durfee-Secor Tunnel) Big Spring; (Durfee-Secor Tunnel)

(Said Big Spring is located on the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 18, Twp. 7 S. R. 14 E. B. M.)

36-0024
-0025

BLACKHART, CHARLES R. AND ISMA C. BLACKHART	2.4 Billingsley Creek .2 Billingsley Creek SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 22, Twp. 7 S. R. 13 E. B. M.	March 30, 1884 Sept. 10, 1884	E. M. Bell Dit Buckeye Ditch
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36-0026
-0027

BLACKHART, MABEL	2.4 Billingsley Creek .4 Billingsley Creek SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 22, Twp. 7 S. R. 13 E. B. M.	March 30, 1884 Sept. 10, 1884	E. M. Bell Ditch Buckeye Ditch
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36-0028

BOYER, EL- ERSON, AND ETHEL BOYER	2 Riley Creek SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 36, Twp. 7 S. R. 13 E. B. M.	Oct. 1, 1908	Pipe Ditch re- ferred to in paragraph 7 of the Finding
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36-0029

BOYER, LEE, and ALICE BOYER	2 Spring (Said Three Springs is located immediately east of the east boundary line of the Dan Jones' Ranch about one-eighth mile east of Billingsley Creek and about one mile north of the head of said Billingsley Creek.) SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 24, and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 25, Twp. 7 S. R. 13 E. B. M.	Feb. 17, 1893	Three Springs
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36-0030

BRAILSFORD A. H., AND BEATRICE E. BRAILSFORD	8 Len Lewis Spring W $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 25, Twp. 7 S. R. 13 E. B. M.; E $\frac{1}{2}$ of the NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 26, Twp. 7 S. R. 13 E. B. M.	Sept. 1, 1889	Brailsford- Owens Ditch;
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36-0031
-0032

BRIGGS, E. G., AND EDNA C. BRIGGS	.5 Riley Creek 1 Riley Creek (The diversion point of said Conyers Ditch is on Riley Creek 100 yards below the diversion point of said Hunt Ditch described in paragraph 7 of the Finding.)	May 1, 1883 May 1, 1883	Hunt Ditch; Conyers Ditch;
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36-0043

-0044

NAME	IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
ELIASON, JACOB AND GARRIE I.	1.6 Len Lewis Spring X .7 Nevada Omohundso Spring	Sept. 1, 1389 March 3, 1902	Drailsford- Owaha Ditch Weatherby Springs;

The SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 25, Twp. 7 S. R. 13 E. B. 11.; also that certain portion of the northwest corner of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 33, in Twp. 7 S. R. 13 E. B. 11. in Idaho, more particularly described as follows, to-wit: Beginning at the quarter corner between sections 25 and 33 in said Twp. 7 S. R. 13 E. B. 11. running thence east a distance of 399 feet to the center of the public highway, thence in a southwesterly direction in the center of the said highway a distance of 372 feet; thence westerly along the north bank of the Clifford Ditch a distance of 370 feet to the west boundary line of the said northeast quarter of the northeast quarter of said Sec. 36, thence north along the said west boundary line a distance of 357 feet to the place of beginning, known as Tax No. 1 in Sec. 35, in the office of the Assessor of Gooding County, Idaho;

Also that certain tract of land more particularly described as follows, to-wit: Beginning at the southwest corner of the southwest quarter of the southeast quarter of Sec. 25, Twp. 7 S. R. 13 E. B. 11., thence running east 397 feet, thence northwesterly to a point distant eighteen hundred and seventy feet on section line from the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said section, thence south 1870 feet to the place of beginning. Said piece of land being a triangular piece of land containing 9.5 of an acre according to the survey thereof, and known as Tax No. 1 of said Sec. 25, in the office of the Assessor of Gooding County, Idaho.

-0045

-0046

FARMER, J. EUGENE, AND MARVEL FARMER	.5 Spring 5.7 Spring	Feb. 1, 1888 Feb. 17, 1896	Weatherby Springs; "Three Springs"
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(Said "Three Springs" is located immediately east of the east boundary line of the Dan Jones' Ranch, about one-eighth mile east of Billingsley Creek and about one mile north of the head of said Billingsley Creek.)

SE $\frac{1}{4}$ of Sec. 24, Twp. 7 S. R. 13 E. B. 11. and Lot 4 of Sec. 19, Twp. 7 S. R. 14 E. B. 11.

-0047

FISH, EARL, AND ALLISON MARY FISH	1.6 Spring	July 23, 1910	Sherman Springs;
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(Said Sherman Springs arises about one mile east of the land described below and is about 200 feet from "Big Springs" elsewhere described herein.)

Beginning at a point 50 rods east of the northwest corner of the northwest quarter of the southeast quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 15, Twp. 7 S. R. 13 E. B. 11. and on the north line of the above described forty acres. Thence 50 rods due east on the half sec-

[illegible]

TRIBUTARY: BILLINGSLEY CREEK

	2.04 CFS	BENEFICIAL USE
	1476.0	AFY

USE OF THIS RIGHT WITH RIGHT NOS. 36-00046 AND 36-15462 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 5.7 CFS.