

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. 36-11142 -0001

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,

36-11142 -0001/
93-08-0474

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: FLYING TRIANGLE INC
Address: RT 1 BOX 180
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.
4. ☒ Priority Date: I respond to the objection concerning the priority date.
5. ☒ Points of Diversion: I respond to the objection concerning the legal description of the point(s) of diversion.
9. ☒ Place of Use: I respond to the objection concerning:
- 9a. ☒ The legal description of the place of use.
- 9b. ☒ The number of irrigated acres within each forty (40) acre subdivision.
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.

14. |X| Other: I respond to the objection concerning:
NON-IRRIGATION USES.

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection items 3 and 3.a, and all allegations of the objection regarding those items, IDWR responds as follows: (1) it recommended the amount of water it determined was being beneficially used; (2) the claimant is not entitled to any amount greater than that which is beneficially used (Idaho Code Secs. 42-104 and 42-1402).

In response to Statement of the Objection item 4, and all allegations of the objection IDWR responds as follows: This claim is based on beneficial use. The claimed priority date predates the date of the New International Mortgage Bank v. Idaho Power Company decree. Since that case adjudicated all rights to water from Weatherby Springs, if the priority date asserted by the claimant were correct this right would have been adjudicated and decreed at that time. It was not. Moreover, the claimant's predecessor in interest was a party to that adjudication; the predecessor therefore had opportunity at that time to address the court's error, if any, in failing to decree this right. Because of this the claimant is precluded from asserting a priority date predating that decree. IDWR further responds that the recommended priority date is based upon information provided by the claimant.

In response to Statement of the Objection items 5 and 11, and all allegations regarding these items, IDWR responds that the recommended water right accurately describes the point of diversion. The point of diversion described is Weatherby Springs, the recommended source of this right. The claimant has not objected to IDWR's recommendation of the source. It is not necessary to describe the points where the water is rediverted from the delivery ditches or pipeline.

In response to Statement of the Objection 9 and 9.a, and all allegations of the objection regarding those items, IDWR responds that the recommended water right accurately describes the place of use of the right.

In response to Statement of the Objection 9 and 9.b, and all allegations of the objection regarding those items, IDWR responds

(Over)

that the recommended water right accurately describes the total number of acres within each 40 acre subdivision upon which IDWR found water was beneficially used for irrigation under this water right. IDWR further responds that the acres irrigated within the recommended place of use for this right are those that are irrigated exclusively from the North Pipeline. Other acres claimed for this right are recommended under other rights with earlier priority dates.

In response to Statement of the Objection item 10 and all allegations of the objection regarding this item, IDWR responds as follows: 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. IDWR has developed uniform standards of consumptive use for various climatic areas throughout the state, based upon the definition of consumptive use contained in Idaho Code Sec. 42-1401A(2), which is the maximum volume of water consumed by "the most water consumptive crop that can be grown in the area during the period of year when water is used for irrigation." The per acre consumptive use volume of 3 AFY per acre claimed and recommended for this water right is based upon the maximum volume of water consumed by the most water consumptive crop (pasture) that can be grown in the area during the irrigation season. 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, and not as a limitation on the quantity of water that the claimant may divert pursuant to this recommended right.

In response to Statement of the Objection item 11, and all allegations of the objection regarding that item, IDWR responds that it has authority pursuant to Idaho Code Sec. 42-1411(2)(j) to include in its recommendations of water rights acquired under state law and recommended in the director's report "such other matters as are necessary to define the right." The remark or remarks objected to are necessary to adequately describe and define this water right. IDWR further responds that the claimant stated no reason for the objection to this item; IDWR is therefore unable to address the objection further.

In response to Statement of the Objection 14, and all allegations of the objection regarding this item, IDWR responds that the recommended water right accurately describes the non-irrigation uses of the right. In further response to this objection item,

IDWR responds that it recommended this element of the water right as claimed.

CHANGES TO THE DIRECTOR'S REPORT

The director proposes no changes to the description of this claim in the Director's Report.

☒ 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:

	No. of Pages
Notice of Claim No. A36-11142	10

(Over)

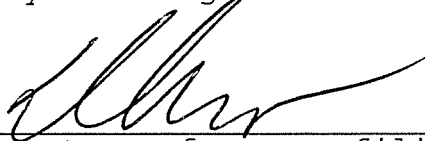
VERIFICATION (Must be Completed)

State of IDAHO

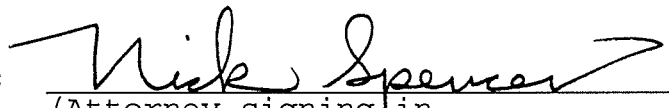
County of ADA

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.

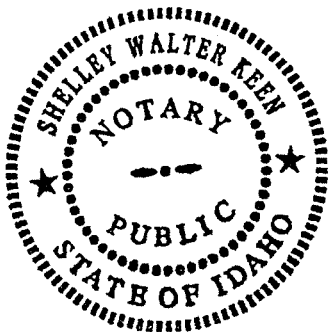


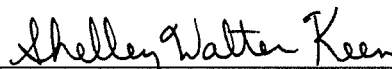
Signature of person filing response

By: 

(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 9th day of September,
1993.





Notary Public for Idaho
Residing at: Boise, Idaho
My Commission expires: July 31, 1997

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:

See No. 3

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: JOHN K SIMPSON
Address: PO BOX 2139
BOISE ID 83701-2139

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

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: 39356

Ident. Number

A36-11142

Date Received

Receipt Number

5006619

see

RECEIVED

MAR 01 1989

Department of Water Resources
Southern Region Office

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

1. Name of Claimant (s) FLYING TRIANGLE, INC. Phone (208) 837-4926

Mailing Address Rt. #1 Box 180, Hagerman ID Zip 83332

2. Date of Priority (Only one (1) per claim) 01-01-1900

3. Source of water supply (a) ⁽¹⁾ WEATHERBY SPRINGS & ⁽²⁾ CURRAN SPRINGS

which is tributary to (b) _____

4. a. Location of existing point of diversion ⁽¹⁾ is: Township 7s Range 1E Section 30,

1/4 of 1/4 of 1/4, Govt. Lot, B.M., County of

Additional points of diversion ⁽²⁾ if any: SW 1/4 NE 1/4 SEC 31 7S 14E; continued on line 14

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 _____

5. 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. Sent via Curren Ditch to North
Pipe (see note at item #14 re: diversion #3)

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FEB 07 1993

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For STOCK WATER purposes from 01-01 to 12-31 amount .14 or _____

For IRRIGATION purposes from 03-15 to 10-15 amount 3.04 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 3.04 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is 210 acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) 5000 sheep and 500 cattle

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. 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	13E	26		15S	15S											40S			70

Total number of acres irrigated 70

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.
see attached sheet or None ()

14. Remarks:
#3rd diversion point is the junction of the Curren Ditch with the North Pipe at SE 1/4 NW 1/4 SEC 25, 7S, 13E. Water is carried through the pipe to \$4th diversion point at TAP #1, SW 1/4, NE 1/4, SEC 26, 7S, 13E. Diversion #5 is TAP #2, which is not fixed but is utilized at several points along pipeline. Stock water use is unlimited in return for right-of-way granted in the early 1900's for the North Pipe. Use and placement of the two 2" taps is outlined in the enclosed copy

FLYING TRIANGLE
Last Name BRATLSFORD Ident No. _____
of the 1956 agreement between Wilkins and Brailsford.

Copies: White - State, Yellow - Claimant

ENCLOSURE
FEB 07 1993

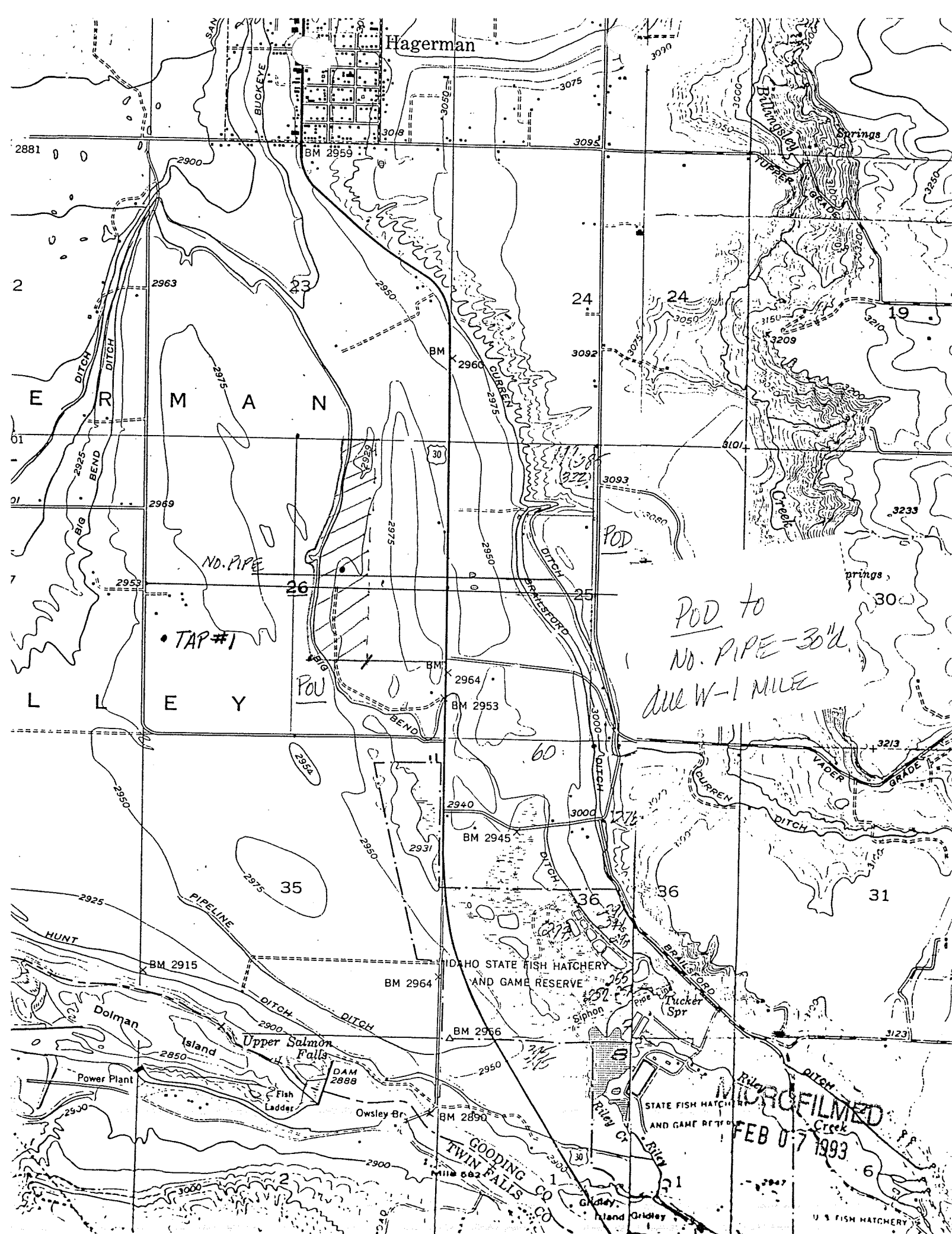
(Cont. #14 -- Remarks)

The stock water usage is based on the Department's figures in the appendixes showing rates of watering based on type of stock.

The amount shown in the claim is the amount figured from the table as the quantity beneficially used.

The place of use of the stock water is shown to be the same as the acres irrigated.

MICROFILMED
FEB 07 1993



VALL

HORIZONTAL ROAD
LINE IS APPROX.
LOCATION - NORTH
PIPE. CONVEYING
FROM BURKAN DITCH
TO PCU IN 26.

1745-1750 1751-1755

Buckeye Ranch

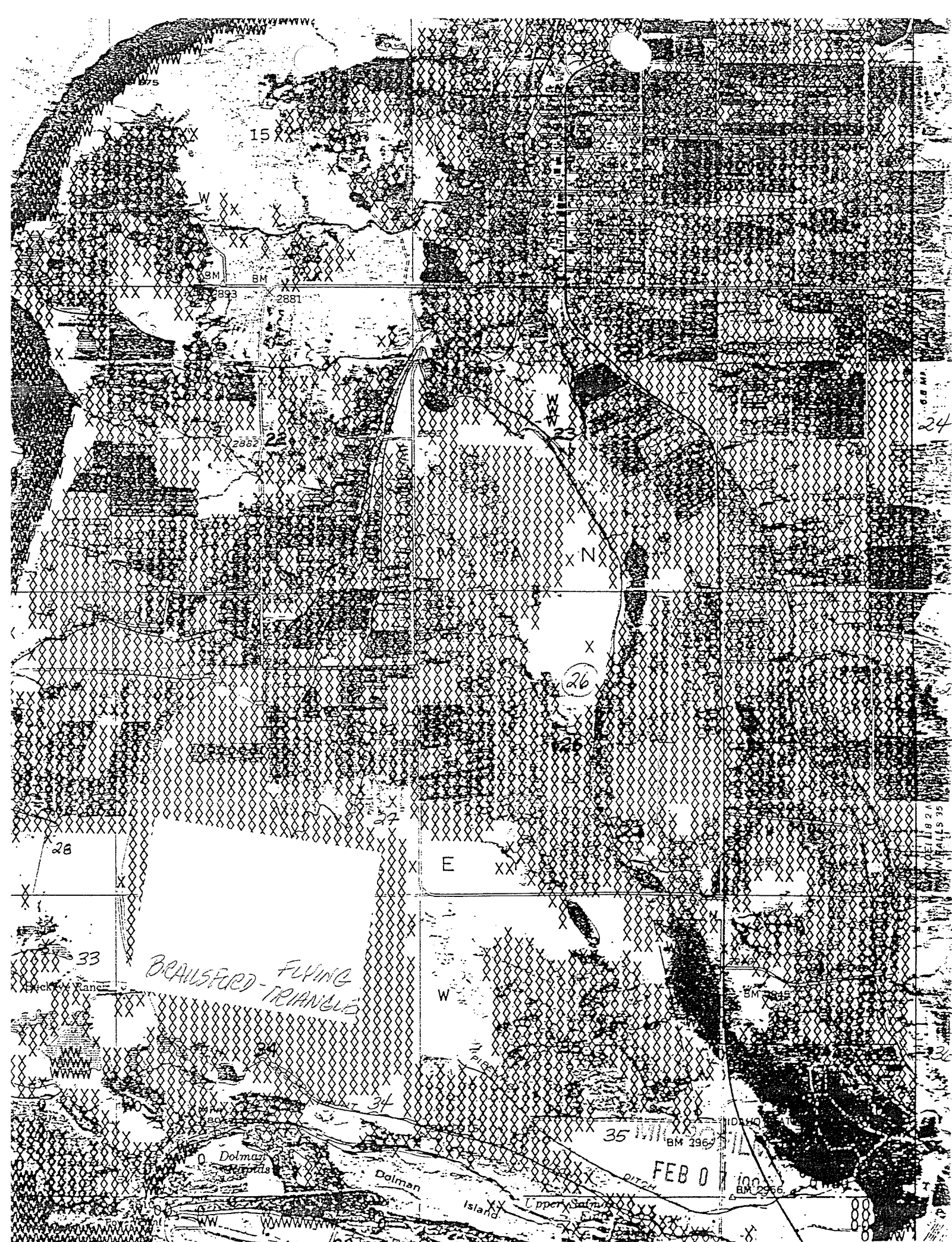
2882

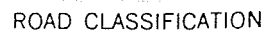
34

1997

Utah

289





deceased, at the time of her death, and also all the right, title and interest
said deceased by operation of law or otherwise may have acquired other than
of the said Leona M. Edwards at the time of her death, in and to all
in Gooding County, Idaho and described as follows:

(S2.7) To
belonging
To have
with the appur
over.
In witness where
hereunto set her hand

In witness where
hereunto set her hand

STATE OF IDAHO)
(sr.
County of Gooding)

undersigned, a notary public in and
appeared Jeremia Shaw, known to me to
instrument, as the executrix of the estate
to me that she, as such executrix, executed

In witness whereof, I have hereunto set
said County of Gooding, the day and year in this

(NOTARY SEAL)

CECIL
Notary Public
Gooding, Idaho

Filed for record at the request of Roy C. Miller, at 1:30 P.M., March 14, 1956.

Eert Bowler, Ex-Officio Recorder

By Dorothy Robbins, Deputy.

Fees \$1.50
FRODO LEAD

No. 129646

1-23-56

THIS INDENTURE, Made this 23rd day of January in the year of our Lord one thousand nine
hundred and fifty six, between Wilkins & Co., Ltd., a co-partnership consisting of Mona F.
Wilkins and Jess Egurrola, individually, Jess Egurrola as trustee of Lillian Wilkins Trusts
#2, 3, 4 & 5, Jess Egurrola as trustee of Russell Wilkins Trusts #5 & 6, Jess Egurrola
as trustee of Mona F. Wilkins Trusts #3 & 4, and John Vandenberg as trustee of Russell
Wilkins Estate, of Denver, County of Denver, State of Colorado, the party of the first part,
and Brailsford Brothers, Inc., a corporation, of Hagerman, County of Gooding, State of
Idaho, the party of the second part.

WITNESSETH, That the said party of the first part, for and in consideration of the sum
of Ten Dollars (\$10.00) and other good considerations, lawful money of the United States of

#7 EXHIBIT B

America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to its successors and assigns forever, all of the following described real estate, situated in the County of Gooding, State of Idaho, to-wit:

Beginning at the Southwest (SW) corner of the Northeast quarter of the Southeast quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Twenty-six (26), thence North and parallel with the East line of Section Twenty-six (26) to the Northwest (NW) corner of the Northeast quarter of the Northeast quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Twenty-six (26), thence west along the North line of said section Twenty-six (26), to a point which is 30 feet West of the west bank of the Big Bend ditch, thence Southerly along a line running 30 feet west of the west bank of said Big Bend ditch to a point which is directly west of the Southwest (SW) corner of the Northeast quarter of the Southeast quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Twenty-six (26), thence East and parallel with the North line of Section Twenty-six (26), to the point of beginning, all in Section twenty-six (26), Township Seven (7) South, Range Thirteen (13) East Boise Meridian, containing approximately 70 acres.

Together with 87 $\frac{1}{2}$ shares of stock in the Big Bend Mining & Irrigation Co., together with all minerals and mineral rights owned by parties of the first part.

Reserving and excepting right of way for maintenance and upkeep of existing 24-inch pipe line extending easterly and westerly across said lands.

SEE PARAGRAPH (b) on reverse side hereof.

(b) The right to take water from a twenty-four (24) inch pipeline, presently known as the "North Pipe" by means of a two inch tap presently in existence upon the portion of said pipeline traversing the last above described parcel of realty and the right to take water from an additional two inch tap to be installed in said 24 inch pipeline at the point thereon to be designated by Brailsfords, provided: that the right to take water from the two taps above mentioned is hereby granted to Brailsfords for as long as the present pipeline or any pipeline installed in substitution or in lieu thereof, by Wilkins or its successors or assigns, is in existence and upon the refusal of Wilkins or its successors or assigns to permit Brailsfords to withdraw such water therefrom, the latter shall have the right to summarily remove any such pipeline from the premises, and provided further, that it is understood and agreed that Wilkins assumes no obligation to maintain said pipeline, or any other pipeline across said premises and in no case guarantees that there shall be water in said pipeline at any time.

(\$11.00 U.S.I.R. STAMPS ATTACHED AND CANCELLED)

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its successors and assigns forever and the said party of the first part, and its successors, the said premises in the quiet and peaceable possession of the said party of the second part, its successors, and assigns, against the said party of the first part, and its successors, and against all and every person and persons whatsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said party of the first part has hereunto set its hand and seal the day and year first above written.

By JESS ROBERTS JR. As trustee of
Lillian Wilkins Trusts #2, 3, 4 & 5
By JESS ROBERTS JR. As trustee of Russell
Wilkins Trusts #6, 7 & 8.
By JESS ROBERTS JR. As trustee of Mona F.
Wilkins Trusts #9, 10 & 11.

WILKINS & CO., Ltd.,
a co-partnership, (Seal) MPW
By MONA F. WILKINS (Seal) JE
By JESS ROBERTS JR. (Seal) JV
By JOHN F. WILKINS
Attorney-in-Fact of Russell Wilkins Estate

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

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 _____ Secretary _____
Title

of Flying Triangle, Inc. _____, that I have signed the foregoing
Organization

document in the space below as _____ Secretary _____ of Flying Triangle, Inc. _____
Title Organization

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

Signature of Authorized Agent W. N. Brailsford _____

Title and Organization Secretary, Flying Triangle, Inc. Date 9-1-88

State of Idaho/or Idaho)
County of Gooding) 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

MICROFILMED
FEB 07 1993

Last Name W. N. BRAILSFORD Ident. Number _____

Copies White-State, Yellow-Claimant