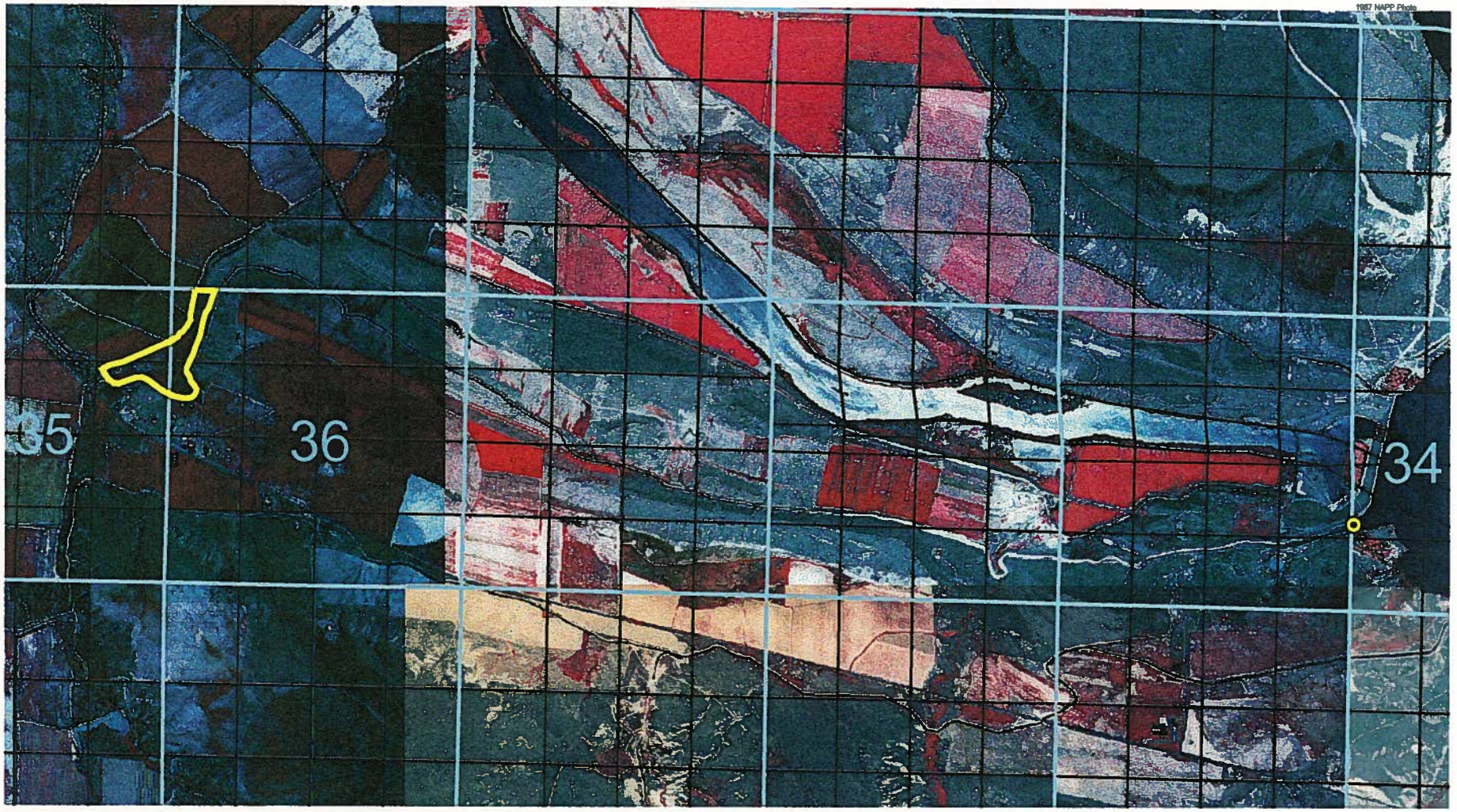
Idaho Department of Water Resources



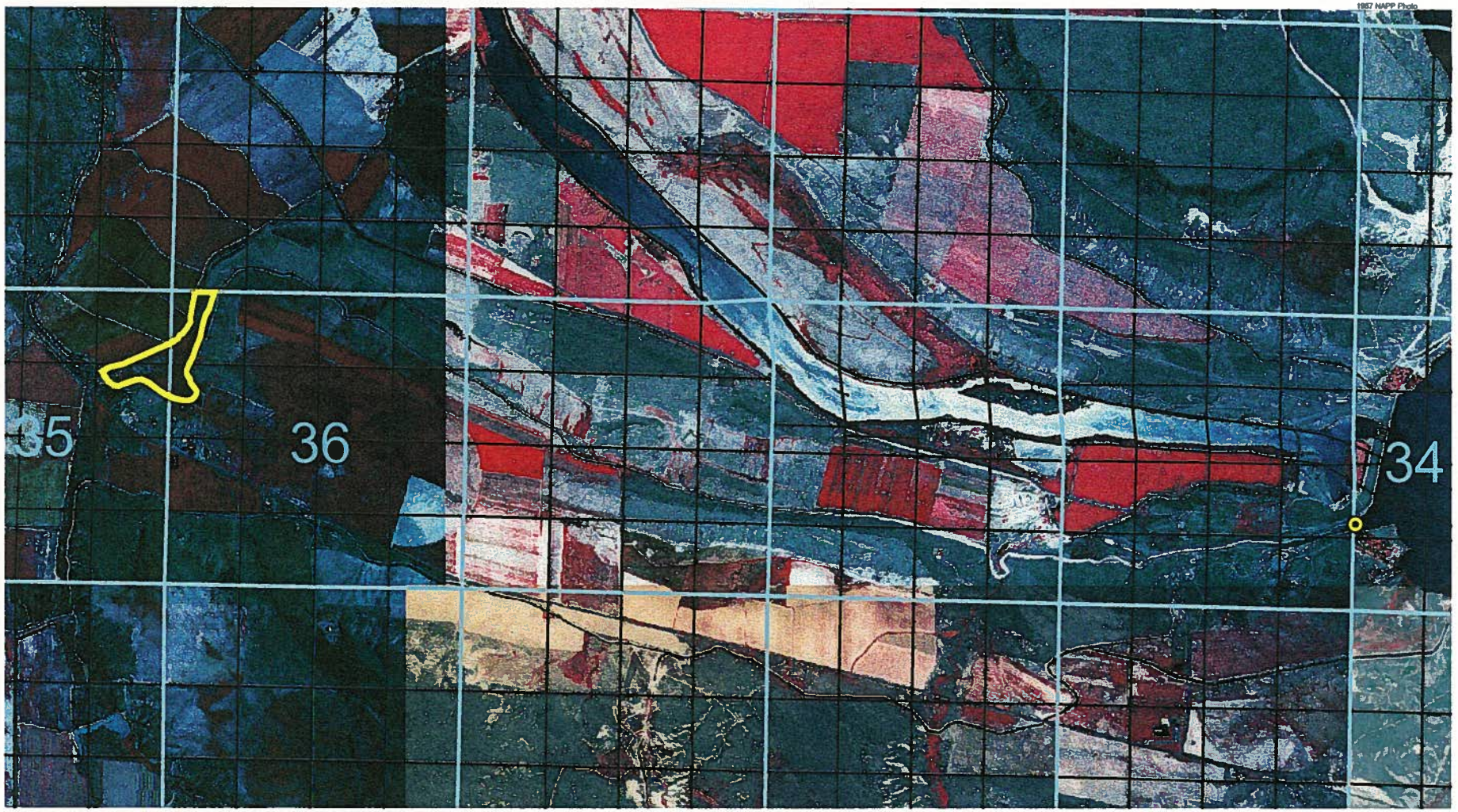
0 1 2 3 4 5 Miles

Claim Number: 02-10031
Legal: T05S, R04E, S34 &
T05S, R03E, S35 & S36
Reviewed By: JLD 8/5/05

Point of Diversion
Place of Use
Section Lines
Quarter Quarter Lines

N

Idaho Department of Water Resources



0 1 2 3 4 5 Miles

Claim Number: 02-10031
Legal: T05S, R04E, S34 &
T05S, R03E, S35 & S36
Reviewed By: JLD 8/5/05

Point of Diversion
Place of Use
Section Lines
Quarter Quarter Lines

N

08/05/2005

IDAHO DEPARTMENT OF WATER RESOURCES

PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 2-10031

NAME AND ADDRESS: W KELLY DARLINGTON
256 HARTLEY DR
HELENA MT 59601

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER

QUANTITY: 0.500 CFS

PRIORITY DATE: 02/15/1925

POINT OF DIVERSION:

T05S R04E S34 SWNWSW Lot 10 Within OWYHEE County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03/15 10/31	0.500 CFS

PLACE OF USE: IRRIGATION Within OWYHEE County

T05S R03E S35	NENE	4.0	T05S R03E S35	SENE	10.0
T05S R03E S36	NWNW	10.0	T05S R03E S36	SWNW	5.0

29 ACRES TOTAL

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

2-10031
Proofs: Permit 15608 file includes a map showing land between Shoofly Creek and Extension/Mutual Canal as being irrigated.
Likely same priority date as 2-56.
Owner: tax lots match claimant
Priority date: claimed 6/1/1912, was originally part of land that should have been included in basin 51 1925 decree, therefore priority date can not be recommended prior to Feb 15, 1925.
POD: Idaho Power Canal as per 4/10/1952 Idaho Power agreement for Shoofly Farms/Lee and Holtzman
Source: Snake River via Idaho Power Canal
POU: 1974 aerial photography, land list in field exam for previous license
Use: Irrigation as per aerial photo, etc
Period: 3/15 -- 10/31 as per Idaho Power agreement
Quantity: original rights to 1 cfs as per Idaho Power agreement (covers claim for 0.5 cfs), claim for less than 0.02 cfs/acre

71+4027+7344 = .02 cfs/acre

APR - 2242

71 - Holly & Reg Meaker
7/1/1964
418 acres
.5 cfs
0.0012 cfs/acre
Benificial Use

4027 - Holly & Reg Meaker
5/1/1962
418 acres
5 cfs
0.012 cfs/acre
Benificial Use

7344 - Holly & Reg Meaker
5/6/1981
418 acres
2.86 cfs
0.0068 cfs/acre
License

2242 - Nice View Investors Farms
11/18/1963
320 acres
6.38 cfs
1595 AFY
.0199 cfs/acre
4.98 AFY/acre
License

56 - Alvin & Layean Dalley & Lisa & Patrick Field
6/1/1912
412 acres
8.84 cfs
.0215 cfs/acre
Benificial Use

.02 cfs/acre = 8.24 cfs

10031 - Kelly Darlington
6/1/1912
29 acres
.5 cfs
.0172 cfs/acre
Benifrial Use

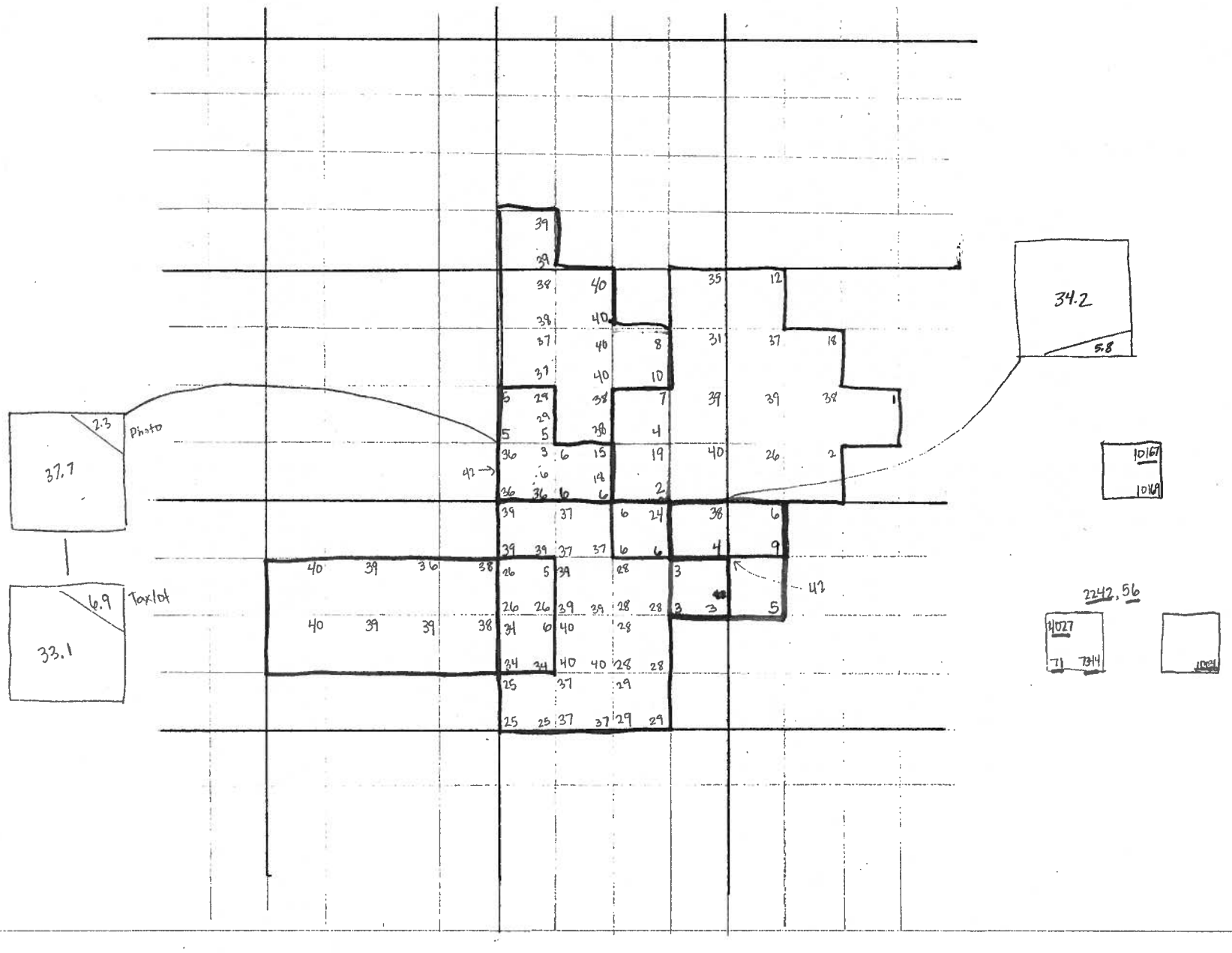
10167 - Howard J Field
5/2/1967
287 acres
4.44 cfs
0.155 cfs/acre
Benificial Use

Split from 2-00053 with 2-10168

10169 - Howard J Field
7/15/81
301 acres
6.02 cfs
1505 AFY
.02 cfs/acre
5 AFY/acre
License

Split from 2-07357 with 2-10170

See original in 2-71-



22-139 100 sheets

Claim #	Diversion	Acres	Priority Date	Basis
2-29	190 cfs	6863	4/1/1952	BU
51-2250 → 2-202A	1.1 cfs	58	6/1/1912	License
51-2250 → 2-202B	.4 cfs	20	6/1/1912	License
→ 2-203	150 cfs	6863	2/22/1904	Decree
2-2034	60 cfs	6863	2/12/1920	License
Claimed as 51-2250F → 2-10141	122.73 cfs	6863	2/22/1904	License
Claimed as 51-2250E → 2-10142	4.98 cfs	6863	2/22/1907	License

203 Decree: Third Court
Grandview Irrigation District vs. Buckaroo Coop. Ditch Co. et al

Right #	Diversion	Acres	Priority Date	Basis
→ 51-1	150 cfs		2/22/1904	Decree
2-2034	60 cfs	6863	2/12/1920	License
51-2250A	2 cfs	138	2/22/1904	License
51-2250B	.47 cfs	33	2/22/1904	License
→ 51-2250C	34 cfs (7-27)	530	2/22/1904	License
51-2250D	115.28 cfs	5787	2/22/1904	License
51-2250E	4.98 cfs	249	2/22/1907	License

51-1 is 2-203
2-2034 is 2-2034
51-2250A + 51-2250B + 51-2250D = 2-10141
51-2250E is 2-10142

Claims
2-202A + 2-202B = 1.5 cfs 6/1/1912
2-29 190 cfs 4/1/52

Rights
51-2250C 34 cfs 2/22/1904

Claim#	Diversion	Acres	Priority Date	Basis
2-56	8.84 cfs 5.89	412	6/1/1912	BU → some acres match w/ 51-2250C
2-202A	1.1 cfs	58	6/1/1912	License
2-202B	.4 cfs	20	6/1/1912	License
		490 acres	4/01/1952	

2- x
y
z

$1.02/Ac 2.95

Right #	Diversion	Acres	Priority Date	Basis
51-2250C	34 cfs 7 cfs irrigation 27 cfs power	530	2/22/1904	License

Original in 2-56

Water Right #	Old #	Priority Date	Signed Date	Owner	Amount	Land List	Split Suffex	Basin 02 #
51-2250	559	2/22/1907	1/23/1924	Grand View Irrigation District	4.98	1	E	02-10142
51-2250	559	2/22/1904	6/19/1918	Grand View Irrigation District	115.28	2	D	
51-2250	559	2/22/1904	11/30/1915	Grand View Irrigation District	96	3	Cancelled	Cancelled
51-2250	559	2/22/1904	11/30/1915	James Garbutt	2	4	A	
51-2250	559	2/22/1904	11/30/1915	Loyal N. Massey	0.4714	5	B	
51-2250	559	2/22/1904	11/30/1915	Grand View Extension Irrigation Co	34	6	C	2-202
51-2250	559	2/22/1904		Grand View Irrigation District	122.73	Claim	F	02-10141

Water Claim #	Prev. Wa	Priority Date	Owner	Amount
02-00202 A	51-2250 (	6/1/1912	Ted & Sandy Cantrell	1.1
			Tracy & Tereasa Silver	
			Gilbert Wallers Farm (Farmers Home Admin)	
02-00202 B	51-2250 (	6/1/1912	Roland G Boatright	0.4
			Shoofly Ranch Inc/Mona L. Spaulding	
			Franklin, Rosanna, & Jennifer Ginn	

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 22, 2004

W KELLY DARLINGTON
256 HARTLEY DR
HELENA MT 59601

RE: Snake River Basin Adjudication (SRBA)
Notice of Claim to a Water Right #2-10031

Dear Claimant:

We have processed the change in ownership of the Notice of Claim to a Water Right referenced above for your property in Owyhee County. Thank you for your patience.

Enclosed is a copy of this water right claim. Please retain this copy for your file, and refer to this record number in any future inquiries or correspondence.

If your mail delivery address changes in any form, please contact us in writing so we can update our records to assure you receive important notices concerning your claim.

Sincerely,

Sally Sherman
Technical Records Specialist
Adjudication Bureau

SS:region
Enclosure:
Copy of Notice of Claim Referenced Above

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 2-10031
Date Received: 4/16/1990
Receipt No: C016304
Received By:

COPY FOR YOUR FILE

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

W KELLY DARLINGTON Phone: (406)449-0640

256 HARTLEY DR
HELENA MT USA 59601

2. Date of Priority: 06/01/1912

3. Source: SNAKE RIVER Trib. to: COLUMBIA RIVER

4. Point of Diversion:

Township	Range	Section	1/4	of 1/4	of 1/4	Lot	County	Type
05S	04E	34	SW	NW	SW	10	OWYHEE	

5. Description of diverting works:

CJ STRIKE DAM, POWER CANAL, HEADGATE AND DITCHES

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	3/15	10/31	0.5	

7. Total Quantity Appropriated is:
0.5 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
05S	03E	35	NE	NE		IRRIGATION	4
			SE	NE		IRRIGATION	11

					Section Acres	15
05S	03E	36	NW	NW	IRRIGATION	9
			SW	NW	IRRIGATION	5
					Section Acres	14
					Total Acres	29

11. Place of use in counties: OWYHEE

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

THIS PROPERTY WAS A PART OF THE INITIAL SHOOFLY FARMS RANCH.

15. Basis of Claim: Beneficial Use

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

RECEIVED
APR 26 2004
Department of Water Resources

DIRK KEMPTHORNE
Governor
KARL J. DREHER
Director

April 8, 2004

KELLY DARLINGTON
256 HARTLEY DR
HELENA MT 59601

RE: Snake River Basin Adjudication (SRBA)
Notice of Change of Water Right Ownership
Notice of Claim to a Water Right #2-10031

Dear Claimant:

We are returning the ownership change form you submitted for your property in Owyhee County. Before we can process this ownership change, we need your assistance.

Item 2c. is required. Please submit a USDA Farm Service Agency aerial photo with the irrigated acres outlined and points of diversion clearly marked.

We do not have!

Please sign the ownership change form at Item 4.

Please contact me if you have any questions at 1/800-451-4129.

Sincerely,

Sally

Sally Sherman
Technical Records Specialist
Adjudication Bureau

SS:region
Enclosure:
Incomplete Notice of Change in Water Right Ownership

Form 42-248(a) 1409(6) July, 2000

RECEIVED
APR 20 2004
Department of Water Resources

RECEIVED
MAR 29 2004
WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are included at the end of this form. Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split

All Attached

Please call 406-449-0640 if you have questions

2. The following **REQUIRED** information must be submitted with this form:

A. n/a The appropriate **FILING FEE.** See instructions for fee amounts.

B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION.**

C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions): PLAT OF PROPERTY or SURVEY MAP clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

OR

If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The AERIAL PHOTO should be submitted in place of the PLAT OF PROPERTY or SURVEY MAP.

3. Name and Address of Former Owner/Claimant(s) _____

4. New Owner/Claimant(s) w Kelly Darby

Name Connector (Check one): [ ] and, [ ] or, [ ] and/or

New Mailing Address _____

City, State and ZIP Code _____

New Telephone Number (406) - 449 - 0640

5. Date you acquired the property _____

OR to change Owner 4/21/04

6. **If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7.** If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT
(If the right(s) will not be split, skip this area and proceed to item 7)

Water Right and/or Adjudication Claim Number _____

Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation		
Stock		
Domestic		
Other _____		
Total		

DESCRIPTION OF YOUR PORTION OF WATER RIGHT
(If the right(s) will not be split, skip this area and proceed to item 7)

Water Right and/or Adjudication Claim Number _____

Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation		
Stock		
Domestic		
Other _____		
Total		

7. Signature of New Owner(s) or Claimant(s) _____
(include title if applicable)

_____

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only

Received by _____ Date _____ Fee _____

Receipted by _____ Date _____ Receipt No. _____

Processed by ashrpm AJ Date 4-22-04 WR _____ Date _____

Legal Description

Exhibit "A"

A tract of land situate in the NE1/4 of Section 35 and the NW1/4 of Section 36, T5S, R3E, B.M., Owyhee County, Idaho, more particularly described as follows:

BEGINNING at the Quarter corner common to Section 35 and 36; thence
North along the Section line common to said Sections 35 and 36 a distance of 330.00 feet to the REAL POINT OF BEGINNING; thence continuing
North along said Section line a distance of 374.73 feet; thence
North 52° 22' 19" West a distance of 467.93 feet; thence
South 87° 22' 14" West a distance of 733.74 feet; thence
North 32° 05' 53" West a distance of 284.13 feet to a point in the center line of Shoofly Creek; thence
North 67° 11' 21" East along the center of Shoofly Creek a distance of 1471.88 feet; thence
North 43° 22' 46" East along said center of Shoofly Creek a distance of 475.30 feet; thence
North 12° 46' 33" East along said center of Shoofly Creek a distance of 514.14 feet to a point on the North line of said Section 36; thence
North 89° 55' 26" East along said North Section line a distance of 316.05 feet to a point on the center of Shoofly Canal; thence
South 18° 45' 17" West along said center of Shoofly Canal a distance of 1449.34 feet; thence
South 26° 08' 06" East along said center of Shoofly Canal a distance of 499.24 feet; thence
East a distance of 50.00 feet; thence
South 00° 17' 14" West a distance of 464.72 feet; thence
North 89° 56' 00" West a distance of 660.00 feet to the REAL POINT OF BEGINNING.

Together with a permanent, perpetual and general easement for all purposes more particularly described as follows, to-wit:
A tract of land situate in the NW1/4 of Section 36, T5S, R3E, B.M., Owyhee County, Idaho, more particularly described as follows:

BEGINNING at the Quarter Corner common to Sections 35 and 36; thence
North along the section line common to Sections 35 and 36 a distance of 330.00 feet; thence
South 89° 56' 00" East a distance of 660.00 feet; thence
North 00° 17' 14" East a distance of 464.72 feet to the REAL POINT OF BEGINNING; thence
South 62° 54' 46" East a distance of 410.00 feet to a point 10.00 feet Southeast of existing well. There will be 7.50 feet to the North of and to the South of said line to give general access to said well for all purposes.

COPY

RECORDATION REQUESTED BY:
Mountain West Bank, N.A.
CEDAR STREET
1225 CEDAR STREET
PO BOX 6013
HELENA, MT 59604

WHEN RECORDED MAIL TO:
Mountain West Bank, N.A.
CEDAR STREET
1225 CEDAR STREET
PO BOX 6013
HELENA, MT 59604

SEND TAX NOTICES TO:
Mountain West Bank, N.A.
CEDAR STREET
1225 CEDAR STREET
PO BOX 6013
HELENA, MT 59604

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

MORTGAGE

MAXIMUM LIEN. The lien of this Mortgage shall not exceed at any one time $41,575.00.

THIS MORTGAGE dated August 1, 2001, is made and executed between W. KELLY DARLINGTON, whose address is 256 HARTLEY, HELENA, MT 59601 (referred to below as "Grantor") and Mountain West Bank, N.A., whose address is 1225 CEDAR STREET, PO BOX 6013, HELENA, MT 59604 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, grants, bargains, sells and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in OWYHEE County, State of Idaho:

SEE EXHIBIT "A" ATTACHED

The Real Property or its address is commonly known as HC 85, GRANDVIEW, ID 83624.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

GRANTOR'S WAIVERS. Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that: (a) this Mortgage is executed at Borrower's request and not at the request of Lender; (b) Grantor has the full power, right, and authority to enter into this Mortgage and to hypothecate the Property; (c) the provisions of this Mortgage do not conflict with, or result in a default under any agreement or other instrument binding upon Grantor and do not result in a violation of any law, regulation, court decree or order applicable to Grantor; (d) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (e) Lender has made no representation to Grantor about Borrower (including without limitation the creditworthiness of Borrower).

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Mortgage, Borrower shall pay to Lender all Indebtedness secured by this Mortgage as it becomes due, and Borrower and Grantor shall strictly perform all Borrower's and Grantor's obligations under this Mortgage.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Borrower and Grantor agree that Borrower's and Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property. The following provisions relate to the use of the Property or to other limitations on the Property.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in

effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans Wit Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinior Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonabl satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon nor leave unattended the Property. Grantor shall do all other acts, in addition to those act set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgag upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale o transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whethe voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greate than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Rea Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Idaho law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charge and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest o Lender under this Mortgage, except for the Existing Indebtedness referred to in this Mortgage or those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficien to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale unde the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and sha authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services or materials and the cost exceeds $5,000.00. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lende that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Mortgage:

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive genera liability insurance in such coverage amounts as Lender may request with Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of ten (10) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federa Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds $5,000.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or no Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair o restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Unexpired Insurance at Sale. Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Mortgage at any trustee's sale or other sale held under the provisions of this Mortgage, or at any foreclosure sale of such Property.

Compliance with Existing Indebtedness. During the period in which any Existing Indebtedness described below is in effect, compliance with the insurance provisions contained in the instrument evidencing such Existing Indebtedness shall constitute compliance with the insurance provisions under this Mortgage, to the extent compliance with the terms of this Mortgage would constitute a duplication of insurance requirement. If any proceeds from the insurance become payable on loss, the provisions in this Mortgage for division of proceeds shall apply only to that portion of the proceeds not payable to the holder of the Existing Indebtedness.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Mortgage or any Related Documents, including but not limited to Grantor's failure to comply with any obligation to maintain Existing Indebtedness in good standing as required below, or to discharge or pay when due any amounts Grantor is required to discharge or pay under this Mortgage or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Mortgage also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Mortgage:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in the Existing Indebtedness section below or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws ordinances, and regulations of governmental authorities.

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Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full.

XISTING INDEBTEDNESS. The following provisions concerning Existing Indebtedness are a part of this Mortgage:

Existing Lien. The lien of this Mortgage securing the Indebtedness may be secondary and inferior to an existing lien. Grantor expressly covenants and agrees to pay, or see to the payment of, the Existing Indebtedness and to prevent any default on such indebtedness, any default under the instruments evidencing such indebtedness, or any default under any security documents for such indebtedness.

No Modification. Grantor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Mortgage by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Grantor shall neither request nor accept any future advances under any such security agreement without the prior written consent of Lender.

ONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Mortgage:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

MPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees nd charges are a part of this Mortgage:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the Indebtedness secured by this Mortgage; (2) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the Indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Borrower.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Borrower's and Grantor's obligations under the Note, this Mortgage, and the Related Documents, and (2) the liens and security interests created by this Mortgage on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Borrower pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:

Payment Default. Borrower fails to make any payment when due under the Indebtedness.

Default on Other Payments. Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Other Defaults. Borrower or Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Mortgage or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower or Grantor.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or Grantor or on Borrower's or Grantor's behalf under this Mortgage or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Mortgage or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The death of Borrower or Grantor, the insolvency of Borrower or Grantor, the appointment of a receiver for any part of Borrower's or Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Borrower's or Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower or Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower or Grantor gives Lender written notice of the creditor or forfeiture proceeding and

deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Existing Indebtedness. The payment of any installment of principal or any interest on the Existing Indebtedness is not made within the time required by the promissory note evidencing such Indebtedness, or a default occurs under the instrument securing such Indebtedness and is not cured during any applicable grace period in such instrument, or any suit or other action is commenced to foreclose any existing lien on the Property.

Breach of Other Agreement. Any breach by Borrower or Grantor under the terms of any other agreement between Borrower or Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Borrower or Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the Indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at it option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Borrower or Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Judicial Foreclosure. Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

Nonjudicial Sale. If permitted by applicable law, Lender may foreclose Grantor's interest in all or in any part of the Personal Property or the Real Property by non-judicial sale.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

Sale of the Property. To the extent permitted by applicable law, Borrower and Grantor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default, or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or Borrower and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the Indebtedness.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

NOTICES. Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Mortgage:

Amendments. This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

Governing Law. This Mortgage will be governed by, construed and enforced in accordance with federal law and the laws of the State of Montana, except and only to the extent of procedural matters related to the perfection and enforcement of Lender's rights and remedies against the Property, which matters shall be governed by the laws of the State of Idaho. However, in the event that the enforceability or

validity of any provision of this Mortgage is challenged or questioned, such provision shall be governed by whichever applicable state or federal law would uphold or would enforce such challenged or questioned provision. The loan transaction which is evidenced by the Note and this Mortgage has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Montana.

Joint and Several Liability. All obligations of Borrower and Grantor under this Mortgage shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all references to Borrower shall mean each and every Borrower. This means that each Borrower and Grantor signing below is responsible for all obligations in this Mortgage.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Mortgage shall not affect the legality, validity or enforceability of any other provision of this Mortgage.

Merger. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Successors and Assigns. Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Mortgage.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Idaho as to all Indebtedness secured by this Mortgage.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Mortgage. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means W. KELLY DARLINGTON and LISA A. DARLINGTON, and all other persons and entities signing the Note in whatever capacity.

Default. The word "Default" means the Default set forth in this Mortgage in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

Existing Indebtedness. The words "Existing Indebtedness" mean the Indebtedness described in the Existing Liens provision of this Mortgage.

Grantor. The word "Grantor" means W. KELLY DARLINGTON.

Guaranty. The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as provided in this Mortgage.

Lender. The word "Lender" means Mountain West Bank, N.A., its successors and assigns.

Mortgage. The word "Mortgage" means this Mortgage between Grantor and Lender.

Note. The word "Note" means PROMISSORY NOTE#60017313. The maturity date of this Mortgage is August 1, 2016.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

X _____
W. KELLY DARLINGTON, Individually

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Montana)
) SS
COUNTY OF Lewis + Clark)

On this 1st day of August, in the year 20 01, before me Darcy R. McLean, a notary public in and for the State of ~~Idaho~~ MONTANA, personally appeared W. KELLY DARLINGTON, known or identified to me (or proved to me on the oath of Same), to be the person whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same.

Darcy R. McLean Residing at Helena
Notary Public for ~~Idaho~~ MONTANA

My commission expires 10-10-02

LASER PRO Lending, Ver. 5.17.01.05 Copr. Harland Financial Solutions, Inc. 1997, 2001. All Rights Reserved. - MT L:\CFI\LPL\G03.FC TR-3201 PR-COMM3

NOTICE: HOMESTEAD NOT EXEMPT

I understand and acknowledge that the real property described in the mortgage or other encumbrance which I signed today is not exempt from execution as a homestead because under 70-32-202 (MCA) it is subject to execution or forced sale to satisfy a judgment obtained on a debt secured by a mortgage or other encumbrance on the premises.

By: W. Kelly Darlington
W. KELLY DARLINGTON

Dated this 1st day of August, 2001.

On this 1st day of August, in the year 2001, before me Darcy R. McLean, a notary public in and for the State of Montana, personally appeared W. Kelly Darlington, known or identified to me (or proved to me on the oath of Same), to be the person whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same.

Darcy R. McLean Residing at Helena
Notary Public for Montana

My commission expires 10-10-02

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

July 2, 2003

RECEIVED
MAR 29 2004
WATER RESOURCES
WESTERN REGION

RECEIVED
APR 8 2004
Department of Water Resources

KELLY DARLINGTON
256 HARTLEY DR
HELENA MT 59601

RE: Snake River Basin Adjudication (SRBA)
Notice of Claim to a Water Right #2-10031

Dear Claimant:

We have been advised you may be the owner of the property and water right referenced above. Before we can modify our records to reflect your ownership of the water right, we require the enclosed Notice of Change of Water Right Ownership form be submitted. We are presently investigating claims in your area, so time is of the essence.

I have enclosed a copy of the water right claim referenced above for your information. Please return the form with the map and deed to **Scott King** at this address.

Since this claim is still pending in the SRBA, ***there is no fee*** to change the ownership.

Please call me toll-free at 1-800/451-4129 if you have any questions.

Sincerely,

Sally

Sally Sherman
Technical Records Specialist
Adjudication Bureau

SS:region
Enclosures:
Copy of Notice of Claim to a Water Right #2-10031
Form 42-248/42-1409(6)

IDWR - WESTERN REGION

CONTRACTOR: Karan Waters

CLAIM/ID: 02-10031 Date: 9-9-02

	TNS	RNG	SEC	NE				NW				SW				SE				Sum
				NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
Claim	5S	3E	35	4			11													15
GIS				4.1			9.8													13.9
Claim			36						9	5										14
GIS									10	5.1										15.1
Claim																				
GIS																				
Claim																				
GIS																				

Number of POD's 1

Total Claimed Acres: 29

Total GIS Acres: 29

Overlapping POU Claim #'s:

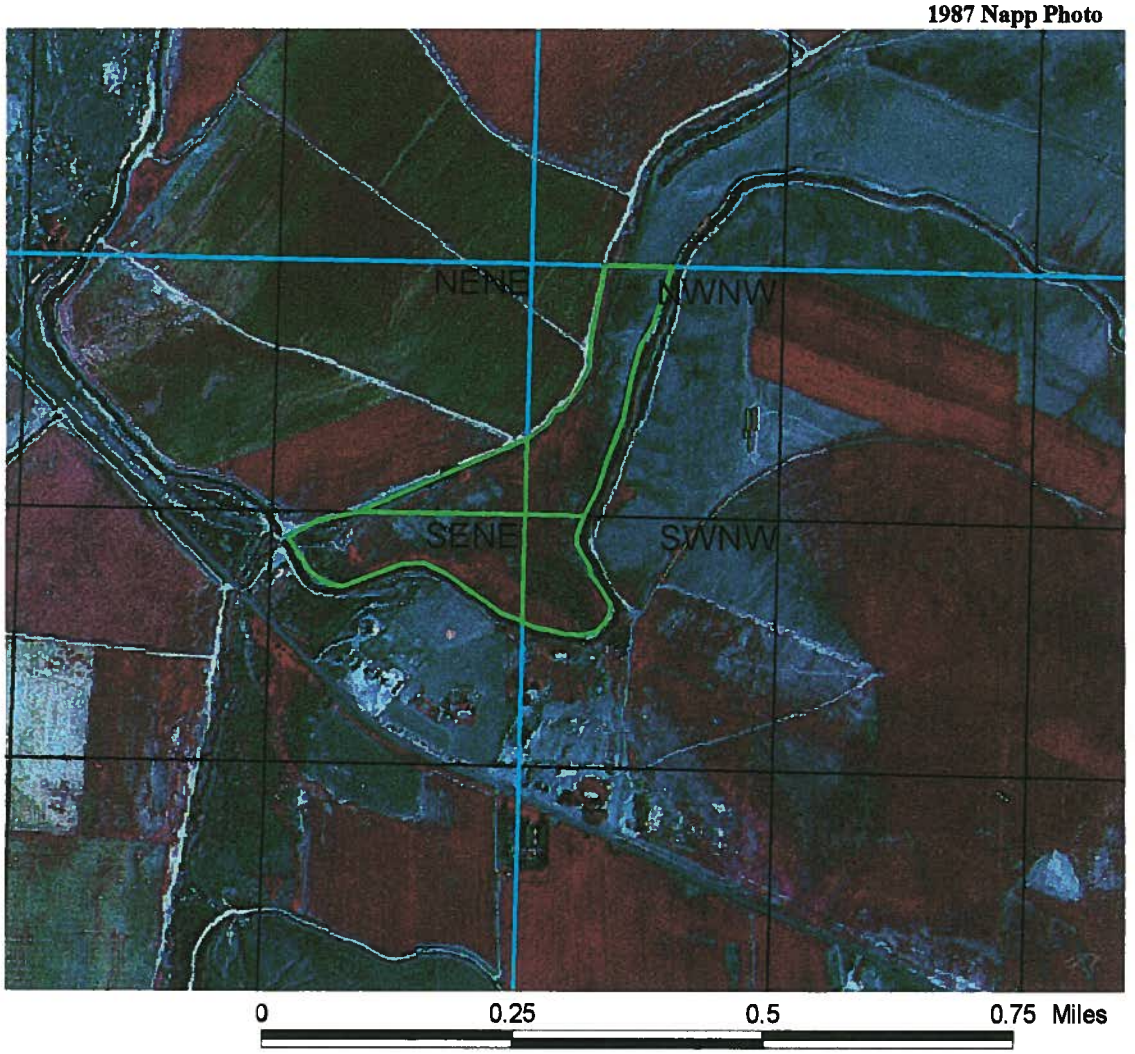
COMMENTS:

County data indicates claimant doesn't own property. POU per claim map.

POD estimated per claim legal.

Idaho Department of Water Resources

Claim Number: 02-10031
Legal: T05S, R03E, S35, 36
Reviewed By:



Point of Diversion
(Located outside of view)

Place of Use

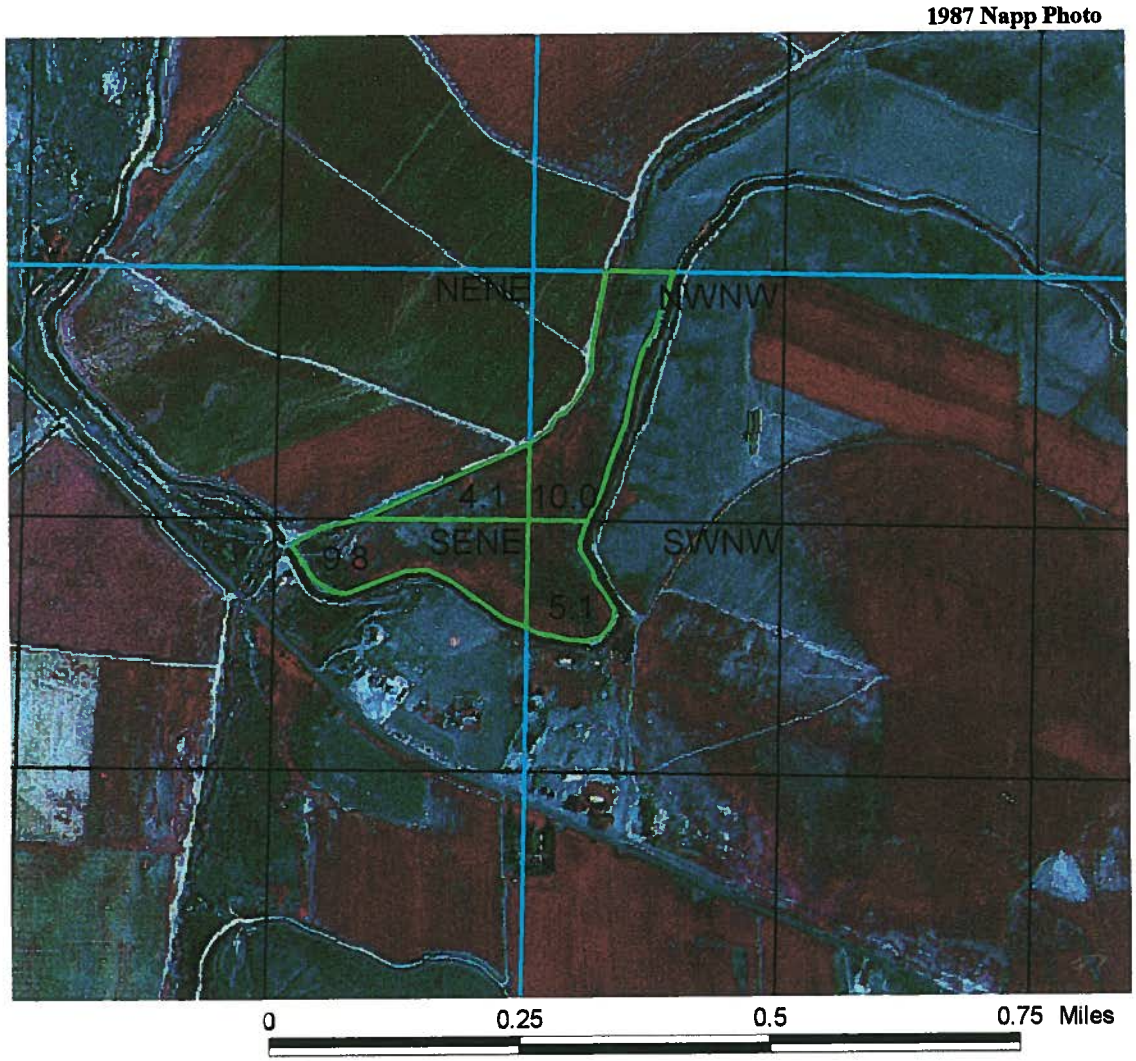
Section Lines

Quarter Quarter Lines

N
W
E
S

Idaho Department of Water Resources

Claim Number: 02-10031
Legal: T05S, R03E, S35, 36
Reviewed By:

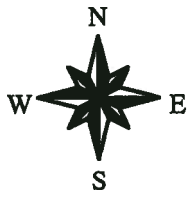


Point of Diversion
(Located outside of view)

Place of Use

Section Lines

Quarter Quarter Lines



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: **A02-10031**
Date Received: 4/16/1990
Receipt No: C046304
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: TRACY SILVER 208-834-2270
   Address: HC 85 BOX 327
   GRAND VIEW, ID 83624

2. Date of Priority: JUN 01, 1912

3. Source: SNAKE RIVER Trib. to: COLUMBIA RIVER

4. Point of Diversion:

Township	Range	Section	1/4	of 1/4	of 1/4	Lot	County
05S	04E	34	SW	NW	SW	10	OWYHEE

5. Description of diverting works:
   CJ STRIKE DAM, POWER CANAL, HEADGATE AND DITCHES

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	10/31	0.500		

7. Total Quantity Appropriated is:
   0.500 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 101.5 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4	of 1/4	Lot	Use	Acres
05S	03E	35	NE	NE		IRR	4.0
			SE	NE		IRR	11.0
						Section Acres	15.0

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AUG 1 0 1992

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
05S	03E	36	NW	NW		IRR	9.0
			SW	NW		IRR	5.0
						Section Acres	14.0
						Total Acres	29.0

11. Place of use in counties: OWYHEE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:
THIS PROPERTY WAS A PART OF THE INITIAL SHOOFLY FARMS RANCH.

15. Basis of Claim: BENEFICIAL USE

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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 X 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): Tracy D. Silver Date: 4/16/90

_____ Date: _____

State of Idaho)
) SS.
County of Ada)

Subscribed and sworn (or affirmed) before me this 16 day of April 19 90

Notary Public

Seal

Residing at Boise, ID

My Commission Expires June 10, 1994

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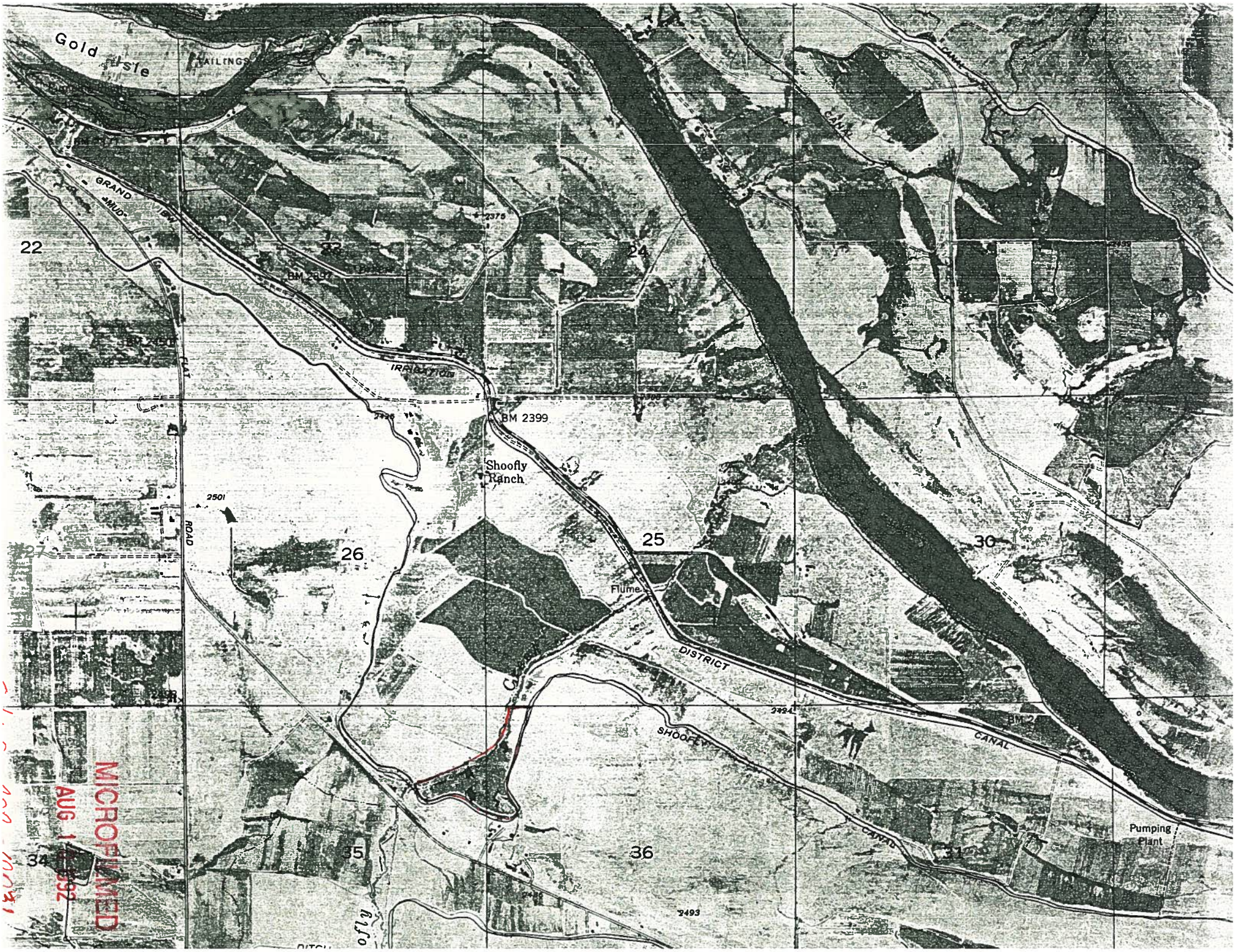
AUG 1 0 1992



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AUG 1 1992

Form 42-1409(10)-1
5/89

Date Received 4-16-90 ~~11/20/89~~

State of Idaho
Department of Water Resources
REQUEST FOR EXTENSION OF TIME TO FILE ADJUDICATION CLAIM(S)

The Idaho Department of Water Resources will consider this form as a request by the claimant for an additional period of time in which to file claim(s) beyond the 90 days allowed by Section 42-1409(10), Idaho Code.

Tracy G. or Teresa L. Silver (208) 834-2270
Name of Claimant Phone Number

HC 85 Box 327 Grand View Id. 83624
Mailing Address City State Zip

Owyhee
County(s) where place of use is located Date claim originally due

Identify water right(s) for which extension is requested

State why an extension of time is requested explaining how a diligent effort has been made to meet the deadline:

We purchased the property after the Owyhee County deadline for filing. local irrigation company informed us that our property (rights) had been included with Grand View Mutual, when with further research I found that they were not filed.

Claimant requests an extension to April 20, , 19 90

Tracy G. Silver April 16 , 19 90
Signature Date of request

Owner
Title

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

The above request for extension of time is hereby [X granted] [denied] for the following reasons:

and if granted the filing deadline is extended to April 16 19 90

Signed this 19 day of May , 19 90

Director or his designated agent
DAVID B. SHAW

Mail to: Idaho Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706

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AUG 1 0 1992

4/5/1989 SRBA CLAIMS RECEIVING CHECKLIST #2

CLAIMANT'S NAME Silver CLAIM IDENT. NO. A02-10031

DATE RECEIVED 4/16/90 CK # C016304 AMOUNT $ 79.00

	YES	NO	Required Info?
1. Is the name and address complete with zip code?	✓		*
2. Is a priority date entered?	✓		*
Is the priority date acceptable in view of mandatory filing dates? See Adjudication Memos #1 and #4 to determine if a Permit is required.	✓		*
3. (a) Is a source entered?	✓		*
(b) Is a tributary to entered? (if required) N/A			
4. Is the legal description of the p.d. sufficient?	✓		*
5. Is there a description of the diverting works?	✓		
6. Are the water uses appropriate for the form? The short form is limited to domestic and stockwater uses with direct diversion. All claims that include storage or instream stockwater must use long form.	✓		*
Is the period of use included?	✓		
Is a quantity claimed for each use?	✓		*
7. Is a total quantity claimed entered?	✓		
8. If required is a consumptive use entered? N/A	✓		
Is the consumptive use correct? N/A	✓		
9. Are the non-irrigation uses listed properly? If this claim is on the short form, and more than one domestic use is listed, single ownership must be stated. If not under single ownership, see Adjudication Memo # 4. N/A			*
10. Is (are) the place(s) of use and purpose(s) indicated?	✓		*
11. Is (are) the county(ies) entered?	✓		
12. Is the ownership of p.u. checked?	✓		
13. Are other water rights listed or "none" indicated?	✓		
14. If required, are remarks correct? (If the claimant does not own the place of use, authority for filing the claim must be explained in the remarks.) N/A			
15. Is the basis of the claim indicated?	✓		
16. If the claimant requested a monthly docket sheet, is payment enclosed? (If yes, describe payment status in "Comments" below.) N/A			
17. Is the claim signed by the claimant, and is the signature appropriate? Organizations must complete the organization block.	✓		*
18. Has the claim been signed, sealed, and dated by a notary?	✓		*
19. Was this claim filed on time, or was an extension granted?	✓ Extension granted		*
20. Is the fee enclosed correct? Exempt	✓		*
21. If this claim is based on an existing water right, has the identification number been entered? N/A			
22. Should this claim be data entered?	✓		

Claim checked by: JB Date: 6/6/90

Claim must be returned to claimant: ___(Yes) ✓(No)

Claimant must be notified of modifications: ___(Yes) ✓(No)

Receipt Prepared by:
Claim data entered by: JB Date: 6/6/90 Checked by: JB Date: 6/6/90
Sent to claimant by: Date:

Comments:

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AUG 10 1992

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

May 8, 1995

RE: ADDRESS CHANGE to Notice of Claims to Water Rights Nos. A57-02228, A57-07051A, A57-07100 & A02-00202A

Tracy Silver or
Teresa Silver
3954 Track Rd
Melba, ID 83641

Dear Tracy and Teresa,

We have received the Change of Address Form in connection with the above referenced claims. Enclosed are computer generated profiles of the information on **BASIN 57** claims, which now reflects the change of address to the Department's records. Please be advised that these claims were previously submitted to the Snake River Basin Adjudication (SRBA) Court in Twin Falls to be decreed as a part of the Department's Director's Report for water rights in Basin 57.

Although the Department's records have been changed to reflect this **ADDRESS** change, SRBA Judge Daniel C. Hurlbutt, Jr. has issued a Court Order dated June 17, 1993, requiring that any claimant with a claim submitted for final decree must complete the enclosed Standard Form 3 before the Court's records for the decree will be changed to reflect the new **ADDRESS**. Standard Form 3 is enclosed along with the directions on how and where to mail the completed form.

Also enclosed is claim A02-00202A, this claim has not yet been submitted to the court, thus you do not need to add this claim to the above list for the Standard Form 3.

I also question why you didn't list claims A57-10825 and A02-10031 on your address change form. Our records still show you as the current owners. I have attached an additional address change form to list these two claims, if you are still current owners. **IF YOU NO LONGER OWN THE PROPERTY UPON WHICH THESE TWO CLAIMS WERE FILED, PLEASE CONTACT THIS OFFICE IMMEDIATELY. IDAHO STATE LAW REQUIRES THAT THE DEPARTMENT BE NOTIFIED OF A CHANGE OF OWNER OR ADDRESS ON A WATER RIGHT.**

If you have any questions concerning Standard Form 3, please do not hesitate to contact this office at (208)334-2190 or the SRBA Court at (208)736-3011.

Sincerely,

ADJUDICATION STAFF
Department of Water Resources
Western Region Office

RH:r
ATTACHMENTS

MICROFILMED
SEP 19 1996