

RECEIVED

JUL 07 1994

Department of Water Resources
Adjudication Bureau

725

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.

Case No. 39576

STANDARD FORM 4

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

MOTION TO FILE A LATE
NOTICE OF CLAIM

Petitioner,

vs.

The United States; the State of Idaho; and
all Claimants to the Use of Water From
the Snake River Basin Water System,

Respondents.

INSTRUCTIONS FOR USE

This form must be used to ask permission to file a late notice of claim in a reporting area where the director's report has been filed. This form has been adopted by the court in *SRBA Administrative Order* (amended June 21, 1993), Section 4A, which may be consulted for further information.

This motion requires you to certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law;

RECEIVED

and is not filed for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation.

You may copy or reproduce this form. If you do, the text must be on the front and back of each page exactly as it appears here. Fill out the form completely and attach all fees or the court will not accept the motion for filing. The Verification and Certificate of Mailing must be completed. Check each box to verify you have followed the court's instructions.

☒ As required by the court, I have read the SRBA Administrative Order I, Rules of Procedure (amended June 21, 1993).

My name is J.D. Schwartz

My address is 4330 S Bannock Hwy, Pocatello Idaho 83204

My phone number is: Work 232-4270 Home 232-5623

I am an attorney representing _____

My name is _____

My address is _____

My phone number is _____

The water right number I want to file a late notice of claim for is A34-00381A
A34-00182
A34-02379F

I did not file a notice of claim to the use of water in the SRBA because:

the property was going through foreclosure with FHA after
a lengthy foreclosure we purchased the property 10-10-94
therefore I'm requesting the court lift the stay on filing
claims in the West Basins 34, and accept these late notices
of claim.

As required by the court, I am providing legal and factual documentation for my claimed use of water. The documents I am providing are: (You must describe the documents and attach a readable copy.)

Notices of claim, copy of the water rites & description
from the FHA information packet, copy of the temporary lease
prior to closure, copy of the license 34-2379, decrees 34-00381
34-00182

I have attached:

- ☒ A fully completed notice of claim (available from the Idaho Department of Water Resources (IDWR)).
- ☒ A claim filing fee and a late claim fee. IDWR may charge this fee pursuant to I.C. §§ 42-1414 and 42-1408A(j). To determine the amount contact IDWR at (800) 451-4129. I have enclosed a check payable to: *State of Idaho Department of Water Resources* in the amount of \$ 612.00.
- ☒ A court appearance fee in the amount of \$58.00 in the form of a check made payable to: *SRBA*. Persons filing a motion for late notice of claim do not become a party or claimant in the SRBA simply by filing this motion.

Follow these instructions regarding the hearing on this motion.

1. Contact the SRBA Court (208-736-3011) to request a hearing date and time.
2. Fill in the following information:

This motion will be heard on October 18 1994 1:30 PM
(Insert Date and Time)

at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

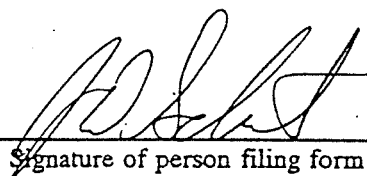
—
VERIFICATION
(Must be completed)

State of Idaho

County of Bonneville

J. D. Schwartz, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

That I am the person or entity filing this motion and I have read the motion, know its contents and that the statements are true to the best of my knowledge and belief.


Signature of person filing form

By: _____
Attorney signing in representative capacity

Subscribed and sworn-to before me on 29 June 94.
(Insert Date)


Notary Public for Idaho, Law
Residing at: Idaho Falls, ID
My Commission expires: 6-14-2000

INSTRUCTIONS FOR MAILING

You must mail the form, including all attachments, to the Clerk of the SRBA Court and to the parties identified in the Certificate of Mailing. **FAX filings will not be accepted by the SRBA Clerk of the Court.**

You must sign the Certificate of Mailing to show that you followed these steps.

CERTIFICATE OF MAILING

I certify that on July 1, 1994, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

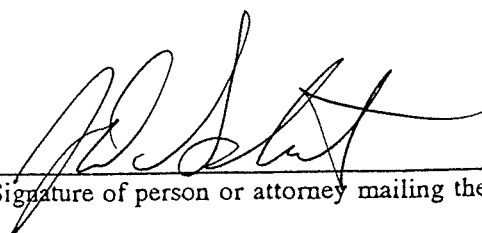
Clerk of the District Court ✓
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. One copy to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, Idaho 83711-4449

3. One copy to:

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



Signature of person or attorney mailing the form

CLAIM FEE 50⁰⁰
RECEIPT FEE 200⁰⁰
LATE FEE 50⁰⁰
300⁰⁰

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: A34-00182
Date Received: 6/29/1994
Receipt No: _____
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: J D SCHWARTZ 208-232-5623
Address: 4330 S BANNOCK HWY
POCATELLO ID 83204

AND/OR

Name: LISA SCHWARTZ 208-232-5623
Address: 4330 S BANNOCK HWY
POCATELLO ID 83204

2. Date of Priority: JUN 1, 1883

3. Source: BIG LOST RIVER Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
06N	25E	14	SE	NW	SE		BUTTE

5. Description of diverting works:
HEADING FOR 3 IN 1 DITCH.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	05/01	10/15	1.600		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06N	26E	31	SW	NE		IRR	40.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06N	26E	31	SE	NE		IRR	31.0
			NE	SE		IRR	40.0
			NW	SE		IRR	40.0
			SW	SE		IRR	30.0
			SE	SE		IRR	40.0
						Section Acres	221.0
		32	SW	NW		IRR	14.0
			NW	SW		IRR	37.0
			SW	SW		IRR	40.0
						Section Acres	91.0
						Total Acres	312.0

11. Place of use in counties: BUTTE

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

13. Other Water Rights Used:
34-00381A, 34-02379F

14. Remarks:

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: / /

UTAH CONSTRUCTION
Decree Plaintiff

JOHN F. ABBOTT, ET AL
vs Decree Defendant

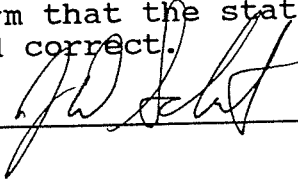
16. Signature(s)

(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/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s):  Date: 6-29-94
_____ Date: _____

State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 29 day
of June 19 94 Ernest Carlson
Notary Public

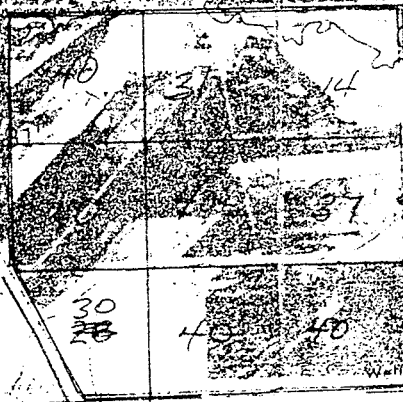
Seal

Residing at Idaho Falls
My Commission Expires 6-14-2000

A34-00381A : A34-00182

Antelope

Darlington



or less to a point due East of the place of beginning, thence West 2256 feet more or less to the point of beginning containing 21.56 acres more or less, all of the above being in Township 4 North, Range 26 East, B. M., also a fraction of said North half of the Southwest quarter of said Section 25 described as follows:

Commencing at the Southeast corner of the Northwest quarter of said Section 25 the place of beginning, thence South 20 rods, thence 580 feet in a Southwesterly direction more or less to the intersection of the O.S.L. railroad, thence 800 feet in a Northwesterly direction along the right of way of the O. S. L. railroad right-of-way, thence 61 feet North, thence East 968 feet to the place of beginning, all in Township 4 North, Range 26 East, B. M.

No. 112

MAUD D. DAGGERT,
(Named in plaintiff's
amended complaint herein
as Maud D. Dysert)

1918-June 4

34-0180
4.0 c.f.s.
TRAN # 396

To be diverted from Antelope Creek through a private ditch having its point of diversion in the Northwest quarter of the Southeast quarter of Section 18, Township 4 North, Range 24 East, B.M. for the irrigation of 200 acres of land in the following described legal subdivisions, -wit:

The Northeast quarter and the South half of the Northwest quarter of Section 17, Township 4 North, Range 24 East, B. M.

No. 113

The Darlington Land and
Irrigation Company, Ltd.,
a corporation.

1886-July 21

34-0181
2.4 c.f.s.

To be diverted from Big Lost River through the Upper Burnett Ditch having its point of diversion in the Northwest quarter of Section 34, Township 7 North, Range 24 East, B. M., for the irrigation of the following described land, to-wit:

The North half of the Southeast quarter and the Northeast quarter of the Southwest quarter of Section 3, Township 6 North, Range 25 East, B.M.

No. 114

THE DARLINGTON LAND AND
IRRIGATION COMPANY, LTD.,
a corporation and J. H. Greene,
mortgagee, as their interests
may appear.

1883-June 1

1897-May 10

34-0182 TR # 366
1.6 c.f.s.
1.0 c.f.s.
34-0183

To be diverted from Big Lost River through the Ruston Ditch having its point of diversion in the Northeast quarter of Section 33, Township 7 North, Range 24 East, B. M., for the irrigation of the following described land, to-wit:

The South half of the Northeast quarter and Lots 1 and 2 of Section 1, Township 5 North, Range 25 East, B. M.

No. 115

UNITED STATES DEPARTMENT OF RECLAMATION
 CERTIFICATE OF WATER RIGHT
 TRANSFERRED RIGHT NO. 366.

THIS IS TO CERTIFY That Nedora B. Greene, of Mackay, County of Custer, State of Idaho, has a right to the use of the waters of Big Lost River, for irrigation and domestic purposes; and that said right has been confirmed by the District Court of the United States for the District of Idaho, Eastern Division, in the case of the Utah Construction Company, a corporation, Plaintiff, vs. John F. Abbott, et al, Defendants, wherein 1.6 second feet of the waters of Big Lost River in Water District No. 27-C were decreed to the Darlington Land & Irrigation Company, Ltd., a corporation, and J. H. Greene, Mortgagee, for the irrigation of the following described land, to-wit:

South Half of the Northeast Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$) and Lots 1 and 2, Section 14, Twp. 5 N., R. 25 E., B.M.;

said right bearing date of priority of June 1, 1883; that title to the above described lands is now vested in Nedora B. Greene, by Joint Claim Deed from the Darlington Land & Irrigation Company, dated June 9, 1925, and by Decree of Distribution in the matter of the estate of John H. Greene, deceased, as shown by entries Nos. 19 and 20 of the Abstract of Title to the above described lands; that upon the application of Nedora B. Greene for a transfer of water right, made before the Commissioner of Reclamation of the State of Idaho, and the said application having been granted, the right to the use of 1.6 second feet of the waters of Big Lost River, is hereby abandoned upon the lands above described and the lands to be irrigated under such right and to which the water right hereby confirmed shall by this certificate become appurtenant, for irrigation and domestic purposes, are described as follows, limited at any given time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amount, to-wit:

1.6 second feet, dated June 1, 1883

Twp.	Rge.	Sec.	Land	No. of acres
6 N.	25 E.	31	S $\frac{1}{2}$ NE $\frac{1}{4}$	80
			N $\frac{1}{2}$ SE $\frac{1}{4}$	80
		32	SW $\frac{1}{4}$ SE $\frac{1}{4}$	20
			N $\frac{1}{2}$ SW $\frac{1}{4}$	40
			SW $\frac{1}{4}$ NE $\frac{1}{4}$	40

That the water to be transferred will be diverted at a point in the SE $\frac{1}{4}$ of Section 14, Twp. 6 N., R. 25 E., B.M. and will be carried through the Three in One Ditch.

That the right to the use of the water aforesaid, hereby confirmed, is restricted to the lands or place of use herein described, as provided by the laws of the State of Idaho.

WITNESS, The seal and signature of the Commissioner of Reclamation of the State of Idaho, affixed at Boise, Idaho, this 12th day of November, 1925.

H. C. GWENDSEN
 Commissioner of Reclamation

(SEAL)

By GEO. N. CARTER
 ASSISTANT.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

IN THE MATTER OF THE APPLICATION)
MEDORA B. GREENE FOR TRANSFER OF)
WATER RIGHT: WATER DISTRICT NO.) ORDER GRANTING TRANSFER
27-C, Case No. 152)

WHEREAS, On November 12, 1925, at the Department of Reclamation of the State of Idaho, Boise, the matter of the application of Medora B. Greene for transfer of water right came regularly on for hearing, pursuant to the published notice; and,

WHEREAS, No appearance was made at the hearing, either in person or by affidavit, to protest against the said transfer, and the evidence submitted by the applicant shows a greater duty of water would result by reason of the transfer, and that no one would be injured thereby:

IT IS, THEREFORE, Hereby Ordered that the said transfer be granted and that the certificate of transfer be issued to the applicant herein, in accordance with the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at Boise, Idaho, this 13th day of November, 1925.

I. G. SWENDSEN
Commissioner of Reclamation

By

G. H. Carter
Assistant

RECORDED

CLAIM FEE 50⁰⁰
ACREAGE FEE 112⁰⁰
LATE FEE 50⁰⁰
212⁰⁰

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: A34-02379F
Date Received: 6/29/1994
Receipt No: _____
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: J D SCHWARTZ 208-332-5623
Address: 4330 S BANNOCK HWY
POCATELLO ID 83204

AND/OR

Name: LISA SCHWARTZ 208-332-5623
Address: 4330 S BANNOCK HWY
POCATELLO ID 83204

2. Date of Priority: AUG 8, 1960

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
06N	26E	31	SW	NW	SW		BUTTE

5. Description of diverting works:
WELL WITH OPEN DISCHARGE INTO DITCH.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/15	10/15	2.110		392.00

7. Total Quantity Appropriated is:
2.110 C.F.S. (and/or) 392.00 A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
06N	26E	31	SW	NE		IRR	36.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06N	26E	31	NE	SE		IRR	38.0
			NW	SE		IRR	38.0
Section Acres							112.0
Total Acres							112.0

11. Place of use in counties: BUTTE

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

13. Other Water Rights Used:
34-00381A, 34-00182

14. Remarks:

15. Basis of Claim: LICENSE

Water Right Number: 28941

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: 6-29-94

Date: _____

State of Idaho)

County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 29 day

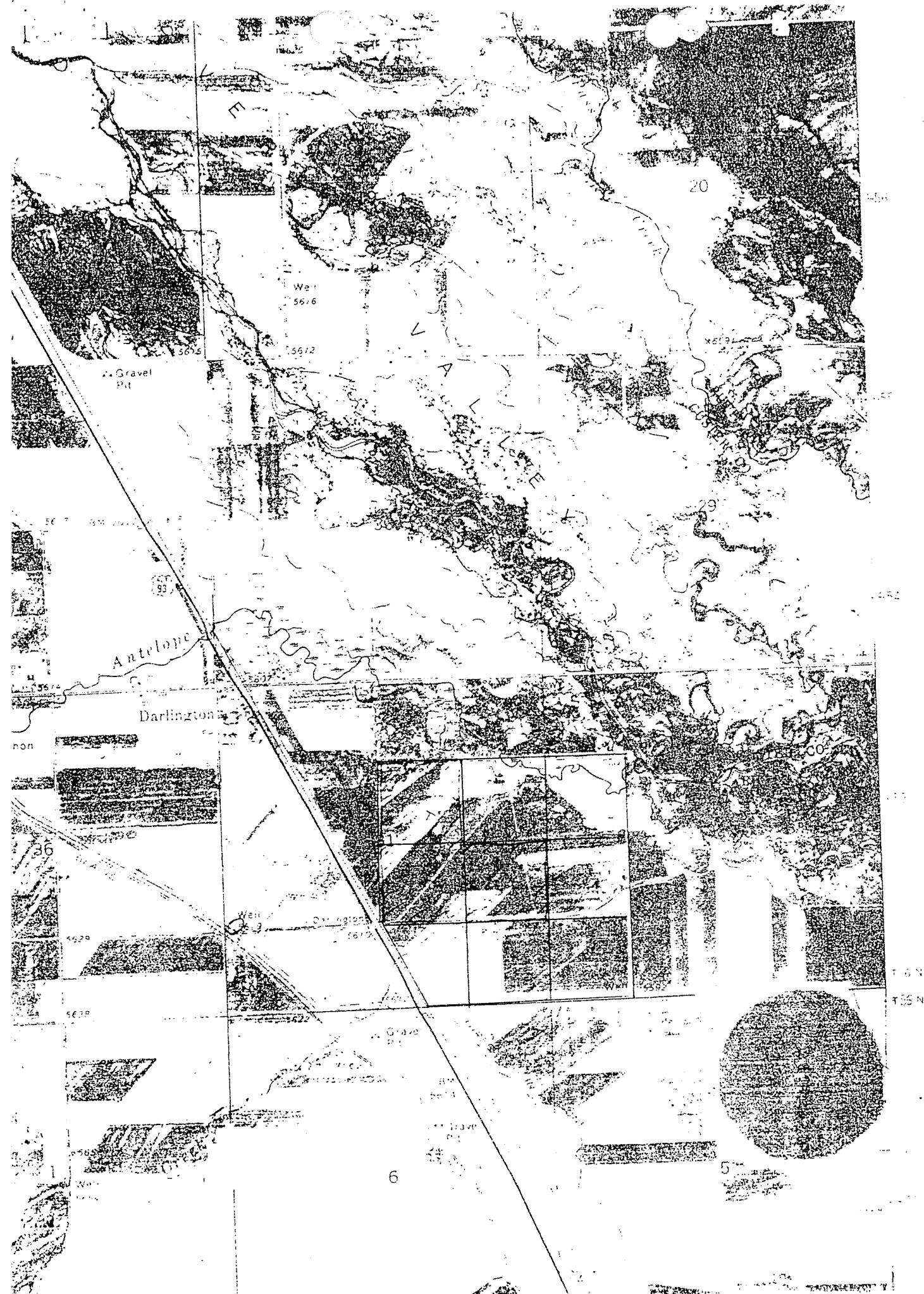
of June 1994

Ernest Carlson
Notary Public

Seal

Residing at Adobe Falls

My Commission Expires 6-14-2000



State of Idaho
Department of Water Administration

LICENSE OF WATER RIGHT

License of Water Right No. 28941/34-2379 Priority August 8, 1960 Amount 7.20 cfs 2.11 cfs.

THIS IS TO CERTIFY, that Boyd Ovard, Paul Stricklan, Jack McAfee
of Darlington, Idaho, have ~~xxx~~ complied with the terms and conditions of Permit
No. 28941/34-2379 issued pursuant to Application for Permit dated August 8, 1960
and has submitted proof to the Department of Water Administration on October 31, 1960
that he has applied water to a beneficial use; an examination by the Department indicates that the
works have a capacity of 7.50 cfs and that the water has in fact been applied to a
beneficial use; a right to the use of water from a ground water source
tributary of _____, is hereby confirmed in the following amounts:

Amount 7.20 cfs for Irrigation from April 1 to Nov. 1 (both dates inclusive)

Amount _____ for _____ from _____ to _____ (both dates inclusive)

Amount _____ for _____ from _____ to _____ (both dates inclusive)

Subject, however, to the condition that no more than 7.20 cfs of water be diverted at
any one time, said waters to be diverted within the _____

SW 1/4 NW 1/4 SW 1/4 Sec. 31, Twp. 6 N, Rgo. 26 E, B.M.

in the county of Butte; and that the amount of water so diverted and to which such
right is entitled and confirmed is for the purposes aforesaid and is limited to the amount which can
actually be beneficially used and shall not exceed 1,143 acre feet per year or
3.0 acre feet per acre.

Description and location of place of use:

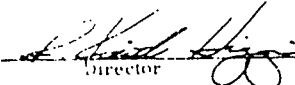
TWP	RANGE	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
6 N	26 E	31	36	36			39	26	28	31	34	38			38	38			344
		32	37																37

Total number of acres irrigated 381

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands
or place of use herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 12 day of

February, 19 73.


Director

34 2379

CLAIM FEE 50
CREAGE FEE -0-
LATE FEE 50
\$100⁰⁰

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: A34-00381A

Date Received: 6/29/1994

Receipt No: _____

Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: J D SCHWARTZ 208-232-5623
Address: 4330 S BANNOCK HWY
POCATELLO ID 83204

AND/OR

Name: LISA SCHWARTZ 208-232-5623
Address: 4330 S BANNOCK HWY
POCATELLO ID 83204

2. Date of Priority: SEP 26, 1894

3. Source: BIG LOST RIVER Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
06N	25E	14	SE	NW	SE		BUTTE

5. Description of diverting works:
HEADING FOR 3 IN 1 DITCH.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	05/01	10/15	2.400		

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

A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
06N	26E	31	SW	NE		IRR	40.0

10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
06N	26E	31	SE		NE		IRR	31.0
			NE		SE		IRR	40.0
			NW		SE		IRR	40.0
			SW		SE		IRR	30.0
			SE		SE		IRR	40.0
							Section Acres	221.0
		32	SW		NW		IRR	14.0
			NW		SW		IRR	37.0
			SW		SW		IRR	40.0
							Section Acres	91.0
							Total Acres	312.0

11. Place of use in counties: BUTTE

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

13. Other Water Rights Used:
34-00182, 34-02379F

14. Remarks:

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: / /

UTAH CONSTRUCTION
Decree Plaintiff

JOHN F. ABBOTT, ET AL
vs Decree Defendant

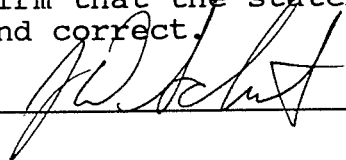
16. Signature(s)

(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: _____

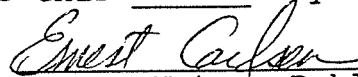
For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s):  Date: 6-29-94
_____ Date: _____

State of Idaho)
County of Bonneville) ss.

Subscribed and sworn (or affirmed) before me this 29 day
of June 19 94


Notary Public

Seal

Residing at 

My Commission Expires 6-14-2000

A34-00381A ; A34-00182

Gravel Pit

Antelope

Darlington

Well

5619

Gravel Pit

BM

5614

Gravel Pit

6

20

456

457

454

453

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451

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441

440

Walter A. Jensen

(a) 1885-June 1

1887-June 1

To be diverted from Big Lost River through the West Side Ditch and Darnley Ditch having their points of diversion in the Southeast quarter of Section 4, Township 5 North, Range 26 East, B. M., for the irrigation of the following described land, to-wit:

The West half, Southwest quarter of the Northeast quarter and the Northwest quarter of the Southeast quarter of Section 10 and the Northeast quarter of the Northeast quarter of Section 9, Township 5 North, Range 26 East, B. M., and

(b) 1880-June 1

1.2 c.f.s.

34-0379

To be diverted from Lower Pass Creek through a private ditch having its point of diversion in the Southeast quarter of Section 33, Township 6 North, Range 26 East, B. M., for the irrigation of the land last above described.

No. 236

Annie M. Jeppesen

1899-June 1

0.8 c.f.s.

34-0380

To be diverted from Big Lost River through the Moore canal having its point of diversion in the Southeast quarter of Section 4, Township 5 North, Range 26 East, B. M., for the irrigation of the following described land, to-wit:

The Northwest quarter of the Southwest quarter of Section 28, Township 5 North, Range 26 East, B. M.

No. 237

C.R. Jeppesen

(a) 1894-September 26

3.2 c.f.s.

34-0381

To be diverted from Big Lost River through the Three-in-One ditch having its point of diversion in the Southeast quarter of Section 14, Township 6 North, Range 26 East, B. M., for the irrigation of the following described land, to-wit:

The Northeast quarter of Section 5, Township 5 North, Range 26 East, B. M.

(b) 1886-June 1

1.24 c.f.s.

34-0382

1895-June 1

2.00 c.f.s.

34-0383

To be diverted from Big Lost River through the Island ditch having its point of diversion in the Southeast quarter of Section 4, Township 5 North, Range 26 East, B. M., for the irrigation of the following described land, to-wit:

The South half of the Northwest quarter of the Southwest quarter, Northeast quarter of the Southwest quarter, Northwest quarter of the Southeast quarter, Southeast quarter of the Southwest quarter, and that part of the Southwest quarter of the Southwest quarter lying east of the Island Ditch, all in Section 27, Township 5 North, Range 26 East, B. M.

No. 238

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
CERTIFICATE OF WATER RIGHT
Transferred Right No. 400.

This is to certify that Oscar E. Sundberg of Polk, State of Nebraska, has a right to the use of the waters of Big Lost River for irrigation and domestic purposes, and that said right has been confirmed by decree of the district court of the United States for the district of Idaho, East Division, U. S. Farrington, Judge, in the case entitled "The Utah Construction Company, plaintiff, vs. John F. Abbott, et al, defendants", said decree bearing date of March 15, 1923, wherein 3.2 second feet of the waters of Big Lost River in Water District 27-B were decreed to C. E. Joppesen for the irrigation of the Northeast Quarter (NE¹), Section 5, Township 5 North, Range 26 East, Boise Meridian, said right bearing date of priority of September 26, 1894, and that a copy of said decree is now on file in the Department of Reclamation of the State of Idaho at Boise; that upon the application of Oscar E. Sundberg, now the holder and owner of said water right, for a transfer of water right made before the Commissioner of Reclamation of the State of Idaho, and the said application having been granted, the right to the use of 3.2 second feet of the waters of Big Lost River is hereby abandoned upon the lands above described, and the lands to be irrigated under said right and to which the water right hereby confirmed shall by this certificate become appurtenant, for irrigation and domestic purposes, are shown in the list of lands hereinbelow described, limited at any given time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amount, to-wit:

3.2 sec. ft., dated September 26, 1894.

2.4 sec. ft. upon the SE¹Q¹, NE¹Q¹, East SW¹Q¹, lying east of O.F.L. Railroad, in Sec. 31; and NE¹SW¹, SW¹NE¹, Sec. 32, all in T. 6 N., R. 26 E., B. M.
0.8 sec. ft. upon SE¹SW¹, NE¹SW¹, Sec. 17; Lot 1 of Sec. 20, T. 6 N., R. 25 E., B. M.

That all of the above described water has heretofore been diverted in the Southeast Quarter of Sec. 14, Twp. 6 N., R. 25 E., B. M., but that hereafter only 2.4 sec. ft. will be diverted at the above described point, and 0.8 sec. ft. will be diverted in the Northeast Quarter of Sec. 33, Twp. 7 N., R. 24 E., B. M.

That the right to the use of the water aforesaid, hereby confirmed, is restricted to the lands or place of use herein described, as provided by the laws of the State of Idaho.

WITNESSED, the seal and signature of the Commissioner of Reclamation of the State of Idaho, affixed at Boise, Idaho, this 19th day of January, 1927.

Commissioner of Reclamation.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

In the Matter of the Application
of Oscar E. Sundberg for Transfer of
Water Right: Water Dist. No. 27-B:
Case No. 189.

ORDER GRANTING TRANSFER

WHEREAS, On the 7th day of January, 1927, at the Department of Reclamation of the State of Idaho, at Boise, the matter of the application of Oscar E. Sundberg for a transfer of water right came regularly on for hearing, pursuant to the published notice; and,

WHEREAS, No one appeared at the hearing, either in person or by affidavit, to protest the said application, and the evidence filed by the applicant with the said application shows that a greater duty of water would result by reason of the transfer, and that no one would be injured thereby;

IT IS, THEREFORE, hereby ordered that the said application for transfer be granted and that the certificate for such transfer be issued the applicant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office, at Boise, Idaho, this 19th day of January, 1927.

Commissioner of Reclamation.

USDA FmHA
Form FmHA 1955-20
(Rev. 5-93)

LEASE OF REAL PROPERTY

1. APPLICATION CODE		1 — "A" APPLICATION 2 — "I" INCREASE/CROP PERCENTAGE 3 — "P" PARTIAL CANCELLATION		4 — "F" FULL CANCELLATION 5 — "D" DELETION/REVERSAL 6 — "C" REVERSAL OF PARTIAL CANCELLATION		7 — "L" REVERSAL OF FULL CANCELLATION 8 — "S" STATISTICAL CHANGE	
2. CASE NUMBER LESSEE				3. OK CODE		4. PROPERTY ID NUMBER	
ST CO LESSEE ID 1 2 0 1 2 0 5 2 8 8 8 0 4 4 7						1 2 0 1 2 0 0 0 1 2	
5. LESSEE NAME AND ADDRESS				6. LEASE TYPE CODE			
S C H W A R T Z , L I S A				01 — LUMP SUM 02 — CROP PERCENTAGE 03 — MONTHLY 04 — PERIODIC PAYMENTS 06 — TRANSITIONAL HOUSING FOR THE HOMELESS (SFH ONLY) 07 — NATURAL DISASTER (SFH ONLY)			
4 3 3 0 S B A N N O C K H W Y				21 — LUMP SUM HOMESTEAD PROTECTION (HP) 23 — MONTHLY HP 24 — PERIODIC PAYMENTS HP 31 — LUMP SUM FARM BUY-BACK (FBB) 32 — CROP PERCENTAGE FBB 33 — MONTHLY FBB 34 — PERIODIC PAYMENTS FBB			
P O C A T E L L O I D							
8 3 2 0 4 ZIP CODE				0 3			
7. NUMBER OF NAME FIELDS		8. NUMBER OF ADDRESS FIELDS		9. DATE LEASE EFFECTIVE MO DA YR		10. DATE LEASE ENDS MO DA YR	
1		2		0 6 1 0 9 4		1 0 1 0 9 4	
12. LESSEE RACE CODE		13. LESSEE RELATIONSHIP CODE		14. LESSEE KIND CODE			
1 — WHITE 2 — BLACK (AFRICAN AMERICAN) 3 — AMERICAN INDIAN - ALASKAN NATIVE 4 — HISPANIC 5 — ASIAN - PACIFIC ISLANDER 7 — TAX EXEMPT 8 — NON-TAX EXEMPT		01 — IMMEDIATE PREVIOUS BORROWER-OWNER 02 — SPOUSE OF PREVIOUS BORROWER-OWNER ACTIVELY ENGAGED IN FARMING 03 — CHILD OF PREVIOUS BORROWER-OWNER ACTIVELY ENGAGED IN FARMING 04 — STOCKHOLDER OF CORPORATION THAT WAS PREVIOUS BORROWER-OWNER 05 — IMMEDIATE PREVIOUS FAMILY SIZE FARM OPERATOR 06 — OPERATORS OF NOT LARGER THAN FAMILY-SIZE FARM 07 — INDIAN MEMBER OF TRIBE THAT HAS JURISDICTION 08 — INDIAN CORPORATE ENTITY 09 — INDIAN TRIBE ITSELF 10 — UNRELATED		00 — ALL OTHERS 05 — SOCIALLY DISADVANTAGED			
1		1 0		0 5			
16. AMOUNT OF LEASE CHARGE				15. LESSEE TYPE CODE			
4 0 0				01 — INDIVIDUAL 02 — GENERAL PARTNERSHIP 03 — LIMITED PARTNERSHIP 04 — CORPORATION 05 — PUBLIC BODY 06 — NON-PROFIT			
17. AMOUNT OF FIRST INSTALLMENT				18. DATE OF FIRST INSTALLMENT MO DA YR			
1 0 0				0 6 1 0 9 4			
19. AMOUNT OF SECOND INSTALLMENT				20. DATE OF SECOND INSTALLMENT MO DA YR			
1 0 0				0 7 1 0 9 4			
21. AMOUNT OF THIRD INSTALLMENT				22. DATE OF THIRD INSTALLMENT MO DA YR			
1 0 0				0 8 1 0 9 4			
23. AMOUNT OF FOURTH INSTALLMENT				24. DATE OF FOURTH INSTALLMENT MO DA YR			
1 0 0				0 9 1 0 9 4			
25. AMOUNT OF FIFTH INSTALLMENT				26. DATE OF FIFTH INSTALLMENT MO DA YR			
27. SECURITY DEPOSIT AMOUNT				28. DATE SECURITY DEPOSIT REMITTED MO DA YR			
29. SUBJECT TO REDEMPTION RIGHTS				30. DATE REDEMPTION RIGHTS EXPIRE MO DA YR			
1 — YES 2 — NO							

LEASE OF REAL PROPERTY

31. REMARKS AND SPECIAL STIPULATIONS:

Additional consideration will be the repair of the irrigation system and clean-up of the property.

Lessee is responsible for the irrigation equipment as of the date of the lease.

Lessee is responsible for the 1994 water charges from Big Lost River Irrigation Company and have all rights connected with the water and ditches within the system.

Electric service is the responsibility of the leasee. All charges will be paid by the leasee. FmHA will have no responsibility in this area.

Continuation of Remarks/Special Stipulations is attached.

32. The United States of America acting through the Farmers Home Administration (FmHA) as the Lessor agrees to lease to the above-named Lessee, and the Lessee hereby leases to occupy and/or use; subject to redemption rights, if any, and the general provisions set forth on the reverse, Special

Stipulations above, and in any attachments, the property located at Darlington,
in the County of Butte and Custer, State of Idaho.

33. FARMERS HOME ADMINISTRATION, Lessor

Lessee

BY: Barbara C. Hylmanek

X Lisa Schwartz
X [Signature]

TITLE: Asst Co Supervisor DATE: 6/10/94

DATE: 6/10/94

GENERAL PROVISIONS

1. **PAYMENTS.** – The Lessee will pay to the Lessor the rent set forth in cash, certified check, cashier's check, money order or personal check payable to the order of the Farmers Home Administration at the address given or to such other party as designated in writing by Lessor.

2. **SECURITY DEPOSIT.** – If the security deposit block on the face of this lease is marked "yes", then receipt of the sum following is hereby acknowledged by the Lessor. This deposit is to be held by Lessor as security for the full and faithful performance of all of the terms and conditions of this lease. Upon termination or expiration of this lease the surrender of all keys to the Lessor and the vacating of the property by the Lessee, the Lessee shall be entitled to the return of the above security deposit providing the property is vacated in as good condition as it was at the time it was first occupied by the Lessee, reasonable wear and tear excepted. Deductions may be made from this security deposit by the Lessor to reimburse Lessor for the cost of repairing or replacing property that may be broken, damaged, lost or missing. This security deposit is not an advance on the rental payment and Lessee may not deduct any portion of it from rent due the Lessor. The security deposit, less any deductions, will be refunded to the Lessee six weeks after the property has been vacated by the Lessee and inspected by the Lessor. It is understood that no interest shall accrue to the security deposit.

3. **UTILITY COSTS.** – Utilities and operating expenses are not included in the rent and are the responsibility of the Lessee.

4. **DELAY IN OCCUPANCY.** – Should the property not be ready for occupancy on the beginning date as indicated above, this lease shall not be affected thereby but Lessee shall owe rent commencing with the date on which the Lessee can occupy the property or the property is ready for occupancy, as determined by the Lessor.

5. **INTERRUPTED OCCUPANCY.** – Should the property be destroyed or materially damaged during the period of this lease so as to render it wholly unfit for occupancy by unforeseen event not due to any fault or neglect of Lessee, the lease shall be terminated and the Lessee shall be entitled to a credit or refund for the unexpired term of the lease for which payment has been made.

6. **POSTING OF PROPERTY BY LESSOR.** – Lessor reserves the right to post the property with "For Sale," "For Rent," or other appropriate signs during the period of this lease, and Lessee will allow parties authorized by Lessor to visit and inspect the premises during reasonable hours by appointment in view of purchasing or renting during the entire term of this lease.

7. **PROPERTY FOR SALE.** – Lessee understands that the premises may be offered for sale and that in the event of a sale, the lease may be transferred to the purchaser.

8. **RIGHT OF INGRESS AND EGRESS BY LESSOR.** – The Lessor shall have the right of ingress and egress at all reasonable times over, across, and upon the property for the prevention of soil erosion and pollution and control or the improvement of the property for farming and residential or other purposes, and for those purposes, the right to construct upon, repair, alter, or improve the property, and to drain, terrace, and ditch the land; and the Lessee hereby waives and releases any and all claims against the Lessor for any damages arising from any entry, operation, activity or inactivity by the Lessor on the property in the reasonable exercise of any of its rights hereunder.

9. **USE OF RESIDENTIAL PROPERTY.** – Lessee agrees that the premises, if residential, shall be occupied only by the Lessee and the Lessee's family for residential purposes only. No business of any kind shall be carried on, in or from the premises without the prior written consent of the Lessor.

10. **PARKING AND AUTOMOTIVE REPAIRS.** – Lessee agrees that Lessee and Lessee's guests shall use only the parking space(s) specifically designated by the Lessor. Lessee agrees, except for emergency towing or starting repairs, that no repairs or maintenance of vehicles will be performed in the parking area or elsewhere on or about the premises.

11. **NOISE.** – Lessee agrees that Lessee and Lessee's family and guests will refrain from causing or permitting any unnecessary loud noise from any source including human voices to emit from the premises and at all times, a reasonable degree of quiet shall be maintained.

12. **LAUNDRY FACILITIES.** – Lessee agrees that any laundry facilities provided shall not be used for any purpose other than normal washing and drying of clothing and domestic linen.

13. **MAINTAINING PROPERTY.** – The Lessee shall maintain the premises in a clean, sanitary, safe and satisfactory condition as at occupancy, reasonable wear and tear excepted.

14. **REMOVAL OR CONSTRUCTION BY LESSEE.** – The Lessee shall not without the consent of the Lessor, demolish, alter, add to, or remove any buildings or structures on the property. No holes shall be drilled in the walls, woodwork or floors, no antenna shall be installed, and no painting or wall papering is permitted unless authorized in writing by Lessor.

15. **DEDUCTIONS FOR REPAIRS.** – The Lessee waives all rights to make deductions and off-sets from the rent for repair and improvements unless the prior written approval for the Lessor is obtained. Any repairs, alterations or improvements for leased premises, undertaken by the Lessee without such prior written approval shall be deemed the voluntary acts of the Lessee.

16. **PAYMENT FOR DAMAGES.** – Lessee agrees to pay Lessor the cost for repair of any damage to the property inflicted intentionally or inadvertently by Lessee or Lessee's guests.

17. **INSURANCE.** – Lessee understands that Lessor does not and has no obligation to carry insurance on the property or its contents.

18. **SUBLEASING.** – The Lessee agrees not to sublet the property or any part thereof without the prior written consent of the Lessor.

19. **TERMINATION OF LEASE.** – Except as provided in Special Stipulations on the face or attached, this lease may be terminated by either party upon 30 days written notice to the other party at that party's address set forth in this lease. If the premises are sold, subject to the lease, the new owner thereof may terminate this lease by giving 30 days notice to Lessee in the same manner, but in any event, the Lessee shall retain the right to harvest any existing crops.

20. **VACATING THE PROPERTY.** – Upon the expiration or termination of this lease, and without further notice, the Lessee shall forthwith peaceably vacate and surrender possession of the property in as good condition as the property is now or shall be put during the term of this lease, reasonable wear and tear excepted. Upon failure of the Lessee forthwith to vacate and surrender possession of the property, the Lessee shall remain in possession thereof only as a tenant at the sufferance of the Lessor who may immediately, or at any time thereafter, re-enter the property and remove all persons and property therefrom, either by summary dispossession proceedings or by any other suitable action or proceeding at law, or otherwise, without being liable to damage therefor.

21. **REMOVAL OF PERSONAL PROPERTY.** – Any personal property belonging to the Lessee and left on the leased premises after termination or expiration of the lease may be disposed of by Lessor in any manner deemed proper and Lessor is hereby relieved of all liability for doing so.

22. **RELEASE FROM CLAIMS AND LIABILITY.** – Lessee hereby agrees to relieve and hold harmless Lessor and any of the Lessor's employees for any and all claims for damage to the Lessee's property and any and all liability that may occur in connection with this lease.

23. **MEMBERS OF OR DELEGATES TO CONGRESS.** – No member of or delegate to Congress shall be admitted to any share or part of this agreement or any benefit that may arise therefrom.

Property Taxes and Assessments: The Subject is being assessed for 342.6 acres of land, which appears to be a good acreage count, therefore this appraisal will indicate a total acreage of 342.6 acres. The property taxes for 1993 have not been paid, and there are some penalty and interest charges that have been levied against the Subject that are not shown in the tax amounts listed above.

Condition of Land: The Subject has not been farmed and/or cultivated for many years, therefore, I believe the market will see this farm in a poor fertility condition, so its condition or lack of fertility and up-keep is reflected in the approaches to value in this appraisal. The Subject once had a severe problem of leafy spurge, however this farm has been sprayed frequently for this problem and it is under control. While the leafy spurge is not entirely eradicated, it is under control, and should not be a measurable problem with the use of typical crop rotations in the farming neighborhood. A new owner of the Subject, or for that matter the current owner (FmHA), should continue with the procedures of controlling this leafy spurge weed problem.

Surface Water Rights: Canal Company - Big Lost River Irrigation District
Shares - 1) 80 M.I. with a priority date of June 1, 1883 (good water right)
2) 120 M.I. with a priority date of September 26, 1894 (very poor right)
3) 5,040 day inches of storage water in the Mackay Reservoir

Water Costs: \$1,566.40 is due on May First, plus an estimated charge of \$125 for the water master, estimated by the Big Lost River Watermaster, Doug Rosenkrance, for a total estimated water cost of \$1,691.40.

Priority Date Relevance: The 6-1-1883 water right is considered a good early water right in the Big Lost River drainage. The 9-26-1894 water right is a very poor water right, and has not been available for the past few years. Even the better water right during typical years could suffer a 50% water shrink and/or water loss before the water gets to the Subject.

Overall Adequacy: The storage water of 5,040 day inches in the Mackay Reservoir is a good water right, however it suffers when the reservoir does not fill, which has been typical the last several years with the Mackay reservoir except for last year (1993). Storage water rights also suffer like surface-flow water rights do from loss in ditch transport (shrinkage). With the exception of last year ditch water shrinkage has typically amounted to a 50% loss during peak crop water demand time.

With the Mackay reservoir typically not filling and loss in transport of storage water, these storage rights typically deliver about 25% of their right capacity to the farm. Based on this storage right, the usable and deliverable storage water to the Subject is estimated to be 1,260 day inches. Based on an 80 day irrigation season for the farming neighborhood, there will be 15.75 inches of storage water per day usable and deliverable to the Subject Farm.

The good surface water rights of the Subject for 80 M.I. with the priority date of June 1, 1883 will also suffer the 50% water shrink and/or water loss like the storage right detailed above. Therefore, the usable and deliverable water to the Subject during peak crop demand time from this surface water right is estimated to be 40 M.I.

PART 8 - COMMENTS

Surface Water Rights: (Continued) The 120 M.I. with the priority date of September 26, 1894 is not a good/early enough priority dated water right to get any typical water delivery. During the last ten years of irrigation history and trends in the Big Lost River, with the exception of 1993, there has not been adequate water for 1894 water right to have any use or value in helping finish crops grow in the neighborhood.

With the above "typical" analysis in mind the total surface water rights usable and deliverable to the Subject is 40 inches of flow rights and 15.75 inches of storage rights for a total of 55.75 inches or 501.75 gallons per minute (g.p.m.). The typical water coverage requirement in this farming neighborhood is about 5.5 g.p.m./irrigated acre. Therefore, 501.75 g.p.m. divided by 5.5 g.p.m./irrigated acre requirement equals 91.23 (say 91.2) acres that can be irrigated with a water coverage of 5.5 g.p.m.

Ground Water Rights: At one time the Subject had a 1/3 interest in an irrigation well, including pump, motor, well, and well site. This well is operated under the State of Idaho Water License No. 34-02379. This water right has been claimed by, and will probably be adjudicated to the following people; Jean H. and Jack McAfee (#34-02379A), Glenn and Tommy E. Guthrie (#34-02379B), Larry Thorngren (#34-02379C). It appears that the 1/3 interest the Subject once had in this ground water source has been lost or possibly sold to one or all of the parties listed above. Therefore, this ground water (well) license (34-2379) is not an asset to the Subject, and is not a factor in this appraisal.

The Subject also had a permit for and irrigation well, the irrigation well presently situated on the west side of the Subject near the access point to the farm. This permit was granted to the owner of the farm as right No. 34-7156 (ground water source), however this permit lapsed before it was perfected into a license and was not claimed or could not be claimed in the basin 34 water adjudication process now underway in the Big Lost River area. The claim disposition for the adjudication process, a copy of which is attached, states that water right number 34-07156 was not claimed and the permit lapsed, therefore this is no longer a ground water source for the Subject. Therefore, the only irrigation water rights the Subject has is surface water rights specified above.

Irrigation Water Distribution System: Since the Subject no longer has the irrigation well permit and has no other well water right, the irrigation well on the Subject is unusable and no longer of any value to the Subject. The irrigation system on the Subject was designed with the irrigation well as the primary water source and since it can no longer be used some of the irrigation distribution equipment on the Subject is also overadequate or excess for the water rights left attached to this farm.

Because of the lost water rights to the Subject specified above and the considerably smaller amount of irrigation water rights now available to it, this down-sized water right requires two irrigation equipment lists. The first list below shows the equipment the Subject has that would be adequate and required to irrigate the estimated 91.2 acres for which the Subject now typically has adequate irrigation water to finish crops grown in the neighborhood.