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

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Attorneys for Idaho Department of Fish and Game

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
)
Case No. 39576)
_____)

Subcase Nos. 36-00133, 36-00133A,
and 36-00192

**AFFIDAVIT OF
CYNTHIA ROBERTSON**

STATE OF IDAHO)
)
County of Ada) ss.

CYNTHIA ROBERTSON, being first duly sworn upon oath, deposes and says:

1. That I am a staff fishery biologist employed by the Idaho Department of Fish and Game (IDFG).

2. That my duties include monitoring proprietary water rights claimed by IDFG in the Snake River Basin Adjudication, and providing technical assistance to IDFG legal counsel regarding those rights.

3. That Department records show that IDFG acquired forty (40) shares of water stock in Big Bend Irrigation and Mining Co. (Big Bend) in 1951, as the result of purchasing property owned by N. S. and R. A. Corthell, and W. H. and I. B. Henslee. See, Warranty Deed dated August 23, 1951, attached as Exhibit A, and incorporated herein by reference, and letter dated March 13, 1961, attached as Exhibit B, and incorporated herein by reference. The 40 shares is equivalent to 1.6 cfs and has been used for wildlife purposes at the Hagerman Wildlife Management Area since 1951.

4. That IDFG records show that IDFG personnel contacted the Southern Region office of the Idaho Department of Water Resources (IDWR) on October 30, 1990, regarding the status of a water right claim made by Big Bend for water diverted out of Upper (Large) Tucker Springs. The discussion concerned the failure of Big Bend to claim any wildlife use for the water diverted from this source, and included a recommendation by IDWR staff that IDFG file a claim on its own behalf for its portion of shares in Big Bend. See Inter-Department Memo dated October 30, 1990, attached as Exhibit C, and incorporated herein by reference.

5. That in late 1990, as a result of the discussions between IDFG and IDWR staff, IDFG filed a Notice of Claim to water right no. 36-00133A. Said claim is part of the court record in this case. A copy of the claim as filed, but prior to signature, is attached as Exhibit D, and incorporated herein by reference.

6. That on August 24, 1992, IDFG received the proposed Director's Report recommendation disallowing IDFG claim no. 36-00133A for 1.6 cubic feet per second (cfs) for wildlife, and recommending the use under water right claim no. 36-00133. IDFG did not file a notice of error at that time. See Proposed Director's Report recommendation dated August 24, 1992, attached as Exhibit E, and incorporated herein by reference.

7. That on November 4, 1992, IDFG received a notice that the Director's Report had been filed with the SRBA Court recommending that 36-00133A be disallowed and recommended as part of 36-00133. See Director's Report recommendation dated November 2, 1992, attached as Exhibit F, and incorporated herein by reference.

8. That on April 21, 1993, IDFG received a facsimile copy of the Director's Report recommendation for water right claim no. 36-00133 from IDWR. The recommendation included 1.72 cfs from March 15 through November 15 for wildlife use, 2.5 acre feet per year from January 1 through December 31 for wildlife storage, and 7.60 cfs for wildlife use from November 16 through March 14. Based upon the recommendation, IDFG reasonably believed that its uses of the claimed water were protected and no objection to the recommendation appeared necessary, and no further discussions with either Big Bend or IDWR were necessary. See Director's Report recommendation dated November 2, 1992, and transmitted to IDFG by facsimile on April 21, 1993, attached as Exhibit G, and incorporated herein by reference.

9. That IDFG received no notice and had no knowledge that Big Bend had filed objections to the Director's Report, nor that IDWR had filed responses to those objections. Part of IDWR's response to the objections was to revise the recommendation for claim no. 36-00133. Wildlife uses were deleted from claim no. 36-00133 and transferred to water right no. 36-00192, a right used in combination with 36-00133 and diverted from the same source, but junior in priority. In addition to transferring the wildlife uses to a junior right, the use was restricted to the irrigation season only. The wildlife use during the non-irrigation season was eliminated completely. IDWR recommended revisions to the Director's Report recommendations in September 1993. Big Bend did not at any time advise IDFG that changes affecting its use of the water for wildlife had been proposed by IDWR. A record of the objections and responses is a part of the court file in this claim. See Objection filed by Big Bend, claim no. 36-00133, dated April 20, 1993; Response to Objection filed by IDWR, claim no. 36-00133, dated September 10, 1993, Objection filed by Big Bend, claim no. 36-00192, dated April 20, 1993; Response to Objection filed by IDWR, claim no. 36-00192, dated September 10, 1993.

10. That on January 11, 1994, IDFG received a copy of the information report "IDWR Report on Objections Filed in Reporting Area 3 (Basin 36)." IDFG noted that objections to water right claim no. 36-00133 had been made by Big Bend and the United States, but determined from the report that none of the objections were as to nature of use. In fact, the objections filed by the United States did include an objection to purpose of use. The United States objected to including non-irrigation uses under 36-00133 and recommended they be included in 36-00192. As IDFG remained unaware that IDWR had proposed revisions to the Director's Report which could negatively impact its interest, and believing that IDWR was representing its interest by defending

the initial Director's Report, it made no further investigation into the nature of the objections at that time. A record of the objections and responses is a part of the court file in this claim. See Objection filed by United States, claim no. 36-00133, dated April 29, 1993; Response to Objection filed by Big Bend, claim no. 36-00133, dated September 1, 1993; Response to Objection filed by IDWR, claim no. 36-00133, dated September 10, 1993.

11. That subsequent to the SRBA Court order of July 28, 1995, allowing motions for late objections and responses to be filed, IDFG reviewed its files regarding claims filed in Basin 36. At that time, IDFG determined that it should further investigate the nature of the objections to claim no. 36-00133 to determine if it needed to become a party to that proceeding.

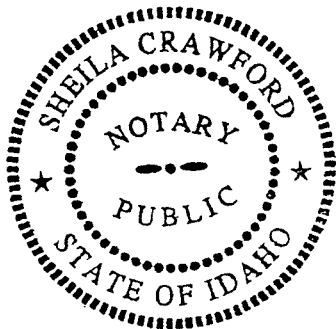
12. That on August 15, 1995, I contacted IDWR regarding claim no. 36-00133. It was at that time that IDFG first became aware that IDWR proposed revisions to the 1992 Director's Report which deleted the wildlife use of water under claim no. 36-00133 and transferred it to claim no. 36-00192, limited the use of water to the irrigation season only, established a new, later priority date. See Objection filed by the United States, claim no. 36-00192, dated April 29, 1993; Response to Objection filed by Big Bend, claim no. 36-00192, dated September 1, 1993; Response to Objection filed by IDWR, claim no. 36-00192, dated September 10, 1993. Until August 15, 1995 IDFG reasonably believed that the uses of water claimed under 36-00133A were protected by the 1992 recommendations for claim no. 36-00133 and did not believe it was necessary to file an objection to IDWR's disallowance of claim no. 36-00133A, or to file objections and responses in claim nos. 36-00133 and 36-00192. In fact, a report issued by IDWR dated August 15, 1995, still shows that IDFG's claimed uses for wildlife are included and recommended in claim no. 36-00133. See Idaho

Department of Water Resources Adjudication Claim Profile Report dated August 15, 1995, attached as Exhibit H, and incorporated herein by reference.

FURTHER your Affiant saith not.

Cynthia Robertson
Cynthia Robertson, Staff Fishery Biologist
Idaho Department of Fish and Game

SUBSCRIBED AND SWORN to before me this 17th day of August, 1995.



Sheila Crawford
Notary Public for Idaho
Residing at Boise, Idaho
My commission expires 5-9-96

Entry No. 40
Nellis S. Corthell and Ruth
A. Corthell, husband and wife

-to-

The State of Idaho, for the
use and benefit of the Idaho
Fish and Game Department

116553
WARRANTY DEED.
Dated, August 23, 1951
Recorded, October 17, 1951, 3:45 PM
Book 45 Deeds Page 186
Consideration \$2000.00
\$2.20 I.R. Stamps

The first parties hereto, in consideration of \$2000.00, do hereby grant, bargain, sell, convey and confirm unto the second party hereto, the following real estate in Gooding County, Idaho:

Beginning at the northwest corner of the southwest quarter of the northwest quarter of Section 36, Township 7 South, Range 13 East, Boise Meridian, and running thence east 269 feet; thence directly south 1,320 feet across said forty acres to the south line; thence west 269 feet; thence directly north along the west line for a distance of 1,320 feet to the point of beginning, together with 9 shares of water stock in the Big Bend Mining and Irrigation Company.

Together with the tenements, hereditaments and appurtenances thereunto belonging, the reversions, remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to said property as well in law as in equity, of the first parties.

Covenants: Regular Warranty.

Acknowledged: August 23, 1951, by the first parties as above written, before Perce Hall, Notary Public, State of Idaho (N.P. Seal)

Entry No. 41
W. H. Henslee and Ida B.
Henslee, husband and wife

-to-

State of Idaho for the use
and benefit of the Department of Fish and Game

116586
QUITCLAIM DEED.
Dated, October 4, 1951
Recorded, October 22, 1951, 9:25 AM
Book 42 Deeds Page 261
Consideration --

The first parties hereto, in consideration of --, do hereby remise, release and quitclaim unto the second party hereto, the following parcel of land in Gooding County, Idaho:

The westerly two hundred sixty-nine (269) feet of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$, Sec. 36, T. 7 S, R. 13 E. of Boise Meridian, containing 8 and 5/33 acres.

Together with the tenements, hereditaments and appurtenances thereto belonging, and the reversions, remainders, rents, issues and profits thereof.

Signed: W. W. Henslee
Ida B. Henslee

Acknowledged: October 4, 1951, by W. H. Henslee and Ida B. Henslee, husband and wife, before Emerson Pugmire, Notary Public, State of Idaho (N.P. Seal)

Security Title Company, Gooding, Idaho

Exhibit A

March 13, 1961

Hagerman Refuge

Big Bend Irrigation and Mining Company, Ltd.
Hagerman, Idaho

Attention: Esther Stroud, Secretary

Temple 7-48-5

Gentlemen:

Enclosed herewith is Certificate No. 48 for 31 shares of the capital stock of the Big Bend Irrigation and Mining Company, Ltd. This certificate was assigned to the Idaho Department of Fish and Game in its purchase of a portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 36, Township 7 South, Range 13 East, Boise Meridian, from W. W. Henslee.

It is respectfully requested that a new stock certificate be issued in the name of the State of Idaho, Department of Fish and Game, and that it be submitted to the Department of Fish and Game, 518 Front Street, Boise, Idaho, together with a certified billing for stock transfer fee.

Very truly yours,

Ross Leonard, Director

T. D. Biladeau, Land Agent

Enclosure

Exhibit B

INTER-DEPARTMENT MEMO

DATE: 10/30/90

FROM: Dale Turnipseed

TO: Cindy Robertson

SUBJECT: A36-00133 (Large Tucker Springs)
Water Right

I contacted Steve Clelland, Water Rights agent, Department of Water Resources on 10/30/90 concerning the Big Bend ditch company filling on Large Tucker Springs water and failing to include the Department of Fish and Game's right of 1.6 cfs (40 shares) for wildlife life purposes. Steve recommended we file an adjudicated claim covering the 40 shares of water from Large Tucker Springs and allow the conflict to be resolved by the Department of Water Resources.

Exhibit C

OCT 31 1990

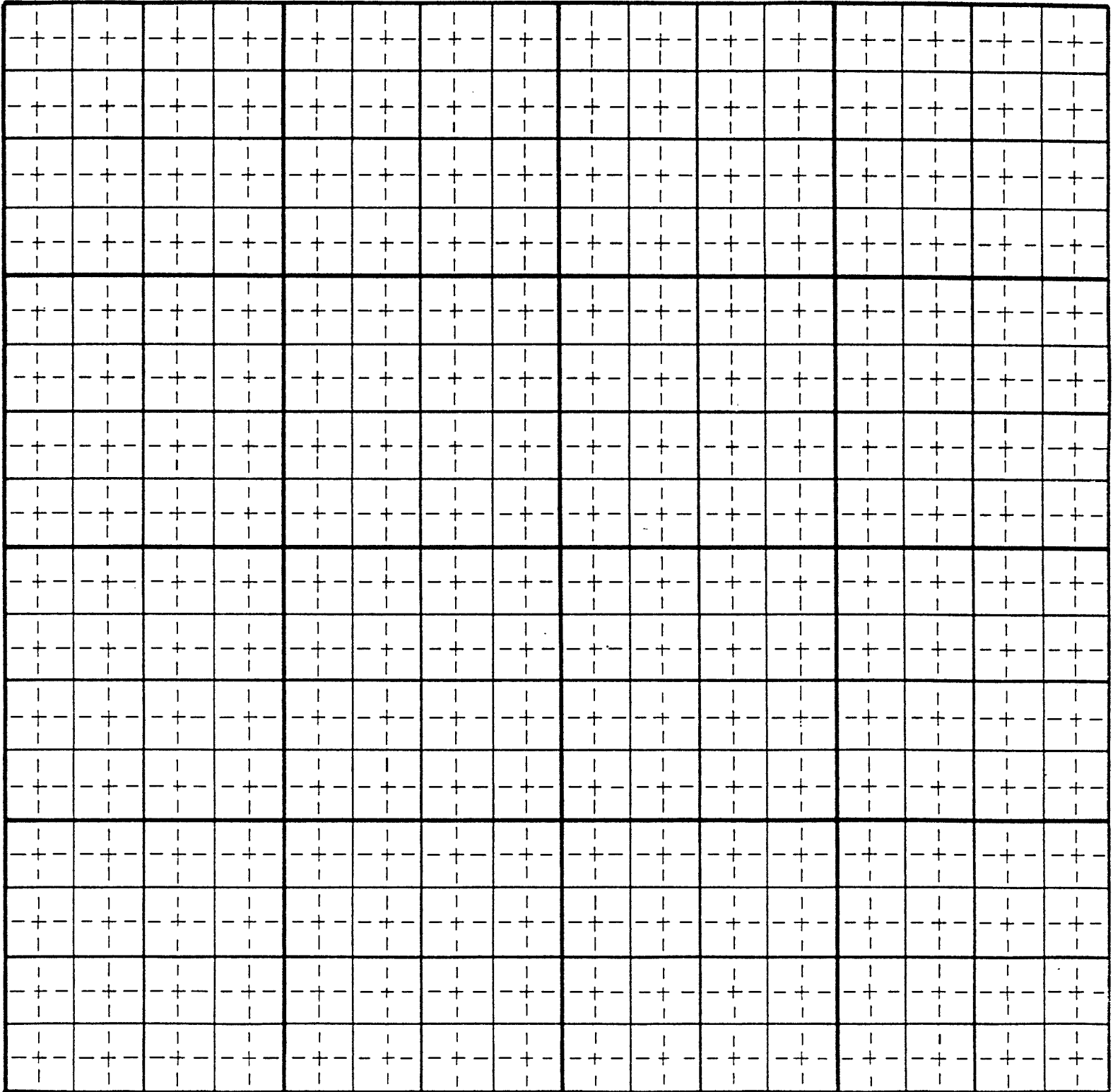
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEMCIVIL CASE NUMBER: 39576
Ident. Number A36-00133 (partial)
Date Received _____
Receipt Number _____NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Idaho Dept. Fish and Game Phone (208) 334-3700
Mailing Address 600 S. Walnut P.O. Box 25 Boise Zip 83707
2. Date of Priority (Only one (1) per claim) December 17, 1903
3. Source of water supply (a) Upper Tucker Springs (Thompson Springs)
which is tributary to (b) Riley Creek
4. a. Location of existing point of diversion is: Township 7S Range 13E Section 36,
NW 1/4 of SE 1/4 of SE 1/4, Govt. Lot, _____ B.M., County of Gooding
Additional points of diversion if any: SW 1/4 NW 1/4 SE 1/4 Sect. 36 T7S R13E
- b. If instream flow, beginning point of claimed instream flow is:
Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,
Govt. Lot _____ B.M., County of _____
ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____
_____ 1/4, Govt. Lot _____ B.M., County of _____
5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. Big Bend Ditch diversion
works consist of a concrete retaining wall diverting water into a
dirt ditch

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

Scale: 2 inches equals 1 mile



Last Name IDFG Ident No. 36-133(part 1) Copies: White-State, Yellow-Claimant

6. Water is claimed for the following purposes:

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

For wildlife purposes from 1/1 to 12/31 amount 1.6 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 1.6 (cfs) and/or (b) _____ (acre feet)

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

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

10. Description of place of use:

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

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
7S	13E	36									W	W	W	W		W	W		
8S	13E	1		W			W												

Total number of acres irrigated _____

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

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

13. Describe any other water rights used at the same place and for the same purposes as described above.
36-2056 ; 36-0012 or None ()

14. Remarks:
Water (20 cfs) was decreed to the Big Bend Ditch Co. in 1932. IDFG is a shareholder in the company (40 shares) for wildlife use. The ditch company filed on the water right (36-133) but did not include the IDFG's 1.6 cfs for wildlife purposes.

Last Name IDFG Ident No. 36-133 (partial)

Copies: White -State, Yellow-Claimant

Decree

Court U.S. District Court Case Number Equity # 1602 Decree Date 3/23/1932

Plaintiff vs Defendant New International Mortgage Bank vs Idahu Power

(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.

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

Date _____

Title

Organization

Title

Organization

Title and Organization _____ Date _____

SS.

Please Print Name

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

Date _____

NOV-2-1992

YOUR WATER RIGHT AS RECOMMENDED IN THE SNAKE RIVER BASIN ADJUDICATION¹⁴⁵⁵⁴

RIGHT NUMBER	NAME & ADDRESS	REASON FOR DISALLOWAL
36-00133A	STATE OF IDAHO DEPT OF FISH & GAME PO BOX 25 BOISE ID 83720	RECOMMENDED AS RIGHT NO. 36-00133.

Exhibit F

IDaho DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: NOV-2-1992
PAGE: A-3884

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
36-00133	BIG BEND IRRIGATION & MINING CO C/O CATHERINE SAUL 2751 S B50 E HAGERMAN ID 83332	12/17/1903	IRRIGATION	03-15 11-15	20.00	CFS DECREE
			DOMESTIC	03-15 11-15	.06	CFS
			STOCKWATER	03-15 11-15	.23	CFS
			WILDLIFE	03-15 11-15	1.72	CFS
			WILDLIFE STORAGE	01-01 12-31	2.5	AFY
			STOCKWATER	11-16 03-14	1.03	CFS
			DOMESTIC	11-16 03-14	.28	CFS
			WILDLIFE	11-16 03-14	7.6	CFS
			TOTAL QUANTITY:			20.00 CFS

SOURCE: TUCKER SPRINGS, UPPER RILEY CREEK

NON-IRRIGATION USES:

DOMESTIC, 2 HOMES; STOCK, 1000 MIXED; WILDLIFE, PONDS AND HABITAT

POINT OF DIVERSION:

107S R13E S36
PLACE OF USE: IRRIGATION

WUSESE

107S R13E S15	SUSW 10.0		
S16	(SESE) 28.0	Lot 6	
S21	(SENE) 15.0	Lot 5	
S22	WUNE 4.0		
	SUNW 37.0		
	SESE 8.0		
S23	SUNW 23.0		
S26	WUNE 10.0		
	SESE 10.0		
S27	WUNE 10.0		
	NESE 12.0		

393.5 ACRES TOTAL
PLACE OF USE: DOMESTIC

107S R13E S21 Lot 5 (SENE)
S22 NENE

PLACE OF USE: STOCKWATER

107S R13E S22
S23 WUNE
SUNW

SUNE
WUSE

WUNE

SENE

Post-It™ Card and fax transmittal memo 7671 # of pages 2

To	From
Co.	Co.
Dept.	Dept.
Fax #	Fax #

3841.2.111

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

DATE: NOV-2-1992
PAGE: A-1885

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
--------------	----------------	---------------	----------------	-----------------------	------------------	----------------

SOURCE: TUCKER SPRINGS, UPPER TRIBUTARY: RILEY CREEK

36-00133 CONTINUED

PLACE OF USE: WILDLIFE	S26	NAME SESE	NAME	NAME	NAME	NAME
107S R13E S36		NAME	NAME	NAME	NAME	NAME
108S R13E S01 Lot 2 (NAME)		NAME	NAME	NAME	NAME	NAME
PLACE OF USE: WILDLIFE STORAGE						
107S R13E S22		NAME	NAME	NAME	NAME	NAME
PLACE OF USE: STOCKWATER						
107S R13E S22		NAME	NAME	NAME	NAME	NAME
107S R13E S23		NAME	NAME	NAME	NAME	NAME
107S R13E S26		NAME	NAME	NAME	NAME	NAME
PLACE OF USE: DOMESTIC						
107S R13E S21 Lot 5 (NAME)		NAME	NAME	NAME	NAME	NAME
107S R13E S22		NAME	NAME	NAME	NAME	NAME
PLACE OF USE: WILDLIFE						
107S R13E S36		NAME	NAME	NAME	NAME	NAME
108S R13E S01 Lot 2 (NAME)		NAME	NAME	NAME	NAME	NAME

REMARKS: RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO IDAHO CODE 42-1416A.

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A.

WATER IS DELIVERED THROUGH BIG BEND DITCH.

USE OF THIS RIGHT WITH RIGHT NO. 36-00192 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 29.43 CFS FOR ALL USES IDENTIFIED DURING THE IRRIGATION SEASON. BOTH ARE ALSO LIMITED TO A TOTAL COMBINED FIELD HEADGATE REQUIREMENT OF 19.00 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 1180.5 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 393.5 ACRES IN A SINGLE IRRIGATION SEASON.

THIS RIGHT WITH RIGHT NO. 36-00192 IS LIMITED TO A TOTAL OF 8.42 CFS FOR USE AS CONVEYANCE LOSS IN DELIVERY OF THE RIGHTS DELIVERED THROUGH THE BIG BEND DITCH DURING THE IRRIGATION SEASON; 6.28 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THE RIGHTS DELIVERED THROUGH THE BIG BEND DITCH DURING THE NON-IRRIGATION SEASON.

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	BIG BEND IRRIGATION & MINING CO C/O CATHERINE SAUL 2751 S 850 E HAGERMAN ID 83332 (208) 837-6622	12/17/1903	IRRIGATION STOCKWATER STOCKWATER WILDLIFE WILDLIFE WILDLIFE STORAGE DOMESTIC DOMESTIC	03-15 11-15 03-15 11-15 11-16 03-14 03-15 11-15 11-16 03-14 01-01 12-31 11-16 03-14 03-15 11-15	20.00 CFS 0.23 CFS 1.03 CFS 1.72 CFS 7.60 CFS 0.28 CFS 0.06 CFS	2.50 AFA
TOTAL DIVERSION:				20.00 CFS		

Water Source: TUCKER SPRINGS, UPPER
 Tributary to: RILEY CREEK
 Stage: DECREEO
 GOODING County

Point(s) of Diversion: TOTS R13E S36 NWSESE

Place of use Legal Description for: IRRIGATION

T	R	S	NE	NENE	NWNE	SUNE	SENE	NE	NW	NWNW	SWNW	SESW	SESW	NESE	NWSE	SWSE	SESE	SUM
07S	13E	15											10					10.0
07S	13E	16															06-28	28.0
07S	13E	21				05-15												15.0
07S	13E	22		04	30	25								15	13	08		164.5
07S	13E	23																23.0
07S	13E	26		10	17										10	07	10	54.0
07S	13E	27		18	07	25	22							12	15			99.0
TOTAL ACRES																		393.5

Place of use Legal Description for: STOCKWATER

T	R	S	NE	NENE	NWNE	SUNE	SENE	NE	NW	NWNW	SWNW	SESW	SESW	NESE	NWSE	SWSE	SESE
07S	13E	22		S	S												
07S	13E	23															
07S	13E	26		S	S										S	S	S

Place of use Legal Description for: STOCKWATER

T	R	S	NE	NENE	NWNE	SUNE	SENE	NE	NW	NWNW	SWNW	SESW	SESW	NESE	NWSE	SWSE	SESE
07S	13E	22		S	S												
07S	13E	23															
07S	13E	26		S	S										S	S	S

AJ5809NP
No. 36-00133

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 08/15/95
PAGE: 2

Place of use Legal Description for: WILDLIFE

NE		NW		SW		SE	
NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW
T	R	S	: Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac
---	---	---	---	---	---	---	---
07S	13E	36	:	:	:	:	:
08S	13E	1	:	:	:	:	:

Place of use Legal Description for: WILDLIFE

NE		NW		SW		SE	
NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW
T	R	S	: Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac
---	---	---	---	---	---	---	---
07S	13E	36	:	:	:	:	:
08S	13E	1	:	:	:	:	:

Place of use Legal Description for: WILDLIFE STORAGE

NE		NW		SW		SE	
NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW
T	R	S	: Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac
---	---	---	---	---	---	---	---
07S	13E	22	:	:	:	:	:

Place of use Legal Description for: DOMESTIC

NE		NW		SW		SE	
NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW
T	R	S	: Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac
---	---	---	---	---	---	---	---
07S	13E	21	:	:	:	:	:
07S	13E	22	:	:	:	:	:

Place of use Legal Description for: DOMESTIC

NE		NW		SW		SE	
NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW
T	R	S	: Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac
---	---	---	---	---	---	---	---
07S	13E	21	:	:	:	:	:
07S	13E	22	:	:	:	:	:

POU County: GOODING

Non-Irrigation Uses: DOMESTIC, 2 HOMES; STOCK, 1000 MIXED; WILDLIFE, PONDS AND HABITAT

Other Rights: 36-00192

Conditions of Approval:

- C04 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO IDAHO CODE 42-1416A.
- C05 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A.

Remarks: WATER IS DELIVERED THROUGH BIG BEND OITCH.

Remarks:

USE OF THIS RIGHT WITH RIGHT NO. 36-00192 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 29.43 CFS FOR ALL USES IDENTIFIED DURING THE IRRIGATION SEASON. BOTH ARE ALSO LIMITED TO A TOTAL COMBINED FIELD HEADGATE REQUIREMENT OF 19.00 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 1180.5 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 393.5 ACRES IN A SINGLE IRRIGATION SEASON.

THIS RIGHT WITH RIGHT NO. 36-00192 IS LIMITED TO A TOTAL OF 8.42 CFS FOR USE AS CONVEYANCE LOSS IN DELIVERY OF THE RIGHTS DELIVERED THROUGH THE BIG BEND DITCH DURING THE IRRIGATION SEASON; 6.28 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THE RIGHTS DELIVERED THROUGH THE BIG BEND DITCH DURING THE NON-IRRIGATION SEASON.

THIS RIGHT IS LIMITED TO A WILDLIFE STORAGE VOLUME OF 2.5 AFY.

Dates: Exam Made Date: 08/20/1990 Verified Date:

Misc: Water District Number: 36A Field Inspection Flag: C
Presumption Flag:

Comments:

Date: 08/08/1992 User-ID: CLELLAND Subject: OTHER RIGHTS
THESE RIGHTS LISTED IN THE ADJUDICATION ARE OTHER USES OF THE SAME WATERS DESCRIBED HEREIN. OTHER RIGHT NOS.: 36-07865, 36-07237, 36-04142 & 36-08318.
THE FOLLOWING ARE CURRENT PERMITS FOR THE SAME WATERS BUT DIFFERENT USES: 36-08317, 36-08377, 36-08567 & 36-08571.

Date: 08/08/1992 User-ID: CLELLAND Subject: RECOMMENDATIONS
THIS RIGHT REPRESENTS ALL THE NON-IRRIGATION SEASON OF USE AS CLAIMED IN THIS CLAIM AND A36-00133A AND A36-10064.
ACTUAL IRRIGATION FIELD REQUIREMENT IS 19.00 CFS

TOTAL OF OTHER USES DURING IRRIGATION: 2.01 CFS
TOTAL: 21.01 CFS (1.01 CFS @192)
TOTAL IRRIGATION SEASON CONVEYANCE LOSS 8.42 CFS (36-00192)
TOTAL: 29.43 CFS

DURING NON-IRRIGATION SEASON THIS RIGHT CAN SUPPLY ALL THE WATER NEEDED FOR BENEFICIAL USES FOUND. USE OF THE LOWER SPRING

Comments:

Date: 08/08/1992 User-ID: CLELLAND Subject: RECOMMENDATIONS
WATER UNDER 36-00192 IS NOT NEEDED DURING THIS TIME.
THIS RIGHT DELIVERS THE FOLLOWING IN NON-IRRIGATION SEASON:
2.63 CFS HEADGATE REQ. + 6.28 CFS CONVEYANCE LOSS = 8.91 CFS.

Date: 08/08/1992 User-ID: CLELLAND Subject: COPIED FROM REMARKS
LAND CLAIMED IS APPROXIMATE BASED ON SHARES OWNED BY VARIOUS
SHAREHOLDERS. SOME OF THE LAND IS ALSO IRRIGATED FROM OTHER
DITCHES. SOME LAND IS ABOVE THE DITCH, AND IS IRRIGATED VIA
PUMPS IN THE DITCH; EXPANSION IS CLAIMED UNDER SEC. 42-1416 OF
THE IDAHO CODE. A LOT OF LAND IN THE HAGERMAN VALLEY WAS PUT
UNDER SPRINKLERS FROM 1972 THRU 1985, POSSIBLY DOUBLING THE
AMOUNT OF LAND IRRIGATED. THE VOLUME CLAIMED IS FOR 20 CFS FLOW-
ING CONTINUOUSLY ALL YEAR. BETWEEN A 50% DITCH LOSS THRU 9 MILES
OF THE BIG BEND DITCH & BENEFICIAL USE, ALMOST ALL OF THIS WATER
IS CONSUMED. DUE TO MILD CONDITIONS IN THE HAGERMAN VALLEY, SOME
IRRIGATION OCCURS ALL YEAR. EXCEPT FOR A FEW OTHER DIVERSIONS,
ALL THE WATER FROM UPPER & LOWER TUCKER SPRINGS FLOWS THRU THE
BIG BEND DITCH ALL YEAR.

Date: 09/21/1992 User-ID: MERRITT Subject: NOTICE OF ERROR RECEIVED FROM LEO RAY

Date: 09/22/1992 User-ID: SCHULTZ Subject: 1 NOTICE OF ERROR (NOE)
RECEIVED NOE 9/22/92 FROM CLEAVE C. LLOYD. LEFT NOE FLAG AS A.

Date: 09/23/1992 User-ID: SCHULTZ Subject: 3 NOTICES OF ERROR (NOE)
RECEIVED 3 NOE'S 9/22/92. LEFT NOE FLAG AS A.
1 NOE WAS FROM CLAIMANT.

Date: 09/24/1992 User-ID: SCHULTZ Subject: 7 NOTICES OF ERROR (NOE)
RECEIVED 7 NOE'S 9/23/92. LEFT NOE FLAG AS A.

Date: 09/25/1992 User-ID: SCHULTZ Subject: 5 NOTICES OF ERROR (NOE)
5 NOE'S RECEIVED 9/24/92. LEFT NOE FLAG AS A.

Date: 09/25/1992 User-ID: SCHULTZ Subject: 3 NOTICES OF ERROR (NOE)
3 NOE'S RECEIVED 9/25/92. LEFT NOE FLAG AS A.

Date: 09/29/1992 User-ID: MERRITT Subject: NOTICE OF ERROR (NOE) FILED BY ATTN. COLEMAN FOR SPRING VALLEY
RANCH

Date: 10/20/1992 User-ID: CLELLAND Subject: RESPONSE TO NOE
MET THIS DAY WITH IVAN GUSTAFSON, CLEAVE LLOYD AND LEO RAY AT
IDWR OFFICE. WE DISCUSSED MULTIPLE ITEMS AND RESOLVED THAT ALL

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 08/15/95

PAGE: 5

Comments:

Date: 10/20/1992 User-ID: CLELLAND Subject: RESPONSE TO NOE
ISSUES SHOULD BE CARRIED TO THE OBJECTION PHASE. THEY WILL BE
COMPLETING THEIR OWN CONVEYANCE LOSS STUDIES. THEY ALSO WANT TO
BE RECOGNIZED AS A SERVICE AREA TYPE DELIVERY SYSTEM FOR 900 AC.

Date: 10/21/1992 User-ID: CHRISTEN Subject: CHANGE TO CLAIM 10-21-92
CHANGED SEASON OF USE FOR STOCKWATER TO AGREE WITH IRR SEASON.KKC

Date: 10/23/1992 User-ID: SHAFF Subject: SEASON OF USE
MADE DOM. & WILDL CONSISTENT IN SEASON WITH IRR. & STOCK SEASONS.

Date: 02/19/1993 User-ID: SCHULTZ Subject: ADDED NEW ATTORNEY
RECEIVED NOTICE OF APPEARANCE FROM HEPWORTH NUNGESTER LEZAMIZ
2/10/93.

Date: 02/25/1993 User-ID: SCHULTZ Subject: ADDED ATTORNEY (NOT UPDATED-SEE PREVIOUS COMMENT)
ADDED NEW ATTORNEY.

Audit:

12/14/90 BEDKE 01/14/92 CLELLAND 07/10/92 CWU-PROD 07/18/92 POST-STD
08/08/92 CLELLAND 08/17/92 THORNTON 08/19/92 THORNTON 08/28/92 PR-PROD
09/21/92 MERRITT 09/22/92 SCHULTZ 09/23/92 SCHULTZ 09/24/92 SCHULTZ
09/25/92 SCHULTZ 09/28/92 SCHULTZ 09/29/92 SCHULTZ 09/29/92 MERRITT
10/15/92 CWU-SHAF 10/20/92 CLELLAND 10/21/92 FRAZEE 10/21/92 CHRISTEN
10/23/92 SHAFF 11/02/92 CP SHAW 12/05/92 ADT-SHAW 02/19/93 SCHULTZ
02/25/93 SCHULTZ 06/16/93 CMDATFIX 09/17/93 UPD-SCHU 10/20/94 JGIVENS
03/29/95 POST-STD

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

* * * * *

IN RE: SRBA

Case No. 39576,

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)

AFFIDAVIT OF JOHN K. BUTLER

* * * * *

STATE OF IDAHO)
)
County of Twin Falls)

ss.

John K. Butler, being first duly sworn on oath, deposes and
says:

1. I am the attorney for Sundance, Inc.

2. Sundance, Inc. seeks to have this Court allow the filing
of late objections as to the Basin 36 Director's Report on the
grounds that since the Director's Report was first issued, there
have been or may have been changes made to the Director's
Recommendations, that were a factor on which Sundance, Inc. relied
in not objecting to said Report.

3. The primary and overriding concern of Sundance, Inc. was
that the Director was recommending that the period of use from
March 15th to November 15th of their water rights described herein,
be changed to April 1st to October 31st. Prior to the issuance of
said Report, Sundance, Inc. had attempted to have the Department of
Water Resource change their recommended period of use.

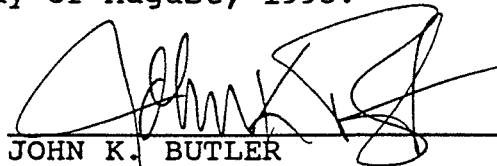
4. Historically, Sundance, Inc. has had a period of use with
respect to the water rights described herein from March 15th to

November 15th. When the Director's Report was initially issued, it provided in General Provision 12(b), a mechanism by which the Department could or would permit an extended period of use by allowing early or late diversion of irrigation water. Since the issuance of that Report, this Court, in or about May, 1995, deleted such provision which adversely affects the interests and rights of Sundance, Inc.'s water rights described herein, and Sundance, Inc., now wishes the opportunity to participate in the SRBA proceedings and assert its rights which would have otherwise been protected by General Provision 12(b).

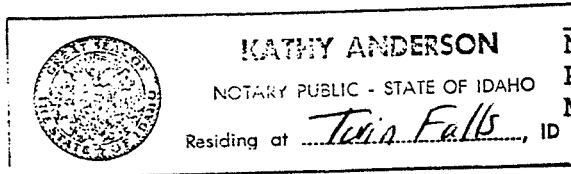
5. If the Director's Report had not provided a recommendation by which the mechanism would be put in place, as described above, so as to allow for an extended period of use, Sundance, Inc. would have timely objected to said report, without the necessity of filing a late objection.

6. It is respectfully submitted, that Sundance, Inc., has good cause for filing the late objection, and have a meritorious position to be asserted in the SRBA proceedings, and it is therefore respectfully requested, that this court grant leave to Sundance, Inc., so as to allow and permit the filing of their late objections, which have been filed concurrently herewith.

DATED this 18 day of August, 1995.


JOHN K. BUTLER

SUBSCRIBED AND SWORN to before me this 18th day of August, 1995.




NOTARY PUBLIC
Residing at: Twin Falls, Idaho
My Commission Expires: 4-3-2000

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 18th day of August, 1995, he caused a true and correct copy of the AFFIDAVIT OF JOHN K. BUTLER to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Don and Carol McFarland
P.O. Box 268
Eden, ID 83325-02268

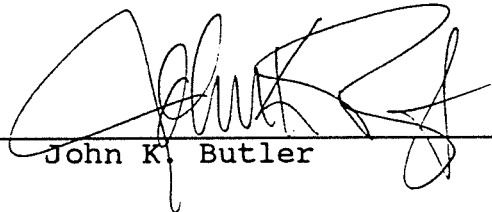
Hand Delivered _____
U.S. Mail X
Fax _____
Fed. Express _____

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 38711-4449

Hand Delivered _____
U.S. Mail X
Fax _____
Fed. Express _____

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

Hand Delivered _____
U.S. Mail X
Fax _____
Fed. Express _____



John K. Butler