

#25402

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: A72-00047

Date Received: ~~11/29/1989~~ 12-1-89

Receipt No: MOD 5288

Received By: B

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: CITY OF CHALLIS 208-879-2386  
Address: P.O. BOX 587  
CHALLIS, ID 83226

2. Date of Priority: OCT 24, 1877

3. Source: GARDEN CREEK Trib. to: SALMON RIVER

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 of | Lot | County |
|----------|-------|---------|--------|--------|--------|-----|--------|
| 14N      | 19E   | 32      | NE     | NE     | NE     |     | CUSTER |
|          |       |         | NW     | NW     | NW     |     | CUSTER |

5. Description of diverting works:  
HEADING FOR CITY PIPELINE AND OPEN DITCH.

6. Water is used for the following purposes:

| Purpose   | From  | To    | C.F.S | (or) | A.F.A. |
|-----------|-------|-------|-------|------|--------|
| MUNICIPAL | 01/01 | 12/31 | 2.040 |      |        |

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:  
M/ MUNIIPAL USES WITHIN CITY OF CHALLIS.

10. Place of Use:

| Township | Range | Section | 1/4 of | 1/4 of | Lot | Use  | Acres |
|----------|-------|---------|--------|--------|-----|------|-------|
| 14N      | 19E   | 28      | SW     | SW     |     | MUNI |       |
|          |       | 32      | NE     | NE     |     | MUNI |       |

A72-00047

Page 1

Date: 11/29/89

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10. Place of Use: Continued

| Township | Range | Section | 1/4 | of | 1/4 | Lot | Use  | Acres |
|----------|-------|---------|-----|----|-----|-----|------|-------|
| 14N      | 19E   | 32      | SE  |    | NE  |     | MUNI |       |
|          |       | 33      | NW  |    | NE  |     | MUNI |       |
|          |       |         | SW  |    | NE  |     | MUNI |       |
|          |       |         | NE  |    | NW  |     | MUNI |       |
|          |       |         | NW  |    | NW  |     | MUNI |       |
|          |       |         | SW  |    | NW  |     | MUNI |       |
|          |       |         | SE  |    | NW  |     | MUNI |       |
|          |       |         | NE  |    | SW  |     | MUNI |       |
|          |       |         | NW  |    | SE  |     | MUNI |       |

11. Place of use in counties: CUSTER

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

13. Other Water Rights Used:  
MANY

14. Remarks:

TRANS. 18, 167 & 561.

SEE TRANS. 561 FOR DELIVERY CONDITIONS.

JUDGMENT STATES 1.58 CFS WILL BE DIVERTED AT INTAKE FOR CITY  
PIPELINE IN THE NW1/4NW1/4 SEC. 32, AND THE BALANCE OF 0.46 CFS  
DIVERTED INTO A DITCH IN THE NE1/4NE1/4 SEC. 32, TWP 14N, RGE 19E

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: 4/15/1987

RAY KEPPNER

Decree Plaintiff

vs

CITY OF CHALLIS, ET AL

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: 3

For Organizations:

I do solemnly swear or affirm that I am Mayor of City of Challis, that I have signed the foregoing document in the space below as Mayor of City of Challis and that the statements contained in the foregoing document are true and correct.

Donald W. Sarsman  
Signature of Authorized Agent

November 29, 1989  
Date

State of Idaho )  
County of Butte ) SS.

Subscribed and sworn (or affirmed) before me this 29<sup>th</sup> day  
of November 19 89

Dolores Dine  
Notary Public

Seal

Residing at Challis  
My Commission Expires 7/24/94

A72-00047

T OF WA

14N

13N

A72-00047

19E



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Water Right Number - 72-00047

Adj. Flag Translation: Standard Water Right Number

Old (D) Number -

\*\*\* C - CURRENT OWNER \*\*\*  
VILLAGE OF CHALLIS

\*\*\* O - ORIGINAL OWNER \*\*\*  
ADAMS

JOHN Q.

1 -  
2 -  
3 -  
City- CHALLIS  
Phone - 208-000-0000

State- ID Zip- 83226

State- ID Zip-

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MAR 18 1993

+ - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +  
10/24/1877 17 D - DECREED

Source - - - - -  
GARDEN CREEK

Tributary - - - - -  
SALMON RIVER

+ - - - - - + - - - - - + - - - - - + - - - - - +  
Twn Rng Sec Tract Lot RFlg County Point of Diversion - - - - - Stream Index (Blank if no Index Code)  
14N 19E 32 NE NE (37) CUSTER  
14N 19E 32 NW NW (37) CUSTER

+ - - - - - + - - - - - + - - - - - + - - - - - +  
Code Description Period From Period To Water Use Diversion Rate Diversion Volume  
01 - IRRIGATION 2.040  
43 - DOMESTIC

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - + + - Total Consumptive Use - + + - KW Usage - +

+ - - - - - + - - - - - + - - - - - + - - - - - +  
Twn Rng Sec Tract Lot Acres Place of Use Code Description County  
14N 19E 32 NE NE 01 IRRIGATION (37) CUSTER  
14N 19E 32 SE NE 01 IRRIGATION (37) CUSTER  
14N 19E 33 NW NW 01 IRRIGATION (37) CUSTER  
14N 19E 33 SW NW 01 IRRIGATION (37) CUSTER

Total Acres:

+ - - Diversion Means -  
+ - - Non-Irrigation Use -  
+ - - Other Rights for Same Use -

Water right number - 72-00047

Adj. flag translation: Standard Water Right Number

TRANS- 18, 167 & 561.  
SEE TRANS. 561 FOR DELIVERY CONDITIONS.

Conditions of Approval -  
No Conditions of Approval found.

Decree Plaintiff - - - +  
ADAMS ET AL

Decree Defendant - - - +  
VANDERVOORT ET AL

Decree Date - +  
05/19/1914

Audit Fields - 05/06/85

05/28/88 CONVERT 06/20/89 CURTIS

Water Rights Dates and Flags Area

|                  |              |                 |              |                  |       |
|------------------|--------------|-----------------|--------------|------------------|-------|
| Proof Due Date   | - 00/00/0000 | Field Exam Made | - 00/00/0000 | Field Exam Fee   | -     |
| Approved/Denied  | - 00/00/0000 | Protested Date  | - 00/00/0000 | Swan Falls       | -     |
| Proof Made Date  | - 00/00/0000 | Hearing Date    | - 00/00/0000 | Temporary Right  | - P   |
| Start Work Date  | - 00/00/0000 | Verified Date   | - 05/06/1985 | DLE/Carey Act    | -     |
| Order Show Cause | - 00/00/0000 | Receipt Number  | -            | Water District   | - 72B |
| Licensed Date    | - 00/00/0000 | Appl Received   | - 00/00/0000 | Transfer/Amended | - T   |
| Decree Date      | - 05/19/1914 |                 |              |                  |       |

MICROFILMED  
MAR 18 1993

APR 2 4 198

4-22-87

1:00 PM

Kent W. Foster, Esq.  
HOLDEN, KIDWELL, HAHN & CRAPO  
P.O. Box 129  
Idaho Falls, Idaho 83402  
Telephone: (208) 523-0620

Barbara Brudner  
DEPUTY

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

RAY KEPPNER and ESTHER  
KEPPNER, husband and wife,

Plaintiffs,

vs.

DEPARTMENT OF WATER RESOURCES,  
State of Idaho and KENNETH  
DUNN, Director of the  
Department of Water Resources,  
State of Idaho, and the CITY  
of CHALLIS, IDAHO,

Defendants.

Case No. 2690

DECLARATORY JUDGMENT

The original plaintiffs herein, Ray Keppner and Esther Keppner, husband and wife, Joseph Peck and Ethel Peck, husband and wife, Kenneth Stark and Frances Stark, husband and wife, and DeRay Keppner, watermaster of Garden Creek Water District #72B, filed their verified Complaint with attached exhibits "A" through "F" on September 18, 1981, naming the DEPARTMENT OF WATER RESOURCES, State of Idaho and KENNETH DUNN, Director of the Department of Water Resources, State of Idaho, as defendants.

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The Complaint sought a writ prohibiting defendants from discharging DeRay Keppner as watermaster or interfering with his distribution of water from Garden Creek, together with attorneys' fees and costs. On September 29, 1981, the parties stipulated to the entry of an order reinstating DeRay Keppner as watermaster on condition he deliver water in accordance with the stipulated schedule and that plaintiffs would amend their Complaint to join the City of Challis as a party-defendant and to seek a Declaratory Judgment determining the respective water rights of the parties. The Order was signed October 9, 1981, and filed October 13, 1981.

The plaintiffs filed an Amended Complaint January 15, 1982, omitting Kenneth Dunn as a defendant and naming the CITY OF CHALLIS, IDAHO, as a defendant. The Amended Complaint sought a Declaratory Judgment that the amount of water to be delivered to the City of Challis be reduced by the amount of stream gain in Garden Creek between the present point of diversion and the original point of diversion as regularly measured and determined by the watermaster. The defendant, City of Challis, filed its Answer to the Amended Complaint on February 5, 1982, alleging certain factual information and seeking a Declaratory Judgment that the City of Challis is entitled to the delivery of 79 miner's inches at the present upper point of diversion at the intake for the city pipeline,

and 23 miner's inches at the original lower point of diversion with a priority date of 1877, and to 25 miner's inches at the present or upper diversion with a priority of May 15, 1880, and also for the appointment of a disinterested watermaster.

The defendants, Department of Water Resources (hereafter IDWR) and Dunn filed their Answer to plaintiffs' Amended Complaint on February 17, 1982, alleging affirmative facts and defenses and seeking a declaration by the Court that the City of Challis is entitled to at least 75 miner's inches without a determination by the watermaster of stream gains and that the watermaster is subject to the authority of IDWR and cannot be adverse to IDWR in litigation concerning the distribution of water.

Pursuant to a subsequent stipulation of all parties, the Court entered an Order dated August 16, 1982, that the plaintiff, DeRay Keppner, watermaster of Garden Creek Water District #72B, be dropped as a plaintiff from the action. On January 27, 1983, the Court entered an Order, again pursuant to stipulation, that Kenneth Stark and Frances Stark be dropped as plaintiffs to the action. From about that time on, the names of Joseph Peck and Ethel Peck, also appear to have been omitted as plaintiffs on most of the documents filed with this Court.

A Stipulation of Facts with attached exhibits "A" through "O" was signed by counsel for all parties on January 16, 1984,

and filed herein. Pursuant to motion, the Court entered its Minute Entry and Order, filed September 27, 1985, permitting the defendant, City of Challis, to file its Amended Answer, which alleged, inter alia, as an affirmative defense, facts supporting application of the doctrine of estoppel by laches against the plaintiffs.

Defendant City of Challis then filed a Motion For Summary Judgment supported by various affidavits setting out additional alleged facts pertinent to the issue of estoppel by laches. On January 29, 1986, plaintiffs, Ray and Esther Keppner filed their Motion For Partial Summary Judgment. No counter affidavits were filed by plaintiffs and the factual information in the record relating to long and knowing acquiescence by plaintiffs and their predecessors in interest in the delivery of 79 miner's inches of the waters of Garden Creek at the present or upper point of diversion to the defendant City of Challis, and the detrimental reliance by the defendant City of Challis thereon, is uncontroverted.

The respective motions of the parties for summary judgment were noticed up for hearing, but before the hearing could be scheduled and held, the parties stipulated to submit the matter to the Court for decision on the motions for summary judgment, without oral argument, on the briefs and the record. The Court has reviewed the record and the briefs and has entered its

Memorandum Decision herein, dated March 19, 1987, and its Amended Memorandum Decision, dated April 8, 1987, concluding that the City of Challis is entitled to a Declaratory Judgment establishing its right to the continued diversion of 79 miner's inches at the present point of diversion:

NOW, THEREFORE, the Court hereby declares, adjudges and decrees as follows:

1. Defendant City of Challis, Idaho, is the owner and holder of water right No. 72-00~~74~~<sup>47</sup>, for 2.04 cfs (102 miner's inches) of the waters of Garden Creek, with a priority date of October 24, 1877, for beneficial purposes and uses, which right was originally decreed to one John Q. Adams in the case of John Q. Adams vs. R. B. Vandervoort, et al, by the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Custer, J. M. Stevens, District Judge, on May 23, 1914. The point of diversion for said water right was at the Baxter Ditch headgate in the NW1/4 NW1/4, S33, T14N, R19, EBM, and water under said right was used for irrigation and domestic purposes upon approximately 160 acres in the SE1/4 NW1/4, SW1/4 NE1/4, NE1/4 SW1/4, NW1/4 SE1/4, S21, T14N, R19, EBM.

2. Said right No. 72-0047 was acquired by the City of Challis by purchase in 1935, and by virtue of a transfer proceeding before the State of Idaho Department of Reclamation (a predecessor agency of the Idaho Department of Water

Resources) which was completed in 1936, said right was transferred for use for irrigation and domestic purposes from the former place of use to the E1/2 NE1/4, S32 and the W1/2 NW1/4, S33, all in T14N, R19, EBM. The point of diversion was changed so that 1.58 cfs (79 miner's inches) was to be diverted at the intake for the city pipeline in the NW1/4 NW1/4, S32, T14N, R19, EBM, and the balance of .46 cfs (23 miner's inches) was to be diverted into a ditch with its headgate on Garden Creek in the NE1/4 NE1/4, S32, T14N, R19, EBM.

3. The Certificate of Transfer documenting the above described transfer of the place of use and point of diversion for water right No. 72-0047 contained a provision to the effect that an amount of water was to be deducted from the 79 miner's inches diverted at the new upper diversion (city pipeline intake) equal to the stream gain between that point and the old point of diversion downstream. However, no amount was in fact ever deducted from the 79 miner's inches which was delivered at said new point of diversion to the City of Challis at all times during each irrigation season when water was available from Garden Creek under right No. 72-0047.

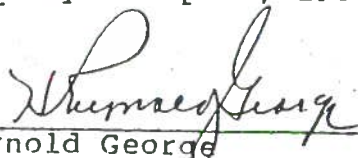
4. Plaintiffs and plaintiffs' predecessors in interest are estopped by laches from taking any action to prevent or reduce diversions under said right to the City of Challis at said upper point of diversion (the intake to the city pipeline)

because there has in fact been (1) long and knowing acquiescence for some 40-50 years by plaintiffs and their predecessors in interest in the practice of the watermasters of delivering the full 79 miner's inches to the City of Challis at its pipeline intake and (2) the City of Challis has relied to its detriment upon such practice by expanding its water service to an increasing population during the same period of time.

5. The defendant City of Challis is entitled to continue to divert and use 1.58 cfs (79 miner's inches) of the waters of Garden Creek under right No. 72-0047 with a priority of October 24, 1877, through its upper diversion at the intake to the city pipeline in the NW1/4 NW1/4, S32, T14N, R19, EBM, at all times during each irrigation season when water is available under such right.

6. Plaintiffs are not entitled to relief on their Complaint herein.

Rendered and entered this 15<sup>th</sup> day of April, 1987.

  
H. Reynold George  
District Judge

7879e/sam

7 - DECLARATORY JUDGMENT

*Certified  
Copy.  
Betty L. Horn, Clerk*

**MICROFILMED**  
**MAR 18 1993**

CLERK'S CERTIFICATE OF MAILING

I certify that I am the duly elected and qualified Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Custer; that I mailed a copy of the foregoing Declaratory Judgment to the following attorneys this 22 day of April, 1987.

Barbara Bledsoe  
Clerk deputy

Myrna South, Esq.  
MARCUS, MERRICK & MONTGOMERY  
737 North 7th Street  
Boise, Idaho 83702

Phillip J. Rassier, Esq.  
Deputy Attorney General  
Department of Water Resources  
Statehouse  
Boise, Idaho 83720

John S. McKinney, Esq.  
P.O. Box 1442  
Salmon, Idaho 83467

Kent W. Foster, Esq.  
HOLDEN, KIDWELL, HAHN & CRAPO  
P.O. Box 129  
Idaho Falls, Idaho 83402



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

RECEIVED

MAR 1 1990

Department of Water Resources  
Southern Region Office

February 22, 1990

Challis Water Dept.  
P. O. Box 487  
Challis, ID 83226

A72-00047  
00123  
07117  
07167

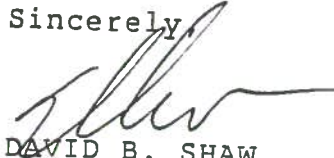
Gentlemen:

Our records show you have filed your adjudication claim(s) in the Snake River Basin Adjudication. Our records do not, however, include a clear map of your service area. Would it be possible for us to get a map of your customer service area for your municipal water system, both to supplement the record of your claim(s) and for use as described below?

In our review and investigation phase of the Snake River Basin Adjudication, the map would be helpful for us to have this information in verifying individual claims to water rights for domestic purposes. We will be happy to discuss with you the most convenient way for you to provide this information to us. I can be reached at 327-7931 or you may contact my assistant, Anita Warntjes at 327-7986.

Your assistance in this matter is greatly appreciated.

Sincerely,

  
DAVID B. SHAW  
Adjudication Bureau Chief

DBS:alw

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MAR 18 1993

TOWNSHIP  
RANGE  
SECTION

00047

2.04 CFS total

1.58 CFS

.46 CFS

NW/NE  
City pipeline  
P/D

NE/NE  
landgate  
DEV.

P/I

32

33

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MAR 18 1993

Declaratory Judgment entered 4-15-1987  
for irr & Domestic

Declaratory Judgment entered 4-15-1987  
for irr/domestic

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MAR 18 1993

CSC  
RCHALLIS  
CREEK  
RANCH

RECEIVED

OCT 21 1999

Department of Water Resources  
Southern Region

October 19, 1999

Ms. Betty Horn, CMC  
Certified City Clerk - Treasurer  
P. O. Box 587  
Challis, ID 83226

Dear Ms. Horn:

As we discussed when we met on Friday (October 15<sup>th</sup>), there was some confusion with the delivery of the City's water rights this past irrigation season and perhaps in the prior year(s). I was in Twin Falls yesterday and among other things, spent time at the Idaho Department of Water Resources. I met with Mr. Kelly Christensen and Mr. Allen Merritt specifically on the City's situation to be sure the explanation I am about to provide is as accurate as possible and would insure elimination of any future confusion with regard to these deliveries.

As we agreed on Friday, the City has four (4) water rights, 72-00047, 72-00110B, 72-00111B and 72-00123. As it stands at the present time, water rights 72-00047 and 72-00123 can be diverted only at Diversion No. A0003075 going to the municipal water ponds and water rights 72-00110B and 72-00111B can be diverted only at Diversion No. A0002509 for supply to, among others, the City Golf Course.

Since you indicated to me you thought it was the City's desire to divert any of these rights from either of these diversions, I inquired about that possibility. While the City can request from IDWR the necessary forms to file a request for changes in the present diversion provisions, I was informed by Mr. Merritt that the probability of this being approved was "at best questionable". Mr. Merritt advised 72-00047 and 72-00123 were established solely as municipal use rights and 72-00110B and 72-00111B are solely irrigation rights for such utilization at the golf course.

If the City would still like to pursue the possibility of having these rights changed, please contact IDWR accordingly for the necessary forms. If I can help in any further way, please let me know.

Sincerely,

J. R. Challis, Watermaster  
Water District 72-B, Garden Creek

cc: Allen Merritt and Kelly Christensen, IDWR - Twin Falls

cc: Challis Recreation & Development

cc: Robert Andrews, Secretary/Treasurer, Water District 72-B, Garden Creek

CLAIM: CITY OF CHALLIS GARDEN CREEK DIVERSION  
DATE PHOTOS TAKEN; 4-1-93 *XHC*

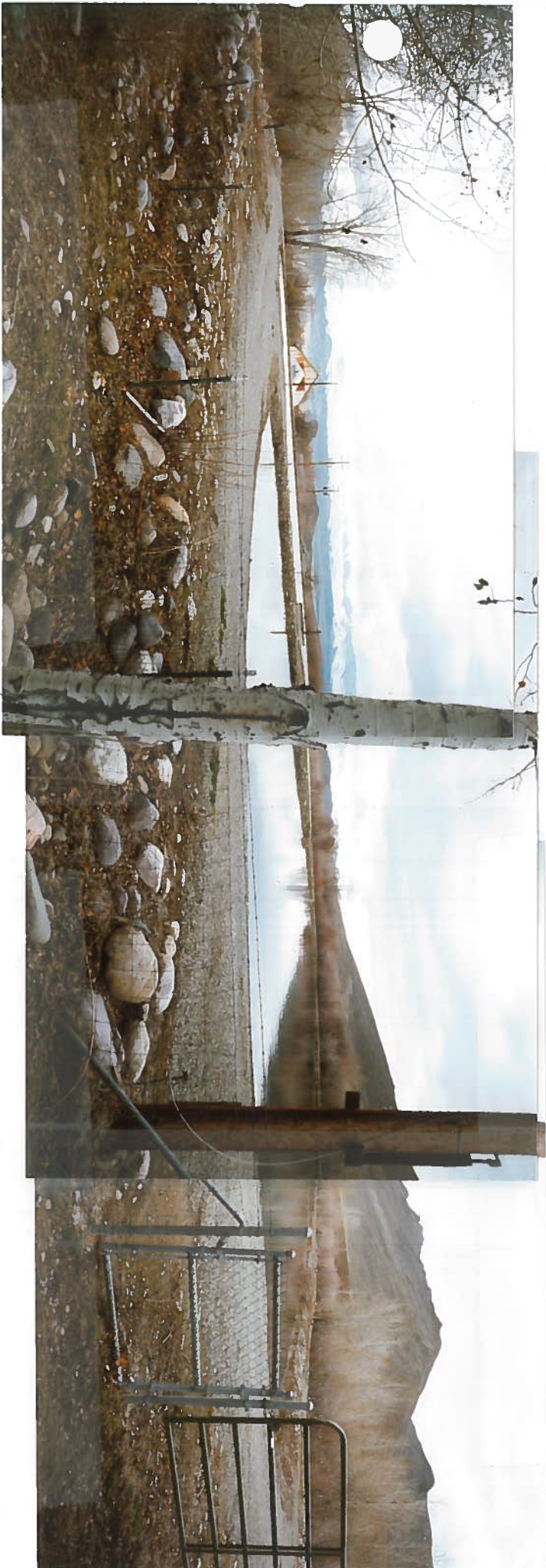
PICTURE # 1

GARDEN CREEK DIVERSION WORKS AND DIVERSION  
CONTROL. SETTLING PONDS ARE TO THE RIGHT  
OF THIS PICTURE. PICTURE LOOKING NORTH  
EAST.



PICTURE SET # 2

THIS PHOTO SET WAS TAKEN NEXT TO THE DIVERSION WORKS AND  
IS LOOKING SOUTH ON THE RIGHT TO LOOKING EAST ON THE LEFT.  
THE BUILDING IN THE BACKGROUND IS THE PUMP STATION FOR THE  
CITY.



#4 city PD looking NE

#5/6/7 city ponds

looking S. to SE to E

| WR-NUMBER | OFFICE | LOCATION | TYPE-DESCRIPTION             | DATE     |
|-----------|--------|----------|------------------------------|----------|
| A72-00047 | KEEN   | CIX      | Reviewed, Conditions Pending | 08/30/94 |
| A72-00123 | KEEN   | CIX      | Claimant Contact Sent        | 08/30/94 |
| A72-07117 | KEEN   | CIX      | Reviewed, Conditions Pending | 08/30/94 |
| A72-07167 | KEEN   | CIX      | Reviewed, Conditions Pending | 08/30/94 |

BASIN  
72

| OFFICE | WR-NUMBER | CURRENT NAME     | location | TOTAL CFS | TYPE-DESCRIPTION             | DATE     | USE DESC                       |
|--------|-----------|------------------|----------|-----------|------------------------------|----------|--------------------------------|
| KEEN   | A72-00047 | CHALLIS, CITY OF | CITY     | 2.040     | Reviewed, Conditions Pending | 08/30/94 | MUNI - change in nature of use |
| KEEN   | A72-00123 | CHALLIS, CITY OF | CITY     | 0.140     | Claimant Contact Sent        | 08/30/94 | IRR                            |
| KEEN   | A72-07117 | CITY OF CHALLIS  | CITY     | 6.000     | Reviewed, Conditions Pending | 08/30/94 | MUNI                           |
| KEEN   | A72-07167 | CITY OF CHALLIS  | CITY     | 1.000     | Reviewed, Conditions Pending | 08/30/94 | MUNI                           |

Rec'd 2/22/94 - still need written response. Rec'd  
Claimant Contact memo in the file.

Kelly Christensen did the field work on these. I need his notes to write up the CVRS.

S.W. Keen  
8-30-94

BASIN 72  
City of Challis

From: DWR60::CHRISTENSEL 23-FEB-1994 14:38:19.21  
To: DWR03::KEEN  
CC: CHRISTENSEN  
Subj: CITY OF CHALLIS ADJUDICATION CLAIMS REVIEW

I SPOKE WITH JOHN WALKER ON 2-23-94 AND CONFIRMED THAT ONLY ONE DIVERSION POINT FROM GARDEN CREEK IS USED. THEY DIVERT AT THE SETTLING PONDS ONLY AND HAVE BEEN FOR AT LEAST 30 YEARS.

I DISCUSSED PUMPING AND SEWAGE TREATMENT RECORDS FOR USE FOR DETERMINING CONSUMPTIVE USE BUT IT DOES NOT APPEAR THAT THEY HAVE RECORDS COMPATIBLE WITH OUR CONSUMPTIVE USE DATA REQUIREMENTS, THEREFORE, I CALCULATED THE IRRIGATED ACRES WITHIN THE CITY LIMITS. NO LARGE MANUFACTURING OR COMMERCIAL CONSUMPTIVE USE ESTABLISHMENTS EXIST IN CHALLIS AT THIS TIME.

EACH BLOCK IS APPROXIMATELY 200 FT BY 200 FT AND IS DIVIDED INTO EIGHT LOTS. USING THE BLM AERIAL PHOTO 5-8C-13 (7-1-88 FLIGHT) I WAS ABLE TO ESTIMATE THE NUMBER OF IRRIGATED LOTS PER BLOCK. LOTS FULLY COVERED BY BUILDINGS AND/OR PARKING LOTS WERE EXCLUDED, HOWEVER, LOTS WITH A RESIDENCE WERE CONSIDERED TO BE COMPLETELY IRRIGATED. THE CONSIDERED CITY LIMITS INCLUDES THE CEMETERY AND THE SUBDIVISION SOUTH OF THE CITY PROPER.

CITY STREETS WERE EXCLUDED FROM THE ACRE DETERMINATION AND AS I HAVE ALSO CONDUCTED THE VERIFICATION OF INDIVIDUAL RIGHTS USING INDEPENDENT SYSTEMS FOR GARDEN CREEK WATER USE, I EXCLUDED THOSE LOTS FROM THE ACRES IRRIGATED. THE FOREST SERVICE PROPERTY EAST OF HIGHWAY 93 IS IRRIGATED UNDER ANOTHER RIGHT AND THEREFORE IS ALSO EXCLUDED.

I FOUND 75 ACRES BEING IRRIGATED.

- 
- The cemetery has its own irrigation right (72-00123), so those five acres should be subtracted from the 75.
  - Consumptive use for the City of Challis system is approximately  
$$70 \text{ acres} \times 2.5 \text{ AF/acre} = 175 \text{ AFY}$$
  - See Adjudication Memo #37 for a discussion of the methodology.

Right Nos.

A72-00047

A72-07167

A72-07117

S.W. Keen  
2-25-94

RECEIVED

MAY 14 1987

RECEIVED

MAR 23 1987

Department of Water Resources  
Southern Region Office

Department of Water Resources

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER  
-----

RAY KEPPNER and ESTHER  
KEPPNER, husband and  
wife,  
  
Plaintiffs,

-vs-

DEPARTMENT OF WATER RESOURCES,  
State of Idaho and KENNETH  
DUNN, Director of the  
Department of Water Resources,  
State of Idaho; and the CITY  
OF CHALLIS, IDAHO,  
  
Defendants.

72-00047

MEMORANDUM DECISION

Case No. 2690

-----

In 1936 the Village of Challis owned a water right of 2.04 cubic feet per second or 102 Miner's inches with a priority date of October 24, 1877. In 1936 the Village set out to seek a change in point of diversion for a portion of this water right moving it upstream. It was apparently a known fact that in between the proposed upper diversion point and the lower diversion point water entered and supplemented the stream flow by virtue of springs and percolating waters. The formal application to the then Department of Reclamation

sought a transfer of 79 inches to an upper diversion point connecting to the Village pipeline and 23 inches at a lower diversion point. Certain water right holders above the upper diversion including predecessors of plaintiffs Keppners protested this transfer. Apparently the 23 inches was the rise asserted between the two points of diversion and the protestors did not agree that this represented a correct figure. A statement was made that this rise was measured during a low water year. A hearing was held May 21, 1936, attended by affected water users and one Fred Tolman, a field engineer for the Department of Reclamation. At the conclusion of the meeting a stipulation was signed by all the protestants and the language of the stipulation was incorporated in the "Certificate of Water Right, Transferred Right No. 561." That language included the following statement:

. . .the water right hereby transferred. . .will be diverted. . .in the following manner:

An amount of said water equal to the difference between said 2.04 cubic feet per second (102 inches) and the amount of water found to raise between the present intake for the Village reservoir and the present point of diversion for the Arthur Baxter ditch. . .

. . .it is further stipulated and agreed by and between said parties that the duly and regularly

appointed watermaster shall determine the amount of water so raising between said point above mentioned and shall regulate the 2.04 cubic feet per second of the water as heretofore stated.

It is apparent that a measurement of the rise was made on or about August 19, 1935, and was measured as 23 inches and this is the figure that the protestors disagreed with. The full record of this case can be examined and it appears that there was no attempt by any watermaster to reduce the intake at the upper diversion by virtue of any measurement of the rise. Whatever recordations of the amount of intake have been made up to 1980 show that the Village received at least 75 inches. After plaintiff Ray Keppner became watermaster measurements were taken of the rise and based on these measurements, and for the first time in over 40 years, the diverted amount at the upper diversion was reduced.

It is significant that the predecessor protestants stipulated the delegation to the watermaster to measure the rise and consequently make any reduction in the flow at the upper diversion. The Village was not in a position to regulate the flow leaving it up to the watermaster, as the protestors and stipulators left it up to the watermaster, to deliver the water. If any watermaster serving prior to

Mr. Keppner had made a measurement of the rise and had then adjusted the flow accordingly there would have been much less of a case to claim that flow could not be reduced because of laches, forfeiture, or adverse possession. Mr. Keppner is bound by the action or non-action of his predecessors.

The City of Challis urged the Court to hold that plaintiff be estopped by laches from questioning the historic delivery of 79 inches of water at the upper diversion. The case of Hillcrest Irrigation District v Nampa and Meridian Irrigation District, 57 Idaho 403, 66 P.2d 115 (1937); is cited as good authority to hold that the Keppners be estopped because of laches. In Hillcrest there was an application in 1913 to change the point of diversion of 1077 inches of water much further upstream. The change was granted and water diverted upstream for a period of more than 20 years and only after that passage of time was any question raised as to the transfer. The Court stated:

It satisfactorily and conclusively appears that even the (Hillcrest's) title may have been originally questionable or uncertain, nevertheless respondents have stood by, with full knowledge of all the facts, and for more than 20 years, have allowed (Hillcrest) to proceed on the theory that it had valid title to these water rights (and). . . respondents are and should be estopped from questioning (Hillcrest's) title.

The Court further said:

. . . the description has for more than 20 years proven sufficient in practical application to enable the various watermasters to identify it and made diversion from year to year so that in practice there has been no controversy or dispute over the particular water rights or appropriations that were intended to be, and in fact, were transferred. . .

The Hillcrest case is certainly good authority for support of the position taken by the City of Challis if it can be satisfactorily shown that the protestants and their successors stood by with full knowledge of all the facts. What knowledge can we assess against these protestants and their successors:

(1) Full knowledge that by agreement the Village was not to receive all of the 102 inches at their upper diversion, but was to be reduced by the rise generated between the two points of diversion;

(2) Full knowledge that the duly and regularly appointed watermaster was to determine the amount of water so raising and regulate the flow at the upper diversion accordingly;

(3) Constructive knowledge of the delivery of 79 inches at the upper diversion over a period of many years. To bear this out we have the affidavit of Lawrence Bradbury, who served as watermaster.

as secretary of the Water District for almost 25 years, from 1948 to 1973. He states that it was the practice all these 25 years to deliver 79 inches to the City of Challis at the upper diversion. He further states in his affidavit that the City paid its annual assessment on the basis of having received 79 inches of water each year. The diversion of the water to the City was open and visible to all the upper water users.

From such constructive notice it can be concluded that the protestants and their successors knew or should have known the amount of water being diverted and thus it should be held that they had knowledge of such fact. See Pflueger v Hopple, 66 Idaho 152, 156 P.2d 315 (1945). Also Fred Green, who was watermaster at the time of this 1936 stipulation and transfer, remained as watermaster through 1945. He, in a sense through the stipulation, became the agent of the protestors to make any adjustment that would vary the 79 inch delivery. He carried out his duties as Watermaster openly and obviously under such circumstances that the protestors as prudent men were put on inquiry as to the particular fact of the amount of water being diverted. (See Pflueger, *ibid.*)

The plaintiffs contend that the protestors and successors had the right to believe that the watermaster was distributing

the water according to the decrees. That contention is basically true, but it is also true that there is no evidence that the watermaster in delivering 79 inches was doing anything but delivering according to the decree.

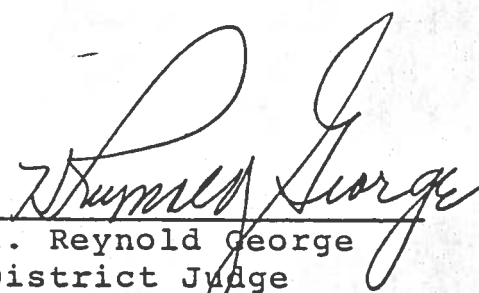
In Mr. Keppner's affidavit he states that in 1979 Gary Funderburg of Water Resources had measurements taken to determine the rise between the City's old and new points of diversion and that this was the first Mr. Keppner realized the City was taking more water than it was entitled to. First Mr. Keppner's possible acquiescence is not material. If there be a sound basis for laches it had taken place long before 1979. Secondly Mr. Keppner is bound by that which was done or not done by his predecessors. Next, there is no evidence that at any time prior to 1979 by measurement was it established that the City was receiving more water than it was entitled to.

The doctrine of laches is a creation of equity and applies where there is a long and continuous knowing acquiescence in another's use and enjoyment of a property right. There may be an estoppel to prevent a continued use and enjoyment of that property right if the rightholder has failed to assert his right at an earlier time and there has resulted a detrimental reliance on the part of the claimant. If we can find the long

and continuous acquiescence can we also find detrimental reliance? That comes through the City's claim that they have expanded their water service to an increased population depending upon the water flow at the upper diversion. The Court gives credence to that claim and finds there is detrimental reliance over this 40-year period.

Based on the findings found in the foregoing language the Court concludes as a matter of law that the plaintiffs through their predecessors are guilty of laches and these predecessors having acquiesced in the continual diversion of approximately 79 inches of water at the upper diversion and the City of Challis is entitled to a declaratory judgment establishing that the City is entitled to the continued diversion of 79 inches.

Dated this 19th day of March, 1987.

  
H. Reynold George  
District Judge

S.W. Keen  
2-23-94

A72-00047

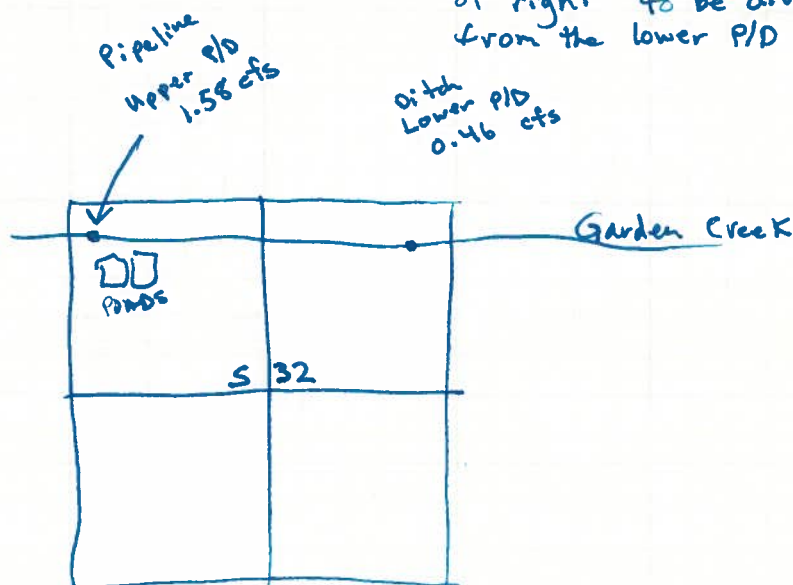
10-24-1987 Priority Source = Garden Creek

5-<sup>19</sup>~~24~~-1914 Decreed 2.04 cfs Irrigation 160 acres S.22 1 P  
10-28-1915 Transfer 167 2.04 cfs 160 acres S.21 1 P  
6-16-1936 Transfer 561 2.04 cfs Irr. + Domestic 160 acres S.32+33 2 P  
4-15-1987 Declaratory Judgement 1.58 cfs - from the city

Pipeline diversion  
"during each irrigation season"

- No mention of nature of  
use or place of use

- No determination of portion  
of right to be diverted  
from the lower P/D (0.46 cfs)



2-23-94 I called Kelly Christensen, the field examiner,  
to ask him to ascertain the existence of the  
lower P/D and water use by the city of  
Challis through that P/D. ~~Has~~ Has that  
portion been abandoned? If not, is the  
use IRR or MUNI?

2. P/0s claimed 1 an open ditch in WENE Sec 32  
(around Blk 1-3) For 46 CFS

| WR ELEMENT                | FIELD EXAM<br>Y/N | CORRESPONDENCE<br>SENT/RECEIVED<br>BY WHOM/DATE | FIELD EXAM<br>BY WHOM/DATE | CHANGE<br>CLAIM<br>Y/N | VERIFIED BY<br>CODE | COMPLETED<br>REVIEW<br>WHOM/DATE | COMPLETED<br>DATA ENTRY<br>WHOM/DATE | VERIFIED<br>DATE<br>WHOM/DATE |
|---------------------------|-------------------|-------------------------------------------------|----------------------------|------------------------|---------------------|----------------------------------|--------------------------------------|-------------------------------|
| PRIORITY DATE             |                   |                                                 |                            |                        |                     |                                  |                                      |                               |
| POINT OF DIV              | Y                 |                                                 |                            |                        |                     |                                  |                                      |                               |
| SOURCE                    |                   |                                                 |                            |                        |                     |                                  |                                      |                               |
| PLACE OF USE              | Y                 |                                                 |                            |                        |                     |                                  |                                      |                               |
| DIV. AMOUNT<br>CFS/VOLUME | Y                 |                                                 |                            |                        |                     |                                  |                                      |                               |
| CONSUMPTIVE USE           | -                 |                                                 |                            |                        |                     |                                  |                                      |                               |
| PURPOSES                  | Y                 |                                                 |                            |                        |                     |                                  |                                      |                               |
| PERIOD OF USE             | Y                 |                                                 |                            |                        |                     |                                  |                                      |                               |
| BASIS OF CLAIM            |                   |                                                 |                            |                        |                     |                                  |                                      |                               |
| REMARKS                   | Y                 |                                                 |                            |                        |                     |                                  |                                      |                               |

\*VERIFIED BY\* CODES

TOPD MAP/ORTHO-PG = 1  
 ASCS MAP = 2  
 WATERMASTER RECORDS = 3  
 NAPP PHOTOS = 4  
 FIELD EXAM = 5  
 OTHER (SEE REMARKS) = 6

THESE CODES ARE USED TO INDICATE HOW THE FIELD EXAMINER VERIFIED THE INFORMATION USED FOR THIS FIELD EXAMINATION. INDICATED ARE ALL CODES WHICH APPLY.



LAST: CHALLIS  
ADDRESS: P.O. BOX 587  
CITY: CHALLIS  
PHONE NUMBER: 208-879-2386  
OWNER CODE: C

FIRST: CITY OF  
STATE: ID ZIP: 83226

LAST: ADAMS  
ADDRESS: X  
PHONE NUMBER: 208-000-0000  
OWNER CODE: 0

FIRST: JOHN Q.  
STATE: ID ZIP: 0

FIELD EXAM REQUIRED?  
VERIFICATION REQUIRED DUE TO REMARKS?

DATABASE Y FIELD EXAMINER

CLAIM REMARKS: TRANS. 18, 167 & 561.  
SEE TRANS. 561 FOR DELIVERY CONDITIONS.  
JUDGMENT STATES 1.58 CFS WILL BE DIVERTED AT INTAKE FOR CITY  
PIPELINE IN THE NW1/4NW1/4 SEC. 32. AND THE BALANCE OF 0.46 CFS  
DIVERTED INTO A DITCH IN THE NE1/4NE1/4 SEC. 32, TWP 14N, RGE 19E

Copy to comments



A. AJ CLAIM: # A72-00047 PRIORITY DATE: 10-24-1877 STAGE: D

B. WR RECORD: # 72-00047 PRIORITY DATE: 10-24-1877 STAGE: D

C. FIELD EXAM REQUIRED? DATABASE FIELD EXAMINER

DUE TO PRIORITY DATE DISCREPANCY? (Y/N) N

ARE THERE OBVIOUS REASONS TO QUESTION THE PRIORITY DATE CLAIMED? Y( ) N( ) ☒

IF YES EXPLAIN.

REMARKS: *Claimed as secret; recommend as claimed.*

RECOMMENDED PRIORITY DATE:

10-24-1877

REVIEWED BY *S.W. Kien*

DATE *2-28-94*

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

| RIGHT     | TWP. | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | CNTY   |
|-----------|------|------|------|-----|-----|-----|-----|--------|
| A72-00047 | 14N  | 19E  | 32   |     | NE  | NE  |     | CUSTER |
| A72-00047 | 14N  | 19E  | 32   |     | NW  | NW  |     | CUSTER |

OTHER AJ CLAIMS WITH SAME AJ POD

A PREFIX R PREFIX NONE

|            |            |
|------------|------------|
| A72-00048  | 72-00048   |
| A72-00051B | 72-00051N  |
| A72-00051N | 72-00061   |
| A72-00072  | 72-07167   |
| A72-00110  | 72-07290   |
| A72-00111  | T72-00048  |
| A72-00123  | T72-00051B |
| A72-10377  | T72-00051L |
|            | T72-00051N |
|            | T72-00110  |
|            | T72-00111  |

WR RECORDS IN SAME 40 ACRE TRACT

SOURCE: GARDEN CREEK

TRIB: SALMON RIVER

B. WR POINT OF DIVERSION AND SOURCE:

| RIGHT    | TWP. | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | CNTY   |
|----------|------|------|------|-----|-----|-----|-----|--------|
| 72-00047 | 14N  | 19E  | 32   |     | NW  | NW  |     | CUSTER |
| 72-00047 | 14N  | 19E  | 32   |     | NE  | NE  |     | CUSTER |

OTHER WR RECORDS WITH SAME WR POD

AJ CLAIMS IN SAME 40 ACRE TRACT

A PREFIX R PREFIX

|            |            |
|------------|------------|
| 72-00048   | A72-00048  |
| 72-00051N  | A72-00051B |
| 72-00061   | A72-00051N |
| 72-07167   | A72-00072  |
| 72-07290   | A72-00078  |
| T72-00048  | A72-00110  |
| T72-00051B | A72-00111  |
| T72-00051L | A72-00118  |
| T72-00051N | A72-00123  |
| T72-00110  | A72-07167  |
| T72-00111  | A72-10071  |
|            | A72-10256  |
|            | A72-10257  |
|            | A72-10261  |
|            | A72-10280  |
|            | A72-10377  |

SOURCE: GARDEN CREEK

TRIB: SALMON RIVER

C. FIELD EXAM REQUIRED?

DUE TO POD DISCREPANCY? (Y/N)  
DUE TO SOURCE DISCREPANCY? (Y/N)

FIELD EXAMINER  
DATABASE  
Y N

REMARKS:

See Transfer File: Transfer S61 and subsequent (1987) Declaratory Judgment of the District Court Judge H. Ronald George (Case No. 2690) indicate that Charles is entitled to 1.5840 from NWNW, S32, T14N, R19E and 0.4640 from NENE, S32, T14N, R19E. The P/D at NWNW is the city's pipeline into settling ponds (it is the same as A72-00123). The 10-acre legal in NWNW, S32, T14N, R19E. The other P/D is apparently a ditch.

| RECOMMENDED POINT(S) OF DIVERSION AND SOURCE: |      |      |        |
|-----------------------------------------------|------|------|--------|
| TWP.                                          | RGE. | SEC. | LOT    |
| 14W                                           | 19E  | 32   |        |
|                                               | NW   | NW   | NW     |
|                                               |      |      | Custer |
|                                               |      |      | 1.5840 |

SOURCE: GARDEN CREEK

TRIB: SALMON RIVER

REVIEWED BY:

S.W. Keen

DATE: 2-25-94

23-FEB-1994

IDWR Agent Kelly Christensen called John Walker at the City of Challis and confirmed that only one diversion from Garden Creek is used. The P/D at the settling ponds is in use taking 79 inches. The lower P/D has not been used for about 30 years.

Based on this evidence, I am assuming that the 23 inches allotted to the lower P/D have been abandoned. The 1987 Declaratory Judgment makes no determination as to the use or existence of this portion of the right.

S.W. Keen  
2-25-94

A. ROOT WATER RIGHT NUMBERS: A72-00047

B. POU LISTING

| TWP | RNG | SEC | 1/4 | 1/4 | LOT | NAME                           | AJ<br>#/ACRES | WR<br>#/ACRES | LANDSAT<br>DATA | FIELD<br>EXAM. | RECOMM.<br>ACRES |
|-----|-----|-----|-----|-----|-----|--------------------------------|---------------|---------------|-----------------|----------------|------------------|
| 14N | 19E | 28  | SW  | SW  |     | CHALLIS, CITY OF               | A72-00047     | -             | -               | -              | -                |
|     |     |     | SW  | SW  |     | YACOMELLA, ANTONY R.           | A72-04181     | 2.3           | 72-04181        | /              | 2.0              |
|     |     |     | SW  | SW  |     | SCHOOL DIST. NO. 181, CHALLISA | A72-07292     | -             | 72-07292        | /              | -                |
|     |     |     | SW  | SW  |     | REED, LLOYD                    | A72-10310     | -             | -               | /              | -                |
|     |     |     | SW  | SW  |     | CLOUD, ROBERT                  | A72-10369     | 3.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | REED, LLOYD                    | A72-10404     | -             | -               | /              | -                |
|     |     |     | SW  | SW  |     | SCHOOL DIST. NO. 181, CHALLIS  | A72-07292     | -             | -               | /              | -                |
|     |     |     | SW  | SW  |     | CHIVERS, THOMAS                | -             | -             | -               | /              | -                |
|     |     |     | SW  | SW  |     | TRELOAR, LOUISE S.             | 72-00052      | 10.0          | 72-00128        | /              | 14.0             |
|     |     |     | SW  | SW  |     | CHURCH OF JESUS CHRIST LATTER  | 72-07358      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     |                                |               |               |                 |                |                  |
|     |     |     | SW  | SW  |     | CHALLIS, CITY OF               | A72-00047     | -             | -               | -              | -                |
|     |     |     | SW  | SW  |     | GASSMAN, RONALD W.             | A72-00072     | -             | 72-00072        | /              | 1.0              |
|     |     |     | SW  | SW  |     | SWIGERT, RUBY                  | A72-00118     | -             | 72-00118        | /              | 1.0              |
|     |     |     | SW  | SW  |     | SWIGERT, RUBY                  | A72-10071     | 0.3           | -               | /              | -                |
|     |     |     | SW  | SW  |     | CITY OF CHALLIS                | A72-07167     | -             | -               | /              | -                |
|     |     |     | SW  | SW  |     | BARRETT, R. M.                 | A72-10280     | -             | -               | /              | -                |
|     |     |     | SW  | SW  |     | BUXTON, SYVILLA                | A72-10377     | -             | -               | /              | -                |
|     |     |     | SW  | SW  |     | WINEBARNER, JON                | A72-00078     | -             | 72-00078        | /              | 1.0              |
|     |     |     | SW  | SW  |     | ADAMSON, W. W.                 | 72-00051F     | 40.0          | -               | /              | -                |
|     |     |     | SW  | SW  |     | KEYES, E. W.                   | 72-00058      | 4.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | OSTER, W. T.                   | 72-00059      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | WILSON, E. P.                  | 72-00061      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | CHAMBERLAIN, ALICE B.          | 72-00066      | 2.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | BRASSUER, RODGER               | 72-00067      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | KERR, LEE                      | 72-00069      | -             | -               | /              | -                |
|     |     |     | SW  | SW  |     | SWEET, M. M.                   | 72-00070      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | MC GOWAN, LAVANTIA             | 72-00071      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | WILKINSON, C. E.               | 72-00075      | -             | -               | /              | -                |
|     |     |     | SW  | SW  |     | MALM, HANNAH                   | 72-00079      | -             | -               | /              | -                |
|     |     |     | SW  | SW  |     | O NEAL, ED                     | 72-00084      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | MC KENDRICK, LILLIE S.         | 72-00086      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | FOX, J. C.                     | 72-00088      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | FOX, J. C.                     | 72-00089      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | BROWN, GERTRUDE D.             | 72-00090      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | HOWELL, CONQUELLA              | 72-00099      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | ELDER, NELLIE                  | 72-00102      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | EBBERTS, JOSEPH L.             | 72-00103      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | EBBERTS, JOSEPH L.             | 72-00104      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | BLUME, SK. JULIUS              | 72-00107      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | BUSTER, WILLIAM                | 72-00112      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | BUSTER, WILLIAM                | 72-00113      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | WATSON, BARBARA E.             | 72-00114      | 1.0           | -               | /              | -                |
|     |     |     | SW  | SW  |     | BRASSUER, RODGER               | 72-00115      | -             | -               | /              | -                |

24.0

16.0

| TWP | RNG | SEC | 1/4 | 1/4 | LOT | NAME                        | AJ<br>#/ACRES | WR<br>#/ACRES | LANDSAT<br>DATA | FIELD<br>EXAM. | RECOMM.<br>ACRES |
|-----|-----|-----|-----|-----|-----|-----------------------------|---------------|---------------|-----------------|----------------|------------------|
| 14N | 19E | 33  | NE  | NE  |     | ADAMSON, D. W.              |               | 72-00119      |                 |                |                  |
|     |     |     | NE  | NE  |     | WATERS, MATTIE              |               | 72-00120      |                 |                |                  |
|     |     |     | NE  | NE  |     | CHIVERS, WILLIAM            |               | 72-00131      |                 |                |                  |
|     |     |     | NE  | NE  |     | NICKSON, WILLIAM            |               | 72-00132      |                 |                |                  |
|     |     |     | NE  | NE  |     | ADAMSON, MABEL              |               | 72-00137      |                 |                |                  |
|     |     |     | NE  | NE  |     | MACKEY & CENTRAL            |               | 72-00131      |                 |                |                  |
|     |     |     | SE  | SE  |     | CHALLIS, CITY OF            |               | 72-00047      |                 |                |                  |
|     |     |     | SE  | SE  |     | HOVERN, KATHLEEN            |               | 72-00047      |                 |                |                  |
|     |     |     | SE  | SE  |     | MAGEE, HARRIET              |               | 72-00047      |                 |                |                  |
|     |     |     | SE  | SE  |     | CITY OF CHALLIS             |               | 72-00047      |                 |                |                  |
| 14N | 19E | 33  | SE  | SE  |     | COBBLEY, ELVIN              |               | 72-00117B     |                 |                |                  |
|     |     |     | SE  | SE  |     | LEATON, HAROLD              |               | 72-00117A     |                 |                |                  |
|     |     |     | SE  | SE  |     | SMITH, JR., O DELL          |               | 72-00117C     |                 |                |                  |
|     |     |     | SE  | SE  |     | SMITH, JR., O DELL          |               | 72-00117D     |                 |                |                  |
|     |     |     | SE  | SE  |     | MAGEE, HARRIET              |               | 72-00117E     |                 |                |                  |
|     |     |     | SE  | SE  |     | MAGEE, HARRIET              |               | 72-00117F     |                 |                |                  |
|     |     |     | SE  | SE  |     | BOYD, LOCKHART              |               | 72-00117G     |                 |                |                  |
|     |     |     | SE  | SE  |     | GARDIOL, PAUL               |               | 72-00117H     |                 |                |                  |
|     |     |     | SE  | SE  |     | PECK, L.                    |               | 72-00117I     |                 |                |                  |
|     |     |     | SE  | SE  |     |                             |               | 72-00117J     |                 |                |                  |
| 14N | 19E | 33  | NE  | NE  |     | CHALLIS, CITY OF            |               | 72-00047      |                 |                |                  |
|     |     |     | NE  | NE  |     | ROUND VALLEY IRRIGATION CO. |               | 72-00032      |                 |                |                  |
|     |     |     | NE  | NE  |     | ADAMSON, W. W.              |               | 72-00031D     |                 |                |                  |
|     |     |     | NE  | NE  |     | US DEPT OF AGRICULTURE      |               | 72-02145      |                 |                |                  |
|     |     |     | SW  | SW  |     | CHALLIS, CITY OF            |               | 72-00047      |                 |                |                  |
|     |     |     | SW  | SW  |     | THORNOCK, NYLE J.           |               | 72-00062      |                 |                |                  |
|     |     |     | SW  | SW  |     | CITY OF CHALLIS             |               | 72-07117      |                 |                |                  |
|     |     |     | SW  | SW  |     | SURGEON, ROBERT E.          |               | 72-10200      |                 |                |                  |
|     |     |     | SW  | SW  |     | ROUND VALLEY IRRIGATION CO. |               | 72-00032      |                 |                |                  |
|     |     |     | SW  | SW  |     | ADAMSON, W. W.              |               | 72-00051B     |                 |                |                  |
| 14N | 19E | 33  | SW  | SW  |     | ROGERS, M. E.               |               | 72-00051L     |                 |                |                  |
|     |     |     | SW  | SW  |     | WATERS, HARRY S.            |               | 72-00132      |                 |                |                  |
|     |     |     | NE  | NE  |     | CHALLIS, CITY OF            |               | 72-00047      |                 |                |                  |
|     |     |     | NE  | NE  |     | CITY OF CHALLIS             |               | 72-07167      |                 |                |                  |
|     |     |     | NE  | NE  |     | STRAND, SPENCER D.          |               | 72-10331      |                 |                |                  |
|     |     |     | NE  | NE  |     | MC FADDEN, JAMES A.         |               | 72-00082      |                 |                |                  |
|     |     |     | NE  | NE  |     | CHALLIS, CITY OF            |               | 72-00047      |                 |                |                  |
|     |     |     | NE  | NE  |     | CITY OF CHALLIS             |               | 72-07167      |                 |                |                  |
|     |     |     | NE  | NE  |     | LISONBEE, ROBERT L.         |               | 72-00051D     |                 |                |                  |
|     |     |     | NE  | NE  |     | ROWLES, D. GRIDLEY          |               | 72-00076      |                 |                |                  |
| 14N | 19E | 33  | NE  | NE  |     | TAPPAN, SCOT                |               | 72-00097A     |                 |                |                  |
|     |     |     | NE  | NE  |     | PYLE, DORIS M.              |               | 72-00081      |                 |                |                  |
|     |     |     | NE  | NE  |     | LISONBEE, ROBERT L.         |               | 72-00051D     |                 |                |                  |
|     |     |     | NE  | NE  |     | COLLINS, JOHN               |               | 72-00098      |                 |                |                  |
|     |     |     | NE  | NE  |     | CHALLIS, CITY OF            |               | 72-00047      |                 |                |                  |
|     |     |     | NE  | NE  |     | CITY OF CHALLIS             |               | 72-07167      |                 |                |                  |
|     |     |     | NE  | NE  |     | LISONBEE, ROBERT L.         |               | 72-00051D     |                 |                |                  |
|     |     |     | NE  | NE  |     | ROWLES, D. GRIDLEY          |               | 72-00076      |                 |                |                  |
|     |     |     | NE  | NE  |     | TAPPAN, SCOT                |               | 72-00097A     |                 |                |                  |
|     |     |     | NE  | NE  |     | PYLE, DORIS M.              |               | 72-00081      |                 |                |                  |
|     |     |     | NE  | NE  |     | LISONBEE, ROBERT L.         |               | 72-00051D     |                 |                |                  |

| TWP | RNG | SEC | 1/4 | 1/4 | LOT | NAME                  | AJ<br>#/ACRES | WR<br>#/ACRES | LANDSAT<br>DATA | FIELD<br>EXAM. | RECOMM.<br>ACRES |
|-----|-----|-----|-----|-----|-----|-----------------------|---------------|---------------|-----------------|----------------|------------------|
| 14N | 19E | 33  | SW  | NW  |     | ALABAMA, D. W.        | 72-00051F     | 740.0         |                 |                |                  |
|     |     |     |     |     |     | WILSON, E. P.         | 72-00060      | /             |                 |                |                  |
|     |     |     |     |     |     | BAXTER, RALPH         | 72-00062      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | MEZGAR, JULIA         | 72-00063      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | WILKINSON, LYNN       | 72-00064      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | WILKINSON, CLYDE      | 72-00065      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | MC GOWAN, LAVANTIA    | 72-00071      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | CAMERON, KATE         | 72-00073      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | MC GOWAN, DELLA       | 72-00074      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | HORTON, MARY          | 72-00077      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | MC FADDEN, JAMES A.   | 72-00082      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | VAN CAMP, ESTHER      | 72-00083      | / 2.0         |                 |                |                  |
|     |     |     |     |     |     | COUNTY OF CUSTER      | 72-00085      | / 2.0         |                 |                |                  |
|     |     |     |     |     |     | SCHOOL DISTRICT NO. 1 | 72-00087      | / 2.0         |                 |                |                  |
|     |     |     |     |     |     | FOX, J. C.            | 72-00089      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | RILEY, J. L.          | 72-00092      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | HORTON, HENRY         | 72-00094      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | MICHAEL, EARL J.      | 72-00095      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | MICHAEL, EARL J.      | 72-00096      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | DRAKE, DAVID B.       | 72-00097      | / 2.0         |                 |                |                  |
|     |     |     |     |     |     | MICHAEL, IDALENE      | 72-00100      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | EBBERTS, JOSEPH L.    | 72-00104      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | BLUME, SK. JULIUS     | 72-00107      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | BLUME, A. F.          | 72-00108      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | WATSON, BARBARA E.    | 72-00114      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | BRADFORD, L. VIOLET   | 72-00129      | /             |                 |                |                  |
|     |     |     |     |     |     | DODGE, JENNIE         | 72-00130      | /             |                 |                |                  |
|     |     |     |     |     |     | HORTON, JOSEPH H.     | 72-00188      | /             |                 |                |                  |
| 14N | 19E | 33  | SW  | NW  |     | CHALLIS, CITY OF      | 72-00047      | /             |                 |                | 40.0             |
|     |     |     |     |     |     | CHALLIS, CITY OF      | 72-00123      | / 7.0         |                 |                |                  |
|     |     |     |     |     |     | CITY OF CHALLIS       | 72-07167      | /             |                 |                |                  |
|     |     |     |     |     |     | LEATON, HAROLD        | 72-00117C     | / 1.7         |                 |                |                  |
|     |     |     |     |     |     | SKEEN, MARY           | 72-10375      | /             |                 |                |                  |
|     |     |     |     |     |     | VAN CAMP, ESTHER      | 72-00083      | /             |                 |                |                  |
|     |     |     |     |     |     | RILEY, J. L.          | 72-00092      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | MOATS, J. E.          | 72-00093      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | GLENNON, L. E.        | 72-00105      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | PECK, L.              | 72-00117      | / 1.0         |                 |                |                  |
|     |     |     |     |     |     | LEATON, HAROLD        | 72-07290      | / 5.0         |                 |                |                  |
| 14N | 19E | 33  | SE  | NW  |     | CHALLIS, CITY OF      | 72-00047      | /             |                 |                | 29.0             |
|     |     |     |     |     |     | CITY OF CHALLIS       | 72-07117      | /             |                 |                |                  |
|     |     |     |     |     |     | CITY OF CHALLIS       | 72-07167      | /             |                 |                |                  |
|     |     |     |     |     |     | STRAND, SALLY L.      | 72-10180      | /             |                 |                |                  |
|     |     |     |     |     |     | BRADBURY, LAWRENCE    | 72-00048      | /             |                 |                |                  |
| 14N | 19E | 33  | SE  | NW  |     | BRADBURY, LAWRENCE F. | 72-00051N     | /             |                 |                |                  |

| TWP | RNG | SEC | 1/4 | 1/4 | LOT | NAME                         | AJ<br>#/ACRES | WR<br>#/ACRES | LANDSAT<br>DATE | FIELD<br>EXAM. | RECOMM.<br>ACRES |
|-----|-----|-----|-----|-----|-----|------------------------------|---------------|---------------|-----------------|----------------|------------------|
| 14N | 19E | 33  | NE  | SW  |     | CHALLIS CITY OF              | A72-00047 /   | 72-07117 /    | 25.0            |                |                  |
|     |     |     | NE  | SW  |     | CITY OF CHALLIS              | A72-07117 /   | 72-07117 /    |                 |                |                  |
|     |     |     | NE  | SW  |     | BRADBURY, LAWRENCE           |               | 72-00048 /    |                 |                |                  |
|     |     |     | NE  | SW  |     | BRADBURY, LAWRENCE F.        |               | 72-00051N /   |                 |                |                  |
| 14N | 19E | 33  | NW  | SE  |     | CHALLIS CITY OF              | A72-00047 /   | 72-07117 /    | 23.0            |                |                  |
|     |     |     | NW  | SE  |     | CITY OF CHALLIS              | A72-07117 /   | 72-07117 /    | 40.0            |                |                  |
|     |     |     | NW  | SE  |     | CYPRUS THOMPSON CREEK MINING | A72-00051N /  | 72-00051B /   | 40.0            |                |                  |
|     |     |     | NW  | SE  |     | CYPRUS THOMPSON CREEK MINING | CA72-00051B / | 72-00051B /   | 40.0            |                |                  |
|     |     |     | NW  | SE  |     | CYPRUS THOMPSON CREEK MINING | CA72-00051L / | 72-00051L /   | 40.0            |                |                  |
|     |     |     | NW  | SE  |     | ROUND VALLEY IRRIGATION CO.  |               | 72-00032 /    |                 |                |                  |
|     |     |     | NW  | SE  |     | WATERS, HARRY S.             |               | 72-00132 /    |                 |                |                  |
|     |     |     | NW  | SE  |     | CYPRUS THOMPSON CREEK MINING | T72-00048 /   | 72-00048 /    | 20.0            |                |                  |
|     |     |     | NW  | SE  |     | CYPRUS THOMPSON CREEK MINING | T72-00051B /  | 72-00051B /   | 20.0            |                |                  |
|     |     |     | NW  | SE  |     | CYPRUS THOMPSON CREEK MINING | T72-00051L /  | 72-00051L /   | 20.0            |                |                  |
|     |     |     | NW  | SE  |     | CYPRUS THOMPSON CREEK MINING | T72-00051N /  | 72-00051N /   | 20.0            |                |                  |

TOTAL ACRES A72-00047

252.00

ARE IRRIGATED ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, Y ( ) N ( )  
IF YES SEE ATTACHED SHEET:

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE Y FIELD EXAMINER

POU COUNTY: CUSTER

PRESUMPTION FLAG: C

REMARKS:

Claimant has claimed a change in place of use and a change in nature of use. The change in nature of use from irrigation + domestic to municipal appears to be the reason for the change in POU from a specific 160 acre tract to the entire city. If change in nature of use is okay, Application Processing Memo #18 says it is appropriate to describe the ~~POU~~ POU of a Municipal Right as "Place of Use within city limits of \_\_\_\_\_."

RECOMMENDATIONS:

TOTAL ACRES: N/A

REVIEWED BY: S.W. Pen

DATE: 2-23-94

limits of \_\_\_\_\_."

## A. AS CLAIMED USES:

PURPOSES  
A72-00047 MUNICIPALMONTH/DAY  
FROM 01-01 TO 12-31DIVERSION QUANTITY  
2.040 CFS

TOTAL DIVERSION RATE/VOLUME CLAIMED

2.040 CFS

## B. WR RECORDED USES:

PURPOSES  
72-00047 IRRIGATION  
72-00047 DOMESTICMONTH/DAY  
FROM TO  
FROM TODIVERSION QUANTITY  
2.040 CFS  
2.040 CFS

TOTAL DIVERSION RATE/VOLUME CLAIMED

2.040 CFS

PRESUMPTION FLAG:

C

## C. FIELD EXAM REQUIRED?

DUE TO WATER-USE DISCREPANCY? (Y/N)  
DUE TO DIVERSION RATE DISCREPANCY? (Y/N)  
DUE TO PERIOD FROM/TO DISCREPANCY? (Y/N)DATABASE EXAMINER  
Y  
Y  
Y-----  
-----  
-----

## D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y(\_\_\_\_) N(\_\_\_\_)

RECOMMEND TO WR STANDARDS OR OTHER?

Y(\_\_\_\_) N(\_\_\_\_) Explain in remarks, below.

## REMARKS:

There is no indication of a season of use ever being assigned to this right. However, change from the irrigation season, whatever it may be, to year around use as a definite season.

4-15-1987 Declaratory Judgement P.7 says "City of Challis is entitled to continue to divert and use 1.58 cfs . . . at all times during each irrigation season . . ."

Standard irrigation season for this area is 4-15 to 10-15.

Y( ) N( )

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?  
 AJ TOTAL CLAIMED DIVERSION RATE: 2.040 CFS  
 WR ROOT RIGHT TOTAL DIVERSION RATE: 2.040 CFS

\*\*\* IF NO or IF STATUTORY CLAIM or BENEFICIAL USE then flow measurement required. \*\*\*  
 \*\* If an amount smaller than the original diversion rate is claimed and an exam is NOT required, explain in remarks. \*\*

However, 0.46 cfs assigned to the lower P/D  
 in 1936 has apparently been abandoned.  
 see p. 5  
 S.V. Khan

FLOW MEASUREMENT REQUIRED?

DUE TO STAGE OR DIVERSION RATE DISCREPANCY? (Y/N)

FIELD  
 DATABASE EXAMINER  
 Y

MEASUREMENT METHOD

FLOW MEASUREMENT  
 SEE ATTACHED CALCULATIONS.

C. ARE OTHER WATER RIGHTS USED? Y( ) N( ) IF YES COMPLETE OVERLAP REVIEW.

OTHER RIGHTS LISTED IN CLAIM: MANY

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

| CLAIM NO.  | SOURCE         | NAME                           | DIV. RATE | DIV. RATE/ACRE | DIV. VOL. | DIV. VOL./ACRE |
|------------|----------------|--------------------------------|-----------|----------------|-----------|----------------|
| A72-00051B | GARDEN CREEK   | CYPRUS THOMPSON CREEK MINING C | 0.500     | 0.002          |           |                |
| A72-00051L | GARDEN CREEK   | CYPRUS THOMPSON CREEK MINING C | 0.250     | 0.001          |           |                |
| A72-00051N | GARDEN CREEK   | CYPRUS THOMPSON CREEK MINING C | 0.300     | 0.001          |           |                |
| A72-00051D | GARDEN CREEK   | LISONBEE, ROBERT L.            | 0.040     | 0.200          |           |                |
| R72-000510 | GARDEN CREEK   | LISONBEE, ROBERT L.            | 0.040     | 0.200          |           |                |
| A72-00081  | GARDEN CREEK   | PLYLE, LORIS M.                | 0.080     | 0.080          |           |                |
| A72-00097A | GARDEN CREEK   | TAPPAN, SCOT                   | 0.090     | 0.090          |           |                |
| 72-00117A  | GARDEN CREEK   | COBBLEY, ELVIN                 | 0.040     | 0.040          |           |                |
| 72-00117B  | GARDEN CREEK   | MAGEE, HARRIET                 | 0.040     | 0.040          |           |                |
| A72-00117C | GARDEN CREEK   | LEATON, HAROLD                 | 0.090     | 0.045          |           |                |
| A72-00123  | GARDEN CREEK   | CHALLIS, CITY OF               | 0.140     | 0.030          |           |                |
| A72-04181  | SPRING         | YACOMELLA, ANTONY R.           | 0.080     | 0.034          |           |                |
| A72-10369  | GARDEN CREEK   | CLOUD, ROBERT                  | 0.060     | 0.020          |           |                |
| A72-10404  | UNNAMED SPRING | REED, LLOYD                    | 0.080     | 0.080          |           |                |

LIST ALL RIGHTS WITH SAME FOU BUT NOT USED FOR IRRIGATION.

| CLAIM NO. | PURPOSES | NAME                               | MONTH/DAY      | RATE     | VOLUME |
|-----------|----------|------------------------------------|----------------|----------|--------|
| A72-07292 | DOMESTIC | SCHOOL DIST. NO. 181 , CHALLISEROM | 08-15 TO 05-30 | .020 CFS |        |

D. RATE/VOLUME CALCULATIONS: (IRRIGATION)

| 1a. IRRIGATION RATE     | 1b. CALCULATIONS |
|-------------------------|------------------|
| ACRES -----             |                  |
| * 0.02 CFS/ACRE = CFS   |                  |
| (Taken from p/u review) |                  |

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y(\_\_\_\_) N(\_\_\_\_)

\*\*\* IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y(\_\_\_\_) N(\_\_\_\_) \*\*\*

2. IRRIGATION CONSUMPTIVE USE

|                                          |      |
|------------------------------------------|------|
| CLAIMED CONSUMPTIVE USE =                | AF/A |
| ACRES -----                              |      |
| * CONSUMPTIVE VOL. AF/A FOR AREA ----- = |      |
| TOTAL CONSUMPTIVE USE -----              | AF/A |

3. IRRIGATION DIVERSION VOLUME

|                                        |      |
|----------------------------------------|------|
| CLAIMED DIVERSION VOLUME =             | AF/A |
| ACRES -----                            |      |
| * DIVERSION VOL. AF/A FOR AREA ----- = |      |
| TOTAL DIVERSION VOLUME -----           | AF/A |

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y(\_\_\_\_) N(\_\_\_\_)

REMARKS: (Include limitations on CONSUMPTIVE USE for combined rights.)

RECOMMENDATIONS:

| REC. PURPOSES        | REC. PERIOD FROM TO | REC. DIV RATE CFS | REC. DIV VOL. AE/A | REC. CONS. USE |
|----------------------|---------------------|-------------------|--------------------|----------------|
|                      | 4-15 10-15          | 1-58              |                    |                |
| TOTAL FOR THIS RIGHT |                     | 1-58              |                    |                |

REVIEWED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

A. CHECK ONLY THE FOLLOWING THAT APPLY:

OWNERSHIP  
FOREIGN/ABANDON  
ADDITIONAL DIV. AMOUNT

ACCEPTED  
AS CLAIMED  
( )  
( )  
( )  
NEEDS  
REVIEW  
( )  
( )  
( )

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 72-00047

TOTAL DIVERSION RATE OF WR SPLITS

DATABASE  
2.040

EXAMINER

CFS

SPLITS:

OLD RIGHT  
NUMBERS

DIVERSION  
RATE

CURRENT "R"  
CLAIM NUM.

"K" DIV.  
RATE

WR RIGHT  
NUMBERS

DIVERSION  
RATE

72-00047

2.040

-

72-00047

2.040

TOTAL CFS

2.040

2.040

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)  
IF NO, is the written review sheet attached? (Y/N)

DATABASE  
Y

FIELD  
EXAMINER

REMARKS:

No split! Portion abandoned. See p.5.

AUTHENTICATION:

SIGNATURE:

DATE:

NAME OF FIELD EXAMINER:

TITLE: