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Department of Water Resources
Adjudication Bureau

Claimants:

Hagerman Water Right Owners, Inc.
and its individual members

Attorney Name and Address:

HEPWORTH, LEZAMIZ & HOHNHORST,
CHARTERED
133 Shoshone St. North
P.O. Box 389
Twin Falls, ID 83303-0389
Telephone: (208)734-7510

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

) Subcase No. See Attached Exhibit A

)

)

AFFIDAVIT OF

Case No. 39576

)

PATRICK D. BROWN

)

* * * * *

STATE OF IDAHO

)

) ss.

County of Twin Falls

)

Patrick D. Brown, being first duly sworn upon oath, deposes and says:

1. My name is Patrick D. Brown and I make the following statements
based upon my personal knowledge and beliefs. I am otherwise competent to testify about
the foregoing and following matters set forth in this affidavit.

1 2. I am an attorney licensed to practice law in the State of Idaho,
2 practicing with the firm of Hepworth, Lezamiz and Hohnhorst, Chartered. As part of my
3 practice, I represent Hagerman Water Right Owners, Inc. and its individual members in the
4 Snake River Basin Adjudication. I have represented that organization and most of its
5 members since early spring of 1993. The claimants in the subcases listed in Exhibit A are
6 some of those members ("clients").

7 3. In early spring of 1993, through Hagerman Water Right Owners, Inc.,
8 I have advised HWRO and its members about how to proceed in this litigation in order to
9 preserve and protect the water rights of its members.

10 4. In order to prepare to meet the May 1, 1993 objection deadline in
11 Basin 36, I spent most of the month of April, 1993 gathering information about the
12 adjudication process in order to advise my clients about whether or not they should object
13 to the Director's recommendation of their rights. As an essential part of those activities, I
14 attempted to ascertain how IDWR recommended the rights and why the rights had generally
15 been reduced from their previously decreed amounts.

16 5. From those efforts, I was able to obtain representations from IDWR
17 about how the rights were recommended and why they were reduced. Attached as Exhibit
18 B is a document called the "Claims Investigation Manual" which was provided to me in
19 court on April 7, 1993 by Mr. Barber, counsel for IDWR. At that time, Mr. Barber
20 represented that the manual was the basis upon which IDWR investigated its claims and
21 made its recommendation in the Hagerman Valley. A true and accurate copy of that Claims
22 Investigation Manual is attached as Exhibit B.

1 6. Also in April, 1993, in an attempt to resolve discovery disputes with
2 IDWR, which was at that time a party to the SRBA, John Hohnhorst of my firm and I
3 traveled to Boise to meet with David Shaw and Lynne Krogh-Hampe in order to have them
4 explain how the Hagerman Valley claims had been investigated and recommended. That
5 meeting on April 16, 1993 took place at the main offices of IDWR in Boise and was
6 attended by a court reporter who transcribed the conversations. Attached as Exhibit C is a
7 true and accurate copy of a portion of the court reporter's transcription of what was said at
8 that meeting, in my presence.

9 7. Attached as Exhibit D is a true and accurate copy of a portion of a
10 supplemental discovery response I received from the Idaho Department of Water Resources
11 on April 23, 1993, which was at a time when IDWR was a party to the SRBA.

12 8. Based on the representations to me by the Idaho Department of Water
13 Resources, including those in the attached exhibits, I advised HWRO and its members that,
14 in my opinion as an attorney and based upon my review of Idaho statutes and case law, it
15 was likely that they could prevail on their objections given that IDWR acknowledged the
16 decrees but believed it could reduce the amount of the rights under the decrees by applying
17 "partial forfeiture."

18 9. Based on that advise, HWRO and its members each entered into a
19 contract with this law firm to pay it to file and prosecute objections to IDWR's
20 recommendations, generally, and specifically to attempt to prevail on the partial forfeiture
21 issue in order to have the claimants' rights adjudicated as they have been previously
22 decreed. Since April, 1993, I have filed numerous objections and continuously attempted
23

1 to get the question of partial forfeiture decided by this court. HWRO and its individual
2 members have paid me tens of thousands of dollars over the past 3 years in order to
3 successfully litigate the question about partial forfeiture.

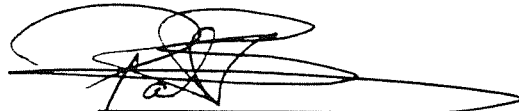
4 10. The first time I was ever informed that IDWR believes that partial
5 forfeiture of decreed rights was not the basis for IDWR's recommendations was in open
6 court this month (May, 1996) at the hearing to reconsider the court's decision on Basin-
7 Wide Issue 10, regarding Partial Forfeiture.

8 11. Attached as Exhibit E is a true and accurate copy of the New
9 International Mortgage decree. Attached as Exhibit F is a true and accurate copy of the
10 Findings of Fact entered in the New International Mortgage case.

11 12. Attached as Exhibit G is a true and accurate copy of the Notice of
12 Claim to a Water Right filed by the Idaho Department of Fish and Game.

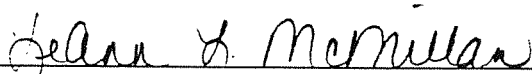
13 13. Further your affiant sayeth not.

14 Dated this 31st day of May, 1996.

15 

16 Patrick D. Brown

17 SUBSCRIBED and SWORN to before me this 31st day of May, 1996.

18
19 
20 NOTARY PUBLIC FOR IDAHO
Residing at: Brome, Id
My Commission Expires: 8/24/2001

21
22 (WATER\HWROPDB.AFF)\lm
23

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Department of Water Resources
Adjudication Bureau

COPY

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	)	STANDARD FORM NO. 5
	)	
Case No. 35976	)	SUBCASE NO. <u>36-00090D</u>
	)	(ONE NUMBER ONLY)
	)	
	)	STIPULATED ELEMENTS
_____	)	OF A WATER RIGHT

THIS FORM MAY ONLY BE USED IF ALL PARTIES HAVE STIPULATED TO ALL ELEMENTS OF A WATER RIGHT AND MAY BE SUBMITTED AT ANY TIME FOLLOWING THE CLOSE OF THE STATUTORY RESPONSE PERIOD.

This form is used to report the stipulated elements of one water right acquired under state law or one water right acquired under federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; that they have been served with sufficient process, according to law; and that they have appeared, prosecuted and defended their positions with regard to this water right dispute.

Instructions for Use

Elements where there has been no objection should be listed exactly as they appear in the director's report. The statement as to these uncontested elements shall state "as recommended in the director's report."

Contested elements that are the result of an objection filed with the court shall be accompanied by a statement fully describing the facts, documents, expert opinions and law which support each element of the water right (attach additional pages if necessary).

1. The **name and address** of the claimant are:

Mildred Culbertson

Route 1, Box 379, Hagerman, ID 83332

Required statement:

Name: Per Notice of Change of Water Right Ownership filed with IDWR

Address: As recommended in director's report

2. The **source** of water is:

Spring

Required statement:

As recommended in director's report

3. The **quantity** of water used in cubic feet per second (CFS) or the quantity of water stored in acre-feet per year (AFY) is:

.02 cfs

Required statement:

As recommended in director's report

4. The **priority date** is:

June 1, 1927

Required statement:

As recommended in director's report

5. The legal description of the **point(s) of diversion** is; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow:

Township 7 South, Range 13 East, Boise Meridian, Section 11, NE1/4SE1/4NE1/4

Gooding County, Idaho

Required statement:

As recommended in director's report

6. The **purpose of use** is:

Domestic

Required statement:

As recommended in director's report

7. The **period of year** when the water is to be used is:

Year Around

Required statement:

As recommended in director's report

8. The legal description of the **place of use** or of the reservation is:

Irrigation: Township 7 South, Range 13 East, Boise Meridian, Section 11, NE1/4NE1/4,
Gooding County, Idaho

Required statement:

As recommended in director's report

9. The **annual volume of consumptive use** is:

Required statement:

As recommended in director's report

10. **Other matters** necessary to define this water right:

None

These matters are necessary because:

N/A

These matters do not fall within the 9 elements listed above because:

N/A

Signatures and Addresses of Parties and their Attorney of Record (attach additional pages if necessary):

I have read this form and know its contents and the statements are true to the best of our knowledge and belief.

Name: Mildred Culbertson

Address: P.O. Box 386

City/State/Zip: Hagerman, ID 83332

Attorney of Record: Patrick D. Brown

Phone: (208)734-7510

Name:

Address:

City/State/Zip:

Attorney of Record:

Phone:

Mildred Culbertson 5/30/96

Party's Signature

Date

Party's Signature

Date

Patrick D. Brown

Attorney's Signature

5/31/96

Date

Attorney's Signature

Date

INSTRUCTIONS FOR MAILING

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

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

CERTIFICATE OF MAILING

I certify that on May 31, 1996, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

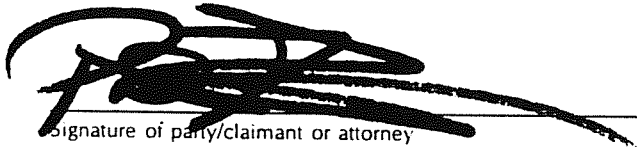
1. Original to:

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

2. Copies to (insert names and addresses):

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

Director of IDWR
P.O. Box 83720
Boise, ID 83701-2139



Signature of party/claimant or attorney

\\WATER\00090D.SF5

EXHIBIT "A"

List of Subcases

Lynn J. Babington and Karen L. Babington	36-00003C
Walter J. Bonning, II and Judy L. Bonning	36-00108B
Dale E. Boyer and Elaine Boyer	36-00079
William E. Norris, David L. and Linda C. Cropper, Blaine Richard and Vivian Cropper, Dave and Nancy Anderson	36-00047
Mildred Culbertson	36-10409
Frank C. Erwin and Peggy Erwin	36-00092
Michael J. Fleming	36-00064B
Keith L. Fuell and Jolene Fuell	36-00086C
Frank L. Glauner and Jean Glauner	36-00039E
Mattie P. Grigg	36-10283B
George J. Korbis and Nellie W. Korbis	36-00039N
Marilyn J. Miller	36-00085A
Howard L. Morris and Rhonda K. Morris	36-00061
Howard L. Morris and Rhonda K. Morris	36-00062
Howard L. Morris and Rhonda K. Morris	36-00063
Mark Potter and Susan Potter	36-00039J
Edna M. Rea	36-00003A
Roger Shaffer	36-00034B
Doyt H. Simcoe and Roxie Simcoe	36-00003F
Richard D. Simon	36-00035J
Dick J. Veenendaal and Sigrid E. Veenendaal	36-00039C
Edith L. Vernon	36-00003E
Paul E. Watkins and Inez S. Watkins	36-00106
Basil Lester Zink and Myrle Hyde Zink	36-00103F

EXHIBIT B

CLAIM INVESTIGATION HANDBOOK

Claim Investigation Manual
Claimant Contact Checklist
Claimant Costs Sample Letter

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CLAIM INVESTIGATION HANDBOOK

INTRODUCTION

A. PURPOSE

The claim investigation handbook has the following three parts.

1. Claim Investigation Manual: The manual contains general instructions as to review to be done for a particular claim, and the recommendations to be made based on the results of the review.
2. Claimant Contact Checklist: The claim investigation manual may indicate that several types of claimant contact are required for a single claim. The claimant contact checklist is a means to keep track of the items to be covered in the claimant contact.
3. Claimant Contact Sample Letters: These letters provide sample language for some of the more common types of claimant contact. It has not been possible to come up with a single or a few forms that cover those types of claimant contact and still contain the necessary information in an understandable format (like the forms that were used for return of notices of claims). Staff are encouraged to devise forms that work best for their situations. The claimant contact letters should, however, provide the claimant with substantially the same information shown in the sample letters (see Part D below as to claimant contact).

B. ORGANIZATION AND USE

The manual is divided into "items" by the elements of a water right (claimant, priority, source, etc.). Each item is then divided into "parts" according to the basis of the claim (recent decree, other decree, recent license, etc.). Within each item there is listed each issue which the water agent MUST review, and a list of other issues that the agent may encounter. The issues are organized (to the extent possible) so that the simpler the claim, the sooner the agent reaches the part that contains the recommendation to be made. (For example, the issues that will result in disallowal of the claim are dealt with first, so that the agent doesn't waste time verifying beneficial use when the claim is going to be recommended for disallowal.)

This method of organization resulted in some redundancy, which in turn contributed to the length of the manual. (For example, both the source item and the point of diversion item contain a general discussion as to changes in use of a water right, but only the detailed aspects relevant to a change in source are discussed in the source item.) It should, however, accommodate the two original goals, which were to provide both a step-by-step guide to review of a claim and a general reference manual.

This manual addresses primarily legal, policy, or procedural issues, and not technical matters. As to those issues, it is intended to be as comprehensive as possible. Nonetheless, questions of a general nature will no doubt continue to arise that are not adequately addressed in the manual. As revisions are finalized, replacement pages will be provided to the staff. More specialized issues will continue to be addressed in adjudication memos.

As noted above, the manual does not address "technical" matters. For example, the manual does not describe how a field exam should be conducted, instruct field agents in the use of measuring devices, describe the "Mannings" equation, etc. The manual does generally indicate when a field exam is required; for example, a field exam is required for all claims based on beneficial use, and a field exam is required to confirm a claim to an accomplished change in use of a licensed or decreed right. A field exam should also be done when there is an issue raised by a claim that can be resolved by a field exam. Where an issue cannot be resolved by field exam, the manual generally provides for the claimant to be contacted to provide the information needed to support the claim.

Copies of this manual may be provided to the public when specifically requested, subject to payment of mailing and/or copying charges. "Subscriptions" for updates will not be available. THIS CLAIM INVESTIGATION HANDBOOK REMAINS SUBJECT TO REVISION.

C. INITIAL REVIEW OF A CLAIM

The first time the claim is reviewed, the entire claim should be reviewed before proceeding with further investigation. The claim investigation manual may indicate several types of claimant contact need to be made, or that several items need to be field examined, or that review of certain items needs to be coordinated. After an initial review of the entire claim, the water agent should develop an overview of what needs to be done and when it needs to be done for this claim (and sometimes for other related claims). If the water agent needs to return to the claim at a later time, the agent may then focus on problem areas that need extra attention.

D. CLAIMANT CONTACT

1. General

There will be a variety of situations in which a claim may not be recommended as claimed absent further information, most of which are noted in the manual. Generally, it will be appropriate to contact the claimant to allow the claimant the opportunity to

submit additional information in support of the claim, and generally, this contact will be by letter.

Claimant contact sample letters are provided for most of the types of claimant contact noted in the manual. The claimant contact should state generally what additional information is necessary, briefly explain why that information is necessary, provide a deadline for receipt of the information by IDWR, and state what will happen if the information is not received.

The claimant contact is complete either when the claimant responds (whether or not the information submitted is sufficient) or when the claimant fails to respond by the deadline. Information may still be submitted after the deadline, but the claimant should be encouraged to submit it as soon as possible. (The later the information is submitted, the greater the chances that IDWR simply will not have the time to consider the information in preparing the director's report.) Claimant contact, once properly made, need not be repeated with respect to a particular issue.

NOTE: The claimant will have a second opportunity to present additional information as part of the proposed recommendation/notice of error procedure. See Adjudication Memo #32 as to the proposed recommendation/notice of error procedure.

The claim investigation manual may indicate claimant contact for a number of different purposes. Generally, all of the types of claimant contact indicated for one claim would be included in one letter, or at most two letters (one before field exam and one after).

2. Contact to attorney

When the claimant is represented by an attorney, any communication from IDWR regarding the claim should generally be directed to the attorney, and not the claimant, unless the attorney indicates otherwise. The water agent should check the data-base to determine if the claimant is represented by an attorney, because an attorney may have filed a notice of appearance with the court rather than on a notice of claim form. See Adjudication Memo #22 as to the effect of a notice of appearance by an attorney.

3. Documenting claimant contact

When claimant contact is to be made to obtain additional information, must the claimant contact be by letter, and must the response be in writing? Or would it be sufficient to simply talk to the claimant, either on the phone or in person at the field exam, and obtain a verbal response? Verbal contact is generally sufficient, with the following three caveats:

1. A memorandum MUST be made and included in the file, which states the name of the person with whom the water agent spoke, the name of the agent, the date of the conversation, notes of the relevant portions of the conversation, and notes of any other relevant information the agent has about the issue.

2. If the agent has some reason to doubt the reliability of the information provided by the claimant, then supporting evidence should be required.

3. If the claimant is not responsive to a verbal request for more information, written claimant contact should be made. The written claimant contact is evidence that IDWR informed the claimant of the need for additional information and the consequences of failure to provide it.

Finally, although the claim investigation manual may state that claimant contact is required to allow the claimant the opportunity to submit information in support of the claim, claimant contact is not required if the information is already available, if the agent can more easily obtain the needed information from another source, or if for any other reason the claimant contact would not be worthwhile.

E. STATUS OF REVIEW AND BASIS FOR RECOMMENDATION

The "quick-look" page of the claim verification report (CVR) will be used to indicate the extent of the review that needs to be done and the status of that review. The claimant contact checklist may be attached to indicate the type of claimant contact to be made.

The claim file for each claim should indicate the basis for the recommendation - NOT just the basis for recommendations that are different than the claim. This may be done in the manner that is convenient for the water agent, but should be appropriate to the degree of complexity. It might, for example, be a remark on the CVR, or a separate, more detailed memo to the file.

F. FURTHER REVIEW

The manual is a generic document that is intended to deal with the majority of issues, but there will no doubt be many claims that it does not adequately address. In addition, the analysis in the manual is based on general rules and some readily identified exceptions to those general rules, and other exceptions may exist. Therefore, although the manual indicates certain actions to be taken in certain circumstances, the claim reviewers will need to exercise their judgment in identifying claims for which different action may be warranted. Such claims should be referred for further review to the appropriate staff (generally, the bureau

chief for policy questions, the technical section supervisor, and the attorney assigned to that region for legal questions).

Prior to referring a claim for further review, the agent should complete any relevant investigation, and should prepare a short memo or note describing the issue that needs further review and the relevant information already available.

G. CHANGING CLAIM

For each claim, an electronic record is created with an "A" prefix. Prior to claim review, the "A" record should be proofed to make sure that it is the same as the written claim and properly coded, including all amended claims.

A duplicate record with an "R" prefix will then be computer generated for each claim. When the manual indicates that the appropriate action is to change the claim, it is the "R" record that is to be changed. The "R" records for a basin will not be available to the public until the proposed recommendations for a basin are distributed. The "R" prefixes will be stripped from the "R" records when the director's report is filed with the court.

Under this procedure, the "A" record will continue to reflect the right as claimed, and data-entry during the review stage will be limited to those situations where the claim is going to be recommended differently than it was claimed, or where an amended claim or notice of change in address/ownership is filed after the "R" record is created.

H. SPLIT OR SEPARATE CLAIM

There are a number of places where the manual indicates that the appropriate action is to split or separate a claim. A claim might be SPLIT, for example, where the right was partitioned by conveyance to two of more different owners, or where the original right had more than one source. In such cases, the claims resulting from the split will all have the same root claim number with different alpha suffixes attached.

A claim might be SEPARATED where the claimant sought to claim one right that is in fact two rights, but the claimant will not be required to file an additional claim and pay an additional claim fee. This might arise, for example, where the claimant claims a partial change in use that is in fact an additional appropriation. In such cases, the new claim will have a new claim number. However, the manual provides for creation of a new electronic claim record only if the new claim is to be recommended, to avoid unnecessary clutter in the database.

I. PROOF OF FACTS

In many instances the question of what is to be recommended depends on whether a fact has been sufficiently proven. Absolute proof of every essential fact is not required for making a recommendation. The issue as to the amount of proof required is addressed by rules governing the burden of proof.

Generally, the burden of proof for most issues is on the claimant, because the claimant is seeking to have a water right confirmed. A good example is proof of priority of beneficial use claims. The claimant is required to submit some information tending to support the priority date claimed; absent contradictory information, the claimant's information meets the claimant's burden of proof and the claimed priority date is recommended. If IDWR has other information which contradicts the claimant's information, then the claimant may be required to submit further information in support of the priority date; all of the relevant information is then "weighed" to determine if the claimed priority is more likely than not the correct priority.

In determining whether a fact is sufficiently proven, a court looks to the "weight" of the evidence. The court evaluates the credibility of the evidence, the inferences that can reasonably be drawn from the evidence, and then determines whether the "preponderance" of the evidence supports the alleged fact. If you picture the scales of justice, then a preponderance is the amount of proof required to push the needle past the mid-point. It is not the "proof beyond a reasonable doubt" that is used in criminal cases. (However, the standard of proof for forfeiture is "clear and convincing evidence", which is something more than "a preponderance", but not as much as "beyond a reasonable doubt".)

Other examples where the burden of proof is on the claimant include: proof of appropriation or elements of an appropriation (a decree or license generally meets the claimant's burden), proof of a change in use of a water right and lack of injury from a change in use (an approved transfer by IDWR generally meets this burden), resolution of an ambiguity in a decree, beneficial use of water in excess of the statutory irrigation standard, defenses to forfeiture, etc. IDWR (or any party challenging the right) generally bears the burden with respect to forfeiture and abandonment of a decreed or licensed water right.

In determining the facts for purposes of recommending claims, the water agents will have to make some close calls. About the only instruction that can be offered is to make a reasonable attempt to gather the relevant evidence, to exercise good judgment in evaluating that evidence, and then to document the evidence for the file in case it is needed in court later. All the available information should be documented for the file, not just the information supporting the recommendation; for the file to justify

the recommendation it must also show the contradictory information that was considered in making the recommendation.

DOCUMENTATION of information upon which the facts are determined is very important. The more complicated the claim, or the more likely the claim is to be contested, the more important the documentation is. "Documentation" does not necessarily mean that the water agent has to find written evidence before a fact can be determined; it does mean that if a determination is based on information that is not in writing, the agent should prepare written notes for the file.

It is important to remember that once that a recommendation is made it is not locked in stone. The claimants will have an opportunity to file notices of error with IDWR to IDWR's proposed recommendation, and will have the opportunity to file objections with the district court to the director's report. More information may become available as part of these processes.

J. RES JUDICATA

The rule of res judicata provides that once a party has the opportunity to fully litigate a matter the party may not relitigate issues that were or should have been litigated in the prior proceeding. The primary reason for the rule is to prevent waste of judicial (taxpayer) resources and other parties' resources by people who have already had their day in court. Although the rule could keep someone from correcting a real error in the prior proceeding, the rule is still deemed fair because 1) the party had the opportunity (typically several opportunities) to correct the error in the prior proceeding, and 2) to allow an exception whenever someone claims an error would essentially do away with the rule.

There are some limitations and exceptions to the rule of res judicata. These include: 1) matters subsequent to the decree, 2) ambiguities in the decree, and 3) clerical errors. In addition, a decree is not binding on persons not party to the decree; a decree may be declared void if the court lacked jurisdiction to enter it; and the decree might describe a water right without actually adjudicating it (see Part Q below as to when is a right really decreed). This discussion is limited to the three numbered items.

Matters subsequent to the decree include forfeiture and changes in use (as well as new appropriations) occurring after the cut-off date of the decree. The water right was determined to exist as described in the decree at the time it was adjudicated; it is conclusive as to facts before the decree but not afterward. Forfeiture and changes in use are two circumstances that could arise after the decree to change the water right. Forfeiture can also include use of water that was beneficial at the time of the decree but is no longer beneficial because it is unreasonably

wasteful under current standards. What is considered reasonable changes over time as technology improves or other circumstances change.

Ambiguities in the decree can be "patent" or "latent." A patent ambiguity is one that is apparent on the face of the decree, such as where the decree does not describe the point of diversion. The decree determined the water right, and the water right necessarily has a point of diversion, but the decree fails to describe it. A latent ambiguity is one that becomes apparent only with additional facts, such as where a right is determined from a source named "Spring Creek," but there is more than one Spring Creek which may be the source of the water right. Ambiguities are resolved by looking to the pleadings or evidence in the court files or even to evidence outside the court files to determine what the court must have meant at the time the court entered the decree.

The rules of civil procedure expressly provide for correction of clerical errors in a decree at any time after the decree is entered (though some cases require the motion to be made within a "reasonable" time). The rule applies only to clerical errors, not substantive errors. The distinction between clerical and substantive is difficult to explain, but the essence is that a clerical error occurred if the court meant to say X but said Y; a substantive error occurred where the court meant X and said X, but the court should have said Y. A common example of a clerical error is a simple transposition of numbers in a property description - the evidence/pleadings in the case showed a point of diversion in section 21, the claimant in fact used a PD in section 21, but the decree said section 12. The error would be substantive, however, where the evidence/pleadings in the case showed a PD in section 21, the decree said section 21, and now the claimant wants to show it was actually in section 12.

In reviewing claims, IDWR will not investigate every apparent change to determine if the discrepancy is the result of a clerical error in the decree. It will generally be up to the claimant to raise the issue (either in response to claimant contact prior to filing the report or in an objection to the report). It will also be up to the claimant to prove that there was an error and that the error was clerical.

In some instances, a claimed error that is not clerical may be treated as a change after the decree. For example, the decree says the PD is in section 21, the claimant says the PD is in section 22, but the claimant can't show that the error was clerical. The PD in section 22 might be recommended if it doesn't result in injury. If the PD in section 22 has been used for more than five years prior to commencement, it might not make much difference if the situation is viewed as a clerical correction or as a change in use, due to the limited review of injury from changes more than five years prior to commencement.

Res judicata also applies to parties in contested cases before an administrative agency, such as contested permit or transfer proceedings before IDWR. Res judicata does not apply to agency proceedings that are "ministerial," which would include uncontested permit or transfer proceedings. However, a similar rule of "finality" would apply, so that a claimant is not entitled to raise a judicial challenge to IDWR's determinations in an uncontested permit or transfer proceeding except through a properly filed appeal. IDWR may revisit issues determined in such a proceedings; whether IDWR will do so is subject to the director's discretion.

K. SECOND ROUND SERVICE

During the investigation of the claims and the water system, if IDWR discovers an unclaimed water use (other than small D&S), IDWR is required to serve a commencement notice by certified mail on all persons with a record interest in the property on which the water is used. Service is not required to be made to such persons who have already filed a claim in the adjudication, even if for a different use. This is known as second round service, which is described in more detail by an order issued by the district court.

There are some sub-items in the manual where a discrepancy is resolved by adding a parcel to the list for second round service. Where a water agent discovers an unclaimed water use (other than small D&S), the manual directs the agent to state the parcel description in the space for second round service on the claim verification report (CVR). Each region will compile a list of these parcels and forward the list to the state office.

The state office will provide the regional office with a list of the parcels and persons previously marked for second round service in a basin. The list should be useful for resolving questions as to whether service has already been made to a particular person or for a particular parcel.

Questions regarding second round service should be referred to the legal assistant, who will be generally responsible for coordinating the various second round service activities.

L. UNDERCLAIMED RIGHTS

1. General

Generally, a right may not be recommended that is "in excess" of the right claimed, due to a general rule of pleadings that the relief granted may not be greater than the relief sought. This includes a priority earlier than the priority claimed, amounts in excess of the amount claimed, purposes of use in addition to purposes of use claimed, or a total number of irrigated acres greater than the number claimed. An amended claim (or additional claim) is required before the excess may be recommended. An

amended claim is generally not required to recommend a different place of use, a different point of diversion, additional points of diversion, or a different season of use for irrigation; in these cases, the recommendation is different but not greater than the right claimed.

2. Claimant contact re underclaimed rights

What should be done where a decreed right that may be excessive by current standards is not fully claimed? (This issue has arisen, and is most likely to arise, with old decrees that decree an excessive amount of water for irrigation. Similar issues can arise where the claimant claims a later priority, doesn't claim a nature of use, of claims less acreage than indicated on a decree, license, or permit; or claims less than was found at the field exam for a beneficial use right.)

There are basically four potential options for dealing with underclaimed rights:

- a. Assume that the claimant claimed everything the claimant wanted to claim. The problem is that there may be instances in which it is apparent that the claimant simply made a mistake. For example, if the claimant claims a priority date less than five years after the decreed priority, this is fairly clearly an error, because no forfeiture could have occurred in that time.
- b. Assume that the claimant claimed what the claimant wanted to claim, unless there is good reason to believe that the claimant may have simply made a mistake, in which case claimant contact should be made to allow the claimant to claim the remainder of the right.
- c. Make claimant contact to allow the claimant to claim the remainder of the right, unless it is clear that IDWR will not recommend the remainder. The problem with this approach is that it would require IDWR to examine every underclaimed right to determine if IDWR may recommend more than was claimed, when the whole point of having the notice of claim as a pleading is to limit IDWR's inquiry to what is claimed.
- d. Make claimant contact whenever a right is underclaimed, to allow the claimant to claim the remainder of the right. The problem with this approach is that the claimant could be contacted to inform them that the right is potentially underclaimed, only to be told later that the remainder of the right will be recommended for disallowal. In addition, this procedure could result in IDWR assisting the claimant to fabricate the claim, even though this is not the intent, and the only way to prevent this result would be to field examine the claim if the claimant files an amended claim (or files an

additional claim) to include amounts, nature(s) of use, or place(s) of use that were not initially claimed.

The second option described above is the procedure that will be followed. It will be assumed that the claimant claimed everything the claimant wanted to claim UNLESS the right is clearly underclaimed AND there is good reason to believe that the claimant may have simply made a mistake. If so, then the claimant should be contacted to allow the claimant to claim the remainder.

"Clearly underclaimed" means that there should be a significant difference between the claim and the decree, the license, or the field exam for a beneficial use claim. What is a significant difference requires an exercise of judgment on the part of the agent. For example, a difference of an acre or two on a forty acre claim might not be significant, whereas a difference of an acre or two on a claim to a few acres might be. Examples of "good reason to believe that the claimant may have made a mistake" generally include but are not limited to the following:

a. The priority date claimed is less than five years after the decreed or licensed priority date or the proposed priority on the permit.

b. The claim is based on beneficial use, the right is underclaimed compared to the field exam, and the unclaimed portion is not covered by an application for transfer, an application for permit, or a permit. (Note that the claimant contact would inform the claimant that, if the claimant desires to continue the unclaimed use, the claimant needs to file an amended claim, an additional claim, an application for permit, or an application for transfer, depending on the use and when it was initiated.)

c. The right is underclaimed and it is based on a license or decree, the right is field examined because a change was claimed, and the field exam shows a use greater than was claimed. (Note that here the right is not field examined because it was underclaimed; rather, it was field examined in the normal course of investigation which gave rise to a reason to believe the claimant erred in preparing the claim.)

M. PERMITS FOR WHICH A PROOF DUE NOTICE WAS FILED PRIOR TO COMMENCEMENT

There are some permits on file with IDWR for which a proof due notice was filed prior to commencement but for which a license will not have been issued at the time the permit is investigated for purposes of preparing the director's report. (There should be fewer claims in this category as time goes on.)

Water allocations staff will be coordinating with adjudications staff to ensure that licenses are issued for these rights prior to filing the director's report. (There may, however, be some permits that for one reason or another cannot be licensed. For example, where the land was put into set aside after the proof due notice was submitted but before the licensing field exam was made, then a license cannot be issued because beneficial use in accordance with the permit cannot be confirmed.) The license will NOT include any expansions or unapproved changes claimed in the adjudication. Once the license is issued, then the claim should be recommended as based on a license, and an expansion or unapproved change should be reviewed in generally the same manner as any other expansion or unapproved change of a licensed right.

There is, however, one important caveat. For various reasons, there has in some cases been a substantial period of time between the filing of the proof due notice, completion of the licensing field exam, and the issuance of the license. An expansion or change in use must have occurred prior to commencement of the adjudication to be claimed in the adjudication, but cannot be claimed for a right based on a permit. The problem that arises from the lapse of time is that a claimant could be prevented from claiming an expansion or change in use that occurred prior to commencement because the right was still based on a permit at that time.

This problem will be resolved, for purposes of the expansion and accomplished change in use analysis, by treating the right as if the license were issued when the proof due notice was submitted. Thus, if an accomplished change in place of use is claimed, the licensing field exam confirmed the new place of use, and the licensing field exam was prior to commencement, then the change may be claimed in the adjudication, and the change will be deemed to have occurred as of the date of the licensing field exam for purposes of the injury analysis. If the licensing field exam was done after the commencement of the adjudication, the change may still be considered as part of the adjudication if the claimant can clearly demonstrate the extent of the use made prior to commencement. (Since a licensing field exam is required to perfect the right, claims based on a use made prior to the field exam must be confirmed by evidence of similar strength.)

The result of this policy is that 1) an expansion may not be recommended with a priority date earlier than the date the proof due notice was submitted, 2) the date of change for purposes of the injury analysis will be deemed to be no earlier than the date the proof due notice was submitted, and 3) an expansion or accomplished transfer may not be claimed for a right for which the proof due notice was submitted after commencement of the adjudication.

NOTE: If an expansion or accomplished transfer is to be recommended based on this analysis, then adjudications staff

should work with allocations staff to make sure that the license for the right is issued before the expansion or accomplished transfer is recommended. Claims recommended with a basis of permit should not be recommended differently than permitted.

There is another situation where coordination of the efforts of adjudications and allocations staff will be very important. In some cases, the extent to which beneficial use has been made of a permit pending action by the allocations staff is dependent on the nature and extent of other water rights, the use of which is combined with the permitted right. Where the claim to be investigated is pending action in the water allocations section, or overlaps with another right pending action in the water allocations section, adjudications staff should coordinate with allocations staff, in a timely manner that allows both sections to meet their schedules.

N. DATE OF CHANGE

Where the claimant is asked to provide the date of change, the date should include the month, day, and year. Where the claimant does not submit the month and/or the day, then the same rules will apply as for priority of beneficial use claims. If only the year is provided, then the month and day will be the last day of the season of use of that year. If only the month is provided, then the day will be the last day within the season of use in that month.

Evidence of date of change should be reviewed in much the same manner as evidence of priority date for beneficial use claims (see Part F.1 below). Where the claimant submits evidence of the date of change, but the evidence does not support the date of change stated by the claimant, then the date of change is deemed to be the earliest date supported by the claimant's evidence, unless the manual indicates otherwise. (For example, the manual might indicate otherwise where the claimed date of change is precluded by a prior judicial or administrative proceeding.)

If the change occurred after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after that date.

O. OWNERSHIP

IDWR will generally not require proof that the claimant is the owner of the water right claimed or that the right was not initiated in trespass for purposes of preparing the report. Ownership issues should be investigated, however, in the following circumstances:

1. Duplicative claims - different claimants file claims to the same water right or the same portion of a water right (see Part XI.C);

2. There is reason to believe, from information already available to IDWR, that there is an ownership or trespass problem.

P. APPLICATIONS FOR CHANGE IN USE (TRANSFERS)

1. Application approved before claim filed

In many instances, the first step in the analysis described in the manual is to compare the claim to the decree or license. In such instances, the claim is to be compared to the decree or license, as amended by the most recent approved transfer. The transfer is final when the period for appeal has passed and no appeal has been filed, or the appeal and any proceedings on remand have been completed.

2. Application approved after claim filed but before report is filed

The adjudication statute requires the claimant to amend a claim consistent with an approved transfer. Based on a literal interpretation of the statute, past procedure was that allocations staff would notify the claimant that the transfer had been approved, and adjudications staff would then notify the claimant to file an amended claim. Since this seems unnecessarily burdensome, the current procedure is that the approved transfer will be deemed to amend the claim without the claimant having to file an amended claim. Allocations staff will send copies of the approved transfer to the region, and regional adjudication staff should include it in the claim file and data-enter the changes in the "A" record (and the "R" record, if one has been created).

There may in some instances be a discrepancy between the claim and the approved transfer other than the approved change, in which case the claimant should be contacted to resolve the discrepancy. For example, the claim may be to a decreed right that includes an expansion in irrigated acreage that may be claimed in the adjudication but may not be approved in a transfer proceeding. If the claimant wants to claim the right differently than it is described in the order approving the transfer, then the claimant should file an amended claim describing the right as the claimant wishes to claim it.

3. Application pending at time report prepared

If an application for transfer has been filed for a change in use that was made prior to commencement of the adjudication, then it may be possible to recommend the change as an accomplished

transfer, in which case the administrative transfer proceeding is unnecessary. If the change is to be recommended in the report, then allocations staff should be informed of the recommendation.

If the transfer applied for may not be recommended as an accomplished transfer, then the right should not be recommended with the changes proposed in the transfer application until the transfer has been approved and the order approving the transfer has become final.

Where an order approving a transfer has been issued, but the order is not final at the time the report is prepared, the claim should be referred for further review by legal staff after the claim has been investigated.

Q. WHEN IS A RIGHT DECREED?

For purposes of preparing the director's report, a right will be deemed to have been decreed where the decree determines the amount, priority, and source of the right as against claimants of other water rights.

A right that is described in a decree that only determines ownership of a water right as against other purported owners of that same right are not considered decreed rights. Examples of such decrees include decrees in divorce, bankruptcy, foreclosure, and forfeiture proceedings (here, forfeiture refers to seizures of property for payment of debt or in criminal proceedings).

There may be rights described in the water right database with a basis of decree, that are based on a decree that did not adjudicate a right. Such rights should be reviewed as rights based on beneficial use, and if recommended, should be recommended with a basis of beneficial use. The claim should include a COMMENT that the decree on which the claim is based did not adjudicate water rights. However, if the right has been administered by the watermaster as a decreed right, then the claim should be referred for further review by legal staff after it has been investigated.

R. BASES FOR DISALLOWAL

A claim recommended for disallowal should have a status of "I". The claim should include a remark indicating the basis for disallowal. Adjudication Memo #32 lists standard remarks for basis for disallowal (the "P" prefix remarks.) If none of the standard remarks seem appropriate, then the water agent should contact legal staff.

The claim should also include a standard condition that offers a brief explanation of the basis for disallowal. Adjudication Memo #32 lists the conditions for the standard bases for disallowal (the "P" prefix conditions, which are numbered the same as the "P"

prefix remarks to which they correspond). The disallowal conditions will print only in the proposed recommendations, and not in the report (see Adjudication Memo #32 as to the proposed recommendation/notice of error procedure). It is not necessary to delete any other conditions in the claim record, because the computer will ignore other remarks in a claim record with an "I" status.

S. STATUTORY CLAIMS

To what extent may a statutory claim be relied on as information either in support of or in contradiction to an adjudication claim? Generally, a statutory claim should be evaluated the same as any other affidavit by a claimant. However, the statutory claim speaks ONLY as to the date as of which the claim was filed. It is NOT evidence in support of a priority prior to the date the statutory claim was filed.

I. NAME & ADDRESS

A. CHANGE IN ADDRESS OR OWNERSHIP

See Adjudication Memo #18 for more information as to changes in ownership and address.

1. Is the name and address the same as on the most recent, proper notice of change in address or ownership?

If not, then the new address and/or owner should be data-entered.

NOTE: Where multiple changes in ownership have been filed for a claim, it is not necessary that the names and addresses of all previous owners be kept in the "R" record, as was generally done with the "A" record. The claimants who originally filed the claim, and the current owners (including current representatives, attorneys, etc.) need to be kept in the "R" record; intervening owners and previous representatives or attorneys need not be kept in the "R" record.

2. Is there reason to believe that there has been a change in address or ownership, and proper notice of the change in address or change in ownership has not been received?

If so, then the claimant should be contacted to obtain proper documentation of the change. If such documentation is not received, notices will be sent to the old address and/or owner, and such notice will be deemed legally sufficient.

Note that each claim should have at least one current owner. If there is no current owner, then there may have been either a data-entry error, or an insufficient notice of change in ownership may have been received.

B. COMPLETE ADDRESS

Is the address sufficient for mailing purposes?

If not, the complete address should be obtained and data-entered. (The most likely omission is the zip code.)

C. PHONE NUMBER

If there is no phone number, if a field exam will be necessary, and if the phone number is available from the phone book or from information, then the phone number should be obtained and data-entered.

D. CHANGE IN ATTORNEY

See Adjudication Memo #22 as to changes in attorney.

II. PRIORITY DATE

A. CLAIM BASED ON DECREE

Even if the claimed priority is the same as the decreed priority, the claimed priority must still be reviewed as set forth in Parts 1 and 2 below.

1. More recent adjudication

Has there been a more recent adjudication of water rights from the water source? (If not, then skip this Part 1.)

For claims in this category, the first issue is whether there was an adjudication of water rights from the water source after the decree on which the claim is based, and if so, the effect of the more recent decree.

a. Is the claimed priority prior to the cut-off date of the more recent decree? (If not, then skip this Part 1.)

Since a decree determines the nature and extent of existing rights, each decree necessarily has (but might not state) a date as of which a right had to be in existence to be included in the adjudication. This date is referred to in this manual as the "cut-off date" of the decree. The cut-off date of the more recent decree is the date of the decree, unless the decree provides for a different cut-off date. Cut-off dates for recent general adjudications in which IDWR filed a report are listed in Adjudication Memo #14.

b. Is the claimant "bound" by the more recent decree?

If the right was not determined in the more recent decree, then the effect of the decree on this claim will depend on whether the claimant is "bound" by the more recent decree (see Intro part J as to res judicata). Generally, the burden is on the claimant to show the claimant is not "bound," either by showing that the owner at the time of the more recent adjudication was not a party to the more recent adjudication (some water right adjudications are binding only on named parties, not on all claimants from the source), or by showing that the source claimed was not included in the water system adjudicated in the more recent adjudication. If the claimant does not meet this burden of proof, then the water right is deemed to have been forfeited because it was not claimed in the more recent adjudication.

c. Effect of decree

If the right is determined in the more recent decree, then the owner at the time of the more recent decree was clearly a party to the adjudication, and the current owner is bound by the decree.

The basis of the claim should be shown in the "R" record as the more recent decree, and the claim should be reviewed as a claim based on the more recent decree.

If it is not apparent from the face of the decrees whether the decree on which the claim is based is superseded by the later decree, then the claim should be referred for further review by legal staff. In many instances one result of the legal review will be that the claimant contact should be made. The claimant should be contacted to allow the claimant the opportunity to show that the earlier decree is not superseded by the later decree. Reference to legal staff should be made prior to claimant contact because legal staff may be able to more quickly determine whether the claimant is bound by the decree from IDWR files. If the claimant submits information for the purpose of showing that the claimed right is not superseded by the decree, then the claim should again be referred to legal staff for further review.

If the right was not determined in the more recent decree, and the claimant has failed to show that the claimant is not bound by the more recent decree, then the basis of the claim should be changed to beneficial use, and the claim should be reviewed as a claim based on beneficial use with a claimed priority date as of the day after the "cut-off date" of the more recent decree.

2. Forfeiture

Is there reason to believe that there has been a five year period of continuous nonuse (or non-beneficial use) after the cut-off date of the decree? (If not, then skip this Part 2.)

The second issue for claims in this category is forfeiture. Due to the higher standard of proof for establishing forfeiture of a decreed right, IDWR will not field examine every right based on a decree that is more than five years old to verify that it has not been forfeited. Instead, as to each claim in this category, IDWR will look to information already available to determine if there is reason to believe that the right may have been forfeited. If so, IDWR will make a reasonable effort to determine if the right has in fact been forfeited.

Therefore, the forfeiture analysis should begin by asking if there is reason to believe that there has been a five year period of continuous nonuse (or non-beneficial use) of the water right subsequent to the cut-off date of the decree. If so, then REASONABLE efforts should be made to investigate whether a forfeiture has occurred (see Part X as to forfeiture analysis). For example, with respect to irrigation claims, lack of verification of the water right by Landsat data or aerial photography is reason to believe that a forfeiture issue may exist that merits further investigation.

Again, the cut-off date of the decree is the date of the decree, unless the decree provides that the water rights determined therein are determined as of a different date. Cut-off dates for recent general adjudications in which IDWR filed a report are listed in Adjudication Memo #14.

3. Rights decreed for subsequent completion

Some of the old decrees purported to determine water rights that the decree indicates were not completed at the time of the decree. Claims to rights that were decreed for subsequent completion should be referred for further review by legal staff.

4. Priority claimed earlier than decreed priority

The decreed priority should be recommended. A priority earlier than the decreed priority may not be recommended due to the principle of res judicata (see Intro Part J as to res judicata).

5. Priority claimed later than decreed priority

Claimant contact

If there is reason to believe that the claimant simply made a mistake in claiming the later priority date, then the claimant should be contacted to allow the claimant the opportunity to file an amended claim asserting the decreed priority date, otherwise the decreed priority is waived. (There is reason to believe that the claimant made a simple mistake where the claimed priority is less than five years after the cut-off date of the decree. See Part 2 above as to forfeiture. There may be other examples.) A priority earlier than the claimed priority may not be recommended.

B. CLAIM BASED ON LICENSE

Even if the claimed priority is the same as the licensed priority, the claimed priority should still be reviewed as set forth in Parts 1 and 2 below.

1. Later adjudication

Has there been a later adjudication of water rights from the water source? (If not, then skip this Part 1.)

For claims in this category, the first issue is whether the license was superseded by a later adjudication of water rights from the water source.

a. Is the priority date prior to the cut-off date of the decree? (If not, then skip this Part 1.)

Determining whether an adjudication proceeding was subsequent to a licensing proceeding can be somewhat difficult. For convenience, the water agent should determine if the licensed priority date is prior to the cut-off date of the decree.

Since a decree determines the nature and extent of existing rights, each decree necessarily has (but might not state) the date as of which a right had to be in existence to be included in the adjudication. This date is referred to in this manual as the "cut-off date" of the decree. The cut-off date of the decree is the date of the decree, unless the decree provides for a different cut-off date. Cut-off dates for recent general adjudications in which IDWR filed a report are listed in Adjudication Memo #14.

b. Is the claimant "bound" by the decree?

If the priority date is prior to the cut-off date of the decree, and the water right was not determined in the decree, then the effect of the decree will depend on whether the claimant was "bound" by the decree (see Intro Part J as to res judicata). Generally, the burden is on the claimant to show that the claimant is not "bound" by the decree, either by showing that the owner at the time of the adjudication was not a party to the adjudication (some adjudications included only named parties), or by showing that the source claimed was not included in the water system adjudicated. If the claimant does not meet this burden of proof, then the water right is deemed to have been forfeited because it was not claimed in the more recent adjudication.

c. Effect of decree

If the water right was determined in the decree, then the owner at the time of the adjudication was clearly a party to the adjudication and the claimant is bound by the decree. The basis of

the claim should be changed to decree, and the claim should be reviewed as a claim based on the decree.

If it is not apparent from the face of the license and decree whether the claimant was bound by the decree, then the claim should be referred for further review by legal staff. In many instances one result of the legal review will be that the claimant should be contacted to allow the claimant the opportunity to submit evidence showing that the license was not superseded by the later adjudication, in which case legal staff will provide further instructions to the agent. Reference to legal staff should be made prior to claimant contact because legal staff may be able to more quickly determine whether the claimant is bound by the decree from IDWR files. If the claimant submits information for the purpose of showing that the claimed right is not superseded by the decree, then the claim should again be referred to legal staff for further review.

If the result of the legal review is that the license was superseded by the decree, then the claim should be analyzed as a beneficial use claim with a claimed priority date as of the day after the cut-off date of the decree (or another date provided by legal staff).

2. Forfeiture

Is there reason to believe that there has been a five-year period of continuous nonuse (or non-beneficial use) after the date the license was issued? (If not, then skip this Part 2.)

The second issue for claims in this category is forfeiture. Due to the higher standard of proof for establishing forfeiture of a licensed right, IDWR will not examine every right based on a license that is more than five years old to verify that it has not been forfeited. Instead, as to each claim in this category, IDWR will look to information already available to determine if there is reason to believe that the right may have been forfeited. If so, IDWR will make a reasonable effort to determine if the right has in fact been forfeited.

Therefore, the forfeiture analysis should begin by asking if there is any reason to believe that there has been a five year period of continuous nonuse (or non-beneficial use) of the water right subsequent to the date the license was issued. If so, then REASONABLE efforts should be made to investigate whether a forfeiture has occurred (see Part X as to forfeiture analysis). For example, with respect to irrigation claims, lack of verification of the water right by Landsat data or aerial photography is reason to believe that a forfeiture issue may exist that merits further investigation.

NOTE: Lack of beneficial use under a recent license may be an issue where there are multiple claims for the same purposes at the same place of use, the total amount is greater than the amount that can be beneficially used for those purposes at the place of use, and the rights are not supplemental. In such cases, the excess is taken from the most junior rights. See Part VIII below as to other rights.

3. Priority claimed earlier than licensed priority

Claimant contact

Historically, it was not uncommon for a person with a beneficial use right to seek documentation of the right by filing an application for permit. Under the statute, the only priority date that could be licensed was the date of filing the application, even though the right was in fact established earlier.

Where an earlier priority date is claimed for a right for which a license has been issued, then the claim should be reviewed as a claim based on beneficial use, and if recommended with a beneficial use priority, then the basis of the claim should be changed to beneficial use. However, the evidence submitted by the claimant in support of a claim based on beneficial use should be weighed in light of any evidence in the water right file. See Part F.1 below as to evidence of priority for beneficial use claims.

If the claim may not be recommended as a prior beneficial use right, then the basis of the claim should continue to be shown as license, and a priority date earlier than the licensed priority may not be recommended.

MISC.: If the claimant's evidence is sufficient to recommend only a portion of the licensed amount with an earlier priority date, then the claim may be recommended as two water rights, one with the earlier priority for the portion of the claim for which the required evidence was submitted, and one with the licensed priority for the remainder.

NOTE: This issue is irrelevant if it has already been determined that the license has been superseded by a decree in Part 1, above, or if it has been determined that a later priority will be recommended based on forfeiture in Part 2, above.

4. Priority claimed later than licensed priority

Claimant contact

If there is reason to believe that the claimant simply made a mistake in claiming the later priority, then the claimant should be contacted to allow the claimant the opportunity to file an amended

claim asserting the licensed priority date, otherwise the licensed priority is waived. (There is reason to believe that the claimant made a simple mistake where the claimed priority is less than five years after the date the license was issued. See part 2 above as to forfeiture. There may be other examples.) A priority earlier than the claimed priority may not be recommended.

C. CLAIM BASED ON PERMIT

Even if the claimed priority is the same as the proposed priority on the permit (as amended by the most recent approved amendment to the permit), the claim should be reviewed as set forth in Parts 1 through 3 below.

1. Permit for which a proof due notice was filed prior to commencement

If the claim is based on a permit for which a proof due notice was submitted prior to commencement, then contact water allocations staff at the state office before proceeding with review of this claim. See Intro Part M for a general discussion of claims in this category.

2. Permit has been licensed

If the permit has been licensed, and the license is final, then the basis of the claim should be changed to license, and the claim should be reviewed as a claim based on a license. "Final" means that any appeal period has passed and no appeal has been filed, or any proceedings on appeal have been completed.

3. Permit lapsed

Claimant contact

If the permit has lapsed, then claimant contact should be made. The claimant should be notified that the claimant must follow the statutory procedure for reinstatement of permits, or, where the right would not be in violation of the mandatory permit statute, proof of beneficial use as of the priority claimed must be submitted, otherwise the claim will be recommended for disallowal on the basis that the permit lapsed.

If the permit is reinstated, then the claim should be reviewed as a claim based on the reinstated permit.

If the claimant submits evidence of beneficial use, then the claim should be reviewed as a claim based on beneficial use. If the claim is to be recommended based on beneficial use then the basis of claim should be changed to beneficial use.

If the claimant does neither, then the claim should be recommended for disallowal, and should include the following remark: "PERMIT LAPSED." (P08 and condition P08)

4. Priority claimed earlier than proposed priority on permit
Claimant contact

The analysis for this issue is the same as for claims based on a license, see Part B.3 above.

5. Priority claimed later than proposed priority on permit
Claimant contact

The claimant should be contacted to allow the claimant the opportunity to file an amended claim asserting the proposed permit priority date, otherwise the proposed permit priority date is waived. (There is reason to believe that the claimant simply made a mistake in claiming the later priority date, because forfeiture should not be an issue for claims in this category.) A priority earlier than the claimed priority may not be recommended.

D. CLAIM BASED ON BENEFICIAL USE (INCLUDING STATUTORY CLAIM)

NOTE: This analysis assumes that a field exam will show at least some beneficial use pursuant to the right claimed. (See Part V.E.1 as to verification of current use.)

NOTE: The basis of a claim should never be recommended as statutory claim. Statutory claim is a valid basis in water allocations, because this is the document that evidences a claim in their files. But since the statutory claim is a claim to a beneficial use right, such claims should be recommended based on beneficial use.

1. Evidence of priority

a. Some evidence

All claimants of rights based on beneficial use (other than most small D&S) will be required to submit some information tending to support the year of the priority claimed. If no such information is submitted, then the claim should be recommended for disallowal, and should include the following remark: "NO LAWFUL APPROPRIATION SHOWN."

A public information brochure describing this requirement and the types of information required has been prepared and distributed to the regions. The brochure with an appropriate cover letter will be mailed to all such claimants in a sub-basin at the beginning of the investigation stage for the sub-basin. The following analysis assumes that this step has already been done.

NOTE: A statutory claim is evidence of beneficial use only as of the date the statutory claim was filed.

NOTE: A beneficial use priority should not be recommended that is outside the season of use for the purposes of use to be recommended. For example, a priority date of December 31 should not be recommended for a right recommended solely for irrigation purposes.

b. More evidence

More information may still be required where IDWR has other information that contradicts the information submitted by the claimant. It will be up to the water agent to use common sense to evaluate the credibility of the information, to weigh conflicting information, and to determine, in light of the contradictory information, whether the claimant's information supports the priority date, and if not, to determine what date it does support. If there is insufficient information to support a priority date that is not in violation of the mandatory permit statute, then the claim should be recommended for disallowal, and should include the

following remark: "NO LAWFUL APPROPRIATION SHOWN." (P01 and condition P01)

c. Evidence of nonuse

IDWR will not require that the claimant also submit information showing that continuous use of the water right was made since the claimed priority date (i.e. use at least once every five years). Instead, before a priority date based on evidence of first use is recommended, the agent should consider whether there is reason to believe that there has been a continuous period of five years nonuse of the right since the claimed priority date. If so, reasonable efforts should be made to investigate whether there has in fact been such nonuse. Any information indicating that there has been such nonuse should be considered in determining whether the claimant's information supports the claimed priority date.

d. Mandatory permit statute

As noted above, the claimant is generally required only to submit some evidence tending to support the year of the priority claimed. However, where the year of the priority claimed is 1963 for ground water or 1971 for surface water, there must be some evidence that would tend to show that the appropriation was completed prior to effect date of the mandatory permit statute, or was commenced prior to the effective date of the mandatory permit statute and completed within a reasonable time thereafter. (The effective dates of the mandatory permit statute were March 25, 1963 for ground water, and May 20, 1971 for surface water; see Adjudication Memo #23 for more information as to the effect of the mandatory permit statutes.) Since this caveat was not noted in the proof of beneficial use priority date brochure, claimant contact may be needed to obtain additional information.

2. Later adjudication

Has there been an adjudication of water rights from the water source after the priority date supported by the claimant's information? (If not, then skip this Part 2.)

For claims in this category, the next issue is whether the claim is superseded by a later adjudication of water rights from the water source, and if so, the effect of the more recent decree.

a. Is the priority date supported by the claimant's information prior to the cut-off date of the decree? (If not, then skip this Part 2.)

Since a decree determines the nature and extent of existing rights, each decree necessarily has (but might not state) a date as of which a right had to be in existence to be included in the adjudication. This date is referred to in this manual as the "cut-

off date" of the decree. The cut-off date of the decree is the date of the decree, unless the decree provides for a different cut-off date. Cut-off dates for recent general adjudications in which IDWR filed a report are listed in Adjudication Memo #14.

b. Is the claimant "bound" by the decree?

If the right was not determined in the decree, then the effect of the decree on this claim will depend on whether the claimant is "bound" by the decree (see Intro part J as to res judicata). Generally, the burden is on the claimant to show the claimant is not "bound," either by showing that the owner at the time of the adjudication was not a party to the adjudication (some water right adjudications are binding only on named parties, not on all claimants from the source), or by showing that the source claimed was not included in the water system adjudicated. If the claimant does not meet this burden of proof, then the water right is deemed to have been forfeited because it was not claimed in the more recent adjudication.

c. Effect of decree

If the right was determined in the decree, then the owner at the time of the more recent decree was clearly a party to the adjudication, and the current owner is bound by the decree. The basis of the claim should be changed to decree, and the claim should be reviewed as a claim based on the decree.

If it is not apparent from the face of the decree whether the claim is superseded by the decree, then the claim should be referred for further review by legal staff. In many instances one result of the legal review will be that the claimant contact should be made. The claimant should be contacted to allow the claimant the opportunity to show that the claim is not superseded by the later adjudication. Reference to legal staff should be made prior to claimant contact because legal staff may be able to more quickly determine whether the claimant is bound by the decree from IDWR files. If the claimant submits information for the purpose of showing that the claimed right is not superseded by the decree, then the claim should again be referred to legal staff for further review.

If the right was not determined in the decree, and the claimant has failed to show that the claimant is not bound by the decree, then the priority to be recommended should not be earlier than the day after the cut-off date of the decree (or another date provided by legal staff).

NOTE: Although proof of priority is generally not required for small domestic and stockwater rights, small D&S rights should still be reviewed to make sure the priority date claimed is not precluded by a later adjudication.

3. Expansion of ground water (GW) in critical ground water area (CGWA)

Is the claim for expansion of GW in a CGWA, and is priority date to be recommended after designation of the CGWA? (If not, then skip this Part 3.)

If the claim is for an expansion of GW in a CGWA, and the priority date supported by the claimant's information is after designation of the CGWA, then the claim should be flagged "G" and the claim should be reviewed as an expansion of GW in a CGWA (see Part F below).

4. Mandatory permit statute

Is the priority date to be recommended in violation of the mandatory permit statute? (If not, then skip this Part 4.)

NOTE: A beneficial use right with a priority after the effective date of the mandatory permit statute may still be valid if the claimant can show that the appropriation was commenced prior to the effective date of the statute and completed with reasonable diligence. See Adjudication Memo #23 for more information as to the effect of the mandatory permit statute.

a. Can the claim be considered a claim based on the second presumption? (See Part F below)

If so, then the claim should be flagged "E", and the claim should be reviewed as an expansion based on the second presumption.

b. If not, is the source ground water and does the claim include a portion that meets the statutory definition of small D&S, or is the source surface water and include a portion for instream stockwater use?

If so, then a claim to ground water should be limited to the portion of the claim that meets the statutory definition of small D&S, or a claim to surface water should be limited to the portion of the claim for instream stockwater use.

c. If not, was the claimed priority precluded by a later adjudication of water rights from the water source?

If so, then the claim should be recommended for disallowal, and should include the following remark: "RIGHT NOT CLAIMED IN PRIOR ADJUDICATION." (P02 and condition P02) (Prior here means prior to the SRBA.)

If not, then the claim should be recommended for disallowal, and should include the following remark: "NO LAWFUL APPROPRIATION SHOWN." (P01 and condition P01)

5. Order of analysis

The order of analysis for each of these issues might not be the same for every claim. Generally, the mandatory permit analysis should be done after the claimant's proof of priority is submitted, because the claimed priority may be consistent with the mandatory permit statute but the claimant's information does not support the priority date claimed. On the other hand, if a claim is asserted for a beneficial use right to the Payette River with a priority date of 1973, then there is no point contacting the claimant for proof of priority or proof that the claimant was not bound by the Payette decree, because the claim is in violation of the mandatory permit statute anyway. (Claimants asserting a priority date in violation of the mandatory permit statute were given the option to withdraw their claims and file applications instead; some chose not to file an application, and some chose to file both.)

E. CLAIM BASED ON POSTED NOTICE

Prior to 1903, Idaho had a "posted notice" statute, which described the means to perfect a statutory appropriation. An appropriator was required to post and record a notice describing the intended appropriation, which was required to contain certain minimum elements. Diversion works were then required to be completed and water applied to a beneficial use with due diligence. If the requirements of the statute were satisfied, then the priority date of the water right related back to the date of posting.

A posted notice is evidence of the intent to appropriate water, but it is not evidence of application of water to beneficial use nor due diligence in completing the appropriation. Some evidence of completion of the appropriation within a reasonable time after the date of posting will therefore be required before a claim may be recommended based on a posted notice. Completion within five years will be deemed reasonable; the reasonableness of longer periods will depend on the circumstances.

NOTE: This analysis assumes that a field exam will show at least some beneficial use pursuant to the right claimed. (See Part V.E.1 as to verification of current use.)

1. Sufficiency of posted notice

Are all minimum elements present?

The first issue is whether the posted notice meets the statutory requirements. The posted notice must contain the following:

- a. Name of appropriator
- b. Source
- c. Amount of water
- d. Location of point of diversion
- e. Purposes of use
- f. Location of place of use
- g. Description of means of diversion
- h. For notices posted or recorded between March 7, 1895 and February 24, 1899, the length of time necessary to complete the appropriation, which may not be more than five years.
 - i. Date of recording between February 10, 1881 and March 10, 1903, and within the following time limits from the date of posting:
 - Prior to June 1, 1887 - 15 days
 - June 1, 1887 to February 19, 1895 - 10 days
 - February 20, 1895 to March 10, 1903 - 15 days

NOTE: The date of recording is the date the notice was recorded with the office of the county recorder for the county

in which the land was located at the time the notice was recorded (there have been some changes in county boundaries since the posted notice statutes). A copy of the posted notice from the county recorder's office will have an endorsement by the county recorder that shows the date of recording.

If the posted notice does not meet these minimum requirements, then the basis of the claim should be changed to beneficial use and the claim should be reviewed the same as a claim based on beneficial use.

2. Does the posted notice include the right claimed?

Does the posted notice include the source, point(s) of diversion, place(s) of use, nature(s) of use, and amount of water claimed? (i.e., Is the claim the same or at least a subset of the water right intended to be appropriated in the posted notice?)

If not, then to the extent that the source, point(s) of diversion, place(s) of use, and nature(s) of use are not included in the posted notice, can they be considered a change in use of the original right (not an expansion)?

If the answer to both questions is no, then the basis of the claim should be changed to beneficial use and the claim should be reviewed the same as a claim based on beneficial use.

NOTE: If the claimed right is partially included in the posted notice, or may partially be considered a change in use of the appropriation described in the posted notice, then the claim may need to be separated into two claims, one based on posted notice and a second based on beneficial use. However, in most instances this determination should not be made until the priority review is otherwise completed, because completion of the priority review may make separation of the claim unnecessary.

3. Later adjudication

Has there been a later adjudication of water rights from the water source? (If not, then skip this Part 3.)

For claims in this category, the next issue is whether the claim is superseded by a later adjudication of water rights from the water source, and if so, the effect of the more recent decree.

a. Is the date of posting prior to the cut-off date of the decree? (If not, then skip this Part 3.)

Since a decree determines the nature and extent of existing rights, each decree necessarily has (but might not state) a date as

of which a right had to be in existence to be included in the adjudication. This date is referred to in this manual as the "cut-off date" of the decree. The cut-off date of the decree is the date of the decree, unless the decree provides for a different cut-off date. Cut-off dates for recent general adjudications in which IDWR filed a report are listed in Adjudication Memo #14.

b. Was the claimant "bound" by the decree?

If the right was not determined in the decree, then the effect of the decree on this claim will depend on whether the claimant is "bound" by the decree (see Intro part J as to res judicata). Generally, the burden is on the claimant to show the claimant is not "bound," either by showing that the owner at the time of the adjudication was not a party to the adjudication (some water right adjudications are binding only on named parties, not on all claimants from the source), or by showing that the source claimed was not included in the water system adjudicated. If the claimant does not meet this burden of proof, then the water right is deemed to have been forfeited because it was not claimed in the more recent adjudication.

c. Effect of decree

If the right was determined in the decree, then the owner at the time of the more recent decree was clearly a party to the adjudication, and the current owner is bound by the decree. The basis of the claim should be changed to decree, and the claim should be reviewed as a claim based on the decree.

If it is not apparent from the face of the decrees whether the claim is superseded by the decree, then the claim should be referred for further review by legal staff. In many instances one result of the legal review will be that the claimant contact should be made. The claimant should be contacted to allow the claimant the opportunity to show that the claim is not superseded by the later adjudication. Reference to legal staff should be made prior to claimant contact because legal staff may be able to more quickly determine whether the claimant is bound by the decree from IDWR files. If the claimant submits information for the purpose of showing that the claimed right is not superseded by the decree, then the claim should again be referred to legal staff for further review.

If the right was not determined in the decree, and the claimant has failed to show that the claimant is not bound by the decree, then the basis of the claim should be changed to beneficial use, and the claim should be reviewed as a claim based on beneficial use with a claimed priority date as of the day after the "cut-off date" of the decree (or another date provided by legal staff).

4. Priority claimed same as or earlier than date of posting

Claimant contact

(A priority date earlier than the date of posting may be claimed, for example, where the posted notice indicates that the appropriation was complete when the notice was posted. If the posted notice indicates that the appropriation was complete at the time of posting, then the posted notice is evidence of use prior to posting, but the notice will have to be examined to determine if it contains evidence of WHEN prior to posting the use was first made. If the posted notice contains language of intent, then this is some indication that the appropriation was not completed prior to posting.)

The claimant should be notified that the claimant must either submit some evidence of completion of the appropriation within a reasonable time following the date of posting, in which case the priority date recommended will be the date of posting, OR the claimant must submit some evidence of the date of first use, in which case the priority based on evidence of the date of first use will be recommended. The claimant contact should further state that absent some evidence to support the priority date, the claim will be recommended for disallowal on the basis that no lawful appropriation was shown.

If the claimant submits some evidence of completion of the appropriation within a reasonable time following the date of posting, then the date of posting should be recommended as the priority date.

If the claimant does not submit such evidence, then the basis of the claim should be changed to beneficial use and the claim should be reviewed the same as a claim based on beneficial use. (It is not necessary to repeat claimant contact to obtain evidence of priority, because the claimant has already been given the opportunity to do so once.)

5. Priority claimed later than date of posting

Claimant contact

If there is some reason to believe that the claimant simply made a mistake in claiming the later priority date, then the claimant should be notified that the claimant may file an amended claim asserting the date of posting as the priority date. (There is some reason to believe that the claimant simply made a mistake where the priority date claimed is less than five years after the date of posting, because use within five years is generally deemed to be completion of the appropriation within a reasonable time. There may be other examples.) The claimant contact should further state that if the claimant desires to claim the date of posting as

the priority date, then the claimant must submit some evidence of completion of the appropriation within a reasonable time after the date of posting, in which case the date of posting will be recommended; if the claimant does not wish to file an amended claim, then the claimant must submit some evidence of the date of first use, in which case the priority date recommended will be the earliest date supported by the evidence (but not earlier than the priority date claimed). Finally, the claimant contact should state that absent some evidence of priority date, the claim will be recommended for disallowal on the basis that no lawful appropriation was shown.

With all other claims in this Part 5, the claimant should be notified that the claimant must submit some evidence of the date of first use; otherwise the claim will be recommended for disallowal on the basis that no lawful appropriation was shown.

If the claimant files an amended claim asserting the date of posting and submits some evidence of completion of the appropriation within a reasonable time following the date of posting, then the date of posting should be recommended as the priority date.

If the claimant does not file an amended claim and submit such evidence, then the basis of the claim should be changed to beneficial use and the claim should be reviewed the same as a claim based on beneficial use. (It is not necessary to repeat claimant contact to obtain evidence of priority, because the claimant has already been given the opportunity to do so once.)

6. Evidence of nonuse

IDWR will not require that the claimant also submit information showing that continuous use of the water right was made since the claimed priority date (i.e. use at least once every five years). Instead, before a priority date based on the posted notice is recommended, the water agent should consider whether there is reason to believe that there has been a continuous period of five years nonuse of the right since the claimed priority date. If so, reasonable efforts should be made to investigate whether there has in fact been such nonuse. Any information indicating that there has been such nonuse should be considered in determining whether the claimant's information supports the claimed priority date.

**F. CLAIM BASED ON SECOND PRESUMPTION OR CRITICAL GROUND WATER
(GW) EXPANSION**

This Part F addresses the review of "E" flagged claims pursuant to Idaho Code §42-1416(2) and "G" flagged claims pursuant to Idaho Code §42-1416B.

"Original claim" refers to the water right alleged to have been expanded; "expansion claim" refers to the expansion claimed.

NOTE: This analysis assumes that a field exam will show at least some beneficial use pursuant to the right claimed. (See Part V.E.1 as to verification of current use.)

1. Evidence of priority

The claimant will be required to submit some evidence of use of the right as of the year of the priority claimed. Analysis of this issue is the same as for other claims based on beneficial use, see Part D.1 above. Note that here the evidence must be use of the expansion claimed.

The priority to be recommended for an expansion claim may not be:

- a. the same as or earlier than the cut-off date of a decree in an adjudication of rights to the claimed source (analysis of this issue is the same as for other claims based on beneficial use, see Part D.2 above),
- b. the same as or earlier than the priority date of the original claim, if the original claim is based on beneficial use,
- c. earlier than the date the proof due notice was submitted, if the original claim is based on a license. The date the proof due notice was submitted is the relevant cut-off date for licenses, rather than the date the license was issued, see Intro Part M.

If any of these limitations apply, then the priority date to be recommended is the day after the limiting date, if the claimant's information supports a finding that the use had been made as of that date.

In addition, if the claimant's evidence of priority supports a priority date for the expansion claim that is prior to the effective date of a transfer of the original claim, and the claimed expansion is inconsistent with the transfer, then the claim should be referred to legal staff for further review.

2. Mandatory permit statute

Is the priority date to be recommended in violation of the mandatory permit statute?

NOTE: A beneficial use right with a priority after the effective date of the mandatory permit statute may still be valid if the claimant can show that the appropriation was commenced prior to the effective date of the statute and completed with reasonable diligence. See Adjudication Memo #23 for more information as to the effect of the mandatory permit statute.

If not, then the flag should be removed and the claim should be reviewed as a claim based on beneficial use. If the claim is not in violation of the mandatory permit statute, then the claimant does not need §42-1416(2) or §42-1416B for the claim to be recommended based on beneficial use.

3. Original right

a. Is the original right to be recommended?

If not, then the claim should be recommended for disallowal, and should include the following remark: "NO LAWFUL APPROPRIATION SHOWN." (P01 and condition P01) §42-1416(2) and §42-1416B apply only to expansion of valid rights.

b. Is the original claim to be recommended as a permit?

If so, then the claim should be recommended for disallowal, and should include the following remark: "NO LAWFUL APPROPRIATION SHOWN." (P01 and condition P01) §42-1416(2) and 42-1416B do not apply to expansions of permits.

NOTE: The query in this part is not whether the original claim is based on a permit, but whether it is to be recommended as a permit. See Intro Part M for a general discussion of claims based on permit for which a proof due notice was filed prior to commencement.

c. If the original claim is based on the second presumption, is the expansion claim based on a decree?

If so, then the expansion claim should be recommended for disallowal, and should include the following remark: "NO LAWFUL APPROPRIATION SHOWN." (P01 and condition P01) §42-1416(2) does not apply to an expansion of a decreed right. (The first presumption may apply to an expansion in the number of irrigated acres, see Part VII.A and VII.B for further discussion of the first presumption.) The original claim for a critical GW expansion may be based on a decree.

4. Expansion before commencement

Is the priority date to be recommended before November 19, 1987?

If not, then the claim should be recommended for disallowal, and should include the following remark: "NO LAWFUL APPROPRIATION SHOWN." (P01 and condition P01) §42-1416(2) and §42-1416B apply only to expansions prior to commencement.

5. Expansion or separate appropriation?

a. For a claim based on the second presumption, is the expansion limited to additional purposes of use, additional acres irrigated, or an increase in season of use? For a critical ground water expansion claim, is the expansion limited to additional purposes of use or additional acres irrigated?

b. Is the expansion really an expansion, and not a separate appropriation? (For example, if the claim is for water diverted through a separate system and used on noncontiguous property, this is clearly a separate appropriation. There may be other examples.)

If the answer to either question is no, then the claim should be recommended for disallowal, and should include the following remark: "NO LAWFUL APPROPRIATION SHOWN." (P01 and condition P01) §42-1416(2) and §42-1416B do not provide a universal exception to the mandatory permit statute; it only applies to CERTAIN expansions of EXISTING rights. If the claim includes an increase in the rate of diversion, or if a critical ground water expansion claim includes an increase in the volume of diversion, then the claim should be disallowed; the extra use should not be recommended for the original amount. (An increase in consumptive use is OK, and an increase in diversion volume is OK for a claim based on the second presumption; see Part V.F for further discussion as to amount to be recommended for claims in this category.)

6. Critical GW expansion

Is the claim for an expansion of GW in a CGWA? (If not, then skip this Part 6.)

a. Is the priority date to be recommended prior to designation of the critical GW area?

If so, then the claim should be flagged "E" instead of "G", and proceed to Part 7 below. Expansions of GW prior to designation of the CGWA may be claimed under the second presumption.

b. Priority to be recommended is after designation of CGWA but before commencement.

If the review has progressed to this point, then the initial determination of the priority date is between the date of designation of the CGWA and the commencement date, in which case the priority date should be recommended as June 30, 1985. (§42-1416B provides that this is the priority date that will be recommended.) The expansion claim should include the following remark: "THIS RIGHT IS AN EXPANSION OF RIGHT NO. (original right) PURSUANT TO IDAHO CODE 42-1416B. (K03) The original claim should include the following remarks: "RIGHT NO. (expansion right) IS AN EXPANSION OF THIS RIGHT PURSUANT TO IDAHO CODE 42-1416B." (K04) "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO 42-1416A." (C05)

7. Recommendation for claim based on second presumption

If the review has progressed to this point, then the claim should be recommended with a priority date as determined above, and should include the following remark: "THIS RIGHT IS AN EXPANSION OF RIGHT NO. (original right) PURSUANT TO IDAHO CODE 42-1416(2)." (K01) The original claim should include the following remarks: "RIGHT NO. (expansion right) IS AN EXPANSION OF THIS RIGHT PURSUANT TO IDAHO CODE 42-1416(2)." (K02) "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A."

8. Second presumption checklist

The checklists in Parts 8 and 9 are included here for convenience. Each element is discussed in further detail under the appropriate item, and in Adjudication Memo #16B.

a. Priority supported by claimant's information is in violation of mandatory permit statute (if not, then second presumption is not necessary).

b. Expansion in use - includes increase in irrigated acreage, additional purpose of use, or increase in season of use. Does not include increase in rate of diversion, but may include increase in volume of diversion and consumptive use.

c. Must be expansion - separate diversion system for noncontiguous lands is not expansion (may be other examples).

d. Must be expansion of valid unadjudicated right - original right must be license or valid beneficial use right; original right may not be permit, decreed right, or beneficial use that is in violation of mandatory permit statute.

e. Expansion must have occurred prior to commencement.

f. May not be expansion of GW in CGWA that occurred after designation of critical GW area.

g. Expansion results in the recommendation of a second right, with a priority as of the date of the expansion. The second presumption is not an exception to the finality of an approved transfer (the priority recommended may not be earlier than the effective date of the transfer).

h. Standard conditions: Note expansion right on original right, original right on expansion right; include appropriate limit on combined use; note accomplished change in place of use of original right.

9. Critical GW expansion checklist

a. Must be expansion of GW in critical GW area, and priority supported by claimant's information is after designation of critical GW area (if not, then 42-1416B is not necessary).

b. Expansion in use - includes increase in irrigated acreage, additional purpose of use, but not an increase in season of use. Does not include increase in rate of diversion or volume of diversion, but may include increase in consumptive use.

c. Must be expansion - separate diversion system for noncontiguous lands is not expansion (may be other examples).

d. Must be expansion of valid right - original right must be decreed right, license or valid beneficial use right; original right may not be permit, or beneficial use that is in violation of mandatory permit statute.

e. Expansion must have occurred prior to commencement.

f. Expansion results in the recommendation of a second right, with a priority of June 30, 1985.

g. Standard conditions: Note expansion right on original right, note original right on expansion right, note requirement to identify acreage for original right; include appropriate limit on combined use; note accomplished change in place of use of original right.

III. SOURCE

This Part III is concerned primarily with changes in source that have not been approved by IDWR. However, there are a few other general issues described in Part A below of which the water agent should be aware.

A. GENERAL

1. Common names

Where the source has a widely used local name that is different from the name shown on USGS maps, then the claim should include the following remark: "SOURCE IS ALSO KNOWN AS _____." (B01)

2. Multiple sources

See Adjudication Memo #12 as to review of a claim with multiple sources.

3. Waste water

See Adjudication Memo #__ as to claims to waste water.

4. Geothermal water

Field exams for rights to ground water and springs should include an examination of water temperature. For purposes of preparing the report, a temperature measurement is not always required. In most cases, it will be readily apparent or the agent will already know that the source is something other than cold water. In such cases, a temperature measurement should be made where it would not be unreasonably difficult. Reasonable attempts should also be made to obtain information as to well depth.

When the field exams have been completed, the claim numbers, temperature, and well depth data for claims to warm or hot ground water or springs should be compiled and forwarded to the bureau chief. The water right files should contain some information as to water temperature and well depth for licensed or decreed rights to warm or hot ground water or springs. The claim numbers, temperature, and well depth information available from the water right files should also be compiled and forwarded to the bureau chief.

This information will be used to develop general provisions to be included in the report describing the manner of administration of rights to the aquifer(s), to determine appropriate remarks to be included in the water right recommendations, and where insufficient information is available from the water right files for rights that

do not otherwise require a field exam, to determine what further investigation is necessary.

Adjudication Memo #32 sets forth standard remarks to be used to identify rights to geothermal water (B05 - B08).

NOTE: Beneficial use of geothermal water generally requires beneficial use of the heat resource as well as beneficial use of the water. Claims to rights to geothermal water that do not make beneficial use of the heat resource should be referred to the bureau chief for further review.

5. Developed/salvaged water

Developed water (or foreign water) is water added to the water system that was not previously part of the water system. A right to developed water has a priority independent of the water system to which the water was added (although the right should have a priority relative to the water system from which the water came). Salvaged water is water that was originally part of the water system, then was lost from the system (not through diversion), and is added back in. Salvaged water also has a priority independent of the water system. Conserved water, or water saved through conservation practices (after diversion), is not salvaged water.

Any claim that asserts the water is developed or salvaged should be referred for further review by the bureau chief.

6. Unapproved changes in source generally

NOTE: Two sources are "separately administered", for example, where each source is subject to administration by a watermaster, but the two sources are not administered as a single system of priorities. There may be other situations in which two sources are deemed to be separately administered.

a. To a nontributary source or a source that is separately administered

A claimed unapproved change from a source to a nontributary source or a source that is separately administered will be treated as a new appropriation. If the use and the date of first use is in violation of the mandatory permit statute, the claim will be recommended for disallowal.

b. To a tributary source that is not separately administered

A claimed unapproved change to a tributary source will be reviewed as a change in use. The claimant will be required to submit the date of the change and some evidence tending to support that date, because the date of the change is essential to the injury analysis. (The analysis of proof of the date of change is

similar to the analysis of proof of priority of beneficial use claims, see Part II.D.1.) If no such evidence is submitted, then the claim will be recommended for disallowal on the basis that the claimant did not show either a change in use without injury, or an appropriation not in violation of the mandatory permit statute. (IDWR may not recommend the right as changed, because IDWR cannot find that the change occurred without injury; on the other hand, IDWR may not simply recommend the original source, because use of the original source could be a second change that might result in injury to other claimants.) The change must have occurred prior to November 19, 1987, because the accomplished transfer statute applies only to changes that occurred prior to commencement.

Where the evidence supports a finding that the change occurred after commencement, then the original source should be recommended. (NAPP photography may be useful in this regard.) If the change occurred prior to commencement, then the change may be recommended if it can be determined from the information available that the change did not result in injury to other water rights or can be conditioned to prevent injury. If such a determination cannot be made, then the change will still be recommended, but with a priority as of the date of the change to prevent injury.

Changes in source that occurred more than five years prior to commencement will not be subject to a more limited injury analysis than changes in source that occurred less than five years prior to commencement. There will be many instances in which injury will be apparent with little or no further inquiry.

NOTE: Where a change in source occurred more than five years prior to commencement and the water right has been administered by the watermaster as a right from the new source with no limitation to prevent injury to other appropriators, the claim should be referred for further review by legal staff. Any information available from the watermaster as to administration of the water right should be documented for the file prior to forwarding the file to legal staff.

7. Exchanges

See Adjudication Memo #___ for more information about recommendation of claims involving an exchange of water from one source for water from another source.

B. CLAIM BASED ON DECREE OR LICENSE

If the right has more than one source, and the claim can readily be split so that each claim shows only one source, then the claim should be split (with alpha suffixes assigned to the claim numbers). If the claim is split, then appropriate remarks should be included where necessary to limit combined use of the rights to

the total of the original right. See Part VIII below as to other rights.

If the claimed source is the same as the source shown on the decree or license (as amended by any approved transfers), then no further review of this item is required.

1. Verify actual source

If the actual source is the same as the source shown on the decree or license (as amended by any approved transfers), then the actual source should be recommended, and no further review of this item is required.

If the actual source is the same as the claimed source, but is not the same as the source shown on the decree or license (as amended by any approved transfers), then proceed with the analysis in Part 2 below.

If the actual source is different than both the claimed source and the source shown on the decree or license (as amended by any approved transfers), then proceed with the analysis in Part 2 below, but treat the actual source as the claimed source. An amended claim will not be required if the claim is to be recommended with the actual source.

2. Date of change

Claimant contact

The claimant should be notified that the claimant must submit the date of the change and some evidence tending to support that date; otherwise the use of water from the new source will not be recommended due to lack of evidence of either a change without injury or a new appropriation not in violation of mandatory permit statute. (If the change occurred after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after that date.)

If no evidence is submitted, or the evidence submitted does not support any finding as to the date of the change, and the source of the entire right was changed, then the claim should be recommended for disallowal, and should include the following remark: "CHANGE IN USE, INSUFFICIENT EVIDENCE OF DATE OF CHANGE." (P05 and condition P05)

If no evidence is submitted, or the evidence submitted does not support any finding as to the date of the change, and the source of a portion of the right was changed, then the portion of the right still used from the original source should be verified and only that portion should be recommended. The claim should include the following condition: "CHANGE IN USE OF PORTION OF

RIGHT; RIGHT LIMITED TO UNCHANGED PORTION DUE TO INSUFFICIENT EVIDENCE OF DATE OF CHANGE." (C07)

If the evidence supports a finding that the change occurred after November 19, 1987, then the source shown on the decree or license (as amended by any approved transfers) should be recommended.

Otherwise proceed to Part E below (Injury or New Appropriation).

NOTE: Generally, the date of the change in source for a claim based on a decree may not be the same as or earlier than the cut-off date of the decree (or the effective date of the most recent approved transfer, whichever is later). If the agent encounters a claim where the evidence supports a finding that the change occurred prior to the cut-off date of the decree, and the difference between the two dates is critical to the recommendation to be made, then the claim should be referred for further review by legal staff. The date of the change in source for a claim based on a license may not be earlier than the date the proof due notice was submitted (or the effective date of the most recent approved transfer, whichever is later). It may not be earlier than the date of the licensing field exam, if the licensing field exam did not confirm the change. (This is similar to claimed expansions of a permit, see Intro Part M.)

C. CLAIM BASED ON PERMIT

1. Permits for which a proof due notice was filed prior to commencement

If the claim is based on a permit for which a proof due notice was submitted prior to commencement, then contact water allocations staff in the state office before proceeding with review of this claim. See Intro Part M for a general discussion of claims in this category.

2. Source claimed different than source on permit

If the claim is to be recommended with a basis of permit, and the source claimed is different than the source shown on the permit (as amended by any approved amendments to the permit), then the source shown on the permit (as amended by any approved amendments to the permit) should be recommended.

A change in source may not be recommended for a claim based on a permit, because the accomplished transfer statute does not apply to permits. The only way to change the source on a permit is to file an application to amend the permit with IDWR.

D. CLAIM BASED ON BENEFICIAL USE (INCLUDING STATUTORY CLAIM, POSTED NOTICE, SECOND PRESUMPTION, CRITICAL GW EXPANSION)

Note that the source of a claim based on the second presumption or a critical GW expansion may not be different than the source of the original claim.

If there is more than one source, and the claim can readily be split so that each claim shows only one source, then the claim should be split (with alpha suffixes assigned to the claim numbers). If the claim is split, then appropriate remarks should be included where necessary to limit combined use of the rights to the total of the original right. See Part VIII below as to other rights.

1. Verify actual source

If the actual source is different than the claimed source, then treat the actual source as the claimed source. An amended claim will not be required if the right is to be recommended with the actual source.

2. Has change occurred?

Is there some reason to believe that there has been a change in source since the priority date to be recommended? (If not, then review of this item is complete.)

(A different source on a statutory claim or a posted notice is some reason to believe that the source was different at the time of filing the claim or posting the notice.)

If so, then make a reasonable effort to determine whether a change in source has occurred. If the evidence supports a finding that a change has occurred, then proceed to Part 3 below. Otherwise the claimed source should be recommended.

NOTE: Where the source is different than the source stated on the most recent approved transfer, then a change in source will be deemed to have occurred, and it will be deemed to have occurred no earlier than the effective date of the transfer.

3. Claimant contact

The claimant should be notified that the claimant must submit evidence either that there has been no change in source, or must submit the date of the change and some evidence tending to support that date; if no evidence is submitted then use of water from the new source will not be recommended due to lack of evidence of either a change without injury or a new appropriation not in violation of mandatory permit statute. (If a change occurred, and the change occurred after November 19, 1987, then a specific date

of change is not necessary, and the evidence of date of change need only support that the change occurred sometime after that date.)

If the evidence supports a finding that no change in source occurred, then the claimed source should be recommended.

If the evidence does not support any finding as to the date of the change, and the source of the entire right was changed, then the claim should be recommended for disallowal, and should include the following remark: "CHANGE IN USE, INSUFFICIENT EVIDENCE OF DATE OF CHANGE." (P05 and condition P05)

If the evidence does not support any finding as to the date of the change, and the source of a portion of the right was changed, then the portion of the right still used from the original source should be verified and only that portion should be recommended. The claim should include the following condition: "CHANGE IN USE OF PORTION OF RIGHT; INSUFFICIENT EVIDENCE OF DATE OF CHANGE." (C07)

If the evidence supports a finding that the change occurred after November 19, 1987, then the original source should be recommended.

Otherwise proceed to Part E below (Injury or New Appropriation).

NOTE: The date of the change may not be the same as or earlier than the effective date of the most recent approved transfer.

E. INJURY OR NEW APPROPRIATION

If the agent has reached this Part E, then it has been determined that there was a change in source, and a date of change prior to November 19, 1987 has been determined.

1. Are the original source and the new source separate?

Sources are separate if the old and new sources are not tributary to each other, and are not both tributary to a third source. It is unlikely that there is any source in the Snake River Basin that is not somehow hydrologically related to some other source in the basin, but it is possible. If there is insufficient information available to make this determination, then, for purposes of analysis of a claimed change in source, it should be assumed that the sources are separate. (For most purposes, it is assumed that sources are not separate, but here, the burden of proof is on the claimant to show that the change did not result in injury, which includes the burden to show that the sources are not separate.)

The old and new sources are separate if they are separately administered. If it appears that the sources are separately administered, then the claim should be referred for further review by the bureau chief.

If the sources are separate, and the source of the entire right was changed, then the basis of the claim should be changed to beneficial use, and the claim should be reviewed as a claim based on beneficial use with a claimed priority as of the date of the change.

If the sources are separate, and the source of a portion of the right was changed, then the portion still used from the original source should be verified. The claim should be limited to the verified uses of the original source, and should include the following COMMENT: "PORTION OF RIGHT FORFEITED/ABANDONED." The claimant should be contacted to allow the claimant to file a new claim for the uses from the new source; the new claim should be based upon beneficial use, with a priority as of the date of the change. This claimant contact is not necessary where the new claim could not be recommended.

If the sources are not separate, then proceed with the injury analysis below. Part 2 contains information as to the injury analysis generally; Parts 3 to 7 describe the standards as to when there is no injury and include some possible conditions to prevent injury for each of the basic types of changes in source; Part 8 describes the recommendation to be made once the analysis in the previous parts is complete. In completing the injury analysis in Parts 3 to 7 below, the agent may need to check with hydrology for relevant information.

2. Injury generally

The general rule is that an appropriator may change the source of his or her water right (to a tributary source that is not separately administered) if the appropriator can show that there is no injury or that the change can be conditioned to prevent injury. However, where that standard cannot be met for an accomplished, unapproved change claimed in the adjudication, IDWR may not simply recommend the original source, because use of the original source could in fact be a second change in use that might result in injury to other claimants. Therefore, where a change has been claimed, and IDWR cannot determine that there is no injury or that the change can be conditioned to prevent injury, the new source will be recommended, but the priority date will be changed to the date of the change to prevent injury. (Where the change in source is being treated as a change in use, rather than a new appropriation, the fact that the date of change is after the mandatory permit statute is not a problem.)

The injury analysis below focuses on injury to appropriators with a priority between this claimant's priority and the date of the change. There is generally no injury to claimants with a priority before the claimant's priority, because senior appropriators are protected by their priorities. There is generally no injury to claimants with a priority after the date of the change, because a claimant cannot be injured by something that happened prior to his or her appropriation.

3. Change from surface to tributary GW

The claimed source may be recommended with no change in priority if it can be determined from information already available to IDWR that:

a. the change will not injure surface appropriators with a priority between the claimant's priority and the date of change by reducing available surface flow (by reducing it more than or differently than the surface diversion did), AND

b. the change will not injure GW appropriators with a priority between the claimant's priority and the date of change by withdrawing GW in excess of the average annual rate of recharge OR by lowering GW below reasonable pumping levels.

The claimed source may also be recommended with no change in priority if conditions can be readily identified that will prevent the injury identified in a. or b.

4. Change from tributary GW to surface water

A change from tributary GW to surface water is presumed injurious. (The effect of the use of the GW rights is less immediate than the effect of diversion from the stream, and this change in the impact of the use results in injury to junior appropriators on the stream.)

5. Change from a tributary to another tributary of same stream

The claimed source may be recommended without a change in priority if it can be determined from information already available to IDWR that:

a. there are no appropriators on the new tributary with a priority after the claimant's priority but before the date of change (injury would result to such appropriators on the new tributary because such appropriators are now subject to a priority to which they were not previously subject), AND

b. there are no appropriators on the mainstream below the new tributary with a priority after the claimant's priority but before the date of change OR the new tributary does not make more water available to the claimant to fulfill his/her right than on the old tributary (injury would result to such appropriators on the

mainstem by depriving them of water they would previously have received).

The claimed source may also be recommended with no change in priority if conditions can be readily identified that will prevent the injury identified in a. or b. (It may be possible to prevent the injury identified in b. if the change can be conditioned to assure that the claimant does not receive any more water at the new PD than would be available at the old PD.)

6. Change from tributary to mainstem

The claimed source may be recommended with no change in priority if it can be determined that there are no appropriators on the mainstem with a priority after the claimant's priority but before the date of change. (Injury would result to such appropriators because the claimant did not previously have the benefit of flows other than the tributary flows.)

The claimed source may also be recommended with no change in priority if conditions can be readily identified that will prevent the injury identified above. (The condition would need to assure that the claimant does not receive any more water at the new PD than would be available at the old PD.)

7. Change from mainstem to tributary

The claimed source may be recommended with no change in priority if it can be determined from information already available to IDWR that there are no appropriators on the tributary with a priority after the claimant's priority but before the date of change (injury would result to such appropriators because they alone are now subject to the claimant's priority whereas before both tributary and mainstem appropriators were subject to the claimant's priority).

The claimed source may also be recommended with no change in priority if conditions can be readily identified that will prevent the injury identified above.

8. Recommendation

If it can be determined from information already available to IDWR that no injury resulted from the change in source, then the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN SOURCE PURSUANT TO IDAHO CODE 42-1416A." (C02)

If condition(s) can be readily identified that will prevent injury, then the conditions should be included in remarks, and the claim should also include the following condition: "RIGHT INCLUDES

ACCOMPLISHED CHANGE IN SOURCE PURSUANT TO IDAHO CODE 42-1416A."
(C02)

If neither of the first two determination can be made, and if the source of the entire right was changed, then the priority should be changed to the date of the change, and the claim should include the following condition: "PRIORITY DATE CHANGED TO PREVENT INJURY FROM CHANGE IN USE." (C06)

If neither of the first two determinations can be made, and if a portion of the entire right was changed, then the portion still used from the original source should be verified. The claim should be split, with the original claim showing use from the original source, and the new claim showing the use from the new source with a priority as of the date of the change, and the claim numbers should have alpha suffixes. Both should include the following remark: "PRIORITY OF PORTION OF RIGHT CHANGED TO PREVENT INJURY FROM CHANGE IN USE, SEE RIGHT NO. (other right)." (C01)

IV. POINT OF DIVERSION (PD)

This Part IV is primarily concerned with changes in PD that have not been approved by IDWR. However, there are a few other general issues described in Part A below of which the water agent should be aware.

A. GENERAL

1. Diversion requirement

Claims based on state law must have a physical diversion from the natural source, unless an appropriation without a diversion has been authorized by statute. Appropriations without diversions that have been authorized by statute include a) instream stockwater use, and b) instream flow and minimum lake level appropriations by the Water Resource Board and other state agencies (all of the claims in the second category should have a permit or license). IDWR has recognized that a right to divert water to storage and then from storage may in some instances be changed to a right to divert water to storage for public purposes, such as where a reservoir previously used for irrigation is changed to recreation, aesthetic, and wildlife purposes (in such cases, the point of diversion is the impoundment structure). There is some question as to whether a right established by diversion may be changed to an instream purpose of use; such claims should be referred to legal staff for further review.

2. Remarks describing PD

Adjudication Memo #32 sets forth standard remarks to describe the following:

- a. common name of ditch (F01),
- b. multiple points of diversion in a single tract (F02),
- c. PD in center of four tracts (F03),
- d. PD on boundary between two tracts (F04),
- e. other rights diverted through same PD (F05, F06).

3. PD flags

Where stored water or water from another source is conveyed in a natural channel, then the point of injection should be included as a PD with an "I" flag, and the point of rediversion should be included as a PD with an "R" flag. See Adjudication Memo #32 for standard remarks identifying the source to which water is injected and rediverted. (G01, G02) See Adjudication Memo #__ for more information about recommendation of claims involving exchanges.

The beginning point and ending point of instream flow claims should be included as PD's with a "B" and an "E" flag.

4. Description of PD by ten acre tract

See Adjudication Memo #30 as to when the PD should be described by ten acre tract.

5. Unapproved change in PD generally

a. Date of change

The claimant will be required to submit the date of the change and some evidence tending to support that date, because the date of the change is essential to the injury analysis. (The analysis of proof of the date of change is similar to the analysis of proof of priority of beneficial use claims, see Part II.D.1.) If no such evidence is submitted, then the claim will be recommended for disallowal on the basis that the claimant did not show either a change in use without injury or a new appropriation not in violation of the mandatory permit statute. (IDWR may not recommend the right as changed, because IDWR cannot find that the change occurred without injury and prior to commencement; on the other hand, IDWR may not simply recommend the original PD, because use of the original PD could be a second change that might result in injury to other claimants.) The change must have occurred prior to November 19, 1987, because the accomplished transfer statute applies only to changes that occurred prior to commencement. Where the evidence supports a finding that the change occurred after commencement, then the original PD should be recommended. (NAPP photography may be useful in this regard.)

Generally, the investigation of injury from a change in PD shown to have occurred more than five years prior to commencement will be more limited than a change in PD that occurred less than five years prior to commencement. A change in PD that occurred more than five years prior to commencement should be recommended as changed unless it is apparent from information already available to IDWR that the change resulted in substantial injury. If substantial injury is apparent, then the claim should be referred for further review by legal staff.

NOTE: The date of the change is not necessary where it can already be determined that the change occurred prior to commencement, and the change did not result in injury to other rights, no matter when the change occurred.

b. When is a change a change?

An administrator's memorandum dated May 10, 1984 states that an application for transfer is necessary only where the PD moves from one tract to another, or where a PD is added, even if the additional PD is in the same tract. A tract is a quarter-quarter unless the license, permit, or decree established the quarter-quarter-quarter. A similar rule will be followed in adjudications,

with the result that a change in use analysis is not generally required where a new point of diversion within the same tract is substituted for the old point of diversion. However, "point of diversion" will still be defined in the director's report as the point at which water is diverted from the stream (or other source), because there could be instances in which there is in fact injury to a junior appropriator from a change in PD within the same tract. A change within a tract should be treated as a change for purposes of recommending the claim if injury is apparent from information already available to IDWR. Otherwise, further investigation of injury from a change within a tract will be made only if the issue is raised by an objection to the recommendation of the right.

As the administrator's memorandum implies, an additional PD may be considered a change in use in some circumstances, and should not automatically be considered an expansion. Generally, a partial change in PD results where the claimant established a new PD for a portion of a water right previously appropriated. In such cases, the partial change in PD should be reviewed the same as any other change in PD.

B. CLAIM BASED ON DECREE OR LICENSE

If the claimed PD is the same as shown on the decree or license (as amended by any approved transfers), then no further review of this item is required.

1. PD not stated in decree

The point of diversion is an essential element of a water right. The failure of a decree to include the PD in the listing of rights is an ambiguity in the decree. (See Intro Part J as to res judicata/ambiguity.) In other words, when the decree determined the water right, it necessarily determined the PD as of the same time as the rest of the elements of the water right; the decree just failed to describe it. The relevant question at this point is how to resolve the ambiguity. For purposes of preparing the director's report, it will be assumed that the current PD is the decreed PD, unless there is reason to believe that there has been a change in PD. The PD of a claim based on a decree that does not state the PD should therefore be analyzed the same as the PD of a claim based on beneficial use (but the basis of the claim should not be changed).

2. Verify actual PD

If the actual PD is the same as the PD shown on the decree or license (as amended by any approved transfers), then the actual PD should be recommended, and no further review of this item is required.

If the actual PD is the same as the claimed PD, but is not the same as the PD shown on the decree or license (as amended by any approved transfers), then proceed with the analysis in Part 3 below.

If the actual PD is different than both the claimed PD and the PD shown on the decree or license (as amended by any approved transfers), then proceed with the analysis in Part 3 below, but treat the actual PD as the claimed PD. An amended claim will not be required if the claim is to be recommended with the actual PD.

3. Date of change

Claimant contact

The claimant should be notified that the claimant must submit the date of the change and some evidence tending to support that date; otherwise the use of water from the new PD will not be recommended due to lack of evidence of a change without injury or a new appropriation not in violation of the mandatory permit statute. (If the change occurred after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after that date.)

If the evidence does not support any finding as to the date of the change, and the PD of the entire right was changed, then the claim should be recommended for disallowal, and should include the following remark: "CHANGE IN USE, INSUFFICIENT EVIDENCE OF DATE OF CHANGE." (P05 and condition P05)

If the evidence does not support any finding as to the date of the change, and the PD of a portion of the right was changed, then the portion of the right still used at the original PD should be verified and only that portion should be recommended. The claim should include the following condition: "CHANGE IN USE OF PORTION OF RIGHT; RIGHT LIMITED TO UNCHANGED PORTION DUE TO INSUFFICIENT EVIDENCE OF DATE OF CHANGE." (C07)

If the evidence supports a finding that the change occurred after November 19, 1987, then the PD shown on the license or decree should be recommended.

If the evidence supports a finding that the change occurred prior to November 19, 1982, then the claimed PD should be recommended, and the claim should include the following remark: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO IDAHO CODE 42-1416A." (C03)

NOTE: As to change in PD more than five years prior to commencement: First, if it is apparent from information already available to IDWR that the change resulted in substantial injury, then the claim should be referred for

further review by legal staff. See Parts E - G below as to injury. Second, the sufficiency of the evidence as to the date of the change may vary depending on the circumstances. For example, if the claimant asserts that the change occurred in 1967, but the claimant's evidence only supports a date of 1969, but there are no junior appropriators between those two dates, then the lack of further evidence makes little difference.

If the evidence supports a finding as to a date of change on or after November 19, 1982, but before November 19, 1987, then proceed to Part D below (Injury).

NOTE: Generally, the date of the change for a claim based on a decree may not be the same as or earlier than the cut-off date of the decree (or the effective date of the most recent approved transfer, whichever is later). If the agent encounters a claim where the evidence supports a finding that the change occurred prior to the cut-off date of the decree, and the difference between the two dates is critical to the recommendation, then the claim should be referred for further review by legal staff. The date of the change for a claim based on a license may not be earlier than the date the proof due notice was submitted (or the effective date of the most recent approved transfer, whichever is later). It may not be earlier than the date of the licensing field exam, if the licensing field exam did not confirm the change. (This is similar to claimed expansions of a permit, see Intro Part M.)

C. CLAIM BASED ON PERMIT

1. Permits for which a proof due notice was filed prior to commencement

If the claim is based on a permit for which a proof due notice was filed prior to commencement, then contact water allocations staff in the state office before proceeding with review of this claim. See Intro Part M for a general discussion of claims in this category.

2. PD claimed different than PD on permit

If the claim is to be recommended with a basis of permit, and if the PD claimed is different than the PD shown on the permit (as amended by any approved amendments to the permit), then the PD shown on the permit (as amended by any approved amendments to the permit) should be recommended.

A change in PD may not be recommended for a claim based on a permit, because the accomplished transfer statute does not apply to permits. The only way to change the PD on a permit is to file an application to amend the permit with IDWR.

D. CLAIM BASED ON BENEFICIAL USE (INCLUDING STATUTORY CLAIM, POSTED NOTICE, SECOND PRESUMPTION, CRITICAL GW EXPANSION)

Note that the PD of a claim based on the second presumption or a critical GW expansion may not be different than the PD of the original claim.

1. Verify actual PD

If the actual PD is different than the claimed PD, then treat the actual PD as the claimed PD. An amended claim will not be required if the right is to be recommended with the actual PD.

2. Has change occurred?

Is there some reason to believe that there has been a change in PD since the priority date to be recommended? (If not, then review of this item is complete.)

(A different PD on a statutory claim or a posted notice is some reason to believe that the PD was different at the time of filing the claim or posting the notice.)

If so, then make a reasonable effort to determine whether a change in PD has occurred. If the evidence supports a finding that a change has occurred, then proceed to Part 3 below. Otherwise the claimed PD should be recommended.

NOTE: Where the PD is different than the PD stated on the most recent approved transfer, then a change in PD will be deemed to have occurred, and it will be deemed to have occurred no earlier than the effective date of the transfer.

3. Claimant contact

The claimant should be notified that the claimant must submit evidence either that there has been no change in PD, or must submit the date of change and some evidence tending to support that date; if no evidence is submitted then the claim will be recommended for disallowal due to lack of evidence of a change without injury or a new appropriation not in violation of the mandatory permit statute. (If the change occurred after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after that date.)

If the evidence supports a finding that no change in PD occurred, then the claimed PD should be recommended.

If the evidence does not support any finding as to the date of the change, and the PD of the entire right was changed, then the claim should be recommended for disallowal, and should include the

following remark: "CHANGE IN USE, INSUFFICIENT EVIDENCE OF DATE OF CHANGE." (P05 and condition P05)

If the evidence does not support any finding as to the date of the change, and the PD of a portion of the right was changed, then the portion of the right still used at the original PD should be verified and only that portion should be recommended. The claim should include the following condition: "CHANGE IN USE OF PORTION OF RIGHT; RIGHT LIMITED TO UNCHANGED PORTION DUE TO INSUFFICIENT EVIDENCE OF DATE OF CHANGE." (C07)

If the evidence supports a finding that the change occurred after November 19, 1987, then the original PD should be recommended.

If the evidence supports a finding that the change occurred prior to November 19, 1982, then the claimed PD should be recommended, and the claim should include the following remark: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO IDAHO CODE 42-1416A." (C03)

NOTE: As to change in PD more than five years prior to commencement: First, if it is apparent from information already available to IDWR that the change resulted in substantial injury, then the claim should be referred for further review by legal staff. See Parts E - G below as to injury. Second, the sufficiency of the evidence as to the date of the change may vary depending on the circumstances. For example, if the claimant asserts that the change occurred in 1967, but the claimant's evidence only supports a date of 1969, but there are no junior appropriators between those two dates, then the lack of further evidence makes little difference.

If the evidence supports a finding as to a date of change on or after November 19, 1982, but before November 19, 1987, then proceed to Part E below (Injury).

NOTE: Note that the date of change may not be the same as or earlier than the effective date of the most recent approved transfer.

E. INJURY IN GENERAL

If the review has progressed to this Part E, it has been determined that there was a change in PD, and a date of change between November 19, 1982 and November 19, 1987 has been determined.

1. General rules

The general rule is that an appropriator may change the PD of his/her water right if the appropriator can show that there is no injury or that the change can be conditioned to prevent injury. However, where that standard is not met for an accomplished, unapproved change claimed in the adjudication, IDWR may not simply recommend the original PD, because use of water from the original PD may be a second change in use that could result in injury to other claimants. Therefore, where a change has been claimed, and IDWR cannot determine that there is no injury or that the change can be conditioned to prevent injury, the new PD will be recommended, but the priority date will be changed to the date of the change to prevent injury to other claimants. (Note that where the change in PD is being treated as a change in use, rather than a new appropriation, the fact that the date of the change is after the mandatory permit statute is not a problem.)

The injury analysis below focuses on injury to appropriators with a priority between this claimant's priority and the date of the change. There is generally no injury to claimants with a priority before the claimant's priority, because senior appropriators are protected by their priorities. There is generally no injury to claimants with a priority after the date of the change, because a claimant cannot be injured by something that happened prior to his/her appropriation.

2. Other information

A desk exam of other rights from this source will be necessary to complete the injury analysis. With respect to a change in PD of a surface right, it will be necessary to determine if there are appropriators with a priority after the claimant's priority but before the date of the change 1) above both the old and new PD, 2) between the old and new PD, and 3) below both the old and new PD. With respect to a change in PD of a ground water right, it will be necessary to identify other wells in the area of the new PD with a priority after the claimant's priority but before the date of the change.

It will also be necessary to obtain whatever information is available from hydrology as to stream flow in the relevant stretch of the stream (with respect to surface water rights) or the condition of the aquifer (with respect to ground water rights). The upstream endpoint of the relevant stretch is the next appropriator upstream with a priority after the claimant's priority but before the date of the change; if there is none, then the old or new PD, whichever is further upstream, is the upstream endpoint. The downstream endpoint of the relevant stretch is the next appropriator downstream with a priority after the claimant's priority but before the date of the change; if there is none, then

the old or new PD, whichever is further downstream, is the downstream endpoint.

3. Types of change

Part F below addresses changes in PD on a stream. Parts F.1 to F.5 describe standards as to when there is injury and some possible conditions to prevent injury for each of the basic types of change in PD on a stream. Part F.6 describes the recommendation to be made once the analysis in the previous parts is complete. Part G addresses changes in PD of ground water rights, and follows a similar format as Part F.

F. INJURY - SURFACE WATER RIGHTS

1. Change in PD upstream on losing stream

It will generally be presumed that there is no injury from a change in PD upstream on a losing stream.

(Generally, such a change either does not result in injury because the junior appropriators bear the same burden as they did before, or is a benefit because it now takes less water to supply the senior appropriator's priority.)

There is, however, one type of situation where the change might be deemed injurious to junior appropriators upstream from the original point of diversion. Where the water supply is insufficient to reach the senior appropriator at the senior's point of diversion, then the watermaster may deliver the water to upstream junior appropriators. This is known as the "futile call" rule; the rationale is that the upstream juniors should not be shut-off where it would not produce any benefit to the downstream senior. But if the senior were to move the point of diversion upstream, then water might be available to satisfy the senior priority that previously would have gone to the junior under the futile call rule. Where these circumstances are present, the claim should be referred to the bureau chief for further review.

2. Change in PD upstream on gaining stream

a. Are there appropriators with a priority after the claimant's priority but before the date of the change, either upstream from both the old and new PD, or between the old and new PD? If not, then no injury will be presumed.

(Generally, it will be presumed that there is no injury to junior appropriators downstream from both the old and new PD, because the juniors bear the same burden as they did before. However, injury may occur to juniors upstream from or between the old and new PD, because additional water is available to the claimant at the new PD that was previously available to the juniors

- or stated another way, the claimant's appropriation was previously at least partly satisfied from the gain in stream flow below the new PD.)

b. If there are such appropriators, can conditions be identified that will prevent the injury to those appropriators?

(The condition would need to assure that the claimant does not receive any more water at the new PD than would be available at the old PD.)

3. Change in PD downstream on losing stream

a. Are there appropriators with a priority after the claimant's priority but before the date of the change, either above both the old and new PD, or between the old and new PD? If not, then no injury will be presumed.

(Generally, it will be presumed that there is no injury to junior appropriators downstream from both the old and new PD, because the juniors bear the same burden as they did before. However, injury may occur to juniors upstream from or between the old and new PD, because it will take more water to deliver the claimant's right at the new PD, water which was previously available to the juniors.)

b. If there are such appropriators, can conditions be identified that will prevent the injury to those appropriators?

(The condition would need to assure that the junior diversions do not get shut off to make up for additional stream loss between the old and new PD.)

4. Change in PD downstream on gaining stream

a. Are there appropriators with a priority after the claimant's priority but before the date of the change, either between the old and new PD, or below both the old and new PD? If not, then no injury will be presumed.

(Generally, with respect to junior appropriators above both the old and new PD, either the change either does not result in injury because the juniors bear the same burden as they did before, or is a benefit because the gain in the streamflow below the old PD is now available to satisfy the claimant's priority. However, injury may occur to junior appropriators between or below the old and new PD, because additional water is available to the claimant at the new PD that was previously available to the juniors.)

b. If there are such appropriators, can conditions be identified that will prevent the injury to those appropriators?

(The condition would need to assure that the claimant would not receive any more water at the new PD than was available at the old PD.)

5. Streamflow constant

It will be presumed that there is no injury from a change in PD on a stream that is neither gaining or losing. (It is not to be assumed that the stream flow is constant where there is insufficient information to determine stream conditions.)

6. Recommendation

If it can be determined from information already available to IDWR that no injury resulted from the change in PD, then the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO IDAHO CODE 42-1416A." (C03)

If condition(s) can be readily identified that will prevent injury, then the conditions should be included in remarks, and the claim should also include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO IDAHO CODE 42-1416A." (C03)

If neither of the above two determinations can be made, and if the PD of the entire right was changed, then the priority should be changed to the date of the change, and the claim should include the following condition: "PRIORITY DATE CHANGED TO PREVENT INJURY FROM CHANGE IN USE." (C06)

If neither of the above two determinations can be made, and if the PD of a portion of the right was changed, then the portion still used from the original PD should be verified. The claim should be split, with the original claim showing the use from the original PD, and the new claim showing the use from the new PD with a priority as of the date of the change, and the claim numbers should have alpha suffixes. Both should include the following remark: "PRIORITY OF PORTION OF RIGHT CHANGED TO PREVENT INJURY FROM CHANGE IN USE, SEE RIGHT NO. (other right)." (C01)

G. INJURY - GROUND WATER (GW) RIGHTS

1. Same source?

The first issue is whether the change is really a change in PD, or whether it is in fact a new appropriation from a separate source. The fact that both points of diversion are wells for the diversion of groundwater is not sufficient to make this determination, because the two wells could divert water from aquifers that are not tributary or are separately administered. See Part III as to changes in source.

2. Injury

Generally, the new PD may be recommended with no change in priority if it can be determined from information already available to IDWR that:

a. the change will not result in withdrawal of GW below the average annual recharge rate (this should not be a problem if requirement c. below is met), AND

b. the change will not result in reduction of water level below reasonable pumping level in neighboring wells, AND

c. the change will not result in an increase in rate or volume of diversion, or volume of consumptive use (this is most likely to be a problem where there is an increase in conveyance losses due to the change), OR

d. conditions can be readily identified that will prevent the injury identified in a., b., and c.

3. Recommendation

If it can be determined from information already available to IDWR that no injury resulted from the change in PD (2.a., b. and c. above), then the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO IDAHO CODE 42-1416A." (C03)

If condition(s) can be readily identified that will prevent injury, then the conditions should be included in remarks, and the claim should also include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO IDAHO CODE 42-1416A." (C03)

If neither of the above two determinations can be made, and if the PD of the entire right was changed, then the priority should be changed to the date of the change, and the claim should include the following condition: "PRIORITY DATE CHANGED TO PREVENT INJURY FROM CHANGE IN USE." (C06)

If neither of the above two determinations can be made, and if the PD of a portion of the right was changed, then the portion still used from the original PD should be verified. The claim should be split, with the original claim showing the use from the original PD, and the new claim showing the use from the new PD with a priority as of the date of the change, and the claim numbers should have alpha suffixes. Both should include the following remark: "PRIORITY OF PORTION OF RIGHT CHANGED TO PREVENT INJURY FROM CHANGE IN USE, SEE RIGHT NO. (other right)." (C01)

V. NATURE OF USE (NU), AMOUNT FOR EACH NATURE OF USE, AND TOTAL AMOUNT

A. GENERAL

1. Other uses

Where the NU to be recommended is domestic, stock, industrial, commercial, or mining, the use should be further described in "other uses." With domestic use for households, the number of households should be described; for stockwater, the number and type of stock should be described; for the others (ESPECIALLY uses pursuant to part B of the domestic definition), the facility in which the water is used should be described. For example, small domestic use in a gas station should be described as use in a gas station; industrial use in a sugar factory should be described as a sugar factory, etc. The distinction between commercial and industrial is that commercial involves service or sales to the general public, whereas industrial involves manufacturing, refining, or other types of processing. Mining includes extraction of minerals and related processes that accompany the mining operation, such as milling, gravel washing, etc. Domestic and stockwater uses should be described in the following form: DOMESTIC, 1 HOME; STOCKWATER, 40 CATTLE, 10 HORSES.

2. Forfeiture

Since a water right is limited to the amount of water beneficially used, a portion of a water right may be forfeited by nonuse. Since forfeiture of the entire right affects whether the right is recommended for disallowal, it is addressed in Part I (priority date). Since partial forfeiture affects the amount recommended, forfeiture of a portion of a right is addressed in this Part V. The analysis in both cases is essentially the same.

3. Amount

Amount includes the rate and volume of diversion for each nature of use, and the total rate and volume of diversion and total consumptive use. See Adjudication Memo #31 as to measurement of flow for ground water claims that require field exam; see Adjudication Memo #34 as to which rights require determination of diversion volume. See Application Processing Memo 14 as to determination of amount for rights that include storage purposes.

Generally, consumptive use for irrigation should be recommended based on current standards. This is true even where claimed differently (more or less), or licensed or decreed differently (more or less). This is an exception to the general rule that IDWR may not recommend more than was claimed, and is also an exception to the rule of res judicata (see Intro Part J). Consumptive use may be treated differently because consumptive use

is not necessary for watermaster distribution. (The adjudication statute provides that consumptive use "is included as a rebuttable presumption in a decree only for the purpose of transfers pursuant to section 42-222, Idaho Code.")

Diversion volume for irrigation should generally be recommended in accordance with IDWR standards, unless there is some reason to believe otherwise. If the volume is determined by decree, then the volume recommended should be the volume decreed (unless it can be determined that a portion of the water right has been forfeited, or unless there has been an expansion in irrigated acres of a decreed right pursuant to the first presumption). With beneficial use rights, reason to believe that the volume is different than IDWR standards may arise from the field exam, or from volumes decreed for similar diversion systems of the same time period. If an excessive rate of diversion is to be recommended (more than 1" per acre), then the volume should be proportionately higher. Also, diversion volume should not be in excess of the volume that can be diverted under the recommended rate of diversion (in computing volume, the dates for season of use are inclusive).

4. Remarks describing amount

Adjudication Memo #32 sets forth standard remarks to describe the following:

- a. right measured at point other than point of diversion (D01),
- b. portion of right solely for conveyance loss (D02 - D04),
- c. storage capacity (D05),
- d. facility volume (D06).

See Part VIII below as to combined use limits for multiple rights.

5. Excessive flows for irrigation

Claims to flows in excess of the statutory standard of an inch per acre have been referred to generally as "excessive flow" claims. Excessive flow claims can be of two types - a single water right for more than an inch per acre, or multiple rights that total more than an inch per acre.

For irrigation claims to more than an inch per acre, the water agent should complete the excess irrigation requirement worksheet to determine if more than an inch per acre is reasonably required. Where this information is not already available to the agent, then the claimant should be contacted to provide the information (regardless of whether the claim is based on beneficial use, license, or decree). Where an amount in excess of current standards is actually needed under the claimant's irrigation practices, then the claim should be referred to the bureau chief

for further review. A policy determination will then be made as to whether that amount is reasonable under the circumstances. Where there are a number of such claims in an area, it may be possible to develop guidelines for "reasonable" excess diversion requirements in that area, so that referral of each such claim in the area will not be necessary.

If the excess amount is necessary due to conveyance losses, then the right should be recommended with a remark limiting that portion of the right to use for conveyance losses in delivery of the right. Careful attention should be paid where there are multiple rights and all or part of one or more of the rights is limited to use for conveyance losses. EACH of the rights should contain a conveyance loss remark of some form.

EXAMPLE: Claimant has two rights to surface water from the same point of diversion, which total 1.2 cfs for 50 acres, and one right to 1 cfs for the same 50 acres. 0.2 cfs of the surface water rights is in excess of an inch per acre; it is to be recommended due to actual, reasonable conveyance losses. The three rights will contain a combined use remark limiting the three rights to 1.2 cfs for irrigation of 50 acres (see Part VIII below as to combined use limits for multiple rights). The portion limited to use for conveyance losses will be allocated to the junior surface water right; thus, if it is later determined that this additional amount is no longer reasonable, it will be the junior right that is reduced. ALL THREE rights will contain a remark that .2 cfs of the junior surface water rights is limited to use for conveyance loss in delivery of the two surface water rights. Inclusion of this remark in all three rights indicates why the combined diversion rate for irrigation of 50 acres is 1.2 cfs instead of 1 cfs.

If the excess amount is necessary due to field requirements, then the claim should include a remark identifying the per acre rate of diversion at the field headgate.

Adjudication Memo #32 sets forth standard remarks for claims to be recommended with excessive flows for irrigation (D02, D03, D04, D08).

6. Unapproved change in NU generally

a. When has change occurred?

A change in NU may have occurred where the claim includes an additional NU, an alternative NU, or an increase in the amount claimed for any NU. (For example, if the claimant claims 10 cfs for irrigation, and 10 cfs for commercial, and the license upon which the claim is based is for 15 cfs for irrigation, and 5 cfs for commercial, then the claim includes a claim to an accomplished

change for 5 cfs that was originally licensed for irrigation and is now used for commercial, even though both the license and the claim include irrigation and commercial as an NU.) The apparent change should be reviewed as described below to determine whether the apparent change is simply an error by the claimant in describing the water right, whether it is in fact a change in use of the right claimed, or whether it is actually a new appropriation.

The claim will be deemed to match a water right record if the NU, amount for each NU, and the total amount are the same as described on the water right record. In addition, the following NU(s) will not be considered a discrepancy:

- i. the new NU is limited to use of the decreed amount for fire fighting purposes, and/or
- ii. the new NU is limited to use of the irrigation portion for incidental stockwater.

b. Alternate NU vs. additional NU

An alternate NU occurs when the original NU is ceased and the water is instead used for a new NU. An additional NU occurs when the original use continues, and the water is reused, or when the new use is made possible by conservation methods employed in making the original use. Note that a claim may include both alternate and additional NU(s).

An alternate NU is a change in use that may be recommended pursuant to the original priority if the change did not result in injury or can be conditioned to prevent injury. An additional NU is an expansion that may be recommended only as a new appropriation, if at all. An additional claim is required before the additional NU may be recommended.

c. Injury

The claimant will be required to submit the date of the change and some evidence tending to support that date, because the date of the change is essential to the injury analysis. (The analysis of proof of date of change is similar to the analysis of proof of priority of beneficial use claims, see Part II.D.1.) If no such evidence is submitted, then the claim will be recommended for disallowal on the basis that the claimant did not show either a change in use without injury or a new appropriation not in violation of the mandatory permit statute. (IDWR may not recommend the right as changed, because IDWR cannot find that the change occurred without injury; on the other hand, IDWR may not simply recommend the original NU(s), because use of water for the original purposes would in fact be a second change that might result in injury to other claimants.) The change must have occurred before November 19, 1987, because the accomplished transfer statute applies only to changes that occurred prior to commencement. Where the evidence supports a finding that the change occurred after

commencement, then the original NU(s) should be recommended. (NAPP photography may be useful in this regard.)

If the change occurred before November 19, 1987, then the change may be recommended if it can be determined from the information available that the change did not result in injury to other water rights or can be conditioned to prevent any injury. If such a determination cannot be made from information already available to IDWR, claimant contact should be made to allow the claimant an opportunity to provide such information prior to filing the report. If such a determination cannot be made, either from information already available to IDWR or from information provided by the claimant, then the change will still be recommended, but with a priority date as of the date of the change to prevent injury.

Generally, the investigation of injury from a change to an alternative NU shown to have occurred more than five years prior to commencement will be more limited than such a change that occurred less than five years prior to commencement. A change to an alternate NU that occurred more than five years prior to commencement should be recommended unless it is apparent from information already available to IDWR that the change resulted in substantial injury. If substantial injury is apparent, then the claim should be referred for further review by legal staff.

NOTE: The date of the change is not necessary where it can be determined that the change occurred prior to commencement, and the change did not result in injury to other rights, no matter when the change occurred.

7. Stored water

A change in use may include an expansion in the number of acres irrigated with stored water pursuant to Idaho Code §42-222. In addition, a change to an alternative nature of use of stored water is a change in use that will generally not result in injury to other water rights because the water, once lawfully stored, is not part of the natural flow to which junior appropriators hold rights. Therefore, the review of expansions in irrigated acreage and changes to an alternative nature of use of stored water is the same, and is generally limited to a requirement of some evidence that it occurred prior to commencement. An additional nature of use may be recommended, if at all, only as a new appropriation.

B. CLAIM BASED ON DECREE OR LICENSE

Even where the claimed NU(s) and amounts match the decree or license, the claim must still be reviewed for partial forfeiture as set forth in Part 12 below.

1. Compare amounts claimed for each NU to total amount claimed

If the total amount claimed is not correct based on the amount claimed for each NU, then such further investigation or claimant contact should be done as necessary to resolve the discrepancy.

There may be instances in which the total amount may appropriately be less than the sum of the amounts for each NU, such as where all or part of the amount for one NU may also be used for another NU. (For example, if an appropriator diverts 10 cfs for irrigation, and runs that same 10 cfs through a small hydropower facility, the total rate of diversion would be 10 cfs, not 20.)

2. Total amount claimed greater than total amount decreed or licensed

Claimant contact

A total amount greater than the total amount decreed or licensed may not be recommended due to the principle of res judicata (see Intro Part J as to res judicata).

NOTE: For claims to an expansion in irrigated acreage of a decreed right based on the first presumption, there may be no increase in rate of diversion, but there may be an increase in the volume of diversion, and there will be an increase in volume of consumptive use. See Adjudication Memo #16B as to recommendation of claims under the presumptions.

The total amount decreed or licensed should be recommended: the original NU(s) and amounts for each NU should be recommended to the extent claimed; and the recommendation should include other claimed NU(s) and amounts for each NU that may be recommended as a change in use pursuant to the analysis below.

The claimant should be contacted to allow the claimant the opportunity to file another claim based on beneficial use for the additional amount claimed and for the remaining claimed NU(s) and amounts for each NU that are not to be recommended as part of the original claim, or to file an application for permit, depending on when use of the additional amount was initiated. (Note that if the original claim is based on a decree, the priority date of the new claim may not be the same as or earlier than the cut-off date of the decree; this is similar to the analysis of effect of decrees in Part II.D.2. If the original claim is based on a license, then the priority date of the new claim may not be earlier than the date

the proof due notice was submitted, or earlier than the date of the licensing field exam, if the licensing field exam did not confirm the change. This is similar to claimed expansions of a permit, see Intro Part M.)

3. Total amount claimed less than total amount decreed or licensed

a. Check to see if this claim is part of a water right that was split, but was fully claimed by various claimants, or if it was claimed under another claim. If so, the discrepancy is resolved.

b. If it is apparent that there is a portion of the original right that should be claimed by this claimant, then claimant contact should be made if there is reason to believe that the claimant simply made a mistake in underclaiming the right. (See NOTE below for an example. There may be others.) The claimant contact should state that the claimant may file an amended claim asserting the decreed or licensed amount; otherwise, the claimant will be deemed to have waived the right to the unclaimed portion. If the claimant files an amended claim that matches the decree or license, then the review of this item is complete except for the partial forfeiture analysis in Part 12 below. If the claimant does not file an amended claim, then the amount recommended should not exceed the amount claimed.

NOTE: Where a decreed right that may be excessive by current standards is not fully claimed, claimant contact should be made IF there is a significant difference between the claim and the decreed right, AND there is good reason to believe that the claimant made a mistake; otherwise it will be assumed that the claimant claimed everything the claimant wanted to claim. What is significant may require an exercise of judgment on the part of the agent; for example, a difference of an acre or two on a forty acre claim may not be significant, whereas a difference of an acre or two for a claim for a few acres might be. Good reason to believe that the claimant made a mistake exists where the right was field examined as part of the normal course of review, and the field exam shows use of an amount greater than was claimed. (A field exam is not required solely because the right was underclaimed. IDWR will generally not field examine rights for which a field exam was not otherwise required to see if the claimant claimed everything the claimant should have claimed.) See Intro Part L for further discussion of underclaimed rights.

c. If it is apparent that there is a portion of the original right that should be claimed by another claimant, then similar claimant contact should be made to that claimant. (If the other claimant did not file for a portion of this claim, the claimant may need to file an additional claim rather than an amended claim.)

d. This sub-item does not provide for second round service for unclaimed amounts; second round service is made based on unclaimed places of use as described in Part VII below.

4. Ambiguity in decree as to NU

a. General

NU is an essential element of a water right. The failure of a decree to include NU in the listing of rights is an ambiguity in the decree. (See Intro Part J as to res judicata/ambiguity.) In other words, when the decree determined the water right, it necessarily determined the NU as of the same time as the rest of the elements of the water right; the decree just failed to describe it. The relevant question at this point is how to resolve that ambiguity. This is done by looking at the rest of the decree, other pleadings or evidence in the case, or other evidence as to how water was used at the time of the decree.

There are some decrees in the files which list the name, source, amount, priority, and property to which the water right is appurtenant, but contain only general language as to NU, such as: "The following rights are decreed for irrigation, culinary, livestock, milling, mining, and other beneficial purposes." This does not mean every water right listed is decreed for any purpose at all and the purpose may be changed whenever the owner feels like changing it. The NU for water rights under these decrees should be analyzed the same as any other decree that fails to state the nature of use for each water right listed.

In these circumstances, the general rule is to first look to the decree, or other documents from the case that are already available in IDWR files. The decree should be interpreted as including any claimed purpose for which there is some specific support in these documents. For example, if a right is decreed to a party in an amount that is consistent with IDWR's irrigation standard or the duty of water set forth in the decree (i.e. 40 inches for use on forty acres), then this is some specific support for an irrigation NU. If a right is decreed to a power and light company, this is some specific support for a hydropower NU; similarly, if a right is decreed to a city or town, this is some support for a municipal NU.

If there is no specific support for the claimed NU in the documents from the case that are already available in IDWR files, then the burden will be on the claimant to supply the information to support the claimed NU.

The following are some caveats regarding the general rule. First, if the decree in an old basin-wide adjudication does not list any rights specifically for domestic purposes, then an irrigation right decreed to persons (as opposed to business or

governmental entities) will be construed as including a homestead, and therefore supporting one claimed domestic use. The rationale for this interpretation is that it would be strange for all the claimants to obtain water rights for their fields but not for their homes. Second, a decree for an irrigation right (regardless of to whom it was decreed) will be construed as including incidental stockwater (use of amounts diverted during the irrigation season for stockwater use as well as for irrigation). The rationale for this interpretation is that incidental stockwater is an historic practice that is continued today, and which IDWR recognizes by including a general provision in the director's report that an irrigation right includes incidental stockwater.

Non-incidental stockwater use is subject to the general rule that some specific support in the decree is necessary. There is specific support for non-incidental stockwater where the decree provides that the rights determined therein are for irrigation and stockwater purposes. In addition, there may be a general exception for all irrigation rights determined by a particular decree where there are documents in the court files, or evidence outside the case which supports a finding that irrigation water was generally diverted year round for stock water use at the time of the decree. Such a finding should be approved by the bureau chief before non-incidental stockwater rights are recommended. In such cases, the amount of the water right during the non-irrigation season is determined the same way the amount any stockwater right is determined - it does not necessarily include the full amount decreed for irrigation but it is necessarily no larger than the full amount decreed for irrigation.

Finally, if the decree has a generic description of NU(s), and does not indicate a uniform duty of water, then it will be generally assumed that the rights are irrigation rights (unless there is some reason to believe otherwise), for which other claimed NU(s) may be recommended as described above. For example, there is one old decree in Southern Region where, if you assume that the rights are generally irrigation rights, some have a duty of water of 2.3 inches per acre, some 2.5, some even more. The rationale for this interpretation is that the vast majority of these rights would have been irrigation rights, even without the assurance of a uniform duty of water.

This analysis ties in heavily with the analysis of season of use, because an ambiguity in season of use is often resolved by looking to the nature of use.

b. Specific support

If there is some specific support for each NU claimed and the amount claimed for each NU in the decree or other documents already in IDWR files, then the NU and the amount for each NU for which there is some specific support should be recommended.

If not, then claimant contact should be made. The claimant should be notified that the claimant must submit documents from the record in the case or other evidence indicating that the NU(s) and the amount for each NU were uses made at the time of the decree; otherwise the NU(s) and the amount for each NU for which there is no specific support in the decree will be considered a change in use. (This claimant contact letter should be combined with the date of change claimant contact letter as shown in the sample letters. The combined letter provides that the claimant must either submit evidence showing that the claimed NU(s) are in fact decreed NU(s), or must submit the date of the change.)

Any NU and/or amount claimed for any NU for which there is not some specific support, either in the documents already in IDWR files or in the evidence submitted by the claimant, should be reviewed as a claim to an accomplished change in use, beginning at Part 5 below.

5. Claimed NU(s) or amount for each NU are different than the decreed or licensed NU or amount for each NU

Claimant contact

a. If the NU(s) and amounts for each NU are less than what was decreed or licensed (in other words, the claim is a subset of the decreed or licensed right, with no change claimed), then claimant contact should be made IF the difference between the claim and the decree or license is significant and if there is some reason to believe that the claimant simply made a mistake in underclaiming the right. (Reason to believe the claimant simply made a mistake may arise, for example, where the right is field examined to verify a change in use and continued use for the unclaimed NU is discovered. There may be other examples.)

If claimant contact is to be made, then the claimant should be notified that the claimant may file an amended claim asserting the unclaimed NU(s) or amounts; otherwise the claimant will be deemed to have waived any right to those NU(s) or amounts. If the claimant does not file an amended claim, then the claim should be limited to the claimed NU(s) and amounts for each NU.

b. If the discrepancy includes an apparent change in NU, proceed to Part 6 below.

6. Verify change

Field exam, claimant contact

If the change in NU is not verified by field exam or other information already available to IDWR (such as aerial photography, etc.), then claimant contact should be made.

The claimant should be notified that the claimant must submit persuasive evidence of additional or alternative NU(s) or amounts for any NU not already verified by IDWR; otherwise the unverified NU or unverified amount for NU will not be recommended. (A decree, license, or permit is persuasive evidence that a right exists. Verification by field exam is persuasive evidence that a use exists for which a right may exist. Therefore, to be consistent, where a use is claimed that is not verified by a decree, license, permit, or field exam, the claimant must submit other persuasive evidence that the use in fact exists.)

The analysis in the following parts should be completed as to that portion of the claimed change in NU that is verified as described above.

Obviously, if a claimed change is not verified, then the change may not be recommended. The more difficult issue is to determine if something else should be recommended instead. The original use may not be automatically recommended, because there may be a forfeiture issue. On the other hand, where the verified uses do not add up to the licensed or decreed amount, the right may not automatically be recommended as partially forfeited either. The following are instructions as to what to do with the unverified portion of the claimed change.

If a portion of the claimed change is unverified but the original use is still being made, then the original NU should be recommended.

If a portion of the claimed change is unverified, but the total of amounts for each verified NU still add up to the total amount decreed or licensed (or the total amount claimed, if less than the total decreed or licensed), then the unverified portion of the claimed change should not be recommended, but the total amounts to be recommended should not change (except pursuant to the partial forfeiture analysis in Part 12 below).

If a portion of the claimed change is unverified, and the total of the amounts for each verified NU do not add up to the total amount decreed or licensed (or the total amount claimed, if less than the total decreed or licensed), then the unverified portion of the change should not be recommended, but whether the original NU(s) and amounts should be recommended, and the total amount to be recommended, will depend on the partial forfeiture analysis in Part 12 below. If it cannot be shown that the right was partially forfeited, then the original NU should be recommended.

NOTE: An amended claim is required before IDWR may recommend an NU greater than was claimed (i.e., if an additional NU was verified but not claimed, or if the verified amount for any NU is greater than was claimed).

7. Stored water

Claimant contact

If the change is an alternate NU of stored water, then claimant contact should be made. The claimant should be notified that the claimant must submit some evidence that the change occurred prior to November 19, 1987; otherwise the change will not be recommended. If the evidence supports a finding that the change occurred prior to November 19, 1987, then the change should be recommended to the extent verified. The claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C04)

If the change is an additional NU of stored water, see Part 9 below.

8. Date of change

Claimant contact

The claimant should be notified that the claimant must submit the date of the change and some evidence tending to support that date; otherwise the change in NU will not be recommended. If the change occurred after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after that date.

If the evidence does not support any finding as to the date of the change, and the NU of the entire right was changed to an alternative NU, then the claim should be recommended for disallowal, and should include the following remark: "CHANGE IN USE, INSUFFICIENT EVIDENCE OF DATE OF CHANGE." (P05 and condition P05)

If the evidence does not support any finding as to the date of the change, and the NU of a portion of the right was changed to an alternate NU, then the portion of the right still used for the original NU(s) should be verified and only that portion should be recommended. The claim should include the following condition: "CHANGE IN USE OF PORTION OF RIGHT; RIGHT LIMITED TO UNCHANGED PORTION DUE TO INSUFFICIENT EVIDENCE OF DATE OF CHANGE." (C07)

If the evidence supports a finding that the change occurred after November 19, 1987, then the original NU(s) and amounts should be recommended (except as otherwise provided pursuant to the forfeiture analysis in Part 12 below).

If the evidence supports a finding that the change occurred prior to commencement, then proceed to sub-item 10 below.

NOTE: Generally, the date of the change for a claim based on a decree may not be the same as or earlier than the cut-off date of the decree (or the effective date of the most recent approved transfer, whichever is later). If the water agent encounters a claim where the evidence supports a finding that the change occurred prior to the cut-off date of the decree, and the difference between the two dates is critical to the recommendation to be made, then the claim should be referred for further review by legal staff. The date of the change for a claim based on a license may not be earlier than the date the proof due notice was submitted (or the effective date of the most recent approved transfer, whichever is later). It may not be earlier than the date of the licensing field exam, if the licensing field exam did not confirm the change. (This is similar to claimed expansions of a permit, see Intro Part M.)

NOTE: The sufficiency of the evidence as to the date of the change may vary depending on the circumstances. For example, if the claimant asserts that the change occurred in 1967, but the claimant's evidence only supports a date of 1969, and there are no junior appropriators between those two dates, then the lack of further evidence makes little difference.

9. Additional NU

Claimant contact

If the change is an additional NU, then the claimant should be contacted to allow the claimant to file a new claim based on beneficial use for the additional NU, or to file an application for permit, depending on when the use was initiated. (Note that if the original claim is based on a decree, the priority date of the new claim may not be the same as or earlier than the cut-off date of the decree; this is similar to the analysis of effect of decrees in Part II.D.2. If the original claim is based on a license, then the priority date of the new claim may not be earlier than the date the proof due notice was submitted, or earlier than the date of the licensing field exam, if the licensing field exam did not confirm the change. This is similar to claimed expansions of a permit, see Intro Part M. Also, if the original claim is based on a license, and the new claim is in violation of the mandatory permit statute, then the new claim should be flagged "E" because the second presumption may apply.)

10. Alternate NU: Change more than five years prior to commencement

Limited injury analysis

If the evidence supports a finding that the change occurred more than five years prior to commencement, then the new NU(s) and

amounts should be recommended unless it is apparent from information already available to IDWR that the change resulted in substantial injury. (See Part 11.a below as to injury.) If the change is to be recommended, the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C04) If substantial injury is apparent, then the claim should be referred for further review by legal staff.

11. Alternate NU: Change less than five years prior to commencement

Injury analysis

a. Standard

A change in NU will result in injury if:

- i. there are other appropriators from the same source with a priority after the claimant's priority but before the date of the change, and
- ii. the change has resulted in an increase in the annual volume of diversion or consumptive use.

b. Evidence

If it can be determined from information already available to IDWR that no injury resulted from the change, or if conditions can be readily identified that will prevent injury, then proceed to Part c below.

If not, then claimant contact should be made. The claimant should be notified that the claimant must submit evidence of non-injury or conditions that will prevent the injury; otherwise the priority of the right will be changed to the date of the change in NU to prevent injury.

c. Recommendation

(This portion of the analysis concerns whether the change may be recommended. The partial forfeiture analysis should still be completed as described in Part 12 below. There may be times when it makes sense to do the partial forfeiture analysis first, because the portion claimed to have been changed may have been forfeited.)

If it can be determined that no injury resulted from the change, then the change in NU should be recommended to the extent verified, and the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C04)

If condition(s) can be identified that will prevent injury, then the conditions should be included in remarks, and the claim should also include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C04)

If neither of the two determinations above can be made, and if the NU of the entire right was changed, then the priority should be changed to the date of the change, and the claim should include the following condition: "PRIORITY DATE CHANGED TO PREVENT INJURY FROM CHANGE IN PURPOSE OF USE." (C06)

If neither of the two determinations above can be made, and if the NU of a portion of the right was changed, then the portion still used for the original NU(s) should be verified. The claim should be split, with the original claim showing the use for the original NU(s), and the new claim showing the use for the new NU(s) with a priority as of the date of the change, and the claim numbers should have alpha suffixes. Both should include the following remark: "PRIORITY OF PORTION OF RIGHT CHANGED TO PREVENT INJURY FROM CHANGE IN USE, SEE RIGHT NO. ____." (C01)

12. Partial forfeiture

Is there reason to believe that there has been a five year period of continuous nonuse (or non-beneficial use) subsequent to the cut-off date of the decree or the date of issuance of the license?

The partial forfeiture query described in this Part 12 should be completed for each claim in this category. However, due to the higher standard of proof for establishing forfeiture of a decreed or licensed right, IDWR will not field examine every claim in this category to verify that it has not been partially forfeited. Instead, IDWR will look to information already available to determine if there is some reason to believe that the right may have been partially forfeited, and if so will make a reasonable effort to determine if the right has been partially forfeited.

NOTE: This does NOT mean that if the claim matches the decree or license, then no further review needs to be done. A complete desk review, using information already available to IDWR (such as aerial photography, satellite imagery, the general knowledge of the agent responsible for reviewing claims in the area, etc.) must be completed to determine if there is cause for further investigation.

a. Claim based on decree

The partial forfeiture analysis should begin by asking if there is reason to believe that there has been a five year period of continuous nonuse (or non-beneficial use) of a portion of the

right subsequent to the cut-off date of the decree. If so, then reasonable efforts should be made to investigate whether a partial forfeiture has occurred (see Part X as to forfeiture analysis). Examples of reason to believe that a partial forfeiture may have occurred include: lack of verification of use in a field exam done to verify a claimed change in use, unreasonableness of the decreed or licensed amount for any NU under current standards, etc.

The cut-off date of the decree is the date of the decree, unless the decree provides that the water rights determined therein are determined as of a different date. Cut-off dates for recent general adjudications in which IDWR filed a report are listed in Adjudication Memo #14.

b. Claim based on license

The partial forfeiture analysis should begin by asking if there is reason to believe that there has been a five year period of continuous nonuse (or non-beneficial use) of a portion of the right subsequent to the date the license was issued. If so, then reasonable efforts should be made to investigate whether a partial forfeiture has occurred (see Part X as to forfeiture analysis). For example, lack of verification of use in a field exam done to verify a change would be reason to believe that a partial forfeiture may have occurred that merits further investigation.

NOTE: Lack of beneficial use under a recent license may be an issue where there are multiple claims for the same purposes at the same place of use, the total amount is greater than the amount that can be beneficially used for those purposes at the place of use, and the rights are not supplemental. In such cases, the excess is taken from the most junior rights. See Part VIII below as to other rights.

C. CLAIM BASED ON PERMIT

1. Permits for which a proof due notice was filed prior to commencement

If the claim is based on a permit for which a proof due notice was filed prior to commencement, then contact water allocations staff at the state office before proceeding with review of this claim. See Intro Part M for a general discussion of claims in this category. If the claim is to be recommended with a basis of permit, then proceed with the analysis below.

2. Claim matches permit

If the NU(s), amount for each NU, and total amount matches the permit, then no further review of this item is required.

3. Claim less than permit (any NU, portion of amount for any NU, or portion of total amount not claimed)

a. Check to see if this claim is part of a water right that was split, but was fully claimed by various claimants, or if it was claimed under another claim. If this resolves the discrepancy, then no further review of this item is required.

b. If it is apparent that there is a portion of the original permit that should be claimed by this claimant, then claimant contact should be made. (Generally, there is reason to believe that the claimant simply made a mistake in claiming less than the full right, because partial forfeiture should not be an issue with claims in this category.) The claimant should be notified that the claimant may file an amended claim asserting the permitted NU(s) and amounts; otherwise the claimant will be deemed to have waived the right to the unclaimed portion. If the claimant files an amended claim that matches the permit, then no further review of this item is required. If the claimant does not file an amended claim, then the discrepancy is resolved, and the NU(s) and amounts recommended should not exceed the NU(s) and amounts claimed.

c. If it is apparent that there is a portion of the original right that should be claimed by another claimant, then similar claimant contact should be made to that claimant. (If the other claimant did not file for a portion of this claim, the claimant may need to file an additional claim rather than an amended claim.)

d. This sub-item does not provide for second round service for unclaimed amounts; second round service is made based on unclaimed places of use as described in Part VII below.

4. Claim different or greater than permit

If the claim is different or greater than the permit (i.e., the claim is not a subset of the permit), then the permitted NU(s) and amounts should be recommended.

A change in NU of a permit may not be recommended because neither the presumptions nor the accomplished transfer statute applies to permits. The only way to change the NU(s) on a permit is to file an application to amend the permit with IDWR (or to file an application for permit, where the change is actually a new appropriation).

D. CLAIM BASED ON BENEFICIAL USE (INCLUDING STATUTORY CLAIM OR POSTED NOTICE)

The order of analysis in this Part E differs from the previous parts because claims based on beneficial use have not been confirmed and will be field examined, while the claims in the previous parts were confirmed at one time and will get field examined only where necessary to resolve a discrepancy between the claim and the document on which it is based, or there is some reason to believe a forfeiture has occurred. So the starting point for analyzing these claims is what is on the ground, while the starting point for analyzing claims in the previous parts was what is on the water right document and whether the claim is the same.

1. Verify current use

Were uses or amounts claimed that were not verified? (If not, then skip this part 1.)

If any part of the claimed NU(s) and/or amounts are not verified by field exam or other information already available to IDWR (such as aerial photography, etc.), then claimant contact should be made.

The claimant should be notified that the claimant must submit persuasive evidence of the unverified portion of the claim; otherwise the unverified NU(s) and/or amounts will not be recommended. (A decree, license, or permit is persuasive evidence that a right exists. Verification by field exam is persuasive evidence that a use exists for which a water right might exist. Therefore, to be consistent, where a use is claimed that is not verified by decree, license, permit, or field exam, the claimant must submit other persuasive evidence that the use in fact exists.)

The analysis below should be completed as to that portion of the claim that is verified as described above. To the extent that a portion of the claim is not verified, then it should not be recommended. If none of the claim is verified, then it should be recommended for disallowal, and should include the following remark: "NO BENEFICIAL USE FOUND." (P03 and condition P03)

2. Unclaimed, verified NU(s) or amounts

Were uses or amounts verified that were not claimed? (If not, then skip this Part 2.)

If uses were found in the field exam that were not claimed, or if the amount claimed (for any NU or the total amount) is significantly less than the amounts verified in the field exam, and if the difference is not covered by an application for permit or transfer, then claimant contact should be made.

The claimant should be notified that the claimant may file an amended claim, file an additional claim, file an application for permit, or file an application for transfer for unclaimed uses and/or amounts. (The claimant may have four different options here depending on the five different scenarios: to file an amended claim if the use was initiated at the same time as the other uses claimed; to file an amended claim if the other uses may be considered a change in use and the change occurred prior to commencement; to file an application for transfer if the other uses may be considered a change in use but the change occurred after commencement; to file an additional claim if the use was initiated later than the other uses and may not be considered a change, and is not in violation of the mandatory permit statute or can be claimed as an expansion pursuant to the second presumption; or to file an application for permit if the use was initiated later than the other uses and may not be considered a change, is in violation of the mandatory permit statute, and cannot be claimed pursuant to the second presumption.)

Unclaimed NU(s) or amounts may not be recommended.

3. Reasonableness of current use

Is the amount used for each NU and the total amount used reasonable? (If so, then skip this Part 3.)

For the full amount actually used to be considered beneficially used, the amount must be reasonable. Otherwise the amount recommended will be limited to a reasonable amount. In determining whether the amount used is reasonable, the following factors should be taken into account: the nature of use, the place of use, transmission losses, and amount of return flows. (The fact that water is returned to the stream does not automatically make the diversion reasonable; the amount of water returned to the stream must also be reasonable.)

If it cannot be determined from information already available to IDWR that the amount used for each NU and the total amount used is reasonable, then claimant contact should be made. The claimant should be notified that the claimant must submit evidence showing that the amount(s) used are not unreasonable; otherwise the amount(s) recommended will be limited to the amount determined to be reasonable by IDWR. (The claimant contact letter should state the amount determined to be reasonable based on information already available to IDWR.) The amount(s) recommended should be limited to the amounts that are determined to be reasonable based on information already available to IDWR and other information submitted by the claimant.

See Part A.6 above as to claims to more than .02 cfs per acre for irrigation. If the amount claimed equals .02 cfs per acre, but fewer acres are to be recommended than claimed, then the amount to

be recommended may be reduced to .02 cfs per acre without completing the excessive flow analysis.

With respect to uses other than irrigation, one indication of reasonableness is how the amount used compares to amounts IDWR has approved for licenses for similar uses. If there is a question as to the reasonableness of the amount used, it should be referred to the bureau chief for further review.

4. Increase in total amount

Is there reason to believe that there has been an increase in the total amount of water used? (If not, then skip this part 4.)

If there is reason to believe that there has been an increase in the total amount of the water right beyond the amount originally appropriated (at the time of the priority to be recommended), then claimant contact should be made. (Evidence of five years nonuse of a portion of the right is reason to believe that the original appropriation was not as great as claimed and in fact an additional appropriation was made at the end of the period in which the portion was not used. This is similar to the analysis of evidence of nonuse of the entire water right with respect to the priority date claimed, see Part II.D.1. A smaller amount on a statutory claim or posted notice is reason to believe that an increase has occurred since the statutory claim was filed or the notice was posted.)

The claimant should be notified that the claimant must submit evidence showing that the amount currently used was the amount originally appropriated, or the claimant may file an additional claim for the additional amount with a priority as of the date of the increase and submit some evidence in support of the priority date claimed, or to file an application for permit, depending on when use of the additional amount was initiated. Absent evidence of no increase or an additional claim for the increase, the additional amount will not be recommended due to lack of evidence of beneficial use not in violation of the mandatory permit statute.

If the evidence supports a finding that the amount currently used was the amount originally appropriated, then review of the entire amount currently used (and claimed) should proceed as described in the next part.

If the evidence does not support such a finding, then the recommendation should not include the amount believed to have been appropriated after the original appropriation.

NOTE: Where there has been an approved transfer, then the amount of the right can be no greater than the amount stated in the transfer, and the additional appropriation, if any,

shall be deemed to have occurred no earlier than the effective date of the transfer.

5. **Stored water**

Is there some reason to believe that there has been a change in NU (either an additional or alternative NU) since the priority date to be recommended? (If not, then review of this item complete.)

(A different NU or an increase in the amount of any NU from a statutory claim or posted notice is reason to believe that a change may have occurred since the statutory claim was filed or the notice was posted.)

If there is some reason to believe that there has been a change to an alternative NU, then claimant contact should be made. The claimant should be notified that the claimant must either submit evidence that there has been no change in NU, (the NU(s) and amounts claimed were the original NU(s) and amounts), or submit some evidence that the change occurred prior to November 19, 1987; otherwise the change will not be recommended.

If the evidence supports a finding that no change has occurred, then review of this item is complete. If the evidence supports a finding that the change occurred prior to November 19, 1987, then the change should be recommended to the extent verified, and the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C04) If neither, then the original NU(s) should be recommended.

If there is some reason to believe that an additional NU has occurred, then follow the analysis in Part 7 below.

6. **Has change occurred?**

Is there some reason to believe that there has been a change in NU (either an additional or alternative NU, or an increase in the amount of any NU) since the priority date to be recommended? (If not, then review of this item is complete.)

(A different NU or an increase in the amount of any NU from a statutory claim or posted notice is reason to believe that a change may have occurred since the statutory claim was filed or the notice was posted.)

If there is some reason to believe that an additional NU has occurred, then proceed to Part 7 below. If there is some reason to believe that a change to an alternative NU has occurred, then proceed to Part 8 below.

NOTE: Where there is a different NU or an increase in the amount of any NU than is shown in the most recent approved transfer, then a change will be deemed to have occurred, and it will be deemed to have occurred no earlier than the effective date of the transfer.

7. Additional NU

Claimant contact

The claimant should be notified that the claimant must submit evidence that there has been no change in NU (that the NU(s) and amounts claimed were the original NU(s) and amounts); or the claimant may file an additional claim for the additional NU with a priority as of the date of the expansion (including some evidence in support of the priority date claimed). Absent evidence of no increase or an additional claim for the increase, the additional amount will not be recommended due to lack of evidence of beneficial use not in violation of the mandatory permit statute.

If the claimant submits evidence that supports a finding that the current NU(s) and amounts are the original NU(s) and amounts, then review of this item is complete. If the evidence does not support such a finding, then the recommendation should be limited to the original NU(s) and amount for each original NU that remains currently in use. (If a new claim is filed, and the use is in violation of the mandatory permit statute, then the new claim should be flagged "E" because the second presumption may apply. See Adjudication Memo #16B as to the presumptions.)

8. Alternate NU

Claimant contact

The claimant should be notified that the claimant must either submit evidence that there has been no change in NU (that the NU(s) and amounts claimed were the original NU(s) and amounts), or must submit the date of the change and some evidence tending to support that date; otherwise the portion of the right that was changed will not be recommended due to lack of evidence of change without injury or a new appropriation not in violation of the mandatory permit statute. (If the change occurred after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after that date.)

If the evidence supports a finding that no change in NU occurred, then review of this item is complete.

If the evidence supports a finding that the change occurred after November 19, 1987, then the original NU(s) and amounts for each NU should be recommended for the portion claimed as changed.

If the evidence does not support either finding, and the NU of the entire right was changed, then the claim should be recommended for disallowal, and should include the following remark: "NO LAWFUL APPROPRIATION SHOWN."

If the evidence does not support either finding, and the NU of a portion of the right was changed, then the recommendation should be limited to the unchanged portion of the right.

If the evidence supports a finding that the change occurred prior to November 19, 1987, then review of the change should proceed as described below.

NOTE: The date of the change may not be the same as or earlier than the effective date of the most recent approved transfer.

NOTE: The sufficiency of the evidence as to the date of the change may vary depending on the circumstances. For example, if the claimant asserts that the change occurred in 1967, but the claimant's evidence only supports a date of 1969, and there are no junior appropriators between those two dates, then the lack of further evidence makes little difference.

9. Change more than five years prior to commencement

Limited injury analysis

If the evidence supports a finding that the change occurred more than five years prior to commencement, then the new NU(s) and amounts should be recommended unless it is apparent from information already available to IDWR that the change resulted in substantial injury. (See Part 10.a below as to injury.) If the change is to be recommended, then the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO 42-1416A." (C04) If substantial injury is apparent, then the claim should be referred for further review by legal staff.

10. Change less than five years prior to commencement

Injury analysis

a. Standard

A change in NU will result in injury if:

- i. there are other appropriators from the same source with a priority after the claimant's priority but before the date of the change, and
- ii. the change has resulted in an increase in the annual volume of diversion or an increase in consumptive use.

b. Evidence

If it can be determined from information already available to IDWR that no injury resulted from the change, or if conditions can be readily identified that will prevent the injury, then proceed to Part c below.

If not, then claimant contact should be made. The claimant should be notified that the claimant must submit evidence of non-injury or conditions that will prevent injury; otherwise the priority of the right will be changed to the date of the change in NU to prevent injury.

c. Recommendation

If it can be determined that no injury resulted from the change, then the change in NU should be recommended to the extent verified, and the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C04)

If condition(s) can be identified that will prevent injury, then the conditions should be included in remarks, and the claim should also include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C04)

If neither of the two determinations above can be made, and if the NU of the entire right was changed, then the priority should be changed to the date of the change, and the claim should include the following condition: "PRIORITY DATE CHANGED TO PREVENT INJURY FROM CHANGE IN USE." (C06)

If neither of the two determinations above can be made, and if the NU of a portion of the right was changed, then the portion still used for the original NU(s) should be verified. The claim should be split, with the original claim showing the use for the original NU(s), and the new claim showing the use for the new NU(s) with a priority as of the date of the change, and the claim numbers should have alpha suffixes. Both should include the following remark: "PRIORITY OF PORTION OF RIGHT CHANGED TO PREVENT INJURY FROM CHANGE IN USE, SEE RIGHT NO. ____." (C01)

E. CLAIM BASED ON SECOND PRESUMPTION OR CRITICAL GW EXPANSION

(Claims in this category will be referred to as "expansion claims" below.)

If the water agent has reached this point, then it has been determined that the second presumption or the critical GW expansion statute applies, that the expansion may not be considered a change in use, that the expansion is in violation of the mandatory permit statute, and that the expansion was made before November 19, 1987.

Since expansion claims are beneficial use claims, all expansion claims are to be field examined.

See Adjudication Memo #16 for more information as to quantification of claims based on the second presumption or critical GW expansion, including conditions, remarks and combined use limitations.

1. Field exam

If any part of the claimed NU(s) and/or amounts are not verified by field exam or other information already available to IDWR (such as aerial photography, etc.), then claimant contact should be made.

The claimant should be notified that the claimant must submit persuasive evidence of the unverified portion of the claim; otherwise the unverified NU(s) and/or amounts will not be recommended. (A decree, license or permit is persuasive evidence that a right exists. Verification by field exam is persuasive evidence that a use exists for which a water right might exist. Therefore, to be consistent, where a use is claimed that is not verified by decree, license, permit, or field exam, the claimant must submit other persuasive evidence that the use in fact exists.)

The analysis below should be completed as to that portion of the claim that is verified as described above. To the extent that a portion of the claim is not verified, then it should not be recommended.

NOTE: This step is unnecessary where it can be determined without a field exam that the claim will result in injury as described in Part 2 below.

2. Injury

An expansion may be recommended pursuant to the second presumption only where the expansion does not result in an increase in the rate of diversion. If the claimant claims an increase in the rate of diversion, then this is sufficient information to recommend the claim for disallowal.

Generally, there should be no injury from a claim based on the second presumption if there is no increase in the rate of diversion and the right is recommended with a priority as of the date the expansion occurred, so generally no further investigation will be done as to injury.

A critical GW expansion may be recommended only where the expansion does not result in an increase in the rate OR VOLUME of diversion. (A second presumption expansion may include an increase in volume of diversion.)

VI. SEASON OF USE (SU)

A. GENERAL

The issues with respect to season of use are limited, and many of those issues will not be common, so the "checklist" analysis format used for previous items seemed unnecessarily tedious. In this item, therefore, there is simply a general discussion of a few issues of which the water agent should be aware.

B. IRRIGATION OUTSIDE THE IRRIGATION SEASON

An SU for irrigation should not be recommended that is outside IDWR's standard SU. Where appropriate to a basin or a portion of a basin, the report will contain a general provision that holders of rights for irrigation may divert water for irrigation outside the SU if the use is beneficial, if all other rights (senior AND junior) that are within their season of use are satisfied, and if such use is consistent with the public interest.

The rationale for this rule is that such marginally beneficial uses should not be totally prohibited, but neither should they be allowed to prevent the appropriation of water for more beneficial uses.

C. STANDARDIZED SU FOR IRRIGATION

There are some instances in which there are decreed and licensed rights for irrigation in the same area with different SU's for irrigation, which in most cases are shorter than IDWR's current standards. As a practical matter, it doesn't make much sense to have different SU's for the same NU in the same area. Therefore, the general rule will be to standardize the SU for irrigation according to current IDWR standards. There may, however, be exceptions to this general rule. One example is where the source is fully appropriated in some years during the non-irrigation season (generally by storage appropriations), because these other rights might be injured by recognition of a longer irrigation season. Generally, a survey should be made of the decreed or licensed SU's for irrigation and the extent of non-irrigation season rights at the beginning of the investigation of a sub-basin. This information should be submitted for further review by the bureau chief, so that a determination can be made as to a standardized SU for irrigation early in the investigation of a particular sub-basin. The standardized irrigation season, once approved, should be applied to claims based on decree, license, or beneficial use, but should not be used on claims based on permit. For permits, standardization of the season of use will be addressed in the licensing process.

D. INCREASE IN SU

Generally, an increase in SU is claimed where the claimed SU begins earlier and/or ends later than the previously decreed, previously licensed, or historically practiced SU, with the result that the total number of days in the claimed SU is greater than in the previously established SU. The most common example of an increase in SU is where the claimant claims a change in nature of use from irrigation to a nature of use that is year-round, such as municipal or commercial uses.

Generally, an increase in SU of ground water should be treated as an expansion only if the increase in SU resulted in an increase in diversion volume. Otherwise, the increase in SU should be treated as a change as described in Part E below. If the increase in SU is to be treated as an expansion, the claim should be limited to the original diversion volume and original SU; an additional claim would be required for the additional diversion volume and additional SU.

E. CHANGE IN SU

A change in SU is claimed where the SU begins earlier or ends later than the previously decreed, previously licensed, or historically practiced SU, but there is no expansion in diversion volume, even if there is an increase in number of days in the claimed SU.

As with other claims to accomplished transfers, the claimant should be contacted and required to show that the change occurred prior to commencement of the adjudication, and submit sufficient evidence of the date of change to show that no injury will result, or that the right can be conditioned to prevent injury from the change.

In such cases, injury will result from a change in SU of a surface water right if there are junior appropriators with a priority after the claimant's priority but before the date of the change, and with a season of use within the new claimed season of use. For example, if the claimant had a right with a priority of June 1, 1950, and a season of use that began March 15, and claimed a change to a season of use beginning March 1 that occurred in 1960, injury would result to a claimant with a June 1, 1955 priority and a season of use that included any of the period from March 1 to March 14. Such a claim should include a remark that the right includes a change in season of use, and that use of the water from March 1 to March 14 would be administered as if it had a priority of March 1, 1960 to prevent injury from the change in use. (In some instances, it may be more appropriate to simply split the claim, as is done for a change in use of a portion of a right that results in injury that cannot be otherwise mitigated. See, for example, Part IV.G.3 as to change in PD. In the example above, it

seemed a bit excessive to do a split that would result in a two-week right.)

With respect to ground water rights, injury will generally be prevented by limiting the claim to the original diversion volume. If the change resulted in an increase in diversion volume, then the additional diversion volume is an expansion for which an additional claim must be filed (and to which the second presumption may apply, but not the critical GW expansion statute, as discussed in Part II.F).

As always, an accomplished transfer may not be recommended for a claim based on a permit for which a proof due notice was submitted on or after the date the adjudication commenced. If a change is claimed for a permit for which a proof due notice was submitted prior to commencement, then the agent should coordinate with allocations staff to determine how the claim should be recommended (see Intro Part M as to claims in this category).

F. DECREASE IN SU

A decrease in SU is claimed where an SU is claimed that starts later than the decreed, licensed, permitted, or historically established SU, or ends earlier than the decreed, licensed, permitted, or historically established SU. In such cases, claimant error should generally be assumed, and the previously established or IDWR standard SU should be recommended as otherwise described in this item, unless there is some reason to believe that the claimed decrease in SU was not in fact claimant error. For example, where there was a change in NU from year-round commercial to fish propagation with a claimed SU of December through May, the claimed NU would be recommended.

G. SU NOT STATED IN DECREE

Season of use is an essential element of the water right. The failure of a decree to include the SU in the listing of water rights is an ambiguity in the decree. (See Intro Part J as to res judicata/ambiguity.) In other words, when the decree determined the water right, it necessarily determined the SU as of the same time as the rest of the elements of the water right; the decree just failed to describe it. The relevant question at this point is how to resolve the ambiguity.

For purposes of preparing the director's report, the agent should first look to the decree, or other documents from the case that are already available in IDWR files, to see if the SU can be gleaned from those documents. If not, then it will generally be assumed that the decreed SU is the same as IDWR's standard SU for the NU(s). This will take care of the vast majority of the claims. For uses other than irrigation, if there is no standard SU, or if there is reason to believe that recommending the standard SU would

not be appropriate, then the claimant should be contacted and required to submit evidence showing that the claimed SU is the decreed SU.

H. CLAIM BASED ON BENEFICIAL USE (INCLUDING POSTED NOTICE, SECOND PRESUMPTION, CRITICAL GW EXPANSION)

IDWR will generally not seek proof of SU for beneficial use claims. IDWR will generally rely on IDWR standards unless there is some reason to believe that the actual SU is different, or if there is some reason to believe that there has been a change in SU or an increase in SU (generally resulting from a change in NU). In such cases, then the claimant should be contacted and required to submit 1) evidence of the actual SU, 2) evidence that no change has occurred, 3) if a change has occurred, the date of the change and sufficient evidence to determine that the change did not result in injury or to condition the right to prevent injury, 4) evidence that no increase has occurred, or, 5) if an increase has occurred, to submit an additional claim or an application for permit, depending on when the increase occurred.

I. SU FOR STORAGE

One notable issue is the SU for diversion to storage for claims based on beneficial use or based on a decree where the SU cannot be determined from the decree. Generally in such instances a year-round season of use should be recommended, unless there is reason to believe that the actual or decreed SU is not year-round. If there is reason to believe that the actual or decreed SU is not year-round, then the claimant should be contacted and required to submit evidence of the actual or decreed SU.

VII. PLACE OF USE (PU)

A. GENERAL

1. Unapproved change in PU generally

The claimant will be required to submit the date of the change and some evidence tending to support that date, because the date of the change is essential to the injury analysis. (The analysis of proof of the date of change is similar to the analysis of proof of priority of beneficial use claims, see Part II.D.1.) If no such evidence is submitted, then the claim will be recommended for disallowal on the basis that the claimant did not show either a change in use without injury or a new appropriation not in violation of the mandatory permit statute. (IDWR may not recommend the right as changed, because IDWR cannot find that the change occurred without injury and prior to commencement; on the other hand, IDWR may not simply recommend the original PU, because use of water at the new PU could be a second change that might result in injury to other claimants.)

The change must have occurred before November 19, 1987, because the accomplished transfer statute applies only to changes that occurred prior to commencement. Where the evidence supports a finding that the change occurred after commencement, then the original PU should be recommended. (NAPP photography should be useful in this regard.)

If the change occurred before November 19, 1987, then the change may be recommended if it can be determined from the available information that the change did not result in injury to other water rights or can be conditioned to prevent any injury. If such a determination cannot be made from information already available to IDWR, claimant contact should be made to allow the claimant an opportunity to provide such information prior to filing the report. If such a determination cannot be made, either from information already available to IDWR or information provided by the claimant, then the right will still be recommended with the change, but with a priority as of the date of the change to prevent injury.

Generally, the investigation of injury from a change in PU shown to have occurred more than five years prior to commencement will be more limited than changes in PU that occurred within five years prior to commencement. (This more limited review does not apply to an expansion in the number of irrigated acres.) A change in PU that occurred more than five years prior to commencement should be recommended as changed unless it is apparent from information already available to IDWR that the change resulted in substantial injury. If substantial injury is apparent, then the claim should be referred for further review by legal staff.

NOTE: The date of the change is not necessary where it can already be determined that the change occurred prior to commencement, and the change did not result in injury to other rights, no matter when the change occurred.

2. Change vs. expansion

A change in use occurs where the new PU is different than the old PU but the new PU is no greater than the old PU. An expansion occurs where the new PU is greater than the old PU. Although the change analysis is set forth below separate from the expansion analysis, one claim may involve both a change and an expansion.

3. Stored water

A change in use may include an expansion in the number of acres irrigated with stored water pursuant to Idaho Code §42-222. In addition, a change in place of use of stored water will generally not result in injury to other claimants because the water, once lawfully stored, is not part of the natural flow of the stream to which junior appropriators hold rights. Therefore, the review of expansions in irrigated acreage and changes in place of use of stored water is the same, and is generally limited to a requirement of some evidence that would support a finding that the expansion or change occurred prior to commencement.

4. Supplemental rights

Rights are supplemental when they are for the same purpose of use at the same place of use, and the total amount of the rights (diversion rate, diversion volume, or consumptive use) on their faces add up to more than the total that can be beneficially used for that use. Generally, supplemental rights are from different sources, but may in some instances be from the same source. Supplemental rights are an exception to the general rule that rights for the same purpose at the same place of use may only "add up" to the total that can be beneficially used for that use.

NOTE: Sometimes, the appropriator will rely primarily on a right from one source (for example, surface water), with the result that this right is sometimes referred to as the "primary" right. The appropriator will then supplement the surface water with other water (for example, stored water), with the result that this right is sometimes referred to as the "supplemental" right. For purposes of this analysis, both rights are referred to as supplemental to each other.

Generally, where supplemental rights are moved together, then the issues as to change in place of use for such rights are the same issues as for any other rights. Special issues arise where supplemental rights are separated, either by moving one to a new place of use or by moving both to different places of use. See

Adjudication Memo #16B as to review of claims where supplemental rights are separated.

5. Permissible PU

A permissible place of use occurs where the claimant has a right to irrigate a certain number of acres within a larger place of use. See Adjudication Memo #16B as to review of claims with a permissible place of use.

6. Irrigation of pasture

Irrigation of pasture is a beneficial use of water, the same as irrigation for any other crop. However, with some claims for pasture, it can be difficult to determine whether diversion and beneficial use has in fact occurred. For claims to irrigation of pasture, the water agent should look for some real effort by the claimant to exercise control of the water, some real increase in the yield of the land, and some real use of this increase. In close cases, it is best to compare the land to other land in the area that is clearly not irrigated, and to take pictures for the file.

7. Remarks describing PU

Adjudication Memo #32 sets forth standard remarks to describe the following:

- a. subdivision parcels (J01),
- b. other common means of identifying PU, such as homestead entry number, etc. (J02),
- c. PU is lands within municipal boundaries (J03),
- d. PU for irrigation is in another state (J04 - J09).

8. First presumption checklist

This checklist is included here for convenience. Each element is discussed in further detail under the appropriate item. See Adjudication #16B for more information as to the first presumption.

- a. Original claim must be based on decree.
- b. Expansion may be expansion in irrigated acreage only. Does not include increase in rate of diversion, but may include increase in volume of diversion and consumptive use.
- c. Expansion must have occurred before commencement.
- d. May not be expansion of GW in CGWA that occurred after designation of critical GW area.
- e. Expansion is recommended pursuant to original priority, so there is only one claim, and neither decree nor subsequent transfer is res judicata as to number of irrigated acres.

- f. Standard condition: THIS RIGHT INCLUDES AN INCREASE IN
IRRIGATED ACRES PURSUANT TO IDAHO CODE 42-1416(1).

B. CLAIM BASED ON DECREE

Even where the claimed PU for each NU matches the decreed PU for each NU, the claim must still be reviewed for partial forfeiture as set forth in Part 8 below, unless it was already done as part of the NU analysis.

1. Ambiguity in decree as to PU

PU is an essential element of the water right. The failure of a decree to include PU in the listing of water rights is an ambiguity in the decree. (See Intro Part J as to res judicata/ambiguity.) In other words, when the decree determined the water right, it necessarily determined the PU for each NU as of the same time as the rest of the elements of the water right; the decree just failed to describe it. The relevant question at this point is how to resolve that ambiguity. This is generally done by looking at the rest of the decree, other pleadings or evidence in the case, or other evidence as to how water was used at the time of the decree.

In most cases, the ambiguity arises because the decree describes the property owned by the claimant at the time of the earlier adjudication, and does not describe the number of irrigated acres in each forty acre tract, or does not describe the quarter-quarter for other uses. The analysis in this Part 1 is primarily concerned with this issue. If the decree (or other documents from the case already on file with IDWR) does not describe the property owned by the claimant at the time of the earlier adjudication, then it will be up to the claimant to provide this information. (The agent may seek this information from the county recorder directly if this would save time for the agent.)

Where the decree describes the property owned by the claimant at the time of the earlier adjudication, but does not describe the quarter-quarter for each NU other than irrigation, then for purposes of preparing the director's report it will be assumed that the current PU is the decreed PU unless there is reason to believe that there has been a change in PU. The analysis is therefore basically the same as for a claim based on beneficial use (but the basis of the claim should not be changed).

Where the NU is irrigation, and the decree describes the property owned by the claimant at the time of the earlier adjudication, but does not describe the number of acres in each quarter-quarter, then it will be presumed that the number of irrigated acres originally decreed is the number of acres currently irrigated within the property described in the decree, unless there is reason to believe otherwise. This rule is based on the first presumption, but the claim should not be flagged "E" where the first presumption is used solely to resolve the ambiguity in the

decree and not as a basis to recommend an expansion in irrigated acres.

One instance where the presumption is rebutted (for purposes of resolving an ambiguity) is where the decree uses a uniform duty of water. For example, the Rexburg decree uses a duty of water of an inch to the acre. Therefore, if a right to 20 inches was decreed in the Rexburg decree as appurtenant to a parcel of land that included 40 acres, then it would be determined that the original number of irrigated acres was 20 acres.

Questions are going to arise where there is an ambiguity as to the number of irrigated acres and the property has been partitioned by sale of a portion of the property. There is a general rule that where one conveys part of a parcel of land with appurtenant water rights, one also conveys a proportionate part of the appurtenant water right, unless the deed provides otherwise, or unless there is clear evidence of a contrary mutual intent. The presumption discussed two paragraphs above may not be used to overcome the rule as to conveyances discussed in this paragraph.

For example, an old decree for the Weiser River describes a right to 5 inches of water that is appurtenant to a 120 acre parcel. The decree has a uniform duty of water of $5/8$ " per acre. It may therefore be assumed that the original number of irrigated acres is eight acres. The 120 acre parcel has since been split into two 60 acre parcels, now owned by different owners. In this instance, the right was fully claimed by one owner and no claim was filed by the other owner, so it will be presumed that the owner who filed the claim owns the entire water right. However, if a claim were filed by the other owner, then it would be presumed that each owner acquired one-half of the right (four acres worth), unless the claimant(s) submitted evidence to the contrary. Absent such evidence, a claim to more than four acres by either claimant would be analyzed as an expansion. (If either claimant claimed more than half of the water right, this would give rise to an ownership issue. See Part XI.C as to duplicate claims.)

2. PU claimed is less than decreed PU (If not, then skip this part 2.)

a. Check to see if this claim is part of a water right that has been split, but has been fully claimed by various claimants, or if it has been claimed under another claim. If so, the discrepancy is resolved.

b. If it is apparent that there is a portion of the original right that should be claimed by this claimant, and it is apparent that the claimant simply made a mistake in underclaiming the PU, then claimant contact should be made. If claimant contact is to be made, then the claimant should be notified that the claimant may file an amended claim asserting the full decreed PU; otherwise the

claimant will be deemed to have waived the right to the unclaimed portion. If the claimant files an amended claim that matches the decree, then the decreed PU should be recommended except to the extent determined otherwise pursuant to the partial forfeiture analysis at Part 8 below. If the claimant does not file an amended claim, then the discrepancy is resolved, and the PU recommended should not exceed the PU claimed.

c. If the first two determinations cannot be made (that there is a split that has been fully claimed, or that the unclaimed portion should be claimed by this claimant), then the place of use of the unclaimed portion should be added to the parcel list for second round service, unless the place of use has already been included as part of the second round service done by the state office.

3. Change and/or expansion: Verify new PU

Field exam, claimant contact

If the new PU is not verified by field exam or other information already available to IDWR (such as aerial photography, etc.), then claimant contact should be made.

The claimant should be notified that the claimant must submit persuasive evidence of the new PU(s) not already verified by IDWR; otherwise the new PU(s) will not be recommended. (A decree, license, or permit is persuasive evidence that a right exists. Verification by field exam is persuasive evidence that a use exists for which a right may exist. Therefore, to be consistent, where a use is claimed that is not verified by a decree, license, permit, or field exam, the claimant must submit other persuasive evidence that use has in fact been made at the new PU.)

The analysis below should be completed as to that portion of the new PU that is verified as described above. If the new PU is a claimed expansion, then the new PU that is not verified should not be recommended.

If the new PU is a claimed change in place of use, and if the new PU is not verified, then obviously the new PU may not be recommended. The more difficult issue is what to recommend instead. The original PU may not be automatically recommended because there may be a forfeiture issue. On the other hand, where the unverified PU gives rise to a question as to the amount of the water right, the right may not automatically be recommended as partially forfeited either. The following are instructions as to what to do with the unverified portion of the claimed change. Where the change in PU also involved a change in NU, then some of the following may have already been done.

If a portion of the claimed change is unverified but the use is still being made at the decreed PU, then the decreed PU should be recommended.

If a portion of the claimed change is unverified, but the lack of verification does not give rise to a partial forfeiture issue, then the decreed PU should be recommended for the unverified portion.

If a portion of the claimed change is unverified, and the lack of verification gives rise to a forfeiture issue, then the forfeiture analysis should be completed as to the unverified portion. If no forfeiture is found, then the decreed PU should be recommended for the unverified portion. (See Part 8 below as to partial forfeiture.)

NOTE: If the claimant erred in describing the PU, then the actual PU should be treated as the claimed PU. Therefore, if the verified PU for each NU matches the decreed PU for each NU, then the actual/decreed PU should be recommended, except to the extent determined otherwise pursuant to the partial forfeiture analysis in Part 8 below. If the verified PU still constitutes a change or an expansion, the analysis below should be completed for the actual PU. An amended claim is required before IDWR may recommend a verified PU that is greater than the claimed PU; an amended claim is not required if the verified PU to be recommended is different but not greater than the claimed PU.

NOTE: In addition to verifying the new PU, the field exam should also verify that water is no longer used at the old PU. What if the examination indicates that use is made at the new PU, but use at the old PU has not ceased? If the claimant is making both uses, then presumably the claimant claimed both uses, and this will be covered in the expansion analysis. If someone else is using water at the old PU and filed a claim, then this gives rise to an ownership issue that is addressed in Part XI.C. If the first two determinations cannot be made, then the parcel should be added to the list for second round service, unless the parcel has already been included as part of the second round service done at the state office.

4. Stored water

Claimant contact

If the change or expansion is a change or expansion in the place of use of stored water (and the change does not include a change in place of storage), then claimant contact should be made. (See Part XI.D as to change in place of storage.) The claimant should be notified that the claimant must submit some evidence that the change or expansion occurred prior to November 19, 1987;

otherwise the change or expansion will not be recommended. If the evidence supports a finding that the change or expansion occurred prior to November 19, 1987, then the change or expansion should be recommended to the extent verified. The claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C05)

5. Date of change

Claimant contact

The claimant should be notified that the claimant must submit the date of the change and some evidence tending to support that date; otherwise the use of water at the new PU will not be recommended for lack of evidence of a change without injury or a new appropriation not in violation of the mandatory permit statute. (If the change occurred after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after that date.)

If the evidence does not support any finding as to the date of the change, and the PU of the entire right was changed, then the claim should be recommended for disallowal, and should include the following remark: "CHANGE IN USE, INSUFFICIENT EVIDENCE OF DATE OF CHANGE." (P05 and condition P05)

If the evidence does not support any finding as to the date of the change, and the PU of a portion of the right was changed, then the portion of the right still used at the decreed PU should be verified, and only that portion should be recommended. The claim should include the following condition: "CHANGE IN USE OF PORTION OF RIGHT; RIGHT LIMITED TO UNCHANGED PORTION DUE TO INSUFFICIENT EVIDENCE OF DATE OF CHANGE." (C07)

If the evidence supports a finding that the change occurred after November 19, 1987, then the decreed PU should be recommended.

If the evidence supports a finding as to a date of change on or after November 19, 1982, but before November 19, 1987, then proceed to part 6 below.

If the evidence supports a finding that the change occurred before November 19, 1982, then the claimed PU should be recommended unless it is readily apparent that the change resulted in substantial injury. (See Part I below as to injury.) If the change is to be recommended, then the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C05) If substantial injury is readily apparent, then the claim should be referred for further review by legal staff.

NOTE: The sufficiency of the evidence as to the date of the change may vary depending on the circumstances. For example, if the claimant asserts that the change occurred in 1984, but the claimant's evidence only supports a date of 1986, and there are no junior appropriators with a priority between those two dates, then the lack of further evidence makes little difference. Also, further review will be required if a claim has been filed by another claimant for the same right (see Part XI.C as to duplicate claims).

NOTE: Generally, the date of the change in PU may not be the same as or earlier than the cut-off date of the decree (or the effective date of the most recent approved transfer, whichever is later). If the water agent encounters a claim where the evidence supports a finding that the change occurred prior to the cut-off date of the decree, and the difference between the two dates is critical to the recommendation to be made, then the claim should be referred for further review by legal staff.

6. Injury from change

In this part injury means an increase in rate or volume of diversion or a change in place of return flows that affects junior appropriators.

If it can be determined from information already available to IDWR that no injury resulted from the change, then the change should be recommended, and the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C05)

If condition(s) can be readily identified that will prevent injury, then the condition(s) should be included in remarks, and the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C05)

If neither of the above can be determined, then claimant contact should be made. The claimant should be notified that the claimant must submit evidence of non-injury or conditions that will prevent injury; otherwise the use of water at the new PU will be recommended with a priority as of the date of the change to prevent injury.

If the two determinations above still cannot be made, and if the PU of the entire right was changed, then the priority should be changed to the date of the change, and the claim should include the following condition: "PRIORITY DATE CHANGED TO PREVENT INJURY FROM CHANGE IN USE." (C06)

If the two determinations above still cannot be made, and if the PU of a portion of the right was changed, then the portion still used at the original PU should be verified. The claim should be split, with the original claim showing the use at the original PU, and the new claim showing the use at the new PU with a priority as of the date of the change, and the claim numbers should have alpha suffixes. Both should include the following remark: "PRIORITY OF PORTION OF RIGHT CHANGED TO PREVENT INJURY FROM CHANGE IN USE, SEE RIGHT NO. _____." (C01)

7. Expansion in irrigated acres prior to commencement

See Adjudication Memo #16B for more information as to recommendation of expansions in irrigated acreage of decreed rights under the first presumption.

Claimant contact

a. If the source is groundwater located within a critical GW area, then the claimant should be notified that the claimant must submit evidence that the expansion occurred prior to designation of the critical GW area; otherwise the expansion will not be recommended.

b. If the source is not groundwater within a critical GW area, the claimant should be notified that the claimant must submit evidence that the expansion occurred prior to November 19, 1987; otherwise the expansion will not be recommended.

If the evidence does not support a finding that the expansion occurred prior to November 19, 1987, then the expansion should not be recommended.

If the source is groundwater located within a critical GW area, and if the evidence does not support a finding that the expansion occurred prior to designation of the critical GW area, but supports a finding that the change occurred prior to November 19, 1987, then the expansion should not be recommended as part of this right, and the claimant should be contacted to allow the claimant an opportunity to file a new claim for the expansion.

Otherwise, proceed to part c.

c. Can water be beneficially used under the resulting rate of diversion per acre? If the number of acres to be recommended would result in a rate of diversion of less than 1/2 inch (0.01 cfs per acre) at the field headgate for sprinkler systems, or less than 3/4 inch (0.015 cfs per acre) at the field headgate for flood systems, then the claimant must submit information showing that a lower per acre diversion rate is beneficial. If such information is not submitted, then the recommendation should be limited to the number of acres that will result in the diversion rate stated

above. (Note that the claimant contact described above may not be necessary if the claim already fails this test.) If such information is submitted, then the claim should be referred for further review by the bureau chief, and should include the following COMMENT: THE NUMBER OF IRRIGATED ACRES FOR THIS RIGHT WAS DETERMINED BASED ON A DIVERSION RATE OF ___ CFS PER ACRE AT THE FIELD HEADGATE."

d. If the expansion is to be recommended, the claim should be flagged "D", and should include the following condition: "THIS RIGHT INCLUDES AN INCREASE IN IRRIGATED ACRES PURSUANT TO IDAHO CODE 42-1416(1)." (C01)

8. Partial Forfeiture

Is there reason to believe that there has been a five year period of continuous nonuse (or non-beneficial use) subsequent to the cut-off date of the decree?

The partial forfeiture query described in this Part 8, should be completed for each claim in this category, unless it was already done as part of the NU analysis. However, due to the higher standard of proof for establishing forfeiture of a decreed or licensed right, IDWR will not field examine every claim in this category to determine that it has not been partially forfeited. Instead, IDWR will look to information already available to determine if there is some reason to believe that the right may have been partially forfeited, and if so will make a reasonable effort to determine if the right has been partially forfeited.

NOTE: This does NOT mean that if the claim matches the decree or license, then no further review needs to be done. A complete desk review, using information already available to IDWR (such as aerial photography, satellite imagery, the general knowledge of the agent responsible for reviewing claims in the area, etc.) must be completed to determine if there is cause for further investigation.

The partial forfeiture analysis should begin by asking if there is reason to believe that there has been a five year period of continuous nonuse (or non-beneficial use) of a portion of the right subsequent to the cut-off date of the decree. If so, then reasonable efforts should be made to investigate whether a partial forfeiture has occurred (see Part X as to forfeiture analysis). Examples of reason to believe that a partial forfeiture may have occurred include: with irrigation claims, lack of verification of the entire place of use from aerial photography or Landsat data; lack of verification of use in a field exam done to verify a change; significant urbanization within the boundaries of an irrigation district or the service area of a canal company; etc.

The cut-off date of the decree is the date of the decree, unless the decree provides that the water rights determined therein are determined as of a different date. Cut-off dates for recent general adjudications in which IDWR filed a report are set forth in Adjudication Memo #14.

C. CLAIM BASED ON LICENSE

Even where the claimed PU matches the licensed PU for each NU, the claim must still be reviewed for a partial forfeiture as set forth in Part 7 below, unless it was already done as part of the NU analysis.

1. PU claimed is less than licensed PU (If not, then skip this part 1.)

a. Check to see if this claim is part of a water right that was split, but was fully claimed by various claimants, or if it was claimed under another claim. If so, the discrepancy is resolved.

b. If it is apparent that there is a portion of the original right that should be claimed by this claimant, and it is apparent that the claimant simply made a mistake in underclaiming the PU, then claimant contact should be made. If claimant contact is to be made, then the claimant should be notified that the claimant may file an amended claim asserting the full decreed PU; otherwise the claimant will be deemed to have waived the right to the unclaimed portion. If the claimant files an amended claim that matches the decree, then no further review of this item is required. If the claimant does not file an amended claim, then the discrepancy is resolved, and the PU recommended should not exceed the PU claimed.

c. If the first two determinations cannot be made (that the claim has been split and fully claimed, or that the unclaimed portion should be claimed by this claimant), then the place of use of the unclaimed portion should be added to the parcel list for second round service, unless the place of use has already been included as part of the second round service done by the state office.

2. Stored water

a. Verify new PU

Verify new PU as described in part 4 below.

b. Claimant contact

If the change or expansion is a change or expansion in the place of use of stored water (and the change does not include a change in place of storage), then claimant contact should be made. The claimant should be notified that the claimant must submit some evidence that the change or expansion occurred prior to November 19, 1987; otherwise the change or expansion will not be recommended. If the evidence supports a finding that the change or expansion occurred prior to November 19, 1987, then the expansion should be recommended to the extent verified. The claim should be

include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C05)

3. Expansion in irrigated acres

Claimant contact

If the claim includes an expansion in irrigated acres, then the claimant should be contacted to allow the claimant the opportunity to file a new claim based on beneficial use for the additional acres, or to file an application for permit, depending on when use on the additional acres was initiated. The priority date of the new claim may not be earlier than the date the proof due notice was submitted, or earlier than the date of the licensing field exam if the licensing field exam did not confirm the change. (This is similar to claimed expansions of a permit, see Intro Part M. Also, if the new claim is in violation of the mandatory permit statute, then the new claim should be flagged "E" because the second presumption may apply.)

The original claim should be limited to the number of original acres. Where the claim does not include a change in place of use, then the acres to be recommended will be the original acres. Where the claim includes a change in use as well as an expansion, it may be difficult to tell which acres should be recommended. In such cases, a common sense approach should be used, taking into account any information as to where the expansion is likely to have occurred, the nature of the diversion system, etc.

4. Change in use

Verify new PU; field exam, claimant contact

If the new PU is not verified by field exam or other information already available to IDWR (such as aerial photography, etc.), then claimant contact should be made.

The claimant should be notified that the claimant must submit persuasive evidence of the new PU(s) not already verified by IDWR; otherwise the new PU(s) will not be recommended. (A decree, license, or permit is persuasive evidence that a right exists. Verification by field exam is persuasive evidence that a use exists for which a right may exist. Therefore, to be consistent, where a use is claimed that is not verified by a decree, license, permit, or field exam, the claimant must submit other persuasive evidence that use has in fact been made at the new PU.)

The analysis below should be completed as to that portion of the new PU that is verified as described above.

Obviously, if the new PU is not verified, then the new PU may not be recommended. The more difficult issue is what to recommend

instead. The original PU may not be automatically recommended because there may be a forfeiture issue. On the other hand, where the unverified PU gives rise to a question as to the amount of the water right, the right may not automatically be recommended as partially forfeited either. The following are instructions as to what to do with the unverified portion of the claimed change. Where the change in PU also involved a change in NU, then some of the following may have already been done.

If a portion of the claimed change is unverified but the use is still being made at the licensed PU, then the licensed PU should be recommended.

If a portion of the claimed change is unverified, but the lack of verification does not give rise to a partial forfeiture issue, then the licensed PU should be recommended for the unverified portion.

If a portion of the claimed change is unverified, and the lack of verification gives rise to a forfeiture issue, then the forfeiture analysis should be completed as to the unverified portion. If no forfeiture is found, then the licensed PU should be recommended for the unverified portion. (See Part 5 below as to partial forfeiture.)

NOTE: If the claimant erred in describing the PU, then the actual PU should be treated as the claimed PU. Therefore, if the verified PU for each NU matches the licensed PU for each NU, then the actual/licensed PU should be recommended, except as otherwise determined pursuant to the partial forfeiture analysis in Part 5 below. If the verified PU still constitutes a change or an expansion, the analysis below should be completed for the actual PU. An amended claim is required before IDWR may recommend a verified PU that is greater than the claimed PU; an amended claim is not required if the verified PU to be recommended is different but not greater than the claimed PU.

NOTE: In addition to verifying the new PU, the field exam should also verify that water is no longer used at the old PU. What if the examination indicates that use is made at the new PU, but use at the old PU has not ceased? If the claimant is making both uses, then presumably the claimant will claim both uses, and this will be covered in the expansion analysis. If someone else is using water at the old PU and has filed a claim, then this gives rise to an ownership issue that is addressed in Part XI.C. If the first two determinations cannot be made, then the parcel should be added to the list for second round service, unless the parcel has already been included as part of the second round service done at the state office.

5. Date of change

Claimant contact

The claimant should be notified that the claimant must submit the date of the change and some evidence tending to support that date; otherwise the use of water at the new PU will not be recommended for lack of evidence of a change without injury or a new appropriation not in violation of the mandatory permit statute. (If the change occurred after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after that date.)

If the evidence does not support any finding as to the date of the change, and the PU of the entire right was changed, then the claim should be recommended for disallowal, and should include the following remark: "CHANGE IN USE, INSUFFICIENT EVIDENCE OF DATE OF CHANGE." (P05 and condition P05)

If the evidence does not support any finding as to the date of the change, and the PU of a portion of the rights was changed, then the portion of the right still used at the original PU should be verified, and only that portion should be recommended. The claim should include the following condition: "CHANGE IN USE OF PORTION OF RIGHT; RIGHT LIMITED TO UNCHANGED PORTION DUE TO INSUFFICIENT EVIDENCE OF DATE OF CHANGE." (C07)

If the evidence supports a finding that the change occurred after November 19, 1987, then the PU shown on the decree should be recommended.

If the evidence supports a finding as to a date of change on or after November 19, 1982, but before November 19, 1987, the proceed to Part I below (Injury).

If the evidence supports a finding that the change occurred before November 19, 1982, then the claimed PU should be recommended unless it is readily apparent that the change resulted in substantial injury. (See Part I below as to injury.) If the change is to be recommended, then the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C05) If substantial injury is readily apparent, then the claim should be referred for further review by legal staff.

NOTE: The sufficiency of the evidence as to the date of the change may vary depending on the circumstances. For example, if the claimant asserts that the change occurred in 1967, but the claimant's evidence only supports a date of 1969, but there are no junior appropriators with a priority between those two dates, then the lack of further evidence makes little difference. Also, further review will be

required if a claim has been filed by another claimant for the same right (see Part XI.C as to duplicate claims).

NOTE: The date of the change may not be earlier than the date the proof due notice was submitted (or the effective date of the most recent approved transfer, whichever is later). It may not be earlier than the date of the licensing field exam, if the licensing field exam did not confirm the change. (This is similar to claimed expansions of a permit, see Intro Part M.)

6. Injury from change

In this part injury means an increase in rate or volume of diversion or a change in place of return flows that affects junior appropriators.

If it can be determined from information already available to IDWR that no injury resulted from the change, then the change should be recommended, and the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C05)

If condition(s) can be readily identified that will prevent injury, then the conditions should be included in remarks, and the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C05)

If neither of the above can be determined, then claimant contact should be made. The claimant should be notified that the claimant must submit evidence of non-injury or conditions that will prevent injury; otherwise the use of water at the new PU will be recommended with a priority as of the date of the change to prevent injury.

If the two determinations above still cannot be made, and if the PU of the entire right was changed, then the priority should be changed to the date of the change, and the claim should include the following condition: "PRIORITY DATE CHANGED TO PREVENT INJURY FROM CHANGE IN USE." (C06)

If the two determinations above still cannot be made, and if the PU of a portion of the right was changed, then the portion still used at the original PU should be verified. The claim should be split, with the original claim showing the use at the original PU, and the new claim showing the use at the new PU with a priority as of the date of the change, and the claim numbers should have alpha suffixes. Both should include the following remark: "PRIORITY OF PORTION OF RIGHT CHANGED TO PREVENT INJURY FROM CHANGE IN USE, SEE RIGHT NO. _____." (C01)

7. Partial Forfeiture

Is there reason to believe that there has been a five year period of continuous nonuse (or non-beneficial use) subsequent to the date the license was issued?

The partial forfeiture query described in this Part 7 should be completed for each claim in this category, unless it has already been done as part of the NU analysis. However, due to the higher standard of proof for establishing forfeiture of a decreed or licensed right, IDWR will not examine every claim in this category to determine that it has not been partially forfeited. Instead, IDWR will look to information already available to determine if there is some reason to believe that the right may have been partially forfeited, and if so will make a reasonable effort to determine if the right has been partially forfeited.

NOTE: This does NOT mean that if the claim matches the decree or license, then no further review needs to be done. A complete desk review, using information already available to IDWR (such as aerial photography, satellite imagery, the general knowledge of the agent responsible for reviewing claims in the area, etc.) must be completed to determine if there is cause for further investigation.

The partial forfeiture analysis should begin by asking if there is reason to believe that there has been a five year period of continuous nonuse (or non-beneficial use) of a portion of the right subsequent to the date the license was issued. If so, then reasonable efforts should be made to investigate whether a partial forfeiture has occurred (see Part X as to forfeiture analysis). Examples of reason to believe that a partial forfeiture may have occurred include: with irrigation claims, lack of verification of the entire place of use from aerial photography or Landsat data; lack of verification of use in a field exam done to verify a change; significant urbanization within the boundaries of an irrigation district or the service area of a canal company; etc.

NOTE: Lack of beneficial use under a recent license may be an issue where there are multiple claims for the same purposes at the same place of use, the total amount is greater than the amount that can be beneficially used for those purposes at the place of use, and the rights are not supplemental. In such cases, the excess is taken from the most junior rights. See Part VIII below as to other rights.

D. CLAIM BASED ON PERMIT

1. Permits for which a proof due notice was filed prior to commencement

If the claim is based on a permit for which a proof due notice was filed prior to commencement, then contact water allocations staff at the state office before proceeding with review of this claim. See Intro Part M for a general discussion of claims in this category. If the claim is to be recommended with a basis of permit, then proceed with the analysis below.

2. Claim matches permit

If the claimed PU for each NU matches the permit, then no further review of this item is required.

3. Claim less than permit

a. Check to see if this claim is part of a water right that was split, but was fully claimed by various claimants, or if it was claimed under another claim. Check to see if this is a permit that is not required to be claimed. If this resolves the discrepancy, then no further review of this item is required.

b. If it is apparent that there is a portion of the original permit that should be claimed by this claimant, claimant contact should be made. (Generally, there is reason to believe that the claimant simply made a mistake in claiming less than the full right, because partial forfeiture is generally not an issue with claims in this category.) The claimant should be notified that the claimant may file an amended claim asserting the permitted PU(s); otherwise, the claimant will be deemed to have waived the right to the unclaimed portion. If the claimant files an amended claim that matches the permit, then no further review of this item is required. If the claimant does not file an amended claim, then the discrepancy is resolved, and the PU recommended should not exceed the PU claimed.

c. If the determinations above cannot be made, then the place of use of the unclaimed portion should be added to the parcel list for second round service, unless the PU has already been included as part of the second round service done at the state office.

4. Claim different or greater than permit

If the PU for any NU is different or greater than the PU shown on the permit (as amended by any approved amendments to the permit), then the PU shown on the permit should be recommended.

A change in PU may not be recommended for a claim based on a permit, because neither the presumptions nor the accomplished transfer statute applies to permits. The only way to change the PU on a permit is to file an application to amend the permit with IDWR (or to file an application for permit, where the change is actually a new appropriation).

E. CLAIM BASED ON BENEFICIAL USE (INCLUDING STATUTORY CLAIM,
POSTED NOTICE)

1. Verify current use

Field exam, claimant contact

If the claimed PU for any NU is not verified by field exam or other information already available to IDWR (such as aerial photography, etc.), then claimant contact should be made.

The claimant should be notified that the claimant must submit persuasive evidence of the PU(s) not already verified by IDWR; otherwise IDWR will not recommend the unverified PU(s) or the amount of water claimed for the unverified PU(s). (A decree, license, or permit is persuasive evidence that a right exists. Verification by field exam is persuasive evidence that a use exists for which a right may exist. Therefore, to be consistent, where a use is claimed that is not verified by a decree, license, permit, or field exam, the claimant must submit other persuasive evidence that use has in fact been made at the claimed PU.)

If the claimed PU for any NU is significantly less than the PU verified by field exam, then claimant contact should be made.

The claimant should be notified that the claimant may file an amended claim, file an additional claim, file an application for permit, or file an application for transfer for unclaimed PU(s). (The claimant may have four different options here depending on the five different scenarios: to file an amended claim if the use was initiated at the same time as the other uses claimed; to file an amended claim if the other uses may be considered a change in use and the change occurred prior to commencement; to file an application for transfer if the other uses may be considered a change in use and the change occurred after commencement; to file an additional claim if the use was initiated after the other uses claimed and may not be considered a change, and is not in violation of the mandatory permit statute or may be claimed pursuant to the second presumption; or to file an application for permit if the use was initiated after the other uses and may not be considered a change, and is in violation of the mandatory permit statute and may not be claimed pursuant to the second presumption.)

The analysis below should be completed as to the claimed, verified PU. Unverified PU(s) should not be recommended. If the claimant fully claimed the PU but used the wrong legal description, then the actual PU should be treated as the claimed PU. An amended claim is not required where the PU to be recommended is different but not greater than the claimed PU.

2. Stored water

Is there some reason to believe that a change or expansion has occurred?

If not, then review of this item is complete.

If there is reason to believe that there has been a change or expansion in the use of stored water (and the change does not include a change in place of storage), then claimant contact should be made. (A different PU of the stored water on a statutory claim or posted notice is reason to believe that a change or expansion has occurred.)

The claimant should be notified that the claimant must either submit evidence that no change or expansion has occurred, or must submit some evidence that the change or expansion occurred prior to November 19, 1987; otherwise the change or expansion will not be recommended. If the evidence supports a finding that no change or expansion occurred, then no further review of this item is required. If the evidence supports a finding that the change or expansion occurred prior to November 19, 1987, then the change or expansion should be recommended to the extent verified. The claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C05).

3. Has change or expansion occurred?

Is there reason to believe that a change or expansion in PU has occurred? (If not, then skip this Part 3.)

If there is some reason to believe that there has been a change or expansion in the PU for any NU since the priority date to be recommended, then claimant contact should be made. (A different PU for any NU on the statutory claim or posted notice is reason to believe that a change has occurred since the statutory claim was filed or the notice was posted.)

The claimant should be notified that the claimant must either submit evidence that there has been no change or expansion in PU, or must submit the date of the change or expansion and some evidence tending to support that date; otherwise the use of water at the new PU will not be recommended for lack of evidence of a change without injury or a new appropriation not in violation of the mandatory permit statute. (If the change occurred after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after that date.)

NOTE: Where the PU is different than the PU shown on the most recent approved transfer, then a change will be deemed to have

occurred, and it will be deemed to have occurred no earlier than the effective date of the transfer.

a. No change

If the evidence supports a finding that no change or expansion has occurred, then review of this item is complete.

b. Expansion in irrigated acres - claimant contact

If the claim includes an expansion in irrigated acres, then the claimant should be contacted to allow the claimant the opportunity to file a new claim based on beneficial use for the additional acres, or to file an application for permit, depending on when use on the additional acres was initiated. (If the new claim is in violation of the mandatory permit statute, then the new claim should be flagged "E" because the second presumption may apply.)

The original claim should be limited to the number of original acres. Where the claim does not include a change in place of use, then the acres to be recommended will be the original acres. Where the claim includes a change in use as well as an expansion, it may be difficult to tell which acres should be recommended. In such cases, a common sense approach should be used, taking into account any information as to where the expansion is likely to have occurred, the nature of the diversion system, etc.

c. Change

If the evidence does not support any finding as to the date of the change, and the PU of the entire right was changed, then the claim should be recommended for disallowal, and should include the following remark: "CHANGE IN USE, INSUFFICIENT EVIDENCE OF DATE OF CHANGE." (P05 and condition P05)

If the evidence does not support any finding as to the date of the change, and the PU of a portion of the rights was changed, then the portion of the right still used at the original PU should be verified, and only that portion should be recommended. The claim should include the following condition: "CHANGE IN USE OF PORTION OF RIGHT; RIGHT LIMITED TO UNCHANGED PORTION DUE TO INSUFFICIENT EVIDENCE OF DATE OF CHANGE." (C07)

If the evidence supports a finding that the change occurred after November 19, 1987, then the PU shown on the decree should be recommended.

If the evidence supports a finding as to a date of change on or after November 19, 1982, but before November 19, 1987, then proceed to part 4 below.

If the evidence supports a finding that the change occurred before November 19, 1982, then the claimed PU should be recommended unless it is readily apparent that the change resulted in substantial injury. (See Part I below as to injury.) If the change is to be recommended, the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C05) If substantial injury is readily apparent, then the claim should be referred for further review by legal staff.

NOTE: Note that the sufficiency of the evidence as to the date of the change may vary depending on the circumstances. For example, if the claimant asserts that the change occurred in 1967, but the claimant's evidence only supports a date of 1969, and there are no junior appropriators with a priority between those two dates, then the lack of further evidence makes little difference. Also, further review will be required if a claim has been filed by another claimant for the same right (see Part XI.C as to duplicate claims).

NOTE: The date of the change in PU may not be earlier than the effective date of the most recent approved transfer.

4. Injury from change

In this part injury means an increase in rate or volume of diversion or a change in place of return flows that affects junior appropriators.

If it can be determined from information already available to IDWR that no injury resulted from the change, then the change should be recommended, and the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C05)

If condition(s) can be readily identified that will prevent injury, then the conditions should be included in remarks, and the claim should include the following condition: "RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A." (C05)

If neither of the above can be determined, then claimant contact should be made. The claimant should be notified that the claimant must submit evidence of non-injury or conditions that will prevent injury; otherwise the use of water at the new PU will be recommended with a priority as of the date of the change to prevent injury.

If the two determinations above still cannot be made, and if the PU of the entire right was changed, then the priority should be changed to the date of the change, and the claim should include the

following condition: "PRIORITY DATE CHANGED TO PREVENT INJURY FROM
CHANGE IN USE." (C06)

If the two determinations above still cannot be made, and if the PU of a portion of the right was changed, then the portion still used at the original PU should be verified. The claim should be split, with the original claim showing the use at the original PU, and the new claim showing the use at the new PU with a priority as of the date of the change, and the claim numbers should have alpha suffixes. Both should include the following remark: "PRIORITY OF PORTION OF RIGHT CHANGED TO PREVENT INJURY FROM CHANGE IN USE, SEE RIGHT NO. ____." (C01)

F. CLAIM BASED ON SECOND PRESUMPTION OR CRITICAL GW EXPANSION

This Part should be done in conjunction with the NU portion of the analysis (Part V.F).

1. Verify current use

Field exam, claimant contact

If the claimed PU for any NU is not verified by field exam or other information already available to IDWR (such as aerial photography, etc.), then claimant contact should be made.

The claimant should be notified that the claimant must submit persuasive evidence of the PU(s) not already verified by IDWR; otherwise IDWR will not recommend the unverified PU(s) or the amount of water claimed for the unverified PU(s). (A decree, license, or permit is persuasive evidence that a right exists. Verification by field exam is persuasive evidence that a use exists for which a right may exist. Therefore, to be consistent, where a use is claimed that is not verified by a decree, license, permit, or field exam, the claimant must submit other persuasive evidence that use has in fact been made at the claimed PU.)

Unverified PU(s) should not be recommended. If the claimant fully claimed the PU but used the wrong legal description, then the actual PU should be treated as the claimed PU. An amended claim is not required where the PU to be recommended is different but not greater than the claimed PU.

2. Critical GW Expansion

Note Idaho Code §42-1416B expressly provides that an expansion in irrigated acres from groundwater in a critical GW area that occurred after designation of the critical GW area may not include an increase in diversion volume. Therefore, there must be information from which it can be determined that there has been a change in the method of diversion which would allow the same volume to be spread to additional acres, and to determine the number of additional acres (up to the total number of additional acres claimed) to which the original volume can be spread.

If this determination cannot be made, then the claim should be recommended for disallowal, and should include the following remark: "NO LAWFUL APPROPRIATION SHOWN." (P01 and condition P01)

See Adjudication Memo #16B for further information as to review of claims under the critical ground water expansion statute.

VIII. OTHER RIGHTS

This field will not print in the report, and the information in this field is no longer being verified or corrected. The information that is currently in the data base will remain there, at least for the time being.

See Adjudication Memo #16B as to:

- a. combined use limits for water rights used at the same place of use for the same purpose of use, and
- b. combined use remarks for the original right and the expansion right under the second presumption and the critical GW expansion statute.

Adjudication Memo #32 sets forth standard remarks to describe the following:

- a. use is combined with water diverted in another state (F01 - F06),
- b. use is combined with water from a water delivery organization that holds title to the right ("E", "N", "S" and "W" prefixes),
- c. use is combined with water diverted under another right in a basin that has not yet been reported (F07). Contact the technical section supervisor to determine to what extent rights in other sub-basins will be investigated as part of the investigation of rights in this sub-basin.

IX. REMARKS

See Adjudication Memo #32 as to standardized remarks and conditions. Most remarks as to specific elements of a right are noted in the manual in the discussion of that element.

X. FORFEITURE

A. ABANDONMENT

The doctrine of abandonment has been established by case law (unlike forfeiture, which is established by statute). The elements of abandonment are "intent to abandon" the right, **concurrent** with "actual relinquishment" of the right. Intent to abandon must be shown by "clear and unequivocal acts"; nonuse alone is not sufficient, but a substantial period of nonuse gives rise to a **rebuttable** presumption of intent to abandon. Unlike forfeiture, no defenses to abandonment have been recognized.

Since forfeiture is based on nonuse alone (see below), in most cases a determination that a right has been lost will be based on the doctrine of forfeiture, and further inquiry as to abandonment will not be necessary, except perhaps in response to an objection raising a defense to forfeiture. Absent a substantial period of nonuse, abandonment is generally more difficult to prove, due to the requirement of evidence of intent to abandon by "clear and unequivocal acts."

Therefore, where the claim investigation manual indicates that the issue of forfeiture should be investigated, it generally does not include investigation of abandonment. However, if the water agent has information as to "clear and unequivocal acts" evidencing an intent to abandon, then the issue of abandonment should be further investigated.

EXAMPLE: A water right was determined to have been abandoned in one case where a farmer made statements to neighbors to the effect that he'd had enough and wasn't going to try to farm his land anymore, and proceeded to plow under the ditches and dig up the headgates.

B. FORFEITURE

Forfeiture of a water right results from five years continuous nonuse. Since a water right is limited by beneficial use, a water right may be partially forfeited by nonuse of a portion of the right. "Nonuse" includes actual use that is not beneficial, such as unreasonable waste.

NOTE: Does use different than authorized under the right constitute nonuse? If the change was made prior to the mandatory transfer statute, no. If the change is one that may be recommended pursuant to the accomplished transfer statute, probably not. However, if the use is too different, there could be an issue as to whether the use was really pursuant to the right claimed.

There are a variety of defenses to forfeiture. Where a defense to forfeiture is shown, then all or part of the period of nonuse is either disregarded or excused. The burden of proving that a defense to forfeiture exists is on the claimant.

There are various places in the claim investigation manual where the agent is directed to proceed to this Part X if there is some reason to believe that there has been a continuous period of five years nonuse (or nonbeneficial use) of the entire water right or a portion of the right. If so, then the agent should make reasonable efforts to investigate whether there has in fact been a continuous period of five years nonuse (or nonbeneficial use) of the entire water right or the portion of the right.

If there is persuasive evidence of a continuous period of nonuse (or nonbeneficial use) of the entire water right, then the agent should proceed with the analysis beginning at Part C below to determine the effect of the nonuse (or nonbeneficial use) on the validity or priority of the right or the portion of the right. Persuasive evidence is required because the burden is on IDWR to prove forfeiture of a decreed or licensed right by clear and convincing evidence.

If there is not such evidence, then the forfeiture analysis is complete for purposes of preparing the report, but forfeiture will be further examined if the issue is raised in an objection to the recommendation of the water right.

NOTE: Where an irrigation right was originally decreed or licensed in an amount that was in excess of current standards, then the portion of the amount that was in excess of current standards will be analyzed as a partial forfeiture, on the basis that there is some reason to believe that the excess was not beneficially used. This is not contrary to the rule of res judicata (see Intro Part J as to res judicata) because the decree or license is final only as to facts as of the time of the decree or license, and the issue here is whether the excess amount is reasonable under current standards for existing irrigation systems.

The agent should complete the excess irrigation requirement worksheet to determine if there is persuasive evidence that a portion of the right is no longer reasonably required. Where this information is not already available to the agent, then the claimant should be contacted to provide the information. Where an amount in excess of current standards is actually needed under the claimant's irrigation practices, then the claim should be referred to the bureau chief for further review. A policy determination will then be made as to whether that amount is reasonable under the circumstances. Where there are a number of such claims in an area, it may be possible to develop guidelines as "reasonable" excess

diversion requirements in that area, so that referral of each such claim in the area will not be necessary.

NOTE: The analysis below may result in a determination that a portion of the period of nonuse is excused. If the analysis in any point results in a period of less than five years continuous nonuse that is unexcused, the forfeiture review is complete. (For example, if there is a ten year period of nonuse, and four years at the beginning of the period is excused, and two years at the end is unexcused, then there is only a four year period of unexcused nonuse remaining, which, for purposes of preparing the report, is not enough to show forfeiture.) Note also that once IDWR has persuasive evidence of nonuse, the burden of proof shifts to the claimant to show that the nonuse is excused.

C. CLAIMANT IS A CITY

If the claimant is a city, then nonuse during the period that the water right was held by the city is generally excused. The claim should still be referred for further review by legal staff to verify that the nonuse will be deemed excused.

If the claimant is not a city, then proceed with the analysis below. If there was a period of nonuse from which forfeiture might result during a period when the water right was not held by the city, then proceed with the analysis below as to the period when the water right was not held by the city.

D. WATER SUPPLY BANK

Nonuse during the period of time that a water right is credited to a water supply bank is excused. Nonuse prior to the time the water right is acquired by the water supply bank or after it is removed from the water supply bank is still relevant. (Note, however, that nonuse prior to acceptance of a right to the water bank counts only if the water right was not beneficially used while it was in the water bank.)

If a period of nonuse remains from which forfeiture might result, then proceed with the analysis below as to that period.

E. TRANSFER

The agent is generally not required to investigate nonuse prior to effective date of an order approving a transfer. However, if the agent has information as to nonuse prior to the effective date of an uncontested, approved transfer, then the issue of forfeiture arising from the nonuse should be further reviewed as described in the sub-items below.

Where the order approving the transfer provides that the transfer did not address the issue of forfeiture occurring prior to the transfer, then the forfeiture review should be completed in the same manner as for other claims. (Water allocations is now including a standard condition on transfers of rights in the SRBA that approval of the application will not prevent review of the validity and extent of the right transferred in the SRBA.)

If a transfer of a portion of a water right was approved, then this policy generally applies only to the portion transferred.

If a period of nonuse remains from which forfeiture might result, then proceed with the analysis below as to that period.

F. EXTENSION

If there is an approved extension on file with IDWR, and the use is resumed in compliance with the statute, then any nonuse during the period covered by the extension is excused.

The agent is generally not required to investigate nonuse prior to the time the extension was granted. However, if the agent has information as to nonuse prior to the effective date of an uncontested, approved extension, then the issue of forfeiture arising from the nonuse should be further reviewed as described in the sub-items below. The issue of forfeiture prior to the effective date of an extension should also be further reviewed where the order approving the extension provides that the order did not address the issue of forfeiture occurring prior to the extension. (The water allocations section is now including a standard condition on extensions of rights in the SRBA that approval of the application will not prevent review of the validity and extent of the right in the SRBA.)

If there is an approved extension on file with IDWR, and the use was not resumed in accordance with the statute, then the claim should be recommended for disallowal, and should include the following remark: "FORFEITED/ABANDONED." (P04 and condition P04)

If the nonuse occurred after resumption of use in compliance with the statute, then the issue of forfeiture should be further reviewed as described in the sub-items below.

If an extension of a portion of the water right was approved, then this general policy applies only to the portion for which the extension was approved.

NOTE: It may be possible for a claimant to claim an expansion pursuant to the second presumption of a right for which an extension was approved. Since the expansion was not at that time a valid right, an extension would not have been granted for it, even if one had been sought. But the lack of an

extension could result in a determination of forfeiture of the expansion claim. To avoid this "Catch 22," the expansion claim will be deemed to "ride with" the original claim for which the extension was granted. The claimant will still have the burden of showing that an expansion was in fact made.

If a period of nonuse remains from which forfeiture might result, then proceed with the analysis below as to that period.

G. CROPLAND SET-ASIDE PROGRAM

If the claim is for stockwater incidental to irrigation, and/or irrigation, then nonuse will be excused during the period of time that the land was in a cropland set aside program. The claim file should include some documentation from ASCS that identifies the parcel of land and the time that it was in set-aside. (Although the burden is on the claimant to produce this documentation, the agent may contact ASCS directly if this would save time for the agent.)

Note that periods of nonuse both before and after the time the land was in set-aside count toward the five year total (so a period of four years nonuse before the land went into set-aside and a period of two years nonuse after the period covered by the extension would result in forfeiture.)

If a portion of the land to which the water was appurtenant was in a cropland set-aside program, then this analysis applies only to the portion for which the extension was approved.

If a period of nonuse remains from which forfeiture might result, then proceed with the analysis below as to that period.

H. NON-AVAILABILITY OF WATER

If the reason for nonuse was that water was not available under the claimant's priority, then the nonuse is excused during the period that water was not available. The agent should look to information already available to IDWR to determine if the nonuse may be excused on this basis. Further investigation of this issue will be made if the issue is raised in an objection to a recommendation of forfeiture or partial forfeiture.

NOTE: The excuse of non-availability of water does not apply if the claimant would not or could not have used the water even if it had been available. For example, if the evidence of nonuse consists of evidence that the diversion system was removed ten years ago, then the fact that water would not have been available during two of those years does not excuse the nonuse. (The burden of proving this defense to forfeiture, as with other defenses to forfeiture, lies with the claimant, but claimant contact will generally not be made to obtain this

information for purposes of preparing the report. If there is doubt as to whether the defense has been shown, then the right should be recommended as forfeited.) For claims to water in water districts, watermaster records should provide information as to whether water was available and was delivered.

I. RESUMPTION OF USE

a. Claimant contact

Use of water after forfeiture may be resumed if there are no appropriators from the same source with a priority after the claimant's priority and before the date the use was resumed, even if the resumption was after the mandatory permit statute. If there are appropriators from the same source with a priority between the claimant's priority and the date of resumption, then the resumption of use is treated as a new appropriation based on beneficial use, and the mandatory permit statute applies.

If the water right is currently in use, but there is a continuous period of five years unexcused nonuse of all or part of the right, then claimant contact should be made. Notify the claimant that the claimant must submit evidence of resumption of use, the date the use was resumed, and some evidence tending to support that date; otherwise the water right will be recommended as forfeited by nonuse (or will be recommended as limited to that portion not forfeited by nonuse). The evidence required to show resumption of use is the same kind of evidence necessary to prove the amount of a claim based on beneficial use, in other words, verification by field exam or other information already available to IDWR, or other persuasive evidence submitted by the claimant (see Part V.E.1). The evidence required to support the date of resumption is the same kind of evidence required for proof of priority of a claim based on beneficial use (see Part II.D.1).

b. Nonuse of entire right, resumption of use of all or portion of right

If the evidence is sufficient to support a finding that use of the entire right was resumed and the date as of which the use was resumed, and there are no appropriators from the same source with a priority between the claimant's priority and the date of resumption, then the period of nonuse should be deemed excused.

If the evidence is sufficient to support a finding that use of a portion of the right was resumed and the date as of which the portion of the right was resumed, and there are no appropriators from the same source with a priority between the claimant's priority and the date of resumption, then the period of nonuse of that portion should be deemed excused, and the portion not resumed

should be deemed forfeited. The right should include the following COMMENT: "PORTION OF RIGHT FORFEITED/ABANDONED."

If the evidence is sufficient to support a finding that use of the entire right was resumed, and the date as of which the use was resumed, BUT there are appropriators from the same source with a priority between the claimant's priority and the date of resumption, then the basis of the claim should be changed to beneficial use, the priority date should be changed to the date of resumption, and the claim should be reviewed as a claim based on beneficial use. If the claim is to be recommended, it should include the following condition: "PRIORITY DATE AND BASIS OF RIGHT CHANGED DUE TO FORFEITURE AND RESUMPTION OF USE AFTER INTERVENING APPROPRIATION." (C08) If the claim may not be recommended based on beneficial use, then the right should be recommended for disallowal, and should include the following remark: "FORFEITED/ABANDONED." (P04 and condition P04)

If the evidence is sufficient to support a finding that use of a portion of the right was resumed, and the date as of which the use was resumed, BUT there are appropriators from the same source with a priority between the claimant's priority and the date of resumption, then the claim should be limited to the portion of the right that was resumed. The basis of the claim should be changed to beneficial use and the priority date should be changed to the date of resumption. If the claim is to be recommended, it should include the following condition: "PORTION OF RIGHT FORFEITED/ABANDONED; PRIORITY AND BASIS OF REMAINDER OF RIGHT CHANGED DUE TO FORFEITURE AND RESUMPTION OF USE AFTER INTERVENING APPROPRIATION."

If the evidence is not sufficient to support a finding that use of the water right was resumed, or the evidence is not sufficient to support a finding as to the date of resumption of the use, then the claim should be recommended for disallowal, and should include the following remark: "FORFEITED/ABANDONED." (P04 and condition P04)

J. "DROUGHT" RIGHTS

Generally, the lack of need for the water does not constitute a defense to forfeiture - on the contrary, the purpose of the forfeiture doctrine is to prevent speculation in or hoarding of water by those who do not need it. There is, however, one very limited exception.

For example, the claimant has surface water rights that, together with natural precipitation, are usually sufficient to irrigate her crops; in addition, the claimant has a licensed ground water right that she needs, on average, only one year in ten. Has the ground water right been forfeited by nonuse? Where the purpose of the water right is to provide supplemental water in drought years, and the right is used consistent with that purpose,

then nonuse of the right during wet or normal years should not result in forfeiture.

K. STORED WATER

The above analysis also applies to stored water. Beneficial use of stored water, however, requires both storage of the water and use of the water stored. Where application of the analysis results in a preliminary determination that a right has been forfeited because water has been stored but has not been put to beneficial use, then the claim should be referred for further review by the bureau chief.

XI. MISCELLANEOUS

A. APPROVAL CONDITIONS ON PERMITS, LICENSES, AND TRANSFERS

See Adjudication Memo #32 as to when and how approval conditions on permits, licenses, and transfers should be carried over into the recommendation of a claim.

B. SPLIT RIGHTS, SPLITS ADD UP TO MORE THAN ORIGINAL RIGHT

Where the water rights are split by conveyance to different owners, then the general rule is that the water right is divided up in the same proportion as the land. There are two exceptions to this rule. The first exception is where the deed conveying the land expressly states how the water right will be divided. The second exception that may exist is where there is persuasive evidence that a specific portion of the water right is appurtenant to a specific portion of the tract of land.

(An example of the second exception is where there is a 40 acre tract with a right to 40 inches for irrigation plus an additional amount for one house. The owner conveys 20 acres plus the house to one person, and the other 20 acres to another person. The first person gets the domestic portion, and two split the irrigation portion equally, unless the deed says otherwise.)

First, it should be determined if each claim from the original right is consistent with the general rule that the water right is divided in the same proportion that the land is divided. For each claim that is not consistent with the general rule, claimant contact should be made. The claimant should be notified that the claim will be limited to the portion that is consistent with the portion of the land the claimant owns unless the claimant submits evidence that the claimant is entitled to a greater portion. If the claimant submits evidence that the claimant is entitled to a greater portion of the original right, then the claim should be referred for further review by legal staff. If it is confirmed that the claimant acquired a greater portion of the original right, then the recommendation of this claim and the other splits should be modified accordingly. If not, then the portion of the claim that is not consistent with the portion of the land the claimant owns should be treated as a new appropriation.

So, what about the 40 acre tract with the 40 inch right that has only 30 irrigable acres that is now in three different parcels with different owners? Here there are two issues: splits and forfeiture. Generally, the split analysis should be done first, and then the forfeiture analysis should be done for each claim. If one claimant now owns 20 acres that includes the ten nonirrigable acres, and it can be shown the claimant does not reasonably require more than an inch per acre, then the claimant originally acquired a right to 20 inches and forfeited the right to 10 inches.

C. DUPLICATE CLAIMS

Duplicate claims refers to the situation where two or more claimants file different claims to the same right, and it isn't a split.

The first task is to find out if they are in fact duplicate claims. In some instances we have received duplicate claims not because the claimants are contesting who owns the right, but because they are co-claimants who did not know who should file, so they both did. Claimant contact should be made for both claims, which says: we have these claims filed for the same right by these persons: we're sending letters to both/all of you; would one of you like to withdraw the claim and get your money back (and leave the claim in the other claimant's name, or have the other claimant file an amended claim to include your name), or are you contesting ownership with these other people? If a duplicate claim is withdrawn, then there is no problem. If the claimant is contesting ownership, then the claimant needs to submit evidence that the claimant does in fact own the water right claimed.

The general rule governing transfers of water rights is that the water right passes with the land unless the deed specifically states otherwise, or unless a contrary MUTUAL intent is clearly demonstrated. (The most typical example of a clearly demonstrated contrary mutual intent is where the contract makes specific provisions as to water rights that are not repeated in the deed. There may be others.) This is known as the silent deed rule.

When duplicate claims are filed, and it is determined that one claim should be recommended for disallowal on the basis that the right is owned by another claimant, then the claim that is disallowed should include the following remark: "RECOMMENDED AS RIGHT NO. _____." (P06 and condition P06.)

When duplicate claims are filed by the state and another entity for water rights on lands leased from the state by the other entity, then the claimant contact described above should be made to the other entity only. (It is already known that the state plans to file claims for all water rights on state lands). If the other entity does not withdraw the claim, then the other entity should be listed as a current owner on the state's claim. The other entity's name should appear on the recommendation of the state's claim in the following form: JOHN SMITH, LESSEE. The other entity's claim should be recommended for disallowal, with the remark and condition described above.

When duplicate claims are filed by the United States and another entity for water rights on lands leased from the United States by the other entity, then the claimant contact described above should be made to the other entity only. (It is already known that the United States plans to file claims for all water

rights on federal lands.) If the other entity does not withdraw the claim, then the claim should be referred to the bureau chief for further review.

In all other instances where duplicate claims are filed by the owner and a lessee of the owner's lands, then the claimant contact described above should be made, and the claimant contact should further state that if the claim is not withdrawn, then the claimant must submit a copy of the lease agreement. The claim should then be referred to legal staff for further review.

D. CHANGE IN PLACE OF STORAGE; CHANGE FROM STORAGE TO DIRECT FLOW OR VICE VERSA

The fundamental issue with such claims, as with any claim that includes an accomplished transfer, is whether the change results in injury to junior water rights. It has not yet been possible to devise a general analysis that would apply to all such claims. Therefore, the water agent should complete the investigation of the claim, and then refer the claim to the technical section supervisor for further review.

CLAIM INVESTIGATION HANDBOOK: CLAIMANT CONTACT CHECKLIST

Name and Address

___ Change in address/ownership (#1)

Priority

___ Claim based on decree

___ More recent adjudication (#3)

___ Priority claimed later than decreed priority (#2)

___ Claim based on license

___ Prior adjudication (#3) (See also #27, which combines #2 and #3; and #25 which combines of #3 and #4.)

___ Priority claimed earlier than licensed priority (#4)

___ Priority claimed later than licensed priority (#2)

___ Claim based on permit

___ Permit lapsed (#5)

___ Priority claimed earlier than permit proposed priority (#4)

___ Priority claimed later than permit proposed priority (#2)

___ Claim based on beneficial use

___ Prior adjudication (#3)

___ Claim based on posted notice

___ Prior adjudication (#6) (If #6 is checked, then #7 or #8 must also be checked. #6 is a combination letter than includes alternate language for #7 and #8.)

___ Priority date claimed same as or earlier than date of posting (#7)

___ Priority date claimed later than date of posting (#8)

Source

___ Claim based on decree or license

___ Date of change (#9)

___ Claim based on beneficial use

___ No change/date of change (#9)

Point of diversion

___ Claim based on decree or license

___ Date of change (#9)

___ Claim based on beneficial use

___ No change/date of change (#9)

Nature of Use, Amount of each NU, and Total Amount

___ Claim based on decree or license

___ Amount claimed greater than amount decreed (#10)

___ Additional NU claimed (#11)

___ NU or amount underclaimed (#12)

___ Claim based on older decree, NU not stated in decree (#13)

___ Date of change (#14)

___ Verify change (#15)

___ Injury from change (#16)

___ Claim based on permit

___ Amount claimed greater than amount of permit (#10)

___ Additional NU claimed (#11)

___ NU or amount underclaimed (#12)

___ Claim based on beneficial use

___ Verify current use (#17)

___ Unclaimed verified NU(s) or amounts (#18)

___ Reasonableness of verified use (#19)

___ Increase in total amount (#20)

___ No change/date of change (#14)

___ Injury from change (#16)

Place of Use

___ Claim based on decree or license

___ Verify change (#21)

___ Date of change (#22)

___ Injury from change (#23)

___ Claim based on beneficial use

___ Verify current use (#17)

___ Unclaimed verified PU (#18)

___ No change/date of change (#22)

___ Injury from change (#23)

Total or Partial Forfeiture

___ No nonuse/resumption of use (#24)

GENERAL

Each letter should include the claim number(s) and the response due date in the caption.

If the notice of claim shows an attorney, then the claimant contact letter should be addressed to the attorney, and should identify the name of the claimant as well as the claim number. If the letter is addressed to an attorney, then everywhere the text says "you" or "your" should be changed to say "your client" or "your client's."

Each letter should include a closing stating whom the claimant should call for further information.

Some of the letters cover several types of claimant contact, and contain material in brackets which indicates some type of editing is required. The material in brackets is either instructions to the person preparing the letter as to which of the following paragraphs should be included, or indicates alternate language, one of which should be included and the other deleted.

CHANGE IN ADDRESS/OWNERSHIP

Letter No. 1

IDWR records currently show the following name and address for the claimant of the Notice(s) of Claim(s) listed above:

If the address shown is incorrect, then please complete the enclosed change in address form and return it to this office. If there has been a change in the owner of the water right(s) claimed in the Notice(s) of Claim(s), then please complete the enclosed change in ownership form and return it to this office.

Your response must be received by this office by the response date shown above. If proper notice of a change in address or ownership is not received, then all legal notices that IDWR is required by law to be mailed to the claimant of the Notice(s) of Claim(s) will be sent to the name and address currently shown by IDWR records, and this notice will be deemed legally sufficient.

[This letter may need to be modified where a change in address/ownership form has been provided but is for some reason inadequate, to identify the inadequacy and how it should be remedied.]

PRIORITY

Letter No. 2

Claim based on decree, license or permit, priority claimed later than decreed, licensed, or proposed permit priority

The priority date claimed on the Notice of Claim listed above is:

IDWR records currently show the following as the [decreed] [licensed] [proposed permit] priority date for the water right claimed in the Notice of Claim listed above:

You may amend your Notice of Claim to claim the earlier, [decreed] [licensed] [proposed permit] priority date. A computer generated copy of your Notice of Claim is enclosed, which is the same as your original Notice of Claim except that the priority date has been changed to show the earlier, [decreed] [licensed] [proposed permit] priority date. If you wish to amend your Notice of Claim, then sign the enclosed form, have your signature notarized, and return it to this office. (Please note that the requirements for signature of an amended claim are the same as for the original claim.)

Your response must be received by this office by the response date shown above. If you do not amend your Notice of Claim, then you may be deemed to have waived the right to claim the earlier, [decreed] [licensed] [proposed permit] priority date.

PRIORITY

Letter No. 3

Claim based on decree, more recent adjudication; claim based on license, older license or beneficial use, more recent adjudication

[If the claim is based on decree, then include the following paragraph.]

Water rights from the source claimed in the Notice of Claim listed above were adjudicated in the following case after the decree listed as the basis for the Notice of Claim:

[If the claim is based on license or beneficial use, then include the following paragraph.]

Water rights from the source claimed in the Notice of Claim listed above were adjudicated in the following case after the priority date claimed in the Notice of Claim:

[For all letters, state name of case, name of court, civil number if there is one, and date of decree.]

To establish the priority date claimed in the Notice of Claim, you must submit evidence showing that the owner of the water right at the time of the case listed above was not joined as a party in the case, or that the water right was not required to be claimed in the case.

[If the water right could still be recommended based on beneficial use even if the claimant is bound by the later decree, then include the following paragraph, and enclose a proof of beneficial use priority brochure.]

If you do not submit such evidence, then your Notice of Claim will be treated as claiming a water right based on beneficial use with a priority date after the cut-off date for claiming rights in the case listed above. To establish a priority date for a claim based on beneficial use, you must submit some evidence tending to show the earliest date the water right was actually used. A brochure describing the types of evidence that can be submitted for this purpose is enclosed.

[In all letters, include the following paragraph.]

Your response must be received by this office by the response date shown above. If no response is received, then your claim will be recommended for disallowal on the basis that it was lost when it was not claimed in the later adjudication.

PRIORITY

Letter No. 4

Claim based on license or permit, priority claimed earlier than licensed or proposed permit priority

The priority date claimed on the Notice of Claim listed above is:

IDWR records currently show the following as the [licensed] [proposed permit] priority date:

To establish a priority date earlier than the [licensed] [proposed permit] priority date, you must submit evidence of actual use of the right as of the priority date claimed (or at least as of a date earlier than the [licensed] [proposed permit] priority date).

[If the claim is to ground water, the licensed or proposed permit priority date is after the mandatory permit statute, and the right claimed is not for a small D&S use, then add the following paragraph.]

The evidence must show use before March 25, 1963, when the mandatory permit statute for ground water was enacted, or that the water right was initiated before March 25, 1963, and was completed within a reasonable time after that date.

[If the claim is to surface water, the licensed or proposed permit priority date is after the mandatory permit statute, and the right claimed is not for instream stockwater, then add the following paragraph.]

The evidence must show use before May 20, 1971, when the mandatory permit statute for surface water was enacted, or that the water right was initiated before May 20, 1971, and was completed within a reasonable time after that date.

[In all letters, include the following paragraph.]

Your response must be received by this office by the response date shown above. If such evidence is not received, then the earliest priority that may be recommended is the [licensed] [proposed permit] priority date.

PRIORITY
Permit lapsed

Letter No. 5

The Notice of Claim listed above is based on a permit that has lapsed. Before IDWR may recommend the claim, you must do one of the following:

1. Follow the statutory procedure for reinstatement of permits.
2. Submit the date the water right was first put to beneficial use, and submit evidence of actual use of the right as of the date submitted.

[If the claim is to ground water, the proposed permit priority date is after the mandatory permit statute, and the right claimed is not for a small D&S use, then add the following paragraph.]

If you choose the second option, then the evidence must show use before March 25, 1963, when the mandatory permit statute for ground water was enacted, or that the water right was initiated before March 25, 1963, and was completed within a reasonable time after that date.

[If the claim is to surface water, the proposed permit priority date is after the mandatory permit statute, and the right claimed is not for instream stockwater, then add the following paragraph.]

If you choose the second option, then the evidence must show use before May 20, 1971, when the mandatory permit statute for surface water was enacted, or that the water right was initiated before May 20, 1971, and was completed within a reasonable time after that date.

[For all letters, include the remaining text.]

If the permit is reinstated, then the claim will be recommended as a claim based on the reinstated permit. If you submit evidence of the date of first use of the water right, then your claim will be reviewed as a claim based on beneficial use, and will be recommended to the extent supported by your evidence.

Your response must be received by this office by the response date shown above. If no response is received, then your claim will be recommended for disallowal on the basis that the permit lapsed.

PRIORITY

Claim based on posted notice, prior adjudication

[Whenever the claim investigation manual indicates that this type of claimant contact is required, one of the three other types of claimant contact for priority date of posted notice claims will also be required. This sample letter incorporates the text for the other posted notice/priority claimant contact.]

Water rights from the source claimed in the Notice of Claim listed above were adjudicated in the following case after the priority date claimed in the Notice of Claim:

[Show name of case, name of court, civil number if there is one, and date of decree.]

To establish the priority date of the water right claimed, you must submit the following evidence.

1. First, to establish any priority before the cut-off date of the decree in the case listed above, you must submit evidence showing that the owner of the water right at the time of the case listed above was not joined as a party in the case, or that the water right was not required to be claimed in the case.

[If the priority date claimed is the same as or earlier than the date of posting, then include the following part 2.]

2. If the evidence described in paragraph 1 is submitted (supporting a pre-decree priority date), then additional evidence must be submitted to support the specific pre-decree priority date of the claimed water right. The evidence may be either of the two following types.

a. You may submit evidence of a priority date as of the date the notice was posted. Such evidence must show completion of the water right described in the posted notice by actual use within a reasonable time following the date the notice was posted. Completion within five years is generally considered reasonable, but longer periods may be considered reasonable depending on the circumstances.

b. You may submit evidence of a priority date as of the date of beneficial use. Such evidence must tend to show the earliest date the water right was put to actual use. If such evidence is submitted, then your claim will be treated as a claim based on beneficial use. A brochure describing the types of evidence that can be submitted for this purpose is enclosed.

[If the priority date claimed is later than the date of posting, then include the following part 2.]

2. If the evidence described in paragraph 1 is submitted (supporting a pre-decree priority date), then additional evidence must be submitted to support the specific pre-decree priority date claimed. This evidence may be either of the two following types. Please note that the priority date claimed is later than the date of posting shown on the posted notice.

a. You may submit evidence of a priority date as of the date the notice was posted. Such evidence must show completion of the water right described in the posted notice by actual use within a reasonable time following the date the notice was posted. Completion within five years is generally considered reasonable, but longer periods may be considered reasonable depending on the circumstances. If you choose this option, you may wish to amend your Notice of Claim to claim the date of posting, which is earlier than the priority date claimed.

b. You may submit evidence of a priority date as of the date of beneficial use. Such evidence must tend to show the earliest date the water was put to actual use. If such evidence is submitted, then your claim will be treated as a claim based on beneficial use. A brochure describing the types of evidence that can be submitted for this purpose is enclosed.

[If the water right could still be recommended based on beneficial use even if the claimant is bound by the decree, then include the following paragraph.]

3. If the evidence described in paragraph 1 is not submitted, then your claim will be treated as a claim based on beneficial use with a priority date after the cut-off date for claiming rights in the case listed above. Some evidence must still be submitted tending to show the earliest date the water right was actually used.

[In all letters, include the following paragraph.]

Your response must be received by this office by the response date shown above. If no response is received, then your claim will be recommended for disallowal for lack of proof of priority date.

PRIORITY

Letter No. 7

Claim based on posted notice, priority claimed same as or earlier than date of posting

The Notice of Claim listed above is based on a posted notice. To establish the priority date of the water right claimed, you must submit one of two types of evidence.

First, you may submit evidence of a priority date as of the date the notice was posted. Such evidence must show completion of the water right described in the posted notice by actual use within a reasonable time following the date the notice was posted. Completion within five years is generally considered reasonable, but longer periods may be considered reasonable depending on the circumstances.

Second, you may submit evidence of a priority date as of the date of beneficial use. Such evidence must tend to show the earliest date the water right was put to actual use. If such evidence is submitted, then your claim will be treated as a claim based on beneficial use. A brochure describing the types of evidence that can be submitted for this purpose is enclosed.

Your response must be received by this office by the response date shown above. If no response is received, then your claim will be recommended for disallowal for lack of proof of priority date.

PRIORITY

Letter No. 8

Claim based on posted notice, priority claimed later than date of posting

The Notice of Claim listed above is based on a posted notice, and claims a priority date later than the date of posting shown on the posted notice. To establish the priority date of the water right claimed, you must submit one of two types of evidence.

First, you may submit evidence of a priority date as of the date the notice was posted. Such evidence must show completion of the water right described in the posted notice by actual use within a reasonable time following the date the notice was posted. Completion within five years is generally considered reasonable, but longer periods may be considered reasonable depending on the circumstances. If you choose this option, you may wish to amend your Notice of Claim to claim the date of posting, which is earlier than the priority date claimed.

Second, you may submit evidence of a priority date as of the date of beneficial use. Such evidence must tend to show the earliest date the water was put to actual use. If such evidence is submitted, then your claim will be treated as a claim based on beneficial use. A brochure describing the types of evidence that can be submitted for this purpose is enclosed.

Your response must be received by this office by the response date shown above. If no response is received, then your claim will be recommended for disallowal for lack of proof of priority date.

SOURCE AND PD

Letter No. 9

**Claim based on decree or license, date of change;
Claim based on beneficial use, no change/date of change**

IDWR's initial investigation of the Notice of Claim listed above indicates that there has been a change in [source] [point of diversion] as described below:

[Previous source:
New source:]

[Previous point(s) of diversion:
New point(s) of diversion:]

A water right owner who has made a change in use of a water right prior to commencement of the SRBA without prior IDWR approval may claim the change in the SRBA. IDWR may recommend a right as changed, however, only if the change meets certain requirements. One of those requirements is that the change not result in injury to other water rights, or that the change be conditioned to prevent injury to other water rights.

[If the claim is based on a decree or license, then include the following paragraph.]

Before IDWR may recommend your claim, you must provide IDWR with the date the change was made and some evidence tending to support that date. If the change was made before November 19, 1987, then the date provided must include the month, day and year. If the change was made after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after November 19, 1987. An information sheet is enclosed that describes the types of evidence that can be submitted for showing the date of the change.

[If the claim is based on beneficial use, then include the following paragraph.]

Before IDWR may recommend your claim, you either must provide IDWR with evidence that there has been no change (that the current [source] [point of diversion] is the original [source] [point of diversion]), or you must provide IDWR with the date the change was made and some evidence tending to support that date. If the change was made before November 19, 1987, then the date provided must include the month, day and year. If the change was made after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after November 19, 1987. An information sheet is enclosed that describes the types of evidence that can be submitted for showing the date of the change.

[For all letters, include the following paragraph.]

Your response must be received by this office by the response date shown above. If no response is received, then your claim to water from the new [source] [point of diversion] will not be recommended to be decreed.

NU AND AMOUNT

Letter No. 10

Claim based on decree, license, or permit, amount claimed greater than amount decreed, licensed, or permitted

IDWR's initial investigation of the Notice of Claim listed above indicates that the amount claimed is greater than the amount shown by the [decree] [license] [permit] on which the claim is based.

Amount claimed:

[Decreed] [Licensed] [Permitted] amount:

Additional amount claimed in excess

of [decreed] [licensed] [permitted] amount:

A separate notice of claim must be filed for the additional amount, and the appropriate filing fee must be paid. A notice of claim form and instructions for filing a notice of claim are enclosed.

Your notice of claim for the additional amount must be received by this office by the response date shown above. If an additional notice of claim is not received, then the additional amount will not be recommended to be decreed.

NU AND AMOUNT

Letter No. 11

Claim based on decree, license, or permit; additional NU claimed

IDWR's initial investigation of the Notice of Claim listed above indicates that a purpose of use was claimed that is in addition to the purpose(s) of use shown on the [decree] [license] [permit].

Claimed and [decreed] [licensed] [permitted] purpose(s) of use:

Additional purpose(s) of use not shown on [decree] [license] [permit]: [include amount for each PU]

A separate notice of claim must be filed for the additional purpose(s) of use, and the appropriate filing fee must be paid. A notice of claim form and instructions for filing a notice of claim are enclosed.

Your notice of claim for the additional purposes of use must be received by this office by the response date shown above. If an additional notice of claim is not received, then the additional purpose(s) of use will not be recommended to be decreed.

NU AND AMOUNT

Claim based on decree, license, or permit, NU or amount underclaimed

Letter No. 12

IDWR's initial investigation of the Notice of Claim listed above indicates that you might not have fully claimed the water right described in the [decree] [license] [permit] upon which the claim is based. If you believe that you have not fully claimed all of the purposes of use for your water right, the amount of water for any purpose of use, or the total amount of water, then you may amend your claim to fully claim the right as it was [decreed] [licensed] [permitted]. (An additional filing fee may be required in some circumstances.)

A computer-generated copy of your Notice of Claim is enclosed. If you wish to amend your claim, simply write in any changes in the appropriate spaces, initial the changes, sign the form and have your signature notarized, and return the claim to this office. (The requirements for signature of an amended claim are the same as for the original claim.)

Your response must be received by this office by the response date shown above. If you do not amend your Notice of Claim, then you may be deemed to have waived the right to claim any amount or purpose(s) of use that were not claimed in your original Notice of Claim.

[If it is clear what the claimant should be claiming - there is no issue as to a split water right or a change in use - then a notice of claim with the appropriate changes may be prepared, in which case the letter should be modified accordingly (the filing fee should be stated in the letter). The first paragraph of the letter may also be modified to indicate more clearly to the claimant in what respect the water right might be underclaimed.]

NU AND AMOUNT

Claim based on older decree, NU not stated in decree

Letter No. 13

The Notice of Claim listed above is based on a decree; however, IDWR's initial investigation of the claim indicates that there is no specific support in the decree for the following claimed purpose(s) of use:

To support a claim to the purpose(s) of use listed above, you must submit one of the following types of evidence.

1. To establish that the purpose(s) of use listed above are part of the original, decreed purposes of use, you must submit documents from the record of the case or other evidence showing

that the purpose(s) of use listed above were uses made at the time of the decree.

[If the NUs listed can be considered a change in use of the original right, then include the following paragraph 2. If the PUs listed can be considered a change in use of stored water, then the claimant need only show that the listed Nus were made prior to November 19, 1987, and the letter should be modified accordingly.]

2. If such evidence is not submitted, IDWR may treat the purpose(s) of use listed above as a change in use of the water right, which IDWR may recommend if the change meets certain requirements. One of the requirements is that the change must have occurred prior to November 19, 1987; another requirement is that the change must not result in injury to other water rights. Before IDWR may recommend the purpose(s) of use listed above as a change in purpose of use, you must provide IDWR with the date the change was made and submit some evidence tending to support that date. If the change was made before November 19, 1987, then the date provided must include the month, day and year. If the change was made after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after November 19, 1987. An information sheet is enclosed that describes the types of evidence that can be submitted for showing the date of the change.

[If the PUs listed above are additional NUs, then include the following paragraph 2.]

2. If such evidence is not submitted, then a separate notice of claim must be filed, the purposes of use listed separate notice accompanied by the appropriate filing fee. A notice of claim form and instructions for filing a notice of claim are enclosed.

[For all letters, include the following paragraph.]

Your response must be received by this office by the response date shown above. If no response is received, then the purposes of use listed above (and the amount of water claimed for those purposes of use) will not be recommended to be decreed.

NU AND AMOUNT

Letter No. 14

Claim based on decree or license, date of change;

Claim based on beneficial use, no change/date of change

IDWR's initial investigation of the Notice of Claim listed above indicates that there has been a change in purpose of use of the claimed water right from the previous purpose(s) of use to the new purpose(s) of use listed below.

New purpose(s) of use:

A water right owner who has made a change in use of a water right prior to commencement of the SRBA without obtaining IDWR approval may claim the change in the SRBA. IDWR may recommend the right as changed, however, only if the change meets certain requirements. One of those requirements is that the change not result in injury to other water rights, or that the change be conditioned to prevent injury to other water rights.

[If the claim is based on a decree or license, then include the following paragraph.]

Before IDWR may recommend your claim, you must provide IDWR with the date the change was made and some evidence tending to support that date. If the change was made before November 19, 1987, then the date provided must include the month, day and year. If the change was made after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after November 19, 1987. An information sheet is enclosed that describes the types of evidence that can be submitted for showing the date of the change.

[If the claim is based on beneficial use, then include the following paragraph.]

Before IDWR may recommend your claim, you must either provide IDWR with evidence that there has been no change (that the claimed purpose(s) of use were the original purpose(s) of use), or provide IDWR with the date the change was made and some evidence tending to support that date. If the change was made before November 19, 1987, then the date provided must include the month, day and year. If the change was made after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after November 19, 1987. An information sheet is enclosed that describes the types of evidence that can be submitted for showing the date of the change.

[For all letters, include the following paragraph.]

Your response must be received by this office by the response date shown above. If no response is received, then the purpose(s)

of use listed above (and the amount of water for those purpose(s) of use) will not be recommended to be decreed.

[If the listed PUs can be considered a change in use of stored water, then the claimant need only submit evidence that the change occurred prior to November 19, 1987, and the letter should be modified accordingly.]

NU AND AMOUNT

Letter No. 15

Claim based on decree or license, verify change

The Notice of Claim listed above claims a change in the purpose of use of the water right, but IDWR has so far been unable to verify the amounts of water for each of the new purpose(s) of use listed below.

[Unverified] [Partially unverified] new purpose of use:
Amount claimed:
Amount verified:

To establish the amount and purpose(s) of use of the water right claimed, you must submit evidence of use of the amount of water claimed for each purpose of use listed above.

Your response must be received by this office by the response date shown above. If no response is received, then the unverified new purpose(s) of use will not be recommended to be decreed. [Lack of verification of a claimed change may or may not result in a reduction of the total amount of water to be recommended, so be careful in modifying the wording of this paragraph.]

NU AND AMOUNT
Injury from change

Letter No. 16

IDWR's initial investigation of the Notice of Claim listed above indicates that there has been a change in purpose of use of the claimed water right from the previous purpose(s) of use to the claimed purpose(s) of use listed below:

Previous purpose(s) of use:
New purpose(s) of use:

A water right owner who has made a change in use of a water right prior to commencement of the SRBA without obtaining IDWR approval may claim the change in the SRBA. IDWR may recommend a right as changed, however, only if the change meets certain requirements.

Before IDWR may recommend the change in purpose of use claimed in the Notice of Claim listed above, you must submit evidence that the change will not result in injury to other water rights, or that the change can be conditioned to avoid injury to other water rights.

Your response must be received by this office by the response date shown above. If no response is received, then the earliest priority date that can be recommended for the new purpose(s) of use listed above is the date the change was made, to prevent injury to other water rights.

[This letter should not be needed unless the claimant has responded to the first letter asking for the date of the change. This is not included in the date of change letter because it may not be known that the second letter is needed until the first letter is answered. If it is known that evidence of no injury will be necessary before the date of change information is sought, then this letter should be combined with the date of change letter.]

NU AND AMOUNT, PU

Letter No. 17

Claim based on beneficial use, verify current use

[If current use is partially unverified, use the following text.]

IDWR has investigated the Notice of Claim listed above. IDWR has so far been unable to verify the [amount] [purpose(s) of use] [place(s) of use] listed below.

Amount claimed:

Amount unverified:

Unverified purpose(s) of use:

Unverified place(s) of use:

[Where there are multiple purposes of use, for which the amount or place of use is unverified or partially unverified, then the amounts and places of use should be separately listed for each purpose of use.] [If the place of use is partially verified, then the unverified portion should be stated.

Example: Irrigation, acreage in excess of 34 acres in NSW Section 21.]

To establish the [amount] [purpose(s) of use] [place(s) of use] of the water right claimed, you must submit persuasive evidence of use of the unverified portions of your claim listed above.

Your response must be received by this office by the response date shown above. If no response is received, then the unverified portion of your claim will not be recommended to be decreed. [Lack of verification of a claimed NU or PU may or may not result in reduction of the total amount of water to be recommended, so be careful in modifying the wording of this paragraph.]

[If the claim is wholly unverified, use the following text.]

IDWR has investigated the Notice of Claim listed above, but so far has been unable to verify the any of the use(s) claimed. To establish the existence of the right, you must submit persuasive evidence of the use(s) claimed.

Your response must be received by this office by the response date shown above. If no response is received, then your claim will be recommended for disallowal on the basis that no beneficial use was found.

NU AND AMOUNT, PU

Letter No. 18

Unclaimed verified NU(s) or amounts; unclaimed verified PU

IDWR has investigated the Notice of Claim listed above, and the following [unclaimed use(s)] [partially claimed use(s)] [unclaimed place(s) of use] were discovered:

[Unclaimed purpose(s) of use:]

[Partially unclaimed purpose(s) of use:]

[Purpose of use:
Unclaimed place of use:]

In order to confirm or establish a right to continue the unclaimed [uses] [place(s) of use], you may want to do one of the following:

1. Amend your Notice of Claim,
2. File an additional Notice of Claim,
3. File an application for permit, or
4. File an application for change in use.

Which of these actions is the most appropriate means to conform or establish a right to continue the unclaimed uses will depend on the nature of your existing right(s) and the date when the unclaimed uses were initiated.

If you wish to confirm or establish a right to continue the unclaimed uses, please contact this office for further information by the response date shown above. Although an application for permit or change in use may be filed at any time, an amended claim or an additional claim must be filed promptly for the use(s) listed above to be considered by IDWR and included in the Director's recommendations to the district court.

NU AND AMOUNT

Letter No. 19

Claim based on beneficial use, reasonableness of verified use

The Notice of Claim listed above states that it is based on beneficial use. Two of the requirements that must be met before IDWR may recommend the amount of water claimed are: 1) there must be actual use of the amount claimed, and 2) the amount claimed must be reasonable for the purpose for which it is used. The initial investigation of the claim indicates that the following amount(s) claimed is greater than the amount reasonably required for the purpose for which it is claimed.

Purpose of use	Amount claimed	Reasonable amount after initial exam
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To establish the amount of water for the purpose(s) of use listed above, you must submit evidence showing that each amount listed above is reasonable for the purpose for which it is claimed.

[If the purpose of use is irrigation, please see the forms developed for excessive flow analysis.]

[add paragraph]

Your response must be received by this office by the response date shown above. If no response is received, then IDWR will not recommend an amount to be decreed that is in excess of the amount in the right column above.

NU AND AMOUNT

Letter No. 20

Claim based on beneficial use, increase in total amount

IDWR's initial investigation of the Notice of Claim listed above indicates that there has been an increase in the total amount of water used since the priority date claimed in the Notice of Claim, as shown below:

Amount claimed:
Priority date claimed:
Amount originally used:

To establish a right to the amount claimed, you must do one of the following.

1. To establish a right to the amount claimed with the priority date claimed, you must submit evidence showing that the amount claimed was the amount put to beneficial use at the time of the priority date claimed.

2. In the alternative, you may file a separate notice of claim for the amount in excess of the amount originally used, with a priority as of the date the increase in amount occurred. The notice of claim must be accompanied by the appropriate filing fee, and you will be required to submit some evidence tending to support the priority date claimed.

Your response must be received by this office by the response date shown above. If no response is received, then the amount in excess of the amount originally used will not be recommended to be decreed.

PU

Letter No. 21

Claim based on decree or license, verify change

The Notice of Claim listed above claims a change in place of use of the water right, but IDWR has so far been unable to verify the new place(s) of use for the purpose(s) of use listed below.

Claimed purpose of use:

Unverified place of use:

[If place of use is partially verified (particularly with irrigation claims, then the unverified portion should be stated. Example: Irrigation, acreage in excess of 34 acres in NWSW section 21.]

To establish the place(s) of use of the claimed water right, you must submit evidence of use of water for the purpose claimed at the place(s) of use listed above.

Your response must be received by this office by the response date shown above. If no response is received, then the unverified portions of your claim will not be recommended to be decreed. [Lack of verification of a claimed PU may or may not result in reduction of the total amount of water to be recommended, so be careful in modifying the wording of this paragraph.]

PU

Letter No. 22

Claim based on decree or license, date of change;

Claim based on beneficial use, no change/date of change

IDWR's initial investigation of the Notice of Claim listed above indicates that there has been an change in place of use of the water right, to the new place(s) of use for the purposes of use listed below.

Purpose of use:

New place of use: [Where only a portion of the place of use is new, list only the new portion.]

A water right owner who has made a change in use of a water right prior to commencement of the SRBA without obtaining IDWR approval may claim the change in the SRBA. IDWR may recommend a right as changed, however, only if the change meets certain requirements. One of those requirements is that the change not result in injury to other water rights.

[If the claim is based on a decree or license, then include the following paragraph.]

Before IDWR may recommend your claim, you must provide IDWR with the date the change was made and submit some evidence tending to support that date. If the change was made before November 19, 1987, then the date provided must include the month, day and year. If the change was made after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after November 19, 1987. An information sheet is enclosed that describes the types of evidence that can be submitted for showing the date of the change.

[If the claim is based on beneficial use, then include the following paragraph.]

Before IDWR may recommend your claim, you must either provide IDWR with evidence that there has been no change (that the claimed place(s) of use were the original place(s) of use), or provide IDWR with the date the change was made and some evidence tending to support that date. If the change was made before November 19, 1987, then the date provided must include the month, day and year. If the change was made after November 19, 1987, then a specific date is not necessary, and the evidence need only support that the change occurred sometime after November 19, 1987. An information sheet is enclosed that describes the types of evidence that can be submitted for showing the date of the change.

[For all letters, include the following paragraph.]

Your response must be received by this office by the response date shown above. If no response is received, then your claim to

water for the new place(s) of use will not be recommended to be decreed. [Lack of verification of a claimed change may or may not result in a reduction of the total amount of water to be recommended, so be careful in modifying the wording of this paragraph.]

[If the claim is for an expansion in irrigated acreage of a decreed right under the first presumption, or a change in place of use of stored water, then the claimant need only show that the change occurred before November 19, 1987, and the letter should be modified accordingly.]

PU

Injury from change

IDWR's initial investigation of the Notice of Claim listed above indicates that the claim includes a change in place of use from the previous place(s) of use to the new place(s) of use [for the purpose(s) of use] shown below.

[Purpose of use:]
Original place of use:
New place of use:

[If the place of use was changed only for some of the purpose(s) of use, then include the bracketed text above. If the claimed right was supplemental at the previous place of use and was moved without the other rights at the previous place of use, then include the bracketed text below.]

[In addition, IDWR's initial investigation indicates that the Notice of Claim listed above is for a right that was supplemental to another right at the previous place of use, but the other right was not moved along with the right claimed in the Notice of Claim listed above.]

A water right owner who has made a change in use of a water right prior to commencement of the SRBA may claim the change in the SRBA. IDWR may recommend the right as changed, however, only if the change meets certain requirements.

Before IDWR may recommend the change in place(s) of use listed above, you must submit evidence that the change not result in injury to other water rights, or that the change can be conditioned to prevent injury to other water rights. [In particular, this evidence must show that moving the water right claimed in the Notice of Claim listed above without the other rights used at the previous place of use did not result in an enlargement of either right, or that the rights can be conditioned to prevent an enlargement in use of either right.]

Your response must be received by this office by the response date shown above. If no response is received, then the earliest priority date that may be recommended for the water claimed for the new place(s) of use listed above will be the date the change was made, to prevent injury to other water rights.

FORFEITURE
Resumption of use

Letter No. 24

IDWR's initial investigation of the Notice of Claim listed above indicates that [the water right] [the following portion of the water right] claimed was not used during the following period.

[Portion not used:]
Period of nonuse:

Under Idaho law, [a water right] [a portion of a water right] may be forfeited by five years continuous nonuse. The use of water may be resumed under some circumstances, but resumption of use after forfeiture will sometimes result in a change in the priority date of the water right to the date use was resumed.

Before IDWR may recommend [the claim] [the portion of your claim] listed above, you must submit one of two types of evidence. First, you may submit evidence showing use of the water during the period listed above. Such evidence must show use frequent enough to leave no five year period of nonuse. Second, you may provide IDWR with the date of resumption (including month, day and year) and submit some evidence tending to support that date.

Your response must be received by this office by the response date shown above. [For total forfeiture, add the following sentence: If no response is received, then your claim will be recommended for disallowal on the basis that the water right was forfeited by nonuse.] [For partial forfeiture, add the following sentence: If no response is received, then the portion of your claim listed above will not be recommended to be decreed.]

PRIORITY - COMBINATION

Letter No. 25

Claim based on older license, prior adjudication; and priority claimed earlier than licensed priority

Water rights from the source claimed in the Notice of Claim listed above were adjudicated in the following case after the priority date claimed in the Notice of Claim.

[Show name of case, name of court, civil number if there is one, and date of decree.]

To establish the priority date of the water right claimed, you must submit the following evidence.

1. First, in order to establish any priority before the cut-off date of the decree in the case listed above, you must submit evidence showing that the owner of the water right at the time of the case was not joined as a party in the case, or that the water right was not required to be claimed in the case.

2. If the evidence described in paragraph 1 is submitted (supporting a pre-decree priority date), then to establish a priority date prior to the licensed priority date, you must submit strong evidence of actual use of the entire right as of the priority date claimed (or at least as of a date prior to the licensed priority date).

[If the claim is to ground water, the licensed or proposed permit priority date is after the mandatory permit statute, and the right claimed is not for a small D&S use, then add the following paragraph.]

The evidence must show use before March 25, 1963, when the mandatory permit statute for ground water was enacted, or that the water right was initiated before March 25, 1963, and was completed within a reasonable time after that date.

[If the claim is to surface water, the licensed or proposed permit priority date is after the mandatory permit statute, and the right claimed is not for instream stockwater, then add the following paragraph.]

The evidence must show use before May 20, 1971, when the mandatory permit statute for surface water was enacted, or that the water right was initiated before May 20, 1971, and was completed within a reasonable time after that date.

[If both the priority claimed and the priority licensed is before the cut-off date of the prior decree, then include the following two paragraphs.]

3. If the evidence described in paragraph 1 is not submitted, then your claim will be treated as a claim based on beneficial use with a priority date after the cut-off date for claiming rights in the case listed above. Some evidence must still be submitted tending to show the earliest date the water right was actually used. A brochure describing the types of evidence that can be submitted for this purpose is enclosed.

Your response must be received by this office by the response date shown above. If no response is received, your claim will be recommended for disallowal on the basis that it was forfeited when it was not claimed in the case listed above.

[If the priority claimed is before the cut-off date of the prior decree, but the licensed priority date is not, then include the following paragraph.]

Your response must be received by this office by the response date shown above. If no response is received, then the earliest priority date that may be recommended is the licensed priority date.

PRIORITY - COMBINATION

Letter No. 26

Claim based on license, prior adjudication; and priority claimed later than licensed priority

Water rights from the source claimed in the Notice of Claim listed above were adjudicated in the following case after the priority date claimed in the Notice of Claim:

[State name of case, name of court, civil number if there is one, and date of decree.]

To establish the claimed priority date, you must submit evidence showing that the owner of the water right at the time of the case listed above was not joined as a party in the case, or that the water right was not required to be claimed in the adjudication.

Please note, however, that the priority date claimed is later than the licensed priority date currently shown by IDWR records. If the evidence described above is submitted, then you may wish to amend your Notice of Claim to show the earlier, licensed priority date. Absent an amendment to the Notice of Claim, the earlier licensed priority date may not be recommended.

[If the water right could still be claimed based on beneficial use even if the claimant is bound by the decree, then include the following two paragraphs.]

If the evidence described above is not submitted, then your Notice of Claim will be treated as claiming a water right based on beneficial use with a priority date after the cut-off date for claiming rights in the case listed above. To establish a priority date for a claim based on beneficial use, you must submit some evidence tending to show the earliest date the water right was actually used. A brochure describing the types of evidence that can be used for this purpose is enclosed.

[For all letters, include the following paragraph.]

Your response must be received by this office by the response date shown above. If no response is received, then your claim will be recommended for disallowal on the basis that it was forfeited when it was not claimed in the case listed above.

**IDWR INFORMATION SHEET
EVIDENCE OF DATE OF CHANGE**

If you have received a letter from the Idaho Department of Water Resources informing you that you need to provide IDWR with the date of the change in use of your water right and evidence to support that date, the information below will assist you in finding or preparing the necessary documentation.

DATE OF CHANGE: WHY IS IT IMPORTANT?

Changes in use of a water right can include, for example, a change in place of use (where the water is used on different land), a change in point of diversion (where water is diverted from the source at a different location), or a change in purpose of use (examples of different purposes of use include irrigation, aquaculture, domestic, stockwater, commercial, industrial, municipal, etc.)

A water right owner who has made a change in use of a water right prior to November 19, 1987, may claim the right as changed in the SRBA.* IDWR, however, may only recommend the right as changed if the change meets certain requirements. One of those requirements is that the change not result in injury to other water rights, or that the change be conditioned to prevent injury to other water rights. The date the change was made is needed to make the injury determination.

* A water right owner who wishes to make a change in use of the water right is required apply to IDWR and obtain approval before making the change. Where the owner made the change prior to commencement of the SRBA, without obtaining IDWR approval, the right can be claimed as changed in the Notice of Claim filed in the SRBA.

WHAT KIND OF EVIDENCE IS REQUIRED?

Some evidence is required that supports the date provided by you as the date the change was made. Documentation of the date the change was made will be sufficient if it tends to show:

1. The new use of water (diversion at the new point of diversion, use at the new place of use, or use for the new purpose of use),
2. As of the date provided by you as the date of change.

**SOME EXAMPLES OF DOCUMENTS WHICH
MAY BE EVIDENCE OF THE DATE OF CHANGE**

These are only examples and there may be other types of documents not listed that would be acceptable.

1. Affidavits - a notarized statement of someone with personal knowledge of the change in use and when it was made. Personal knowledge means someone who observed the change in use,

not someone who was told of it by someone else.

2. Records of the person or business who sold, installed, or constructed the new diversion works could be evidence of a change in point of diversion, and might apply to other changes in use as well.

3. For a change in point of diversion of ground water, the report of the well driller who drilled the new well.

4. For a change in place of use of irrigation claims, crop reports or aerial photography crop production on the new place of use. Information on aerial photography can be obtained from the U.S. Geological Survey at the following address:

EROS Data Center
User Services Section
Sioux Falls, SD 57198
Phone: (605) 594-6151

5. County assessor records may be useful to show a change in place of use or change in purpose of use, where the property is taxed based on the use of the property.

6. Income tax records may be useful to show a change in purpose of use where the records show income from use of water for the new purpose.

7. Other types of records or permits may be useful, such as building or health permit to show a commercial use, etc.

WHAT IF I AM UNABLE TO OBTAIN ANY OF THE EVIDENCE LIST ABOVE?

If you cannot furnish some proof such as the examples listed above, you may submit your own testimony, in the form of an affidavit (a letter signed by you and notarized), which explains your knowledge of the change, when the change was made, and the basis for your knowledge. The letter should include a statement of the claimant's personal knowledge of the change in use, but may include information the claimant obtained from others.

WHAT WILL HAPPEN IF THE DATE OF CHANGE AND SOME INFORMATION SUPPORTING THE DATE OF CHANGE ARE NOT SUBMITTED?

IDWR will not recommend the change in use, which may result in a reduction in the amount of water recommended. For example, with a change in point of diversion, IDWR will not recommend the amount of water claimed for diversion at the new point of diversion; with a change in place of use, IDWR will not recommend the amount of water claimed for use at the new place of use; and for a new purpose of use, IDWR will not recommend the amount of water claimed for the new purpose of use. IDWR cannot simply recommend the original use, since this may be a second change that could result in injury to other water rights. On the other hand, IDWR cannot recommend the change unless IDWR can make a determination that the change occurred prior to commencement of the adjudication and the change did not result in injury. The date the change was made and some evidence supporting the date is essential information.

EXHIBIT C

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

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

Petitioner,

vs.

Case No. 39576

United States; State of Idaho;
and all claimants to the use
of water from the Snake River
Basin Water System,

Respondents.

CONFERENCE

PLACE: Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho

DATE: April 16, 1993



COURT REPORTING

537 W. Bannock
Suite 205

P.O. Box 578
Boise, Idaho 83701

(208) 336-9208

Original

EX IDWR 311

A P P E A R A N C E S

For the Idaho Department
of Water Resources:

A. LYNNE KROGH-HAMPE, Esq.
and NICHOLAS B. SPENCER, Esq.
Deputy Attorneys General
1301 North Orchard
Boise, Idaho 83706
David Shaw, Bureau Chief

Also Present:

For Hagerman Water Right
Claimants:

HEPWORTH, NUNGESTER & LEZAMIZ
by JOHN C. HOHNHORST, Esq.
and PAT BROWN, Esq.
133 Shoshone Street North
Twin Falls, Idaho 83303

1 exception to that is where the claim is in excess of an inch
2 per acre, that has to be justified by the claimant.

3 MR. BROWN: So if there's a decreed right for
4 more than an inch per acre, who would have the burden of
5 proof for forfeiture?

6 MS. KROGH-HAMPE: The burden of proving that
7 they're entitled to more than an inch per acre would be on
8 the claimant.

9 MR. BROWN: Okay; so then --

10 MS. KROGH-HAMPE: Now, with respect to a
11 decree that was entered within the last five years, the
12 issue would arise as to whether there had been a sufficient
13 change in circumstances, sufficient change in technology,
14 sufficient change in any of the factors giving rise to
15 reasonableness to say is it worth making the further
16 inquiry, but the statute flat out says more than an inch per
17 acre has to be justified.

18 MR. BROWN: So if it's more than an inch per
19 acre even if it's decreed, your analysis isn't really a
20 forfeiture analysis, it's an analysis that says the claimant
21 has the burden of proof.

22 MS. KROGH-HAMPE: I think we're talking, I
23 think we are getting into semantics. What we're trying to
24 determine is whether a portion of the water right has been
25 forfeited. The way we do that is by looking to see whether

1 under current circumstances that amount in excess of an inch
2 per acre that was decreed some decades ago is still
3 reasonable.

4 MR. BROWN: Okay, you mentioned and the book
5 mentions that there's differences between old decrees and
6 new decrees. Can you explain that distinction?

7 MS. KROGH-HAMPE: There can be a number of
8 reasons why there might be a difference between an old
9 decree and a new decree. For example, in the Payette
10 adjudication, that was a decree done pursuant to the current
11 adjudication statute -- well, no, done under a statute
12 that's similar to the current adjudication statute. The
13 director was a party to it. It is therefore going to be
14 more complete and more consistent than many of the decrees
15 that were done back at the turn of the century, and the
16 decrees themselves vary a grade deal in what they
17 determine. Some decrees determine point of diversion, some
18 decrees don't. Some decrees determine season of use, some
19 decrees don't. The recent decrees in which the Department
20 has participated will, but some of the old ones simply have
21 omissions. There's probably other examples I can't think of
22 off the top of my head, but those are the ones that jump
23 immediately to mind.

24 MR. BROWN: So it doesn't depend on the age of
25 the decree, it depends upon what was omitted or included in

1 a decree based on what kind of deference you give to the
2 decree?

3 MS. KROGH-HAMPE: No. Well, it's not a matter
4 of whether or not we defer to the decree on the forfeiture
5 issue. Forfeiture we're looking at after the decree and the
6 decree determined what it determined as of the date it
7 determined it. With forfeiture, you're looking at, okay,
8 some decades after that decree are the circumstances still
9 the same. Have the circumstances changed so that what was
10 reasonable at the time of the decree is no longer reasonable
11 under current practices.

12 MR. HOHNHORST: Let me ask you a question on
13 something that you said earlier because I want to make sure
14 I understand it. Let's say that John Doe, Claimant, makes a
15 claim and says I have a farm in Hagerman, Idaho, and I think
16 I'm entitled to two-and-a-half inches of water an acre and
17 he sends you a copy of a decree that says John Doe, you get
18 two-and-a-half inches of water per acre, a 1935 decree. Do
19 I have it right that you're going to respond to the claimant
20 by saying we want to make you justify two-and-a-half inches
21 an acre under existing today's conditions without regard to
22 your existing decree; right?

23 MS. KROGH-HAMPE: If the Department did not
24 already information available to it to demonstrate that
25 two-and-a-half inches per acre were reasonable under current

1 standards, then, yes, we would contact the claimant seeking
2 information that would justify two-and-a-half inches per
3 acre.

4 MR. HOHNHORST: And if the claimant responded
5 and you did not regard the response as satisfactory, the way
6 that that would manifest itself in the recommendation is
7 everything over the inch per acre would be deemed
8 forfeited?

9 MS. KROGH-HAMPE: Anything that was claimed in
10 excess of the amount that the information available to us
11 supported as reasonable would be recommended for disallowal
12 on the basis of partial forfeiture.

13 MR. HOHNHORST: Okay.

14 (Noon recess.)

15 MR. SPENCER: Before we move into the next
16 item, I'd like to raise a matter just for clarification,
17 some stuff that I thought about over the lunch hour. I
18 rather got the impression that you gentlemen were under the
19 impression that in all cases when a field exam is done that
20 an actual measurement of water is taken and that is not the
21 case. There's essentially a rule of thumb sense applied and
22 if, for instance, taking the Hagerman Valley you have a
23 claimant that claims he is irrigating a 40 acre tract and
24 his source is the Buckeye Ditch running along one side of
25 that tract and he is claiming X amount of water, it's often

AUTHENTICATION

This is to certify that the foregoing
conference held in Re the General Adjudication of Rights to
the Use of Water from the Snake River Basin Water System,
commencing at 9:30 a.m., on April 9, 1993, at the offices of
the Idaho Department of Water Resources, 1301 North Orchard,
Boise, Idaho, is a true and correct transcript of said
conference.


CONSTANCE S. BUCY
Certified Shorthand Reporter



EXHIBIT D

D

HEPWORTH, NUNGESTER & LEZAMIZ,
CHARTERED
133 Shoshone St. North
P.O. Box 389
Twin Falls, ID 83303-0389
Telephone: (208)734-7510
Attorneys for Claimant
(PPK\PDB\21530INT.2\lmr)

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

* * * * *

In Re the General Adjudication
of Rights to the Use of Water
from the Snake River Basin
Water System

Case No. 39576

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

HAGERMAN WATER RIGHT OWNERS,
INC. AND ITS INDIVIDUAL
MEMBERS' SECOND SET OF
INTERROGATORIES AND FIRST SET
OF REQUESTS FOR PRODUCTION OF
DOCUMENTS TO IDAHO DEPARTMENT
OF WATER RESOURCES

Petitioner,

vs.

United States; State of Idaho;
and all claimants to the use
of water from the Snake River
Basin Water System,

Respondents.

TO: THE IDAHO DEPARTMENT OF WATER RESOURCES AND ITS
ATTORNEY OF RECORD:

HAGERMAN WATER RIGHT OWNERS, INC. AND ITS INDIVIDUAL MEMBERS'
SECOND SET OF INTERROGATORIES AND FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO IDAHO DEPARTMENT OF WATER RESOURCES - 1

LAW OFFICES

HNL

epworth,
ungester,
lezamiz

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2
3 INTERROGATORY NO. 1: For each claim, identified by name
4 and number above, please state which, if any, of the specific
5 rules, regulations, guidelines and policies produced under the
6 above Requests for Production you relied on in reviewing the
7 respective claim and making your recommendation to the court.

8 Dated this 24 day of February, 1993.

9 HEPWORTH, NUNGESTER & LEZAMIZ,
10 CHARTERED

11 By: 
12 Patrick D. Brown
13 Attorneys for H.W.R.O., Inc.

14 CERTIFICATE OF MAILING

15 The undersigned, a resident attorney of the State of
16 Idaho, with offices at 133 Shoshone St. North, P.O. Box 389, Twin
17 Falls, Idaho 83303, and one of the attorneys for the respondents
18 in this matter, certifies that he caused to be mailed a copy of the
19 above and foregoing SECOND SET OF INTERROGATORIES AND FIRST SET OF
20 REQUESTS FOR PRODUCTION OF DOCUMENTS on the 24 day of February,
21 1993, to:

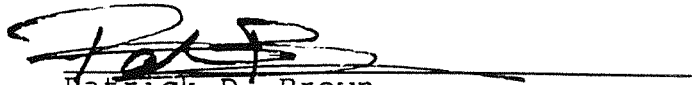
22 Chief, Natural Resources Division (1)
23 Office of Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449



Hepworth,
Nungester,
& Lezamiz

HAGERMAN WATER RIGHT OWNERS, INC. AND ITS INDIVIDUAL MEMBERS'
SECOND SET OF INTERROGATORIES AND FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO IDAHO DEPARTMENT OF WATER RESOURCES - 7

1 The United States Department of Justice (1)
2 Environment and Natural Resources Division
3 550 West Fort Street, Box 33
4 Boise, ID 83734

5 
6 Patrick D. Brown

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Hepworth,
Nungester,
& Lezamiz

HAGERMAN WATER RIGHT OWNERS, INC. AND ITS INDIVIDUAL MEMBERS'
SECOND SET OF INTERROGATORIES AND FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO IDAHO DEPARTMENT OF WATER RESOURCES - 8

LARRY ECHOHAWK
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER
Deputy Attorney General
Natural Resources Division
Statehouse, Room 210
Boise, Idaho 83720
(208) 334-2400
FAX (208) 334-2690

Attorneys for Petitioner

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 Drainage
Basin Water System

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

Petitioner,

vs.

United States; State of Idaho;
and all unknown claimants to
the use of water from the
Snake River Drainage Basin
Water System,

Respondents.

Case No. 39576

IDAHO DEPARTMENT OF WATER
RESOURCES' FIRST
SUPPLEMENTAL ANSWERS TO
DISCOVERY BY HAGERMAN
WATER RIGHT OWNERS, INC.

INTERROGATORY NO. 1 DATED FEBRUARY 24, 1993:

SUPPLEMENTAL ANSWER: The IDWR supplements its answers in five parts:

PART I: The only rules and regulations adopted for adjudications are the Adjudication's Rules and Regulations, governing the filing of claims and claim filing fees. General policies and procedure for review and recommendation of all claims, including the claims of members of Hagerman, are set forth in the Claims Investigation Manual and the Adjudication Memorandums. The methodology for reviewing claims to water for irrigation in excess of an inch per acre is set forth in the Hubble Report. The IDWR applied this methodology to the claims held by members of Hagerman. In addition, the IDWR followed the policies set forth in the various Administrator's Memorandums, where applicable. The IDWR made available to Hagerman the (1) Adjudication Rules and Regulations, (2) the Claims Investigation Manual, (3) the Adjudication Memorandums, and (4) the

Administrator's Memorandums on March 12, 1993 when IDWR served its response to the Hagerman's discovery and public records request. The IDWR provided a copy of the Adjudication Rules and Regulations as Attachment 3 to its original answers. The Claims Investigation Manual, the Adjudication Memorandums, and Administrator's Memorandums were produced and made available for inspection and copying by Hagerman pursuant to I.R.C.P. 33(c). See a letter dated March 12, 1993, which is attached as Attachment 10. Moreover, a copy of the Claims Investigation Manual was provided to counsel in open court on April 7, 1993. Tr. Vol. I, p. 231, L. 19 through p. 232, L. 9. . . .

VERIFICATION

STATE OF IDAHO)
) ss.
County of Ada)

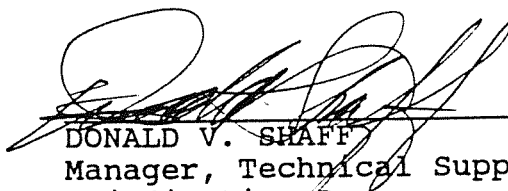
Donald V. Shaff, being first duly sworn on oath, deposes and states:

I am the Manager of the Technical Support Section of the Adjudication Bureau of the Idaho Department of Water Resources and an authorized representative for the Idaho Department of Water Resources. I have read the foregoing responses to interrogatories and requests for production and believe to the best of my knowledge and belief that the responses to the interrogatories and requests for production are true and correct as they relate to the following:

1. Supplement to Interrogatory No. 2 dated February 19, 1993: Part I (a), (b), (c), (d), and (e).
Part II (a), (b), (d), (e) and (f).
2. Supplement to Interrogatory No. 1 dated February 24, 1993: Parts I, III, and IV.
3. Supplement to Request for Production dated February 24, 1993:
4. Response to Informal Request: Parts I and II.

I have insufficient information to verify the remaining information in these answers and have no information about the delivery of documents to Hagerman.

IDAHO DEPARTMENT OF WATER RESOURCES

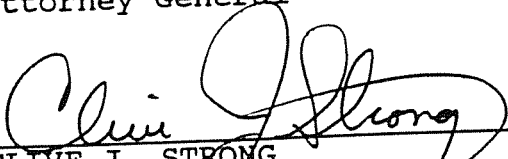

DONALD V. SHAFF
Manager, Technical Support Section
Adjudication Bureau

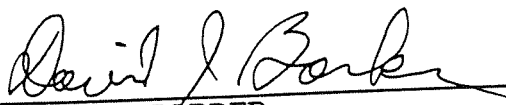
Subscribed and sworn to before me this 23rd day of April, 1993.


Notary Public for Idaho
Residing in Boise, Idaho
My Commission expires: 6/16/1994

DATED this 22d day of April, 1993.

LARRY ECHOHAWK
Attorney General


CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division


DAVID J. BARBER
Deputy Attorney General
Natural Resources Division


A. LYNNE KROGH-HAMPE
Deputy Attorney General
Idaho Department of Water Resources

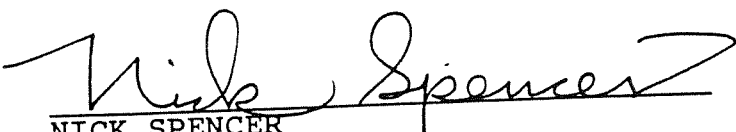

NICK SPENCER
Deputy Attorney General
Idaho Department of Water Resources



EXHIBIT E

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE
DISTRICT OF IDAHO, SOUTHERN DIVISION.

NEW INTERNATIONAL MORTGAGE
BANK, a corporation,

Plaintiff,

-vs-

IDAHO POWER COMPANY, a
corporation, et al,

Defendants.

In Equity No. 1602

D E C R E E OF COURT
DISTRICT OF IDAHO

W. D. McNEIL
Deputy

WHEREAS, The above entitled action having heretofore been submitted to the court upon pleadings and stipulations of fact, on file herein, and WHEREAS, the court being duly advised in the premises, and having made its findings of fact and conclusions of law;

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, That all of the land described in the complaint of the plaintiff, and in the answers, cross-complaints, and counter-claims of the defendants and intervenors, and each of them, is semi-arid in character and requires the artificial application of water or irrigation in order to produce thereon ordinary agricultural crops; that said land is situated in what is known as the Hagerman Valley, east of and adjacent to the Snake River, and that the same lies between the rim rock, or canyon wall, to the east of the Snake River and said Snake River; that the subsoil of said valley underlying said valley and all of the soil is shattered, fissured lava flow, upon which has been deposited layers of clay and gravel, interspersed with water worn boulders, fragments of rock, and the soil is composed mainly of decomposed lava rock, oxidized lava rock and sand, and that owing to the nature of the soil and subsoil, the coarse texture and the mechanical composition of the soil and its free drainage, the said land and all of the land

in Hagerman Valley requires a large amount of water, as hereinafter specified, for its successful irrigation and production thereon of ordinary agricultural crops.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That said land, and all of the same, is situated in what is known as the Hagerman Valley, in Gooding County, Idaho, excepting certain lands of the Idaho Power Company situated on the south side of Snake River, which lands are in Twin Falls County, Idaho; said Hagerman Valley being a small valley or cove on the east side of the Snake River between "Thousand Springs" on the south and "Lower Salmon Falls" on the north, comprising approximately 16,000 acres of land lying between the rim rock on the east and the Snake River on the west; that in the land, territory, and country immediately to the east of said Hagerman Valley there is underground flowage of water, flowing towards the Snake River, which comes to the surface in numerous springs, seeps, and trickles along said rim rock, and in numerous and divers other springs located in the said Hagerman Valley, and that said underground flowage of water is the common source and supply of two creeks situated in the Hagerman Valley, one commonly known as "Riley Creek", which said stream flows in a southwesterly direction and empties into Snake River, and the other commonly known as "Billingsley Creek", which said stream flows in a northwesterly direction and empties into Snake River, said Riley Creek and said Billingsley Creek being the natural drainage and waterways into which the waters afforded by said seeps, rivulets, springs and underground flow naturally drain and are conveyed into the Snake River; and that the said Riley Creek and Billingsley Creek have the same source, that is to say, that the waters of both of said creeks have their origin in the underground flowage of water flowing beneath the lavas in a generally westerly direction and making their appearance as seeps, trickles, rivulets and springs on the

rim rock bounding said Hagerman Valley on the east and also in said valley, and that the said Riley Creek and Billingsley Creek are a part of the same drainage system, and that interference with the waters supplying the seeps, trickles, rivulets and springs supplying Riley Creek is an interference with the natural flow of Billingsley Creek, and that interference with the waters supplying the seeps, trickles, rivulets and springs supplying Billingsley Creek is an interference with the natural flow of said Riley Creek.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That of and from the waters comprising and constituting the source and supply of Billingsley Creek and Riley Creek and the waters of the seeps, springs, and rivulets so mentioned and above set out, the plaintiff, New International Mortgage Bank, be, and hereby is, ordered, adjudged, and decreed to have the use of, and the right to use for, the irrigation of its hereinafter described land and for domestic and other purposes thereon, the following amounts of water, to-wit:

Twelve second feet of the waters of Riley Creek, with a priority of May 1, 1883, said water to be diverted by means of a dam constructed in, and a ditch leading from, said Riley Creek; the point of diversion of said ditch being located at a point in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 1, Twp. 8 South, Range 13 E. B. M., from which the corner of Sections 1, 2, 35, and 36, Twps. 7 and 8 South, Range 13 E. B. M. bears north 60° 12' west 4365 feet distant;

Also 12 second feet of the waters of Riley Creek, with a priority of October 1, 1908, the point of diversion of said ditch being located near the head of Riley Creek, that is to say, where the main body of water comprising said Riley Creek emerges from the hillside in the form of springs, said springs being sometimes referred to as the Thompson or Tucker Spring, which said point of diversion is located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 36, Twp. 7 South, Range 13 E. B. M., from ^{which} the corner of Sections 1, 2, 35, and 36, Twp. 7

and 8 South, Range 13 E. B. M. bears south 75° 50' west 4435 feet distant;

Also 20 second feet of the waters flowing in Billingsley Creek, with a date of priority of September 10, 1884, the same being diverted by means of a dam in, and a ditch leading from, said Billingsley Creek, the point of diversion being in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 11, Twp. 7 South, Range 13 E. B. M., from which the quarter section corner common to Sections 11 and 12, Twp. 7 South, Range 13 E. B. M. bears south 47° 22' east 718 feet distant.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That the amounts of water heretofore set out, diverted from said natural water supply at the points of diversion heretofore mentioned and set out, are necessary for the proper irrigation and cultivation of, and that the same is appurtenant to the following, described land of the plaintiff, viz:

SW $\frac{1}{4}$ of NE $\frac{1}{4}$; NW $\frac{1}{4}$ of SE $\frac{1}{4}$; S $\frac{1}{2}$ of NW $\frac{1}{4}$; N $\frac{1}{2}$ of SW $\frac{1}{4}$, Section 27; SE $\frac{1}{4}$ of NE $\frac{1}{4}$; NE $\frac{1}{4}$ of SE $\frac{1}{4}$; Lots 4, 5, 8, and 9, all in Section 28; Lots 1, 4, 5, and 8; SE $\frac{1}{4}$ of SE $\frac{1}{4}$, all in Sec. 33; Lots 1, 2, 3, 4, 5, and 7; SE $\frac{1}{4}$ of NW $\frac{1}{4}$; NE $\frac{1}{4}$; N $\frac{1}{2}$ of NW $\frac{1}{4}$, all in Sec. 34; SW $\frac{1}{4}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 35, all in Township 7 South, Range 13 E. B. M. Terrace Bar, Big Foot Bar, Union Bar and Comstock Placer Mining Claims according to plat of Mineral survey No. 1, Lot 37, filed in U. S. Land Office at Hailey, Idaho, November 20, 1884; Starr Hunt, Jack Rabbitt and Fractional Terrace Bar Placer Mining Claims according to plat of mineral survey No. 301, Lot 38, filed in U. S. Land Office at Hailey, Idaho, January 2, 1890; all in Township 7 South, Range 13, E. B. M. All islands in Snake River South of said Section 33, Township 7 South, Range 13 E. B. M., excepting tracts 16, 27, 37, 124, and 125 of Map of Buckeye Ranch recorded in Book 1 of Plats, page 44, in the office of the County Recorder of Lincoln County, Idaho.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That said plaintiff may, and is hereby given the right to, change its point of diversion of the waters diverted from Billingsley Creek at the point of diversion hereinbefore described and set out to that certain point of diversion on Riley Creek heretofore designated and set out as the Tucker or Thompson Spring diversion, or elsewhere on Riley Creek;

and that if the said plaintiff elects so to do, that it may change the point of diversion from said Billingsley Creek as aforesaid to said point of diversion above mentioned and set out, or elsewhere on said Riley Creek; and that if the plaintiff does so change its said point of diversion as aforesaid, then and in that instance it does expressly waive any and all claims to the waters of Billingsley Creek diverted at the point of diversion aforesaid, and shall receive in lieu thereof 10 second feet of the waters of Tucker or Thompson Spring, with a date of priority of October 1, 1908, from said Riley Creek, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That in case said plaintiff so exercises said right, that the diversion of the said additional 10 second feet of the waters of Riley Creek at Thompson or Tucker Spring, or elsewhere on Riley Creek, shall be made at the cost and expense of said plaintiff, and shall not interfere with the diversion by the Idaho Power Company and other parties of the waters of said Tucker or Thompson Spring, which diversions shall be at all times considered entitled to a full diversion before the plaintiff herein shall be entitled to divert said additional 10 second feet of the waters of Riley Creek at said Thompson or Tucker Spring.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That except as otherwise expressly provided herein, the right hereby given to any of the parties hereto to divert water from the channel of said Billingsley Creek shall not be deemed a right to divert water from the channel of said Riley Creek and the right to divert water from the channel of said Riley Creek shall not be deemed a right to divert water from the channel of said Billingsley Creek.

It is hereby ordered, adjudged, and decreed that the defendants, counterclaimants, cross-complainants and interveners hereinafter named do have the use of, and the right to use, for irrigation, domestic, power and other purposes on the lands set after their respective names, from the streams and other sources hereinafter named, the amounts of water and priorities set after their respective names, to-wit:

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
CURRAN, Mary	15. Billingsley Creek	September 10, 1884	Curran ditch.

(The point of diversion of said Curran ditch is 1594 feet South and 656 feet East of the quarter corner between Sections 30 and 31, Township 7 South, Range 14 E.B.M. being in the Southeast Quarter of the Northeast Quarter of Section 31, Township 7 South, Range 13, E.B.M.)

South Half of Northeast Quarter ($S\frac{1}{2}NE\frac{1}{4}$), Southeast Quarter ($SE\frac{1}{4}$) and Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$), all of Section 23, Township 7 South, Range 13 E.B.M. and West Half of Southwest Quarter ($W\frac{1}{2}SW\frac{1}{4}$) of Section 24, Township 7 South, Range 13 E.B.M.

GOODING, Amanda J.	3. Billingsley Creek	September 10, 1884.	Buckeye ditch.
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South Half of Southwest Quarter ($S\frac{1}{2}SW\frac{1}{4}$) and South Half of Southeast Quarter ($S\frac{1}{2}SE\frac{1}{4}$) of Section 27, Township 7 South, Range 13 E.B.M.

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
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BARLOGI,	3.5 Billingsley Creek	April 1, 1885	Sands Ditch
REX, AND	1.08 Billingsley Creek	April 1, 1907	Sands Ditch
MORA B.	2 Billingsley Creek	April 1, 1880	Barlogi Ditch
BARLOGI			

(The diversion point of said Sands Ditch is on the banks of Billingsley Creek about 325 yards westerly of and below the point of diversion of the said Buckeye Ditch described in paragraph 7 of these Findings. The diversion point of said Barlogi Ditch is on the banks of Billingsley Creek in the southeast corner of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M.)

Lot 1 of Sec. 15 and Lot 5 of Sec. 10, the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 11, and the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M., excepting from the latter forty 9.25 acres heretofore conveyed to one John Jensen which exception is described as follows, to-wit:
Beginning at the southeast corner of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M.; thence north along the east line thereof 445 feet; thence south 82 degrees 30' West 250 feet; thence north 35 degrees 0' West 228 feet; thence South 85 degrees 45' West 336 feet; thence South 13 degrees 45' West 585 feet to the point of intersection with the south line of the above described forty; thence east along the south line of said forty 840 feet more or less to the point of beginning.

BARTON, R.	.8 Spring	March 8, 1902	Weatherby Spring
W., and	.4 Spring	March 8, 1902	Weatherby Spring
MRS. R. W.			
BARTON			

(Said Weatherby Springs arises on the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 30, Twp. 7 S. R. 14 E. B. M.)

NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the S $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 26, Twp. 7 S. R. 13 E. B. M.

BARTON, W.	1.3 Spring	March 8, 1902	Weatherby Spring
C., AND			
MRS. ELLA	NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 22, the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 36, all in Twp. 7 S. R. 13 E. B. M.		
BARTON			

BEDAL,	3 Len Lewis Spring	Sept. 1, 1889	Brailsford-Owens Ditch;
KATE C.,	2 Spring	May 26, 1891	Bickel Spring;
AND	4.4 Riley Creek	May 1, 1884	Bedal Ditch;
JAMES			
BEDAL			

(The diversion point of the Brailsford-Owens Ditch is Len Lewis Spring in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 8, Twp. 8 S. R. 14 E. B. M., which point lies north 65 degrees 35' East 857 feet from the center of said section 6. The diversion point of said Bickel Spring

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIAT- ION	DIVERSION POINT
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is North 0 degrees 5' east 264.5 feet from the south-west corner of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 6, Twp. 8 S. R. 14 E. B. M. The diversion point of the Bedal Ditch is on Riley Creek about one-fourth mile above the residence on the land described below.)

The W $\frac{1}{2}$ of the SE $\frac{1}{4}$ and the E $\frac{1}{2}$ of the SW $\frac{1}{4}$, and the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 36, Twp. 7 S. R. 13 E. B. M.; Lots 1, 2, 6 and 7 and the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 1, Twp. 8 S. R. 13 E. B. M. and Lots 4, 5, and 6 of Sec. 6, Twp. 8 S. R. 14 E. B. M.

J. C. BED- INGFIELD	10.9 Spring	March 8, 1902	Weatherby Spring
AND ALETA	.3 Spring	April 4, 1910	Weatherby Spring
M. BEDING- FIELD AND	12 Spring	Dec. 9, 1916	Weatherby Spring
MARY Mc- CARTY	20 Billingsley Creek	April 1, 1917	Curran Ditch;

(The diversion point of said Curran Ditch is at the head of Billingsley Creek.)

The SW $\frac{1}{4}$ Sec. 23; N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 26; NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 35, and the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 36, all in Township 7 South, Range 13 E. B. M.

BELL, HAR- LAN	2.16 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch;
	.5 Riley Creek	Oct. 1, 1908	Pipe Ditch re- ferred to in paragraph 7 of the Find- ings.

Lots 16, in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and Lots 27 and 37 in the W $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$, in Sec. 27, Twp. 7 S. R. 13 E. B. M., the same being Acreage Tracts shown on the map or plat of Buckeye Ranch on file in the office of the Recorder of Gooding County, Idaho.

BELL, LEO, GLENN, AND MRS. E. M. BELL	14.4 Billingsley Creek	March 30, 1884	E. M. Bell Ditch
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(The diversion point of the said E. M. Bell Ditch is very close to the diversion point of said Buckeye Ditch.)

Lots 6 and 9 in Sec. 21, Twp. 7 S. R. 13 E. B. M.; SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 22, Twp. 7 S. R. 13 E. B. M.; NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 27, Twp. 7 S. R. 13 E. B. M.; NE $\frac{1}{4}$ NE $\frac{1}{4}$, and Lot 1, in Sec. 28, Twp. 7 S. R. 13 E. B. M.

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
BIG SPRING WATER USERS ASSOCIATION, a corporat- ion	12.9 Spring 5 Spring	March 21, 1901 April 1, 1911	Big Spring; (Durfee-Secor Tunnel) Big Spring; (Durfee-Secor Tunnel)
(Said Big Spring is located on the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 18, Twp. 7 S. R. 14 E. B. M.)			
BLACKHART, CHARLES R. AND IZMA C. BLACKHART	2.4 Billingsley Creek .2 Billingsley Creek SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 22, Twp. 7 S. R. 13 E. B. M.	March 30, 1884 Sept. 10, 1884	E. M. Bell Ditch Buckeye Ditch;
BLACKHART, MABEL	2.4 Billingsley Creek .4 Billingsley Creek SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 22, Twp. 7 S. R. 13 E. B. M.	March 30, 1884 Sept. 10, 1884	E. M. Bell Ditch Buckeye Ditch;
BOYER, EM- ERSON, AND ETHEL BOYER	2 Riley Creek SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 36, Twp. 7 S. R. 13 E. B. M.	Oct. 1, 1908	Pipe Ditch re- ferred to in paragraph 7 of the Findings
BOYER, LEE, and ALICE BOYER	2 Spring (Said Three Springs is located immediately east of the east boundary line of the Dan Jones' Ranch about one- eighth mile east of Billingsley Creek and about one mile north of the head of said Billingsley Creek.) SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 24, and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 25, Twp. 7 S. R. 13 E. B. M.	Feb. 17, 1896	Three Springs;
BRAILSFORD A. H., AND BEATRICE E. BRAILSFORD	8 Len Lewis Spring W $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Sec. 25, Twp. 7 S. R. 13 E. B. M.; E $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 26, Twp. 7 S. R. 13 E. B. M.	Sept. 1, 1889	Brailsford- Owens Ditch;
BRIGGS, E. G., AND EDNA C. BRIGGS	.5 Riley Creek 1 Riley Creek (The diversion point of said Conyers Ditch is on Riley Creek 100 yards below the diversion point of said Hunt Ditch described in paragraph 7 of the Findings.)	May 1, 1883 May 1, 1883	Hunt Ditch; Conyers Ditch;

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
	from the said quarter corner first above mentioned and is 729 feet south of the section line between said sections 2 and 11; thence north 80 degrees 28' west 949 feet to a point (which point is 573.8 feet south of a point on the section line between said sections 2 and 11 in said Twp. and Range aforesaid 1320 feet west from the said quarter corner between sections 2 and 11 first above mentioned;) thence north 80 degrees 28' west 199.1 feet to a point; thence south 23 degrees 40' west about 2269 feet to a point 290 feet east from the quarter corner on the west boundary line of section 11, Twp. 7 S. R. 13 E. B. M.; thence east along the south boundary line of Lot 3 of said Section 11 to the southeast corner of said Lot 3; thence north along the east boundary line of said Lot 3 to the northeast corner thereof; thence east along the south boundary line of Lot 2, in said section 11 to the southeast corner of said Lot 2; thence north along the east boundary line of said Lot 2 to the place of beginning.		
CONDIT, JAMES E. AND JENNIE M. CONDIT	.5 Spring (Said Hutt Spring is located on the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 19, Twp. 7 S. R. 14 E. B. M.) The NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ (also known as Lot 3) of Section 19, Twp. 7 S. R. 14 E. B. M.	April 1, 1930	Hutt Spring
DILATUSH, E. W., AND ALICE I. DILATUSH, AND CHARLES C. CAREY	2.4 Billingsley Creek .3 Spring (Said unnamed spring arises in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M. at a point 1065 feet north 2 degrees 2' west from the southeast corner of said tract of land. That the point of diversion of said Grange Ditch is on the bank of Billingsley Creek about 100 feet below the diversion point of said Buckeye Ditch and from the diversion point of said Grange Ditch the quarter section corner common to secs. 11 and 12 Twp. 7 S. R. 13 E. B. M. bears south 31 degrees 27' east a distance of 933.4	Jan. 2, 1891 Jan. 2, 1891	Granger Ditch Unnamed Spring
	Beginning at the southeast corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M.; thence west along the forty line 1075'; thence north 20 degrees 49' east 820 feet; thence north 24 degrees 34' east 450 feet; thence south 81 degrees 26' east 593 feet to the east forty line, thence south along the forty line 1122 feet to the point of beginning.		
ELIASON, ARMEDIA	.8 Spring .4 Spring	Dec. 12, 1901 April 4, 1910	Weatherby Springs; (Hoagland Tunnel) Weatherby Springs;
	The NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 36, Twp. 7 S. R. 13 E. B. M. excepting therefrom, however, the following described tract of land: Beginning at the quarter corner between Sections 25 and 36 of said township and range, running thence east 399 feet to the center of the public highway, thence in a southwesterly direction in the center of said highway 278 feet, thence westerly along the north bank of the Clifford Ditch 370 feet, to the west boundary line of said NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 36, thence north along said west boundary line 257 feet to the point of beginning, said tract of land excepted containing 2.2 acres, more or less, and the property herein described containing 37.8 acres, more or less.		

NAME		AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
ELIASON, JACOB AND CARRIE I.	1.6 .7	Len Lewis Spring Spring	Sept. 1, 1889 March 8, 1902	Brailsford- Owens Ditch Weatherby Springs

The SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 25, Twp. 7 S. R. 13 E. B. M.; also that certain portion of the northwest corner of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 36, in Twp. 7 S. R. 13 E. B. M. in Idaho, more particularly described as follows, to-wit: Beginning at the quarter corner between sections 25 and 36 in said Twp. 7 S. R. 13 E. B. M. running thence east a distance of 399 feet to the center of the public highway, thence in a southwesterly direction in the center of the said highway a distance of 278 feet; thence westerly along the north bank of the Clifford Ditch a distance of 370 feet to the west boundary line of the said northwest quarter of the northeast quarter of said Sec. 36, thence north along the said west boundary line a distance of 257 feet to the place of beginning, known as Tax No. 1 in Sec. 36, in the office of the Assessor of Gooding County, Idaho;

Also that certain tract of land more particularly described as follows, to-wit: Beginning at the southwest corner of the southwest quarter of the southeast quarter of Sec. 25, Twp. 7 S. R. 13 E. B. M., thence running east 397 feet, thence northwesterly to a point distant eighteen hundred and seventy feet on section line from the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said section, thence south 1870 feet to the place of beginning. Said piece of land being a triangular piece of land containing 9.5 of an acre according to the survey thereof, and known as Tax No. 1 of said Sec. 25, in the office of the Assessor of Gooding County, Idaho.

FARMER, J. EUGENE, AND MARVEL FAR- MER	.5 5.7	Spring Spring	Feb. 1, 1888 Feb. 17, 1896	Weatherby Springs "Three Springs"
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(Said "Three Springs" is located immediately east of the east boundary line of the Dan Jones' Ranch, about one-eighth mile east of Billingsley Creek and about one mile north of the head of said Billingsley Creek.)

SE $\frac{1}{4}$ of Sec. 24, Twp. 7 S. R. 13 E. B. M. and Lot 4 of Sec. 19, Twp. 7 S. R. 14 E. B. M.

FISH, EARL, AND ALLISON MARY FISH	1.6	Spring	July 23, 1910	Sherman Springs;
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(Said Sherman Springs arises about one mile east of the land described below and is about 200 feet from "Big Springs" elsewhere described herein.)

Beginning at a point 50 rods east of the northwest corner of the northwest quarter of the southeast quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 13, Twp. 7 S. R. 13 E. B. M. and on the north line of the above described forty acres. Thence 50 rods due east on the half sec-

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
	tion line; thence 32 rods due south at right angles; Thence 50 rods due West at right angles; thence 32 rods due north to the point of beginning. Also: All of the NE$\frac{1}{4}$ of the SE$\frac{1}{4}$ of Sec. 13, Twp. 7 S. R. 13 E. B. M., save and excepting therefrom, four acres, described as follows: Beginning at the northwest corner of the NE$\frac{1}{4}$ of the SE$\frac{1}{4}$ of Sec. 13, Twp. 7 S. R. 13 E. B. M., thence east 20 rods, thence south 32 rods, thence west 20 rods, thence north 32 rods to point of beginning.		
FLORENCE LIVESTOCK COMPANY	10 Billingsley Creek 9.7 Spring	Nov. 4, 1885 April 1, 1900	Florence Livestock Company Ditch; Florence Livestock spring;
	(The diversion point of said Florence Livestock Company Ditch is immediately below the old railroad fill on the SW$\frac{1}{4}$ of the NE$\frac{1}{4}$ of Sec. 13, Twp. 7 S. R. 13 E. B. M. The diversion point of said Florence Livestock Spring is on the SE$\frac{1}{4}$ of the NW$\frac{1}{4}$ of Sec. 12, Twp. 7 S. R. 13 E. B. M.) appurtenant to SW$\frac{1}{4}$, the SW$\frac{1}{4}$ of the NW$\frac{1}{4}$ and the W$\frac{1}{2}$ of the SE$\frac{1}{4}$ of Sec. 12; the E$\frac{1}{2}$ of the SE$\frac{1}{4}$, S$\frac{1}{2}$ of the SE$\frac{1}{4}$ of the NE$\frac{1}{4}$ both in Sec. 11; the NW$\frac{1}{4}$ of the NE$\frac{1}{4}$ and the N$\frac{1}{2}$ of the NW$\frac{1}{4}$, both in Sec. 13; all in Twp. 7 S. R. 13 E. B. M.		
	.5 Spring	April 1, 1901	Florence Livestock Spring;
	appurtenant to A certain parcel of land situate in Sec. 14, Twp. 7 S. R. 13 E. B. M. more particularly described as follows, to-wit: Beginning at the northwest corner of the NE$\frac{1}{4}$ of the NE$\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M. and running thence East 1320 feet, thence South 330 feet, thence West 1320 feet, thence North 330 feet to place of beginning, containing 10 acres.		
GLAUNER, JOHN AND ELENA A. GLAUNER	1.2 Billingsley Creek .4 Unnamed Springs	June 26, 1881 June 26, 1881	John Bell Ditch; 4 Unnamed Spring
	(The diversion point of said John Bell Ditch is on the bank of Billingsley Creek 30 yards below the diversion point of the Buckeye Ditch heretofore described. Said four unnamed springs arise on the land described immediately hereafter.) appurtenant to These certain tracts of land more particularly described as follows, to-wit: Commencing at the northwest corner of the SE$\frac{1}{4}$ of the SE$\frac{1}{4}$ of Sec. 2, Twp. 7 S. R. 13 E. B. M.; thence running south along the west boundary line of said SE$\frac{1}{4}$ of the SE$\frac{1}{4}$ of said section, township and range aforesaid 208 feet; thence east parallel to the north boundary line of said SE$\frac{1}{4}$ of the SE$\frac{1}{4}$ of said Section, Township and Range aforesaid 832 feet; thence north 208		

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
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feet; thence West along the north boundary line of said SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section, Township and Range 832 feet to the point of beginning.

Also:

All that portion of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 2, Twp. 7 S. R. 13 E. B. M. lying north and east of the state highway, known as the "Old Oregon Trail," as now laid out and existing across said subdivision of land. The lands herein conveyed being a triangular shape tract situate in the northeasterly portion of the said NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said section, township and range afore-said.

Also:

That certain part or portion of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of section 2, in Twp. 7 S. R. 13 E. B. M. more particularly described as follows, to-wit: Beginning at a point on the southeast corner of the said NE $\frac{1}{4}$, running thence west to a point on the southwest corner of the said NE $\frac{1}{4}$, thence North to a point 321 feet and 9 inches south from the Northeast corner of the said NE $\frac{1}{4}$, thence due east to a point on the east boundary line of said NE $\frac{1}{4}$ distant 321 feet and 9 inches south from the northeast corner of said NE $\frac{1}{4}$, thence due south to the place of beginning..

Also:

Beginning at a point 107 feet 3 inches south of the northeast corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$, Sec. 2, Twp. 7 S. R. 13 E. B. M. thence running south 214 ft. 6 inches, thence west 80 rods, thence north 214 feet 6 inches, thence east 80 rods to the point of beginning.

.4	Billingsley Creek	June 26, 1881	John Bell Ditch;
.4	Unnamed Springs	June 26, 1881	2 Unnamed Springs;

(Said Two Unnamed Springs arise on the land described immediately hereafter.)

appurtenant to

That certain tract of land more particularly described as follows, to-wit:

Beginning; at a point on the first standard parallel south 2832 links west from the northeast corner of Sec. 2, Twp. 7 S. R. 13 E. B. M. and running thence west along said standard parallel 1168 links, thence south along western boundary of Lot 2, same section and range, 1032 links, thence east parallel to first course 1168 links, thence north parallel to second course 1032 links, to point of beginning, all in Lot 2, Sec. 2, Twp. 7 S. R. 13 E. B. M.

NAME	AMOUNT OF WATER IN SECONO FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
GRIDLEY, (	1.5 Riley Creek	May 1, 1883	Gridley Ditch No. 1
WALTER,	.3 Riley Creek	May 1, 1883	Gridley Ditch No. 2
AND ANNA GRIDLEY			

(The point of diversion of Gridley Ditch No. 1 is on the bank of Riley Creek immediately above Riley Falls. The diversion point of Gridley Ditch No. 2 is 75 yards below the diversion point of the Conyers Ditch elsewhere described.)

Two unsurveyed tracts of land situate in Sec. 1, Twp. 8 S. R. 13 E. B. M. as follows: A certain island known as Weatherby Island containing about 30 acres located in Snake River between Gooding County and Twin Falls County, in the above named section, and a certain tract of about three acres of land below the rimrock and on the mainland immediately north of said island in said section.

HAGERMAN	5 Spring	April 7, 1906	Spring No. 1;
WATER USERS	11.2 Spring	April 7, 1906	Spring No. 2;
ASSOCIATION	20 Springs	April 7, 1906	Numerous small springs;

(Said Spring No. 1 is located about the center of the north side of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 13, Twp. 7 S. R. 13 E. B. M.; Spring No. 2 is located about the center of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 18, Twp. 7 S. R. 14 E. B. M. Said numerous small springs are located about 100 yards north of the "Big Springs", the source of the water supply of the Big Spring Water Users Association.)

HIGLEY, ALBERT	.5 Spring	Dec. 12, 1901	Weatherby Springs; (Hoagland Tunnel)
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All the North Half of the Southwest Quarter of the Northeast Quarter (NW $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$) of Sec. 33, Twp. 7 S. R. 13 E. B. M., excepting that portion thereof, containing approximately 2.07 acres, lying west of the center of the channel of the ditch intersecting said premises, commonly known as the "Brailsford Ditch," the center channel of which ditch intersects the south line of said premises at a point 204.4 feet east of the west boundary of said subdivision, thence running north 9 degrees 29' west 350 feet, thence north 20 degrees 15' west 360 feet to the northwest corner of said SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said section, township and range.

HOFFMAN, L. W., and MRS. L. W. HOFFMAN	2.22 Spring	Dec. 12, 1901	Weatherby Springs; (Hoagland Tunnel)
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NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
	.28 Spring	May 1, 1912	Weatherby Springs;
	.8 Spring	Nov. 1, 1915	Weatherby Springs;
	SE$\frac{1}{4}$ of the NE$\frac{1}{4}$ of Sec. 36, S$\frac{1}{2}$ of the NE$\frac{1}{4}$ of the NE$\frac{1}{4}$, NW$\frac{1}{4}$ of the NE$\frac{1}{4}$ of the NE$\frac{1}{4}$, Sec. 36, SE$\frac{1}{4}$ of the SW$\frac{1}{4}$ of the NE$\frac{1}{4}$, of Sec. 36, E$\frac{1}{2}$ of the SW$\frac{1}{4}$ of the SW$\frac{1}{4}$ of NE$\frac{1}{4}$, of Sec. 36, and NE$\frac{1}{4}$ of the SE$\frac{1}{4}$, all in Sec. 36, Twp. 7 S. R. 13 E. B. M. Also that portion of Lot 2 Sec. 31, Twp. 7 S. R. 14 E. B. M. more particularly described as follows: "Beginning at the southwest corner of said Lot 2, thence running north on the Section line about 80 rods to the north bank of John Curran's irrigation ditch; thence east along said ditch bank about 90 rods to the east line of said Lot 2; thence south along said line about 80 rods to the southeast corner of said Lot 2; thence west along the south line of said Lot 2, about 80 rods to the point of beginning; The entire above tract contains 157.85 acres.		
HOMES, GER- TRUDE, AND BEN HOMES	5.6 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch
	Starting at the NW corner of NE$\frac{1}{4}$NW$\frac{1}{4}$ of Sec. 23, Twp. 7 S. R. 13 E. B. M. first corner and running due east 804 feet to 2nd corner; thence due south 234 feet to third corner; thence due east 228 to fourth corner; thence due South 65 rods 13 feet to fifth corner; thence due west 1032 feet to sixth corner; thence about due north 80 rods to starting point, said tract containing about 30 acres of land except 7/12ths of an acre lying east of the Dilatush Ditch located in the northeast corner of the above described tract; and the NW$\frac{1}{4}$ of the NW$\frac{1}{4}$ of Sec. 23, Twp. 7 S. R. 13 E. B. M.; containing in both forties approximately 70 acres of land.		
JENSEN, J. H., AND MRS. J. H. JENSEN	.7 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch
	1.4 Billingsley Creek	April 1, 1885	Sands Ditch
	.5 Billingsley Creek	March 30, 1884	E.M. Bell Ditch
	NE$\frac{1}{4}$ of the NW$\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M. Excepting therefrom the following described tract of land: Beginning at the southeast corner of the NW$\frac{1}{4}$ of the NW$\frac{1}{4}$, Sec. 14, Twp. 7 S. R. 13 E. B. M.; thence west along the south boundary thereof 286 feet; thence in a northeasterly direction along the Dilatush water ditch 671 feet; thence east 115 feet to the east boundary line of the said NE$\frac{1}{4}$ of the NW$\frac{1}{4}$; thence south along the east boundary line thereof to the southeast corner of the said NE$\frac{1}{4}$NW$\frac{1}{4}$, the place of beginning. Also that part of the Southeast Quarter of the Northwest Quarter (SE$\frac{1}{4}$NW$\frac{1}{4}$) Section 14, Twp. 7 S. R. 13 E. B. M., Tax No. 25, described as follows: Beginning at the northwest corner of the SE$\frac{1}{4}$ of the		

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
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NW $\frac{1}{4}$, running thence south 759.5 feet; thence north-east 845.5 feet along the bank of the Sande water ditch to a point on the north boundary line of the said SE $\frac{1}{4}$ of the NW $\frac{1}{4}$; thence west 376 feet to the point of beginning.

Also that portion of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 11 Twp. 7 S. R. 13 E. B. M. described as follows: Beginning at the southwest corner of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Sec. 11, Twp. 7 S. R. 13 E. B. M.; thence north on the west boundary line of said SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Sec. 11, 28 feet; thence in an easterly direction in a straight line to the southeast corner of said SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Sec. 11; thence west along the south boundary line of said SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 11 to the place of beginning.

Also a portion in the southeast corner of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M. described as follows: Beginning at the southeast corner of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M.; thence north along the east line thereof 445 feet; thence south 82 degrees 30' West 250 feet; thence north 35 degrees 0' west 228 feet; thence South 85 degrees 45' West 336 feet; thence South 13 degrees 45' West 585 feet to the point of interesection with the south line of the above described forty; thence east along the south line of said forty 340 feet more or less to the point of beginning.

JONES,	12.5	Spring	Feb. 1, 1888	Weatherby Springs;
DANIEL	1	Spring	Feb. 1, 1888	Weatherby Springs;
				(Hogland Tunnel)
	.5	Unnamed Spring	April 1, 1905	Unnamed Spring

(Said unnamed spring arises on the east boundary line of Lot 2 of the property hereinafter described.)

Lots 1, 2, 3 and 4 and the E $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Sec. 30, Twp. 7 S. R. 14 E. B. M. and the E $\frac{1}{2}$ of Sec. 25, Twp. 7 S. R. 13 E. B. M. excepting therefrom Tax No. 1 more particularly described as follows, to-wit:

Beginning at the southwest corner of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 25, Twp. 7 S. R. 13 E. B. M.; thence running east 397 feet; thence northwesterly to a point distant 1370 feet on section line from SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said section; thence south 1370 feet to place of beginning, containing 9.5 acres.

JUSTICE,	2.	Billingsley Creek	June 26, 1881	John Bell Ditch
WILLA A.	.1	Spring	June 26, 1881	Spring No. 1
	.2	Spring	June 26, 1881	Spring No. 2
	.4	Spring	June 26, 1881	Spring No. 3
	.3	Spring	June 26, 1881	Spring No. 4;

(Spring No. 1 arises below the public highway on the north part of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 11. Spring No. 2 arises above said public highway on the north part of said forty acre tract of land. Spring No. 3 arises below the Justice road on the line between said

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
	forty acre tract of land and the SE$\frac{1}{4}$ of the SE$\frac{1}{4}$ of Sec. 2 and Spring No. 4 arises about 100 yards north of Spring No. 3 on the SE$\frac{1}{4}$ of the SE$\frac{1}{4}$ of said Sec. 2, all in Twp. 7 S. R. 13 E. B. M.) The NE$\frac{1}{4}$ of the NE$\frac{1}{4}$ of Sec. 11, and the SE$\frac{1}{4}$ of the SE$\frac{1}{4}$ of Sec. 2, both in Twp. 7 S. R. 13 E. B. M. excepting from said section 2 a certain portion thereof conveyed to John W. Glauner on November 25, 1924, which portion is more particularly described as follows, to-wit: Commencing at the northwest corner of the SE$\frac{1}{4}$ of the SE$\frac{1}{4}$ of Sec. 2, Twp. 7 S. R. 13 E. B. M.; thence running south along the west boundary line of said SE$\frac{1}{4}$ of the SE$\frac{1}{4}$ of said section, township and range aforesaid 208 feet, thence east parallel to the north boundary line of said SE$\frac{1}{4}$ SE$\frac{1}{4}$ of said Section, Township and Range aforesaid 832 feet; thence north 208 feet; thence West along the north boundary line of said SE$\frac{1}{4}$ SE$\frac{1}{4}$ of said Section, Township and Range 832 feet to the point of beginning.		
LEWELLEN, ROY, AND NETTIE M. LEWELLEN	.6	Billingsley Creek	June 26, 1881 John Bell Ditch;
	Beginning at the southeast corner of Lot 2, Sec. 2, Twp. 7 S. R. 13 E. B. M.; thence west along the south boundary of said Lot 2, 7.8 chains to the east boundary of the Hagerman-Bliss Highway; thence north along said east boundary 6.33 chains; thence north 86 degrees 37 minutes east 3.71 chains; thence north 70 degrees 37 minutes east 3.34 chains; thence north 84 degrees 28 minutes east 1.21 chains; thence south 67 degrees 22 minutes east 1.23 chains; thence south 8 degrees 00 minutes east 1.7 chains; thence south 36 degrees 07 minutes east 7.6 chains, to the south boundary of Lot 1 in said section; thence west along said south boundary 5.86 chains, more or less, to the place of beginning, being approximately 8.5 acres in said Lots 1 and 2; also, beginning at the northeast corner of the NE$\frac{1}{4}$ SE$\frac{1}{4}$ of said Section 2; thence south along the east boundary thereof 107.25 feet; thence west to the west boundary of said NE$\frac{1}{4}$ SE$\frac{1}{4}$, thence north 107.25 feet to the northwest corner of said NE$\frac{1}{4}$ SE$\frac{1}{4}$; thence east along the north boundary thereof, to the place of beginning, being approximately 3.25 acres in said NE$\frac{1}{4}$ SE$\frac{1}{4}$, all said land being in Gooding County, State of Idaho.		
MARINER, F. C., AND MYRTA M. MARINER, AND LETA M. EVANS	4.8	Billingsley Creek	March 30, 1884 E.M. Bell Ditch
	N$\frac{1}{2}$ of the SW$\frac{1}{4}$ of Sec. 22, Twp. 7 S. R. 13 E. B. M.		

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
MARSH, J. H., AND FLOSSIE MARSH	.5 Spring (Said Unnamed spring is located on the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 19, Twp. 7 S. R. 14 E. B. M.) SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 19, Twp. 7 S. R. 14 E. B. M.	July 1, 1916	Unnamed Spring;
MOORE, DANIEL AND DOROTHY MOORE	1.4 Billingsley Creek Tax Nos. 9 and 10 in Sec. 11, Twp. 7 S. R. 13 E. B. M. containing approximately 10 acres in each tax number, a total of 20 acres.	April 1, 1888	Sands Ditch
NEAL, LOUIS, HARRY H. AND EFFIE M. NEAL, AND ALVA REED	2 Billingsley Creek 1 Billingsley Creek 2 Billingsley Creek .8 Spring (Said Unnamed spring arises in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M. at a point 1065 feet north 2 degrees 2' West from the southeast corner of said forty acre tract of land.) The SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M. excepting approximately nine acres described as follows: Beginning at the Southeast Corner of the said Southwest Quarter of the SE $\frac{1}{4}$ of said Sec. 11, Thence north along the center of the Hagerman road 305.25 feet, thence North 80 degrees 55' West 907.5 feet, thence South 44 degrees West 631.15 feet to the Quarter corner of the boundary line between Sections 11 and 14, thence due east to the place of beginning. Also the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M., excepting a strip of ground extending along the entire length of the south side of said SE $\frac{1}{4}$ of the SW $\frac{1}{4}$, which strip is 28 feet wide on the west and runs to a point at the east end, or the quarter corner of the above mentioned secs. 11 and 14, Twp. 7 S. R. 13 E. B. M.	April 1, 1885 April 1, 1910 Jan. 2, 1891 Jan. 2, 1891	Sands Ditch Sands Ditch Granger Ditch Unnamed Spring;
MILES, LIBBIE	1.4 Len Lewis Spring All that portion of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 36, Twp. 7 S. R. 13 E. B. M. lying west of the central channel of the "Brailsford Ditch," as now laid out and existing through said subdivision, which said tract of land contains approximately 7.17 acres of land and is more particularly bounded and described as follows, to-wit: "Commencing at the southwest corner of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$	Sept. 1, 1889	Brailsford-Owens Ditch

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
	of said section, township and range aforesaid; thence east along the south boundary of said subdivision 463 feet to the center of the said "Brailsford Ditch;" thence following the center channel of said ditch north 19 degrees 34' West 170 feet; thence north 46 degrees 14' West 165 feet; thence north 9 degrees 29' West 723 feet; thence north 20 degrees 15' West 360 feet to the northwest corner of said subdivision; thence south along the west boundary line of said subdivision 1330 feet to the place of beginning. Also the SE$\frac{1}{4}$ of the NW$\frac{1}{4}$ of Sec. 36, Twp. 7 S. R. 13 less the north 2$\frac{1}{2}$ acres thereof now belonging to one W. C. Barton, said exception being that portion of said tract of land lying north of the public highway.		
PARROTT, MRS. FLOR- ENCE,	1.2 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch;
	A certain tract of land commencing 204.3 feet west of the southeast corner of Block No. 10 and continuing along said line west 195.7 feet to the southwest corner of said Block, thence north along said block line 269.3 feet to the northwest corner of said block; thence east along said block line 297 feet; thence in a south-westerly direction 287.7 feet to the point of beginning containing 1.52 acres more or less, all in Block No. 10, of the Townsite of Hagerman, according to the map or plat on file in the office of the Recorder of Gooding County, Idaho; Also Lots 1 to 7 inclusive and 10 to 16 inclusive of Block 9, Lots 3, 4, 7, 10, 11, 12, 14, 15, 16, in Block 6, Lots 9, 10, 11, 12, 13, 14, 15, and 16 in Block 5 of Hagerman Townsite, according to the map or plat thereof on file in the office of the Recorder of Gooding County, Idaho.		
PENFOLD, JOHN T., AND EMMA PENFOLD	2 Spring	Feb. 1, 1888	Weatherby Springs;
	The SE$\frac{1}{4}$ of the NW$\frac{1}{4}$ of Sec. 25, Twp. 7 S. R. 13 E. B. M. and that portion of the NE$\frac{1}{4}$ of the SW$\frac{1}{4}$ of said Section 25, known as Tax No. 3, and more particularly described as follows, to-wit: Beginning at a point on the East line of the southwest quarter of Sec. 25, Twp. 7 S. R. 13 E. B. M. 1590 feet north of the southeast corner of said SW$\frac{1}{4}$ of Sec. 25, thence running north 34 degrees West 468 feet, thence North 20 degrees, west 685 feet to within 15 feet of the North boundary of said SW$\frac{1}{4}$ of Sec. 25, thence 89 degrees 18 minutes east 500 feet and thence south 1035 feet to the place of beginning.		
PENFOLD, PARLEY, AND GRACE PENFOLD	2.4 Billingsley Creek .4 Billingsley Creek	March 30, 1884 Sept. 10, 1884	E.M. Bell Ditch Buckeye Ditch
	The NE$\frac{1}{4}$ of the NW$\frac{1}{4}$ of Sec. 27, Twp. 7 S. R. 13 E. B. M.		

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
POPE, ELI- JAH, AND LAUD POPE, GERALD AND BERNICE POPE	.5 Billingsley Creek .5 Spring (Said Unnamed spring is located on the east portion of the tract of land immediately hereinafter described and about 75 yards from the east line thereof.) N $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M.	June 26, 1881 June 1, 1927	John Bell Ditch Unnamed Spring
PREWETT, M. M., AND MARGARET PREWETT	.8 Billingsley Creek That certain portion of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M. described as follows: Beginning at a point 670 feet east and 25 feet north of the southwest corner of the said SE $\frac{1}{4}$, running thence north to a point on the south boundary line of acreage tract or outlot 65, thence due west to a point in the center of the Stotz Ditch, thence in a southeasterly direction along the center of the said ditch to a point where said ditch intersects a line running east and west 25 feet north and parallel with south boundary of the said southeast boundary of the said southeast quarter, thence due east to the point of beginning. Also acreage tract or Outlots numbered 34 and 65 according to the map or plat of Hagerman Townsite; Also Lots 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 of Block 61; Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16 Block 48; Lots 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of Block 52; Lots 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of Block 47; Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14 15 and 16 of Block 51; Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16 of Block 62 of the Village of Hagerman according to the Plat of Hagerman Townsite, in the office of the Recorder of Gooding County, Idaho.	Sept. 10, 1884	Buckeye Ditch;
RAWLINGS, WALTER AND MRS. WALTER RAW- LINGS	.6 Spring A certain parcel of land, described in metes and bounds as follows: Beginning at the southwest corner of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M., and running thence East 594 feet, thence north 400 feet, thence West 594 feet, thence South 400 feet to the place of beginning, containing 5.45 acres more or less. A certain parcel of land, described in metes and bounds as follows: Beginning at a point 400 feet north of the southwest corner of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M. and running thence East 1320 feet, thence North 330 feet, thence West 1320 feet, thence South 330 feet to the place of beginning, containing 10 acres.	April 1, 1901	Florence Livestock Spring

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
HAWLINGS, NORMA	.3 Spring	April 1, 1901	Florence Live- stock Spring;

A certain parcel of land situate in the Hagerman Valley, Gooding County, State of Idaho, and more particularly described as follows: Beginning at a point about 740 feet north of the Southwest corner of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M. and running thence East 1320 feet, thence North about 250 feet, thence West 1320 feet, thence South about 250 feet, containing 7.575 acres, more or less.

SANBORN, JOHN C., AND JESSIE M. SAN- BORN	.6	Billingsley Creek	June 26, 1881	John Bell Ditch;
	1.2	Billingsley Creek	June 26, 1881	Pipe line;
	5.7	Billingsley Creek	June 26, 1881	Padgett Ditch;

(The diversion point of said Pipe line is on Billingsley Creek at the diversion point of the John Bell Ditch; the diversion point of the Padgett Ditch is 50 yards below the diversion point of the John Bell Ditch;)

Lots 2, 3, 6 and the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 2, Twp. 7 S. R. 13 E. B. M. Also beginning at the northeast corner of Lot 7 said Section 2 and running thence west 4 chains; thence south 20 chains; thence east 4 chains; thence north 20 chains to beginning; also the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M.

Excepting from the above described land the following described tracts:

Beginning at a point on the first standard parallel south 2000 links west from the northeast corner Sec. 2, Twp. 7 S. R. 13 E. B. M. and thence west along said standard parallel 756 links, thence south parallel to eastern boundary of said Sec. 2, 1640 links, thence east parallel to first course 756 links; thence north along the eastern boundary of Lot 2 of the above mentioned Sec. 2 1640 links to the point of beginning, containing 12.40 acres all in Lot 2, Sec. 2, Twp. 7 S. R. 13 E. B. M.

Also beginning at a point on the first standard parallel south 2832 links west from the northeast corner of Sec. 2, Twp. 7 S. R. 13 E. B. M., thence west along said standard parallel 1168 links; thence south along the western boundary of Lot 2, same section, township and range, 1032 links, thence east parallel to the first course 1168 links; thence north parallel to the second course 1032 links, to point of beginning containing 12.05 acres all in Lot 2, Sec. 2, Twp. 7 S. R. 13 E. B. M.

Also all that portion of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 2, Twp. 7 S. R. 13 E. B. M. lying north and east of the state highway, known as the "Old Oregon Trail" as now laid out and existing over and across said subdivision of land, containing $4\frac{1}{2}$ acres more or less.

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
SANDS, BESSIE	1.5 Billingsley Creek Lots 3 of Sec. 16, Twp. 7 S. R. 13 E. B. M. and the West two acres of Lot 5, Sec. 15 and the West five acres of the N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Sec. 15, Twp. 7 S. R. 13 E. B. M.	April 1, 1905	Sands Ditch
SANDS, JESSIE, AND LA- PRAEL SANDS	N $\frac{1}{2}$ of the SW $\frac{1}{4}$ excepting therefrom the west five acres thereof; also the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and Lot 5, excepting from Lot 5 the West two acres thereof all in Sec. 15, Twp. 7 S. R. 13 E. B. M.	7 April 1, 1895	Sands Ditch
SANDS, MARTHA A.	S $\frac{1}{2}$ of the NE $\frac{1}{4}$, N $\frac{1}{2}$ of the SE $\frac{1}{4}$ and W $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 15, Twp. 7 S. R. 13 E. B. M.	8 April 1, 1888	Sands Ditch
SCHOOLER, HENRIETTA	The SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 15, Twp. 7 S. R. 13 E. B. M.	1.2 April 1, 1905	Sands Ditch
SHEPARD, FRANK R., AND ALMA A. SHEP- ARD	The S $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Sec. 15, Twp. 7 S. R. 13 E. B. M.	2 April 1, 1905	Sands Ditch
SEVEN H. L. SHEEP COMPANY	(Said Martin Curran Tunnel is located at the head of Billingsley Creek.) The SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, SE $\frac{1}{4}$ of the NW $\frac{1}{4}$, W $\frac{1}{2}$ of the SE $\frac{1}{4}$, E $\frac{1}{2}$ of the SW $\frac{1}{4}$ all in Sec. 31, Twp. 7 S. R. 14 E. B. M.	4.8 Spring April 1, 1892	Martin Curran Tunnel and Curran Ditch
SKINNER, CHARLES, AND IVA E. SKINNER	Outlots A82, A83, and A84 of Hagerman Townsite, according to the Plat thereof on file in the office of the Recorder of Gooding County, Idaho.	1 Billingsley Creek Sept. 10, 1884	Buckeye Ditch;
STROUD, FLORENCE, OWENS	SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ and N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Sec. 25, Twp. 7 S.	4 Len Lewis Spring Sept. 1, 1889 1 Spring March 8, 1902	Brailsford-Owens Ditch; Weatherby Springs;

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
R. 13 E. B. M. less a 12 foot in width right of way on the north side of the SW$\frac{1}{4}$ of said Sec. 25; and less that certain piece and parcel of land described as follows: Beginning at a point on the east line of the SW$\frac{1}{4}$ of said Sec. 25, 1590 feet north of the southeast corner of the SW$\frac{1}{4}$ of said Section 25; thence running north 34 degrees west 468 feet; thence North 20 degrees west 685 feet to within 15 feet of the North boundary of said SW$\frac{1}{4}$ of said Section 25; thence 89 degrees 18 minutes east 500 feet, thence south 1035 feet to the place of beginning.			
TERRY, JOHN D., AND SARAH F. TERRY	2 Billingsley Creek 1 Billingsley Creek	April 1, 1880 April 30, 1887	Barlogi Ditch; Terry Ditch;
(Said Terry Ditch diverts on the north side of Billingsley Creek at a point immediately below the diversion point of said Barlogi Ditch.) NW$\frac{1}{4}$ of the SW$\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M.			
THOMPSON, T. E., AND MABEL THOMP- SON	5.4 Billingsley Creek W $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 14, Twp. 7 South R. 13 E. B. M. excepting therefrom Outlots 87 and the South Half of Outlot 86 of Hagerman Townsite.	Sept. 10, 1884	Buckeye Ditch;
TROVILLO, D., C., AND ESTELLA TROVILLO	1.5 Billingsley Creek .5 Billingsley Creek 2 Billingsley Creek .6 Billingsley Creek	April 1, 1885 April 1, 1910 Jan. 2, 1891 June 28, 1881	Sands Ditch; Sands Ditch; Granger Ditch; Padgett Ditch;
SW$\frac{1}{4}$ of the NE$\frac{1}{4}$; the E$\frac{1}{2}$ of the NE$\frac{1}{4}$ of the SW$\frac{1}{4}$ (the same being known as Lots 3 and 4 of said 40 acre tract according to the plat of the R. L. Justice Ranch) and all of the NW$\frac{1}{4}$ of the SE$\frac{1}{4}$, excepting therefrom that portion thereof now belonging to Charles C. Corey and E. W. Dilatush, more particularly described as follows, to-wit: "Beginning at the southeast corner of the NW$\frac{1}{4}$ of the SE$\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M.; thence west along the 40 line 1075'; thence north 20 degrees 49' east 820'; thence north 24 degrees 34' east 450 feet; thence south 81 degrees 26' east 893 feet to the east side of forty, thence south along the forty line 1122 feet to the point of beginning. All in Sec. 11, Twp. 7 S. R. 13 E. B. M.			

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
TUPPER, W. G., AND LIL- LIAN TUP- PER	.8 Spring Lots 1 and 2 of Sec. 19, Twp. 7 S. R. 14 E. B. M.	April 4, 1928 appurtenant to	Huitt Spring
	.6 Spring (Said unnamed springs arise in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 18, Twp. 7 S. R. 14 E. B.M.) appurtenant to Lot 4 of Sec. 18, Twp. 7 S. R. 14 E. B. M.	April 1, 1881	2 Unnamed Springs
UNSINN, EMMA, AND RUTH UN- SINN, A MINOR, AND H. O. FRAZIER, AND B. E. DYAR, AS TRUSTEES AND GUARDIANS OF SAID RUTH UNSINN, A MINOR	1.61 Spring Lots 3 and 4 of Sec. 31, Twp. 7 S. R. 14 E. B. M.	Dec. 12, 1901	Weatherby Springs; (Hoagland Tunnel)
VADER, EARL AND ETHEL VADER	.6 Spring .1 Spring	April 1, 1886 Dec. 12, 1901	Spring along Spring Creek; Weatherby Springs; (Hoagland Tunnel)
(The Spring along said Spring Creek is situated on the land of Fred Vader described as the W $\frac{1}{2}$ of the E $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the East 12.75 acres of the W $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 31, Twp. 7 S. R. 14 E. B. M.)			
The West thirty acres of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the East ten acres of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 31, Twp. 7 S. R. 14 E. B. M.			
VADER, FRANK J., AND KATIE VADER	.2 Spring .5 Spring .1 Spring	Dec. 12, 1901 July 8, 1915 April 1, 1886	Weatherby Springs; (Hoagland Tunnel) Weatherby Springs; Spring along Spring Creek;
(Said spring along Spring Creek is the same as described above.)			
NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the E $\frac{1}{2}$ of the E $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 31, Twp. 7 S. R. 14 E. B. M.			

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
VADER, FRED	.9 Spring	April 1, 1886	Spring along Spring Creek;
(Said Spring along Spring Creek is the same as described above.)			
W $\frac{1}{2}$ of the E $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the East 12.75 acres of the W $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 31, Twp. 7 S. R. 14 E. B. M.			
VADER, HARVEY W., AND MABEL VADER	1.2 Spring	April 1, 1886	Spring along Spring Creek
(Said Spring along Spring Creek is the same as described above.)			
NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 36, Twp. 7 S. R. 13 E. B. M. and the West 30 acres of Lot 1 of Sec. 31, Twp. 7 S. R. 14 E. B. M.			
VADER, VERNON	.3 Spring	April 1, 1886	Spring along Spring Creek;
(Said Spring along Spring Creek is the same as described above.)			
The West 7.25 acres of the W $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 31, and the East 2.75 acres of Lot 1, all in Sec. 31, Twp. 7 S. R. 14 E. B. M.			
WEACH, WILLIAM, AND JANE WEACH	.2 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch
Lots 1 to 8, both inclusive, in Block 5 and Lots 1 and 2 in Block 6, Hagerman Townsite, according to the Plat thereof on file in the office of the Recorder of Gooding County, Idaho.			
WHARTON, J. A., JR. AND ALPHA WHARTON	1 Riley Creek	May 1, 1883	Hunt Ditch;
	1 Riley Creek	Oct. 1, 1908	Pipe Ditch;
(Said Hunt Ditch and said Pipe Ditch are the ditches referred to in paragraph 7 of the Findings.)			
Lots 1 and 2 of Sec. 35, Twp. 7 S. R. 13 E. B. M., excepting all that portion of Lot 1 lying south of the following described line, to-wit: Said line commences at a point in the East line of said Lot 1, 1000 feet south of northeast corner thereof and runs in a straight line to a point on the West boundary of said Lot 1, 200 feet north of the north bank of Snake River.			

ANNA C.
BICKEL
AND PAUL
S. A.
BICKEL

2 second feet of Riley Creek of a priority of January 18, 1889, the point of diversion of which is 1030 feet south 30 degrees west from the northwest corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 6, Twp. 8 S. R. 14 E. B. M.

1 second foot of Riley Creek of a priority of January 18, 1899, the diversion point of which is 640 feet south 11 degrees west from the northwest corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 6, Twp. 8 S. R. 14 E. B. M.

1.5 second feet of Riley Creek of a priority of January 18, 1889, the diversion point of which is 850 feet south 8 degrees east from the northwest corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 6, Twp. 8 S. R. 14 E. B. M.

1 second foot of Riley Creek of a priority of June 15, 1910, the point of diversion of which is 710 feet south from the northwest corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 6, Twp. 8 S. R. 14 E. B. M.

6 second feet of Riley Creek of a priority of June 15, 1910, the point of diversion of which is 390 feet south 51 degrees west from the northwest corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 6, Twp. 8 S. R. 14 E. B. M.

Said land being situated in Gooding County, State of Idaho, and more particularly described as follows, to-wit:

That certain real property in Sections Five (5), Six (6), and Eight (8), in Township Eight (8) South of Range Fourteen (14) East, Boise Meridian, in Gooding County, Idaho, more particularly described as follows, to-wit:

The Southwest quarter of the Southwest Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$), Section Five (5), excepting therefrom the portion thereof described as follows: Beginning at the Southwest corner of said Section 5; thence north on the west line of said Section 5 to a point 100 feet north of the precipice of the upper Rim Rock of Snake River Canyon; thence southeasterly paralleling the said rim rock at a distance of 100 feet to a point 100 feet east of the intersection of the south line of said Section 5 with the precipice of the upper rim rock of Snake River Canyon; thence west along the south line of said Section 5 to the point of beginning.

Also excepting therefrom a strip of land lying in the northeast corner of the southwest quarter of the southwest quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section five (5) Township Eight (8) South, Range Fourteen (14) E. B. M. described as follows: Beginning at the northeast corner of the southwest quarter of southwest quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section five (5) Township eight (8) South, Range fourteen (14) E. B. M., a point from which the section corner of sections 5, 6, 7 and 8, Township 8 South, Range 14 E. B. M., bears south forty-five degrees thirty-two minutes (45 degrees 32') West 1881.3 feet; thence westerly along the north boundary of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 5, Township 8 South, Range 14 E. B. M. 608.5 feet; thence south 83 degrees 40' East 612.8 feet to the east boundary of the southwest quarter of southwest quarter Section 5 Township 8 S., Range 14 E. B. M.; thence northerly along said east boundary 80.3 feet to the point of beginning. Also a strip of land lying in the northwest corner of the southwest quarter of southwest quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$) Section five

(8) Township eight (8) South, Range fourteen (14) E. B. M., which is described as follows: Beginning at the northwest corner of the southwest quarter of southwest quarter Section five (5), Township 8 South, Range 14 E. B. M.; a point from which the section corner of Sections 5, 6, 7 and 8, Township 8 S., Range 14 E. B. M.; bears southerly along the section line 1314.5 feet; thence easterly along the north boundary of the Southwest Quarter of Southwest quarter Section 5, Township 8 S., Range 14 E. B. M., 285.3 feet; thence south 67 degrees 0' west 308.6 feet to the west boundary of section 5, Township 8 S., Range 14 E. B. M.; thence northerly along said west boundary 114.6 feet to the point of beginning. The above described pieces of land containing .98 acres.

Lot Eight (8) of Section Six (6), excepting therefrom the portion thereof described as follows: Beginning at the Southeast corner of said Lot 8, being the corner common to said Sections 5, 6, 7, and 8; thence north on the east boundary line of said Lot 8 to a point 100 feet north of the precipice of the upper rim rock of Snake River Canyon; thence northwesterly paralleling the said rim rock at a distance of 100 feet to the strip of land in said Lot 8 granted by the grantors herein to the Twin Falls North Side Land and Water Company by deed dated January 17, 1912, and recorded in Book J of Deeds, at page 331, in the records of Gooding County, Idaho, and by said company and its successor occupied with a ditch to convey waste water to Snake River; thence southwesterly along the southern boundary of said strip of land to its intersection with Snake River and thence continuing to the thread of said stream; thence southeasterly following the thread of Snake River upstream to its intersection with the south line of said Lot 8; thence east along the south boundary of said Lot 8 to the place of beginning.

Also excepting therefrom a strip of land seventy-five (75) feet wide, 50 feet on the north or right-hand side and 25 feet on the south or left-hand side respectively to the center line which is described as follows: Said strip of land lying in Lot eight (8) Section Six (6), Township Eight (8) South, Range Fourteen (14) E. B. M.; beginning at a point on the east boundary of Section 6, Township 8 S., Range 14 E. B. M., from which point the section corner of Sections 5, 6, 7 and 8 bears southerly along the section line 1254.0 feet, said point being on the center line of the 7-D Waste Ditch, at Engineer's station 169 plus 13.6, said engineer's station being 100 feet long. Thence south 67 degrees 25' west 298.6 feet to station 172 plus 12.2. Thence south 69 degrees 35' west 38.3 feet to station 172 plus 50.5 (Note—from station 172 plus 64 to station 175 plus 00, water has no regular course but flows under rocks) Thence south 66 degrees 24' west 249.5 feet to station 175 plus 00. Thence south 50 degrees 24' west 55 feet to station 175 plus 33. Thence south 56 degrees 24' west 180 feet to station 177 plus 35. Thence south 54 degrees 24' west 155 feet to station 178 plus 90. Thence south 33 degrees 54' west 105 feet to station 179 plus 65. Thence south 23 degrees 39' west 169.5 feet to station 181 plus 34.5. which station is on the bank of the Snake River and a point from which the section corner of sections 5, 6, 7 and 8, T. 8 South Range 14 E. B. M. bears south 60 degrees 46' east 1143.8 feet; comprising 2.28 acres.

The Southeast quarter of the Northwest quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$), Lots Seven (7) and Nine (9), the North Half of the Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$), and the Southwest Quarter of the Northeast Quarter

(SW $\frac{1}{4}$ NE $\frac{1}{4}$), of Section Six (6), excepting therefrom the portion thereof described as follows: Beginning at the northeast corner of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 6, Twp. 8 S. R. 14 E. B. M., running thence 870 feet west, thence southeasterly to a point on the east line of the said SW $\frac{1}{4}$ NE $\frac{1}{4}$, 870 feet south of the point of beginning, thence north 870 feet to the point of beginning, containing 8.688 acres.

Lot One (1) of Section Eight (8), excepting therefrom the portion described as follows: All that portion of said Lot 1 lying south and west of a line described as follows: Beginning at a point on the north line of said Section 8, which is 100 feet east of the intersection of said north line with the upper Rim Rock of Snake River Canyon; thence southeasterly paralleling the said Rim Rock at a distance of 100 feet to a point 100 feet north of the intersection of the east line of Lot 1 with the upper Rim Rock of Snake River Canyon.

The Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Eight (8), excepting therefrom that portion described as follows: All that portion of the said NE $\frac{1}{4}$ NW $\frac{1}{4}$ lying south and west of a line described as follows: Beginning at a point on the west line of said subdivision which is 100 feet north of the intersection of said line with the upper Rim Rock of Snake River Canyon; thence southeasterly paralleling said Rim Rock at a distance of 100 feet to a point on the south line of said subdivision which is 100 feet east of the intersection of said south line with the upper Rim Rock of Snake River Canyon.

BIG BEND IRRIGATION AND MINING COMPANY

It is hereby ordered, adjudged and decreed, and this does order, adjudge and decree, that the defendant and cross complainant, Big Bend Irrigation and Mining Company, a corporation, is the owner of, and entitled to the use of, and the right to use for irrigation and domestic purposes the following amounts of water, to-wit:

Twenty (20) second feet of the waters of what is commonly known as the large Thompson, or Tucker, spring, being situate in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 36, Twp. 7 South, Range 13 East, B. M. in Gooding County, Idaho, the place of diversion being at said spring and by means of a tunnel, flume and ditch and other necessary diversion works built and constructed at said spring and conveying the same through such ditch to and upon the lands hereinafter described for the irrigation of the same and for the watering of stock and other domestic use. The priority of said water right to be, and is, fixed as the 17th day of December, 1903. Also all of the waters of what is known as the smaller Thompson, or Tucker, Spring, situate in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, Twp. 7 South, Range 13 East, B. M. in Gooding County, Idaho, and estimated to flow 15 second feet, with a priority of April 1, 1906. That said water is diverted at said spring by means of a dam and ditch directly into said ditch, being the same ditch diverting and carrying the waters from the large Thompson, or Tucker, spring hereinbefore described and conveying the same to the hereinafter described lands of the stockholders of the defendant and cross complainant, Big Bend Irrigation and Mining Company, and used for the irrigation thereof and for domestic purposes.

Said water of said two water rights is hereby made appurtenant to and to be used upon and, in the irrigation of the follow-

ing described lands belonging to the stockholders of the said defendant and cross complainant, Big Bend Irrigation and Lining Company, situate in Gooding County, Idaho, being approximately 1940 acres of land in Sections 15, 16, 21, 22, 23, 26, 27, 35 and 36 in Township 7 South, Range 13 East B. M. and being situate in the following 40 acre tracts in the above named sections, township and range, to-wit:

In Sec. 15: SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$.

In Sec. 16: NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$.

In Sec. 21: NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$.

In Sec. 22: NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, and NE $\frac{1}{4}$ SW $\frac{1}{4}$.

In Sec. 23: SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$.

In Section 26: NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$.

In Sec. 27: NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ SW $\frac{1}{4}$.

In Sec. 35: NE $\frac{1}{4}$ NE $\frac{1}{4}$.

In Sec. 36: NW $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$.

HIGH & FRITCHMAN COMPANY

It is hereby ordered, adjudged and decreed, and this does order, adjudge and decree, that the defendant and intervenor High & Fritchman Company, a corporation, is the owner of, and entitled to the use of, and the right to use for irrigation and domestic purposes the following amounts of water, to-wit:

Three and 2 tenths (3.2) second feet of water, with a priority of October 9, 1884, developed and diverted from the waters, seeps, springs and rivulets in the rim rock above the head waters of Billingsley Creek, by means of a tunnel commonly known as the Curran Tunnel, or Curran Spring, situate in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 32, Twp. 7 North, Range 14 East, B. M., Gooding County, Idaho, and 4.8 second feet of the waters of said seeps, springs, and rivulets diverted and developed by the same tunnel, with a priority of April 1, 1908, taken from said tunnel by a pipe line and ditch into and upon the lands of the said defendant herein-after described and used on said lands for irrigating and raising crops thereon and for watering stock and other domestic purposes during the non irrigation season.

Said water rights are appurtenant to and to be used upon and in the irrigation of the following described lands, situate in Gooding County, Idaho, of the said defendant and intervenor High & Fritchman Company, a corporation, to-wit:

The Southeast Quarter (SE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$); the East Half (E $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Thirty-one (31); the Southwest Quarter (SW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$); the West Half (W $\frac{1}{2}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section Thirty-two (32), all in Township Seven (7) South, Range Fourteen (14) East, B. M., and Lots Three (3) and Four (4) of Section Five (5), Township Eight (8) South, Range Fourteen (14) East, B. M., together wit all water rights, ditches and ditch rights of way appurtenant thereto.

It is hereby ordered, adjudged and decreed that the defendant and counterclaimant, Idaho Power Company, is the owner of and entitled to the use of and the right to use for irrigation, domestic and other purposes the following amounts of water, to-wit:

Eight second feet of the waters of Riley Creek diverted at or from Tucker or Thompson Springs into and through the Pipe Ditch in the Southeast Quarter ($SE\frac{1}{4}$) of the Southeast Quarter ($SE\frac{1}{4}$) of Section 36, Township 7 South, Range 13, East, B. M. with a priority date of October 1, 1908, and an additional three second feet of the waters of said Riley Creek for irrigation, domestic and other purposes diverted into and through the Hunt Ditch in the Southwest Quarter ($SW\frac{1}{4}$) of the Southeast Quarter ($SE\frac{1}{4}$) of Section 1, Township 8 South, Range 13 East, B. M. with a priority date of April 1, 1901, and an additional water right for one-half second foot of water from said Riley Creek for domestic uses and purposes and the watering of stock during the non-irrigation season diverted at Thompson or Tucker Springs through said Pipe Ditch, with a priority date of April 1, 1901, and an additional water right for one-half second foot of the waters of said Riley Creek for domestic uses and purposes and the watering of stock during the non-irrigation season diverted through said Hunt Ditch with a priority date of May 1, 1918.

Said water rights are appurtenant to and to be used on and ^{or} in the irrigation of the following described lands of the said Idaho Power Company:

Lot Four (4) in Section One (1) of Township Eight (8) South, Range Thirteen (13) East, B. M.

Lot One (1) of Section Two (2), Township Eight (8) South, Range Thirteen (13) East, B. M.

The Southwest Quarter (SW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Thirty-five (35), Township Seven (7) South, Range Thirteen (13) East, B. M.

Lot One (1) of Section Thirty-five (35), Township Seven (7) South, Range Thirteen (13) East, B. M.

Lots One Hundred Twenty-four (124) and One Hundred Twenty-five (125) of the Buckeye Subdivision.

Lot Five (5) of Section One (1), Township Eight (8) South, Range Thirteen (13) East, B. M.

Lots Two (2), Three (3) and Four (4) of Section Two (2), and the South Half (S $\frac{1}{2}$) of the Northwest Quarter (NW $\frac{1}{4}$) and the South Half (S $\frac{1}{2}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Two (2), Township Eight (8), South, Range Thirteen (13) East, B. M.

Lots One (1), Two (2), Three (3), and the South Half (S $\frac{1}{2}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Three (3), Township Eight (8) South, Range Thirteen (13) East, B. M.

Lot Six (6) of Section Thirty-four (34), Township Seven (7) South, Range Thirteen (13) East, B. M.

Also that certain island situate in the Snake River known as Dolman Island, being south of Sections Thirty-four (34) and Thirty-five (35), Township Seven (7) South, Range Thirteen (13) East, B. M.

It is further ordered, adjudged and decreed that the said water rights of the Idaho Power Company may be diverted by different diversion works and conveyed through different conduits from those now used in the diversion of said water rights, and said water rights may be diverted elsewhere out of Riley Creek ^{or Thompson or Tucker Springs} than from the existing diversion works and conduits, such changed diversion works or conduits to be constructed at the expense of said Idaho Power Company.

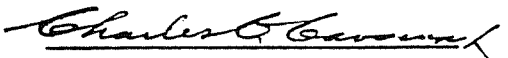
It is further ordered, adjudged and decreed that the water rights of the defendant and counterclaimant, Idaho Power Company, for the generation of electricity and electrical energy, and for incidental domestic and irrigation purposes in connection with its operation of hydroelectric generating plants as described in subdivisions (b), (c) and (d) of Paragraph I of said Idaho Power Com-

pany's further and separate answer and counterclaim filed herein, and the underground flow and sources supplying said water rights, are neither concerned in nor affected by this action or by this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECERRED, That the plaintiff, defendants, cross-complainants, counter-claimants, and interveners and their attorneys, agents, servants, and employees and any and all persons acting in aid of or for any of said parties, and any persons in privy with or claiming under any of said parties and each and every of them are hereby forever enjoined and restrained from in any manner interfering with or diverting or using the waters of said Billingsley Creek, and/or said Riley Creek, and/or the Springs, adjudication of which has been made herein, excepting in accordance with the terms of this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That each party to this action shall pay his own costs.

Made in open Court this 22nd day of March, 1932.



District Judge.

United States of America

DISTRICT OF IDAHO

88:

I, W. D. McREYNOLDS, Clerk of the District Court of the United States for the District of Idaho, do hereby certify that the foregoing documents and pleadings, together with the Judgment (entered in Judgment Book No. 4 at page 585), constitute the Judgment Roll in this cause, under the rules of this Court.



WITNESS my hand and the seal of said Court this 23rd day of March, 1923.

W. D. McREYNOLDS, Clerk.

By _____ Deputy.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF IDAHO, SOUTHERN DIVISION.

NEW INTERNATIONAL MORTGAGE
BANK, a corporation,

Plaintiff,

-vs-

IDAHO POWER COMPANY, a
corporation, et al.

Defendants.

In Equity No. 1602

FINDINGS OF FACT

WHEREAS, The above entitled matter came duly on for hearing and was submitted upon stipulation of facts and on argument of counsel, and the court being duly advised in the premises, does here and now make the following findings of fact:

-1-

That the plaintiff, New International Mortgage Bank, now is, and during all the times hereinafter mentioned has been a corporation duly organized and existing under and by virtue of the laws of the Kingdom of the Netherlands, with its principal place of business at Groningen, and is a citizen and resident of said Kingdom of the Netherlands, and has duly complied with the statutes of the State of Idaho, permitting foreign corporations to own, hold and operate lands in the State of Idaho.

-2-

That the defendant, Idaho Power Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Maine, and by reason of full compliance with the laws of the State of Idaho is authorized to transact and is transacting business in the State of Idaho, and is entitled to own, hold and operate the lands and waters in the State of Idaho, and is a citizen and resident of the State of Maine.

That the defendants, Western Loan & Investment Company, Seven H. L. Sheep Company, Curran Sheep Company, Big Spring Water Users Association, Big Bend Irrigation & Mining Company, Florence Livestock Company, Hagerman Water Users Association, Hagerman Valley Muskrat Farms Company, High & Fritchman Company, and each of them, are corporations duly organized and existing under and by virtue of the laws of the State of Idaho, and are citizens and residents of the State and District of Idaho.

That all of the defendants named in the above entitled action, excepting the Idaho Power Company, a corporation, and the defendants, Mrs. Alice Hart, Fred Vader, Paul S. A. Bickel and Anna C. Bickel, are citizens and residents of the State and District of Idaho.

That the defendant, Mrs. Alice Hart, a widow, is a citizen and resident of the State and District of Washington.

That the defendant, Fred Vader, is a citizen and resident of the State and District of California.

That the defendants, Paul S. A. Bickel and his wife, Anna C. Bickel, are citizens and residents of the State of California.

-3-

That this is an action between citizens of different states, and that the amount in controversy herein exceeds the sum of \$3,000.00 in value, exclusive of interest and costs.

-4-

That all of the land described in the complaint of the plaintiff, and in the answers, cross-complaints and counter-claims of the defendants and intervenors, and each of them, is semi-arid in character and requires the artificial application of water or irrigation in order to produce thereon ordinary agricultural crops; that said land is situate in what is known as the Hagerman Valley, east of and adjacent to the Snake River, and that the same lies between the rim

rock, or canyon wall, to the east of the Snake River and said Snake River; that the subsoil of said valley underlying said valley and all of the same is shattered, fissured lava flow, upon which has been deposited layers of clay and gravel, interspersed with water worn boulders, fragments of rock, and the soil is composed mainly of decomposed lava rock, oxidized lava rock and sand, and that owing to the nature of the soil and subsoil, the coarse texture and the mechanical composition of the soil and its free drainage, the said land and all of the land in Hagerman Valley requires a large amount of water, as hereinafter specified, for its successful irrigation and production thereon of ordinary agricultural crops.

-5-

That said land, and all of the same, is situated in what is known as the Hagerman Valley, in Gooding County, Idaho, excepting certain lands of the Idaho Power Company situated on the south side of Snake River, which lands are in Twin Falls County, Idaho; said Hagerman Valley being a small valley or cove on the east side of the Snake River between "Thousand Springs" on the south and "Lower Salmon Falls" on the north, comprising approximately 18,000 acres of land lying between the rim rock on the east and the Snake River on the west; that in the land, territory and country immediately to the east of said Hagerman Valley there is underground flowage of water, flowing towards the Snake River, which comes to the surface in numerous springs, seeps and trickles along said rim rock, and in numerous and divers other springs located in the said Hagerman Valley, and that said underground flowage of water is the common source and supply of two creeks situated in the Hagerman Valley, one commonly known as "Riley Creek", which said stream flows in a southwesterly direction and empties into Snake River, and the other commonly known as "Billingsley Creek", which said stream flows in a northwesterly

Page 6.

direction and empties into Snake River, said Riley Creek and said Billingsley Creek being the natural drainage and waterways into which the waters afforded by said seeps, rivulets, springs and underground flow naturally drain and are conveyed into the Snake River; and that the said Riley Creek and Billingsley Creek have the same source, that is to say, that the waters of both of said creeks have their origin in the underground flowage of water flowing beneath the lavas in a generally westerly direction and making their appearance as seeps, trickles, rivulets and springs on the rim rock bounding said Hagerman Valley on the east and also in said valley, and that the said Riley Creek and Billingsley Creek are a part of the same drainage system, and that interference with the waters supplying the seeps, trickles, rivulets and springs supplying Riley Creek is an interference with the natural flow of Billingsley Creek, and that interference with the waters supplying Billingsley Creek is an interference with the natural flow of said Riley Creek.

-6-

That the plaintiff herein is now, and its predecessors in interest have been, for more than thirty years last past, the owners of and in possession of the following described land, which is commonly known as the Buckeye Ranch, containing approximately 1446 acres, situated in Gooding County, Idaho within said district, and particularly described as follows, to-wit:

SW¹/₄ of NW¹/₄; NW¹/₄ of SE¹/₄; S¹/₂ of NW¹/₄; N¹/₂ of SW¹/₄, Section 27; SE¹/₄ of NW¹/₄; NW¹/₄ of SE¹/₄; Lots 4, 5, 6 and 9, all in Section 28; Lots 1, 2, 3 and 8; SW¹/₄ of SE¹/₄, all in Section 33; Lots 1, 2, 3, 4, 5 and 7; SW¹/₄ of NW¹/₄; NW¹/₄; N¹/₂ of NW¹/₄, all in Section 34; SW¹/₄ of NW¹/₄ and NW¹/₄ of SW¹/₄ of Section 35, all in Township 7 South, Range 18 E. B. M. Territorial Borrao Bar, Big Foot Bar, Union Bar and Comstock Placer Mining Claims according to plat of mineral survey No. 1, Lot 37, filed in U. S. Land Office at Hailey, Idaho, November 10, 1904; Starr Hunt, Jack Rabbit and Territorial Borrao Bar Placer Mining Claims according to plat of mineral survey No. 301, Lot 33, filed in U. S. Land Office at Hailey, Idaho, January 2, 1890; all in

Sections 7 South, Range 13, T. 2. N. All lands in
Hunt River South of said Section 33, Township 7
South, Range 13 E. N. W. comprising tracts 13, 17, 37,
104 and 105 of Map of Rights shown recorded in Book
1 of Plats, page 44, in the office of the County Re-
corder of Lincoln County, Idaho.

-7-

That the lands of the plaintiff, so described in paragraph
6 hereof, now are, and for many years last past have been, appropri-
ated from the waters of said seeps, trickles, rivulets and springs
aforesaid, so flowing in Riley Creek and Billingsley Creek; that
said waters so beneficially used upon plaintiff's lands are, and
have been for many years last past, diverted from said creeks onto
plaintiff's lands through three main ditches; and that the common
names, respective points of diversion, priority dates and amounts
diverted to and used upon plaintiff's lands through the three
ditches are as follows, to-wit:

HUNT DITCH: By means of the Hunt Ditch plaintiff and its
predecessors in interest, beginning May 1st, 1885, have diverted
12 second feet of the waters so flowing in said Riley Creek and
beneficially applied the same upon plaintiff's said lands con-
tinuously. The point of diversion for said ditch is located at
a point in the SW 1/4 Sec. 1, T. 3 S., R. 13 E. B. M. from
which the corner of Sections 1, 2, 35 and 36, Twp. 7 and 8 S.,
R. 13 E. B. M. bears North 60 degrees 12' West 4365 ft. distant,
whence it follows a general northwesterly course to and upon
plaintiff's said lands.

PIPE DITCH: By means of the Pipe Ditch plaintiff and its
predecessors in interest, beginning October 1st, 1908, have diverted
12 second feet of the waters so otherwise flowing in Riley Creek
and beneficially applied the same upon plaintiff's said lands
continuously. The point of diversion of said ditch is located at
the head of Riley Creek, that is, where the main body of water
comprising said Riley Creek emerges from the hill side in the form
Page 8.

of springs (said springs being sometimes referred to as the Thompson or Tucker Springs), at which point a tunnel has been driven into the hillside for said diversion purposes, said diversion point being located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 36, T. 7 S., R. 13 E.B.M., from which the corner of Sections 1, 2, 35 and 36, Twp. 7 and 8 S., R. 13 E.B.M. bears South 75 degrees 50' West 4435 ft. distant, whence it follows a general westerly course to and upon plaintiff's lands.

BUCKEYE DITCH: By means of the Buckeye Ditch, which is sometimes known as the Leighton-Colthorp Ditch, plaintiff and its predecessors in interest, beginning September 10th, 1884, have diverted 20 second feet of the waters so flowing in Billingsley Creek and beneficially applied the same upon plaintiff's said lands continuously. The point of diversion is on the bank of said Creek in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 11, T. 7 S., R. 13 E.B.M., from which the quarter section corner common to Sections 11 and 12, T. 7 S. R. 13 E.B.M. bears South 47 degrees 22' East 718 ft. distant (likewise a steel pin set in the center of U.S. Highway No. 30 for the center of the SE $\frac{1}{4}$ of Sec. 11 bears South 23 degrees 41' West 1971 ft. distant from said point of diversion, whence said ditch follows a general south and south-westerly course to and upon plaintiff's lands.

-8-

That the plaintiff shall have the right to change its point of diversion of the waters of Billingsley Creek which it has diverted through the Buckeye Ditch heretofore described to Riley Creek at Tucker or Thompson Springs through the Pipe Ditch, hereinbefore described, or elsewhere on Riley Creek without interference to other users from said Creek, and said plaintiff in lieu of the said Billingsley Creek appropriation

shall, upon the abandonment by it of the Billingsley Creek appropriation taken through the said Buckeye Ditch, have, and is hereby given, a decreed right from said Riley Creek at said Tucker or Thompson Springs for 10 additional second feet of water, making a total of 22 second feet from said Riley Creek at Tucker or Thompson Springs, with a priority of October 1, 1908, and that such permission to change the diversion from Billingsley Creek to Riley Creek is granted and given by virtue of the plaintiff waiving all of its claims and rights in the Buckeye Ditch and all of its claims and rights to the waters of Billingsley Creek, hereinbefore described, as conveyed through said Buckeye Ditch. It is further decreed, that this right of change of point of diversion as set forth in this paragraph shall be exercised solely at the cost and risk of the plaintiff, and shall not interfere with the diversion by the Idaho Power Company and other parties of the waters of said Tucker or Thompson Springs, which diversions shall be at all times considered entitled to full diversion before the plaintiff herein shall be entitled to divert the waters provided under this paragraph to be changed from Billingsley Creek to Riley Creek.

That for the irrigation of their respective tracts of land hereinafter described and for domestic and other purposes thereon, the defendants and parties hereinafter named in this writ and their predecessors in interest diverted and appropriated on the dates set after their respective names, of the waters of Riley Creek, Billingsley Creek, at the diversion points herein set forth, and of certain named springs in Hagerman Valley, Idaho, the respective amounts of water set opposite their respective names, which said water is appurtenant to the said lands of said respective defendants and parties, to-wit:

NAME	AMOUNT OF WATER IN SECONDS FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
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ALAN BARLOGI	3.6 Billingsley Creek	April 1, 1965	Santa Ditch
AND MIRA B. BARLOGI	1.08 Billingsley Creek	April 1, 1967	Santa Ditch
BARLOGI	2 Billingsley Creek	April 1, 1980	Barlogi Ditch

(The diversion point of said Santa Ditch is on the banks of Billingsley Creek about 300 yards westerly of and below the point of diversion of the said Buckeye Ditch described in para. 7 of these Findings. The diversion point of said Barlogi Ditch is on the banks of Billingsley Creek in the southeast corner of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. S. 14.)

Lot 1 of Sec. 11 and Lot 3 of Sec. 12, the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 11, and the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. S. 14, excepting from the latter forty 9.28 acres heretofore conveyed to the Joan Jensen which exception is described as follows, to-wit: Beginning at the southeast corner of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. S. 14; thence north along the east line thereof 448 feet; thence south 12 degrees 30' west 130 feet; thence north 55 degrees 0' west 333 feet; thence south 45 degrees 43' west 333 feet; thence south 13 degrees 45' west 335 feet to the point of intersection with the south line of the above described forty; thence east along the south line of said forty 340 feet more or less to the point of beginning.

WATSON, R.
AND DAIS.
R. W.

1.3 Spring
1.4 Spring

March 8, 1968
March 9, 1968

Weatherby Spring
Weatherby Spring

(Said Weatherby Spring arises on the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 30, Twp. 7 S. R. 14 E. S. 14.)

NAME	AMOUNT OF WATER IN SECONDS FEET AND SOURCE	DATE CITY OF DIVERSION POINT	DIVERSION POINT
W$\frac{1}{2}$ of the SW$\frac{1}{4}$ and the SE of the SW$\frac{1}{4}$ of the NW$\frac{1}{4}$ of Sec. 33, Twp. 7 S. R. 13 E. B. M.			
BARTON, W. C., AND ELLA BAR- TON	1.3 Spring NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 32, the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 36, all in Twp. 7 S. R. 13 E. B. M.	March 8, 1902	Weatherby Springs

BEDAL, KATE C., AND JAMES BEDAL	3 Lea Lewis Spring 2 Spring 4.4 Riley Creek (The diversion point of the Brailsford-Owens Ditch is on Lewis Spring in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 3, Twp. 8 S. R. 14 E. B. M. which point lies north 15 degrees 35' East 357 feet from the center of said section 3. The diversion point of said Bickel Spring is North 0 degrees 51' east 334.5 feet from the south- west corner of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 3, Twp. 8 S. R. 14 E. B. M. The diversion point of the Bedal Ditch is on Riley Creek about one-fourth mile above the residence on the land described below.)	Sapt. 1, 1889 May 18, 1881 May 1, 1884	Brailsford- Owens Ditch Bickel Spring; Bedal Ditch;
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The W $\frac{1}{2}$ of the SE $\frac{1}{4}$ and the E $\frac{1}{2}$ of the SW $\frac{1}{4}$, and the SE $\frac{1}{4}$
of the SE $\frac{1}{4}$ of Sec. 36, Twp. 7 S. R. 13 E. B. M.; Lots
1, 2, 6 and 7 and the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 1, Twp.
8 S. R. 13 E. B. M. and Lots 4, 5, and 6 of Sec. 6,
Twp. 8 S. R. 14 E. B. M.

J. C. AND- INFIELD AND ALITA H. BEDING- FIELD AND MARY Mc- CARTY	10.9 Spring .3 Spring; 12 Spring 20 Billingsley Creek (The diversion point of said Curran Ditch is at the head of Billingsley Creek.)	March 8, 1902 April 4, 1910 Dec. 3, 1916 April 1, 1917	Weatherby Spring Weatherby Spring Weatherby Spring Curran Ditch;
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The SW $\frac{1}{4}$ Sec. 33; NW $\frac{1}{4}$, SE $\frac{1}{4}$, NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$,
E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 33; NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$,
SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 35, and the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, all
in Township 7 South, Range 13 E. B. M.

BELL, HAR- LAN	3.16 Billingsley Creek .5 Riley Creek	Sept. 10, 1894 Oct. 1, 1908	Buckeye Ditch; Fire Ditch re- ferred to in para. 7 of these findings
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Lot 13, in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and Lots 27
and 37 in the W $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$, in Sec. 37,

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	DATE WHEN WATER WAS DIVERTED	DIVERSION POINT
Twp. 7 S. R. 13 E. B. 11., the same being Ackerly Tracts shown on the map or plat of Buckeye Ranch in file in the office of the Recorder of Gooding County, Idaho.			
BELL, LEO, PLENN, AND MRS. E. M. BELL	14.4 Billingsley Creek	March 30, 1884	E. M. Bell Ditch. (The diversion point of the said E. M. Bell Ditch is very close to the diversion point of said Buckeye Ditch.) Lots 6 and 9 in Sec. 31, Twp. 7 S. R. 13 E. B. 11.; SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 32, Twp. 7 S. R. 13 E. B. 11.; NW $\frac{1}{4}$ of Sec. 27, Twp. 7 S. R. 13 E. B. 11.; NE $\frac{1}{4}$, and Lot 1, in Sec. 33, Twp. 7 S. R. 13 E. B. 11.
BIG SPRING WATER USERS ASSOCIATION, a corporat- ion.	12.9 Spring	March 21, 1901	Big Spring; (Dunfee-Secor Tunnel)
	5 Spring	April 1, 1911	Big Spring; (Dunfee-Secor Tunnel)
(Said Big Spring is located on the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 13, Twp. 7 S. R. 13 E. B. 11.)			
BLACKHART, CHARLES R. AND LENA C. BLACKHART	2.4 Billingsley Creek	March 30, 1884	E. M. Bell Ditch.
	.2 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch;
	SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 32, Twp. 7 S. R. 13 E. B. 11.		
BLACKHART, MABEL	2.4 Billingsley Creek	March 30, 1884	E. M. Bell Ditch.
	.4 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch;
	SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 32, Twp. 7 S. R. 13 E. B. 11.		
BOYER, EM- ERSON, AND ETHEL BOYER	3 Riley Creek	Oct. 1, 1908	Riley Ditch re- ferred to in com- mon of these findings; SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 33, Twp. 7 S. R. 13 E. B. 11.
BOYER, LEE AND ALICE BOYER	3 Spring;	Feb. 17, 1938	Three Springs; (Said "Three Springs" is located immediately east of the east boundary line of the Big Spring Ranch, about one-eighth mile east of Billingsley Creek, about one-half mile north of the head of said Billingsley Creek.) SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 14, and the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 33, Twp. 7 S. R. 13 E. B. 11.

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	DATE OF APPROPRIATION	DIVERSION POINT
BRAILSFORD, A. H., AND MATRICE E. BRAILSFORD	3 Len Lewis Spring W $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 33, Twp. 7 S. R. 13 E. B. M.; E $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 33, Twp. 7 S. R. 13 E. B. M.	Sept. 1, 1889	Brailsford- Wrens Ditch
BRIGGS, E. G., and EDNA C. BRIGGS	.5 Riley Creek 1 Riley Creek (The diversion point of said Conyers Ditch is on Riley Creek 100 yards below the diversion point of said Hunt Ditch described in paragraph 7 of these Findings.) S $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ (or Lot 3), Sec. 1, Twp. 3 S. R. 13 E. B. M.	May 1, 1883 May 1, 1883	Hunt Ditch; Conyers Ditch;
CLIFFORD, EDNA M., FRANCES H. CLIF- FORD, WM. H. CLIF- FORD, HOW- ARD F. CLIF- FORD, RICH- ARD C. CLIF- FORD, ROYLE J. CLIFFORD, WILTON L. CLIFFORD, OLVIRA E. McCORKLE, EMEL C. SMITH	3 Spring 1.5 Billingsley Creek 1.6 Billingsley Creek NW $\frac{1}{4}$ of the NE $\frac{1}{4}$, E $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$, of Sec. 27, and the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 33, Twp. 7 S. R. 13 E. B. M. .5 Billingsley Creek 3 Billingsley Creek appurtenant to the following land: (The diversion point of one Clifford ditch is 1.3 feet below the diversion point of said Bonds Ditch, the other 50 ft. below the diversion point of said Bonds Ditch, and all of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M. and that portion of Lots 2 and 3 in said Sec- tion 11 bounded and described as follows: Commencing at the quarter corner between Secs. 3 and 11, Twp. 7 S. R. 13 E. B. M., thence west along the section line between said Sections 374.3 feet; thence south 13 degrees 43' east 70 feet; thence south 8 de- grees 7' west 83 feet; thence south 13 degrees 33' east 38 feet; thence south 23 degrees 23' east 45 feet; thence south 25 degrees 35' east 243.3 feet; thence south 27 degrees 43' west 333 feet; thence south 35 degrees 53' west 13.4 feet to a point (which said point is south 25 degrees 45' west 323.7 feet	March 2, 1902 March 30, 1884 Sept. 10, 1884 April 1, 1909 April 1, 1880	Weatherby Spring E.M. Bell Ditch; Buckeye Ditch; James Ditch; Two Clifford Ditches

NAME	AMOUNT OF WATER IN CUBIC FEET AND 3/4	DATE	LOCATION
From the SW 1/4 quarter corner 117.5 above mentioned and is 729 feet south of the section line between said sections 8 and 11; thence north 87 degrees 33' west 345 feet to a point (which point is 478.3 feet south of a point on the section line between said sections 8 and 11 in said Twp. and range aforesaid 1010 feet west from the said quarter corner between sections 8 and 11 first above mentioned; thence north 80 degrees 33' west 199.1 feet to a point; thence South 13 degrees 45' west about 2269 feet to a point 220 feet east from the quarter corner on the west boundary line of section 11, Twp. 7 S. R. 13 E. B. M.; thence east along the south boundary line of Lot 3 of said Section 11 to the southeast corner of said Lot 3; thence north along the east boundary line of said Lot 3 to the northeast corner thereof; thence east along the south boundary line of Lot 2, in said section 11 to the southeast corner of said Lot 2; thence north along the east boundary line of said Lot 2 to the place of beginning.			
CONDIT, JAMES E. AND JENNIE M. CONDIT	.5 Spring	April 1, 1930	Huitt Spring; (Said Huitt Spring is located on the SW 1/4 of the NW 1/4 of Sec. 19, Twp. 7 S. R. 14 E. B. M.) The NW 1/4 of the SW 1/4 (also known as Lot 3) of Section 19, Twp. 7 S. R. 14 E. B. M.
DILATUSH, E. T., AND ALICE I. DILATUSH, AND CHARLES C. CARLEY	2.4 Billingsley Creek .3 Spring;	Jan. 3, 1891 Jan. 3, 1891	Granger Ditch Unnamed Spring (Said unnamed spring arises in the SW 1/4 of the NW 1/4 of Sec. 11, Twp. 7 S. R. 13 E. B. M. at a point 1088 feet north 2 degrees 3' west from the southeast corner of said tract of land. That the point of diversion of said Granger Ditch is on the bank of Billingsley Creek about 100 feet below the diversion point of said Buckeye Ditch and from the diversion point of said Granger Ditch the quarter section corner common to secs. 11 and 12 Twp. 7 S. R. 13 E. B. M. bears south 31 degrees 27' east a distance of 833.4 feet Beginning; at the southeast corner of the NW 1/4 of the SW 1/4 of Sec. 11, Twp. 7 S. R. 13 E. B. M.; thence west along the forty line 1075'; thence north 20 degrees 40' east 320 feet; thence north 24 degrees 34' east 460 feet; thence south 81 degrees 26' east 833 feet to the east forty line, thence south along the forty line 1122 feet to the point of beginning.
ELIASON, ARMEDIA	.3 Spring .4 Spring	Dec. 13, 1901 April 4, 1910	Weatherby Springs; (Horseshoe Tunnel) Weatherby Springs; The NW 1/4 of the NE 1/4 of Sec. 33, Twp. 7 S. R. 13 E. B. M. excepting therefrom, however, the following described tract of land: Beginning at the quarter corner between Sections 25 and 36 of said township and range, running thence east 399 feet to the center of the public highway, thence in a southwesterly direction in the center of said highway 278 feet, thence westerly along the north bank of the Clifford Ditch 370 feet, to the west boundary line of said NW 1/4 of the NE 1/4 of said Section 33, thence north along said west boundary line 357 feet to the point of beginning, said tract of land excepted containing 8.2 acres, more or less, and the property herein described containing 37.3 acres, more or less.

NAME	AMOUNT OF WATER IN SECONDS FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
ELIASON, JACOB AND CARRIE I.	1.6 Len Lewis Spring .7 Spring	Sept. 1, 1889 March 3, 1902	Brallford- Trens Ditch Weatherby Springs;
	The SE$\frac{1}{4}$ of the SW$\frac{1}{4}$ of Sec. 26, Twp. 7 S. R. 13 E. B. M.; also that certain portion of the northwest corner of the NW$\frac{1}{4}$ of the NE$\frac{1}{4}$ of Sec. 36, in Twp. 7 S. R. 13 E. B. M. in Idaho, more particularly described as follows, to-wit: Beginning at the quarter corner between sections 25 and 36 in said Twp. 7 S. R. 13 E. B. M. running thence east a distance of 339 feet to the center of the public highway, thence in a southwesterly direction in the center of the said highway a distance of 278 feet; thence westerly along the north bank of the Clifford Ditch a distance of 370 feet to the west boundary line of the said northwest quarter of the northeast quarter of said Sec. 36, thence north along the said west boundary line a distance of 257 feet to the place of beginning, known as Tax No. 1 in Sec. 36, in the office of the Assessor of Gooding County, Idaho; Also that certain tract of land more particularly described as follows, to-wit: Beginning at the southwest corner of the southwest quarter of the southeast quarter of Sec. 25, Twp. 7 S. R. 13 E. B. M., thence running east 397 feet, thence northwesterly to a point distant eighteen hundred and seventy feet on section line from the SW$\frac{1}{4}$ of the SE$\frac{1}{4}$ of said section, thence south 1870 feet to the place of beginning. Said piece of land being a triangular piece of land containing 9.5 of an acre according to the survey thereof, and known as Tax No. 1 of said Sec. 25, in the office of the Assessor of Gooding County, Idaho.		
FARMER, J. EUGENE AND MARVEL FAR- MER	.5 Spring 3.7 Spring	Feb. 1, 1888 Feb. 17, 1888	Weatherby Springs; "Three Springs"
	(Said "Three Springs" is located immediately east of the east boundary line of the Dan Jones' Ranch about one-eighth mile east of Billingsley Creek and about one mile north of the head of said Billingsley Creek.) S$\frac{1}{4}$ of Sec. 24, Twp. 7 S. R. 13 E. B. M. and Lot 4 of Sec. 19, Twp. 7 S. R. 14 E. B. M.		
FISH, EARL, AND ALLI- SON MARY FISH	1.6 Spring	July 26, 1910	Sherman Springs
	(Said Sherman Springs arises about one mile east of the land described below and is about 200 feet from "Big Springs" elsewhere described herein.) Beginning at a point 50 rods east of the northwest corner of the northwest quarter of the southeast quarter (NW$\frac{1}{4}$SE$\frac{1}{4}$) of Section 13, Twp. 7 S. R. 13 E. B. M. and on the north line of the above described forty acres. Thence 50 rods due east on the half sec-		

NAME	ACCOUNT OF WATER IN SECOND FEET AND 6 URGES	DATE	LOCATION	DESCRIPTION
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tion line; thence 30 rods due south at right angles; thence 30 rods due West at right angles; thence 30 rods due north to the point of beginning.

Also; All of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 13, Twp. 7 S. R. 13 E. B. M., save and excepting therefrom, four acres, described as follows: Beginning at the northwest corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 13, Twp. 7 S. R. 13 E. B. M., thence east 30 rods, thence south 30 rods, thence west 20 rods, thence north 30 rods to point of beginning.

FLORENCE
LIVESTOCK
COMPANY

10	Billingsley Creek	Nov. 4, 1885	Florence Live-stock Co. ditch;
9.7	Spring	April 1, 1900	Florence Live-stock Spring;

(The diversion point of said Florence Livestock Company Ditch is immediately below the old railroad fill on the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 13, Twp. 7 S. R. 13 E. B. M. The diversion point of said Florence Livestock Spring is on the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 12, Twp. 7 S. R. 13 E. B. M.)

appurtenant to SW $\frac{1}{4}$, the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 12; the E $\frac{1}{2}$ of the SE $\frac{1}{4}$, S $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ both in Sec. 11; the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, both in Sec. 13; all in Twp. 7 S. R. 13 E. B. M.

.5	Spring	April 1, 1901	Florence Live-stock Spring;
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appurtenant to

1. A certain parcel of land situate in Sec. 14, Twp. 7 S. R. 13 E. B. M. more particularly described as follows, to-wit: Beginning at the northwest corner of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M. and running thence East 1300 feet, thence South 300 feet, thence West 1300 feet, thence North 300 feet to place of beginning, containing 10 acres.

GLAUNER,
JOHN AND
EMMA A.
GLAUNER

1.2	Billingsley Creek	June 28, 1881	John Bell Ditch
.4	Unnamed Springs	June 28, 1881	4 Unnamed Springs;

(The diversion point of said John Bell Ditch is on the bank of Billingsley Creek 30 yards below the diversion point of the Buckeye Ditch heretofore described. Said four unnamed springs arise on the land described immediately hereafter.)

appurtenant to

Those certain tracts of land more particularly described as follows, to-wit:

Commencing at the northwest corner of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 3, Twp. 7 S. R. 13 E. B. M.; thence running south along the west boundary line of said SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said section, to north line and range aforesaid 303 feet; thence east parallel to the north boundary line of said SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said section, Township and Range aforesaid 332 feet; thence north 103

NAME	AMOUNT OF WATER IN SECONDS FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
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feet; thence West along the north boundary line of said SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section, Township and Range 832 feet to the point of beginning.

Also:

All that portion of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 3, Twp. 7 S. R. 13 E. B. M. lying north and east of the state highway, known as the "Old Oregon Trail," as now laid out and existing; across said subdivision of land. The lands herein conveyed being a triangular shape tract situate in the northeasterly portion of the said NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said section, township and range aforesaid.

Also:

That certain part or portion of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of section 3, in Twp. 7 S. R. 13 E. B. M. more particularly described as follows, to-wit: Beginning at a point on the southeast corner of the said NW $\frac{1}{4}$, running thence west to a point on the southwest corner of said NW $\frac{1}{4}$, thence North to a point 321 feet and 9 inches south from the Northeast corner of the said NW $\frac{1}{4}$, thence due east to a point on the east boundary line of said NW $\frac{1}{4}$ distant 321 feet and 9 inches south from the northeast corner of said NW $\frac{1}{4}$, thence due south to the place of beginning.

Also:

Beginning at a point 107 feet 3 inches south of the northeast corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$, Sec. 3, Twp. 7 S. R. 13 E. B. M. thence running south 314 ft. 3 inches thence west 80 rods, thence north 314 feet 3 inches, thence east 80 rods to the point of beginning.

.4 Billingsley Creek	June 23, 1881 John Bell Ditch;
.4 Unnamed Springs	June 23, 1881 3 Unnamed Springs;

(Said Two unnamed springs arise on the land described immediately hereafter.)

appurtenant to

That certain tract of land more particularly described as follows, to-wit:

Beginning at a point on the first standard parallel south 2832 links west from the northeast corner of Sec. 3, Twp. 7 S. R. 13 E. B. M. and running thence west along said standard parallel 1168 links, thence south along western boundary of Lot 2, same section and range, 1032 links, thence east parallel to first course 1168 links, thence north parallel to second course 1032 links, to point of beginning, all in Lot 3, Sec. 3, Twp. 7 S. R. 13 E. B. M.

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	DATE OF APPROPRIATION	DIURNAL POINT
BRIDLEY, WALTER, AND ANNA GRIDLEY	1.8 Riley Creek .3 Riley Creek	May 1, 1888 May 1, 1888	Bridley Ditch No. Bridley Ditch No.

(The point of diversion of Bridley Ditch No. 1 is on the bank of Riley Creek immediately above Riley Falls. The diversion point of Bridley Ditch No. 2 is 75 yards below the diversion point of the Conyers Ditch elsewhere described.)

Two unsurveyed tracts of land situate in Sec. 1, Twp. 8 S. R. 13 E. B. M. as follows: A certain island known as Weatherby Island containing about 30 acres located in Snake River between Gooding County and Twin Falls County, in the above named section, and a certain tract of about three acres of land below the runrock and on the mainland immediately north of said island in said section.

HAGERMAN WATER USERS ASSOCIATION	5 Spring 11.2 Spring 20 Springs	April 7, 1906 April 7, 1906 April 7, 1906	Spring No. 1; Spring No. 2; Numerous small springs;
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(Said Spring No. 1 is located about the center of the north side of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 13, Twp. 7 S. R. 13 E. B. M.; Spring No. 2 is located about the center of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 13, Twp. 7 S. R. 14 E. B. M. Said numerous small springs are located about 100 yards north of the "Big Springs", the source of the water supply of the Big Spring Water Users Association.)

HIGLEY, ALBERT	.5 Spring	Dec. 12, 1901	Weatherby Spring (Hogland Tunnel)
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All the North Half of the Southwest Quarter of the Northeast Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$) of Sec. 13, Twp. 7 S. R. 13 E. B. M., excepting that portion thereof, containing approximately 3.07 acres, lying west of the center of the channel of the ditch intersecting said premises, commonly known as the "Brailford Ditch," the center channel of which ditch intersects the south line of said premises at a point 104.6 feet east of the west boundary of said subdivision, thence running north 3 degrees 29' west 350 feet, thence north 20 degrees 15' west 130 feet to the northwest corner of said SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said section, township and range.

HOFFMAN, AND LRS. L. W. HOFFMAN	3.25 Spring	Dec. 12, 1901	Weatherby Spring (Hogland Tunnel)
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NAME	AMOUNT OF WATER IN SECONDS FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVISION POINT
	.28 Spring	May 1, 1912	Weatherly Spring
	.9 Spring	Nov. 1, 1912	Weatherly Spring

SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 33, 3 $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$, NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$, Sec. 33, SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, of Sec. 33, E $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, of Sec. 33, and NE $\frac{1}{4}$ of the SE $\frac{1}{4}$, all in Sec. 33, Twp. 7 S. R. 13 E. B. M.

Also that portion of Lot 2 Sec. 31, Twp. 7 S. R. 14 E. B. M. more particularly described as follows:
"Beginning at the southwest corner of said Lot 2, thence running north on the Section line about 30 rods to the north bank of John Curran's irrigation ditch; thence east along said ditch bank about 30 rods to the east line of said Lot 2; thence south along said line about 30 rods to the southeast corner of said Lot 2; thence west along the south line of said Lot 2, about 30 rods to the point of beginning."

The entire above tract contains 157.33 acres.

HOMES, GER- TRUDE, AND BEN HOMES	5.6 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch
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Starting at the NW $\frac{1}{4}$ corner of NW $\frac{1}{4}$ of Sec. 33, Twp. 7 S. R. 13 E. B. M. first corner and running due east 304 feet to 2nd corner; thence due south 334 feet to third corner; thence due east 228 to fourth corner; thence due South 65 rods 13 feet to fifth corner; thence due west 1032 feet to sixth corner; thence about due north 30 rods to starting point, said tract containing about 30 acres of land except 7/12ths of an acre lying east of the Dilatash Ditch located in the northeast corner of the above described tract; and the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 33, Twp. 7 S. R. 13 E. B. M.; containing in both forties approximately 70 acres of land.

JENSEN, J. R., AND MRS. J. R. JENSEN	.7 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch
	1.4 Billingsley Creek	April 1, 1885	Sands Ditch
	.5 Billingsley Creek	March 30, 1884	C.M. Bell Ditch

NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M. Excepting therefrom the following described tract of land: Beginning at the southeast corner of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$, Sec. 14, Twp. 7 S. R. 13 E. B. M.; thence west along the south boundary thereof 333 feet; thence in a northeasterly direction along the Dilatash water ditch 671 feet; thence east 113 feet to the east boundary line of the said NW $\frac{1}{4}$ of the NW $\frac{1}{4}$; thence south along the east boundary line thereof to the southeast corner of the said NE $\frac{1}{4}$ NW $\frac{1}{4}$, the place of beginning.

Also that part of the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$) Section 14, Twp. 7 S. R. 13 E. B. M., Tax No. 25, described as follows:

Beginning at the northwest corner of the SE $\frac{1}{4}$ of the

NAME	AMOUNT OF WATER IN GALLONS PER MINUTE	PRIORITY OF DISTRIBUTION	CONTRIBUTION TO THE
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beginning; thence south 1000 feet; thence east 140.8 feet along the bank of the same water ditch to a point on the north town and range line of the said SE $\frac{1}{4}$ of the NW $\frac{1}{4}$; thence west 378 feet to the point of beginning;

Also that portion of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 11 Twp. 7 S. R. 13 E. B. M. described as follows: Beginning at the southwest corner of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Sec. 11, Twp. 7 S. R. 13 E. B. M.; thence north on the west boundary line of said SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Sec. 11, 28 feet; thence in an easterly direction in a straight line to the southeast corner of said SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Sec. 11; thence west along the south boundary line of said SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 11 to the place of beginning.

Also a portion in the southeast corner of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M. described as follows: Beginning at the southeast corner of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M.; thence north along the east line thereof 448 feet; thence south 82 degrees 30' West 810 feet; thence north 35 degrees 0' west 228 feet; thence south 88 degrees 48' West 338 feet; thence south 18 degrees 40' West 368 feet to the point of intersection with the south line of the above described forty; thence east along the south line of said forty 840 feet more or less to the point of beginning.

JONES,
DANIEL

12.5 Spring	Feb. 1, 1888	Weatherby Springs
1 Spring	Feb. 1, 1888	Weatherby Springs
		(Hogland Tunnel)
.5 Unnamed Spring	April 1, 1905	Unnamed Spring;

(Said unnamed spring arises on the east boundary line of Lot 2 of the property hereinafter described.)

Lots 1, 2, 3 and 4 and the E $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Sec. 30, Twp. 7 S. R. 14 E. B. M. and the E $\frac{1}{2}$ of Sec. 35, Twp. 7 S. R. 13 E. B. M. excepting therefrom Tax No. 1 more particularly described as follows, to-wit:

Beginning at the southwest corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 20, Twp. 7 S. R. 13 E. B. M.; thence running east 397 feet; thence northwesterly to a point distant 1370 feet on section line from SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said section; thence south 1370 feet to place of beginning, containing 9.5 acres.

JUSTICE,
WILLA A.

2 Billingsley Creek	June 23, 1881	John Bell Ditch
.1 Spring	June 23, 1881	Spring No. 1
.2 Spring	June 23, 1881	Spring No. 2
.4 Spring	June 23, 1881	Spring No. 3;
.3 Spring	June 23, 1881	Spring No. 4;

(Spring No. 1 arises below the public M. & W. on the north part of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 11. Spring No. 2 arises above said public M. & W. on the north part of said forty acre tract of land. Spring No. 3 arises below the Justice road on the line between said

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	DATE OF APPROPRIATION	DIVERSION POINT
	forty acre tract of land and the SE$\frac{1}{4}$ of the SW$\frac{1}{4}$ of Sec. 2 and Spring No. 4 arises about 100 yards north of Spring No. 3 on the SE$\frac{1}{4}$ of the SE$\frac{1}{4}$ of said Sec. 2, all in Twp. 7 S. R. 13 E. S. 2.) The NE$\frac{1}{4}$ of the NW$\frac{1}{4}$ of Sec. 11, and the SE$\frac{1}{4}$ of the SE$\frac{1}{4}$ of Sec. 2, both in Twp. 7 S. R. 13 E. S. 2, excepting from said section 2 a certain portion thereof conveyed to John W. Glauner on November 28, 1924, which portion is more particularly described as follows, to-wit: Commencing at the northwest corner of the SE$\frac{1}{4}$ of the SE$\frac{1}{4}$ of Sec. 2, Twp. 7 S. R. 13 E. S. 2; thence running south along the west boundary line of said SE$\frac{1}{4}$ of the SE$\frac{1}{4}$ of said section, township and range aforesaid 208 feet, thence east parallel to the north boundary line of said SE$\frac{1}{4}$ SE$\frac{1}{4}$ of said Section, Township and Range aforesaid 832 feet; thence north 108 feet; thence west along the north boundary line of said SE$\frac{1}{4}$ SE$\frac{1}{4}$ of said Section, Township and Range 832 feet to the point of beginning.		
LEWELLEN, ROY, AND NETTIE M. LEWELLEN	.6 Billingsley Creek	June 23, 1881	John Bell Ditch
	Beginning at the southeast corner of Lot 2, Sec. 2, Twp. 7 S. R. 13 E. S. 2; thence west along the south boundary of said Lot 2, 7.8 chains to the east boundary of the Hagerman-Bliss Highway; thence north along said east boundary 3.33 chains; thence north 88 degrees 37 minutes east 3.71 chains; thence north 70 degrees 37 minutes east 3.34 chains; thence north 84 degrees 33 minutes east 1.21 chains; thence south 87 degrees 22 minutes east 1.13 chains; thence south 3 degrees 00 minutes east 1.7 chains; thence south 73 degrees 07 minutes east 7.8 chains, to the south boundary of Lot 1 in said section; thence west along said south boundary 3.86 chains, more or less, to the place of beginning, being approximately 3.5 acres in said Lots 1 and 2; also, beginning at the northeast corner of the NE$\frac{1}{4}$ SE$\frac{1}{4}$ of said Section 2; thence south along the east boundary thereof 107.83 feet; thence west to the west boundary of said NE$\frac{1}{4}$ SE$\frac{1}{4}$; thence north 107.83 feet to the northwest corner of said NE$\frac{1}{4}$ SE$\frac{1}{4}$; thence east along the north boundary thereof, to the place of beginning, being approximately 3.25 acres in said NE$\frac{1}{4}$ SE$\frac{1}{4}$, all said land being in Gooding County, State of Idaho.		
MARINER, F. C., AND MYRTA M. MARINER, AND LETA M. EVANS	4.8 Billingsley Creek	March 30, 1884	E.A. Bell Ditch
	NE$\frac{1}{4}$ of the SW$\frac{1}{4}$ of Sec. 22, Twp. 7 S. R. 13 E. S. 2.		

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	REVENUE POINT
MARSH, J. E., AND FLOSSIE MARSH	.5 Spring; (Said Unnamed spring is located on the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 19, Twp. 7 S. R. 14 E. B. 1.) SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 19, Twp. 7 S. R. 14 E. B. 1.	July 1, 1912	Unnamed Spring;
MOORE, DANIEL AND DOROTHY MOORE	1.4 Billingsley Creek Tax Nos. 9 and 10 in Sec. 11, Twp. 7 S. R. 13 E. B. 11. containing approximately 10 acres in each tax number, a total of 20 acres.	April 1, 1888	Sands Ditch
NEAL, LOUIS, HARRY H. AND EFFIE M. NEAL, AND ALVA NEED	2 Billingsley Creek 1 Billingsley Creek 2 Billingsley Creek .8 Spring (Said Unnamed spring arises in the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. 11. at a point 1088 feet north 3 degrees 2' West from the southeast corner of said forty acre tract of land.) The SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. 11. excepting approximately nine acres described as follows: Beginning at the Southeast Corner of the said Southwest Quarter of the SE $\frac{1}{4}$ of said Sec. 11, thence North along the center of the Hagerman Road 338.15 feet, thence North 30 degrees 55' West 307.8 feet, thence South 4 degrees 55' West 331.13 feet to the quarter corner of the boundary line between Sections 11 and 14, thence due east to the place of beginning. Also the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. 11, excepting a strip of ground extending along the entire length of the south side of said SW $\frac{1}{4}$ of the SW $\frac{1}{4}$, which strip is 28 feet wide on the west and runs to a point at the east end, or the quarter corner of the above mentioned secs. 11 and 14, Twp. 7 S. R. 13 E. B. 11.	April 1, 1888 April 1, 1910 Jan. 3, 1881 Jan. 3, 1891	Sands Ditch Sands Ditch Sands Ditch Unnamed Spring;
HILTS, LIBBIE	1.4 Len Lewis Spring All that portion of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. 11. lying west of the central channel of the "Brailford Ditch," as now laid out and existing through said subdivision, which said tract of land contains approximately 7.17 acres of land and is particularly bounded and described as follows, to-wit: "Commencing at the southwest corner of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$	Sept. 1, 1888	Brailford- Ditch;

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
	of said section, township and range aforesaid; thence east along the south boundary of said 1/4 division 483 feet to the center of the said "Grallaford Ditch; thence following the center channel of said ditch north 19 degrees 34' west 170 feet; thence north 42 degrees 14' west 185 feet; thence north 8 degrees 39' west 732 feet; thence north 20 degrees 15' west 380 feet to the northwest corner of said subdivision; thence south along the west boundary line of said subdivision 1330 feet to the place of beginning."		
	Also the SE 1/4 of the NW 1/4 of Sec. 33, Twp. 7 S. R. 13 less the north 2 1/2 acres thereof now belonging to one W. O. Barton, said exception being that portion of said tract of land lying north of the public highway.		
PARROTT, MRS. FLOR- ENCE.	1.2 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch;
	A certain tract of land commencing 204.3 feet west of the southeast corner of Block No. 10 and continuing along said line west 185.7 feet to the southwest corner of said Block, thence north along said block line 269.3 feet to the northwest corner of said block; thence east along said block line 237 feet; thence in a south-westerly direction 287.7 feet to the point of beginning containing 1.52 acres more or less, all in Block No. 10, of the Townsite of Hagerman, according to the map or plat on file in the office of the Recorder of Gooding County, Idaho;		
	Also Lots 1 to 7 inclusive and 10 to 18 inclusive of Block 9, Lots 3, 4, 7, 10, 11, 13, 14, 15, 16, 17 in Block 8, Lots 9, 10, 11, 13, 13, 14, 15 and 16 in Block 5 of Hagerman Townsite, according to the map or plat thereof on file in the office of the Recorder of Gooding County, Idaho.		
PENFOLD, JOHN T., AND EMMA PENFOLD	2 Spring	Feb. 1, 1888	Weatherby Springs
	The SE 1/4 of the NW 1/4 of Sec. 35, Twp. 7 S. R. 13 E. S. 11. and that portion of the NE 1/4 of the SW 1/4 of said Section 35, known as Tax No. 3, and more particularly described as follows, to-wit: Beginning at a point on the east line of the southwest quarter of Sec. 35, Twp. 7 S. R. 13 E. S. 11. 1890 feet north of the southeast corner of said SW 1/4 of Sec. 35, thence running north 34 degrees West 468 feet, thence North 20 degrees, west 685 feet to within 15 feet of the North boundary of said SW 1/4 of Sec. 35, thence 33 degrees 15 minutes east 810 feet and thence south 1035 feet to the place of beginning.		
PENFOLD, PABLEY, AND GRACE PENFOLD	2.4 Billingsley Creek .4 Billingsley Creek	March 23, 1884 Sept. 10, 1884	T.M. Bell Ditch Buckeye Ditch
	The NE 1/4 of the NW 1/4 of Sec. 37, Twp. 7 S. R. 13 E. S. 11.		

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	DATE OF APPROPRIATION	TURN-ON POINT
POPE, ELI- JAH, AND MAUD POPE, GERALD AND BERNICE POPE	.3 Billingsley Creek .3 Spring	June 23, 1881 June 1, 1927	John Bell Ditch Unnamed Spring
(Said unnamed spring is located on the east portion of the tract of land immediately hereinafter described and about 75 yards from the east line thereof.)			
N $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M.			
PREWETT, H. L., AND MARGARET PREWETT	.3 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch
That certain portion of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M. described as follows: Beginning at a point 370 feet east and 25 feet north of the southwest corner of the said SE $\frac{1}{4}$, running thence north to a point on the south boundary line of acreage tract or Outlot 65, thence due west to a point in the center of the Stots Ditch, thence in a southeasterly direction along the center of the said ditch to a point where said ditch intersects a line running east and west 25 feet north and parallel with south boundary of the said south-east boundary of the said southeast quarter, thence due east to the point of beginning. Also acreage tract or Outlots numbered 64 and 65 according to the map or plat of Hagerman Townsite; Also Lots 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 of Block 31; Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16 of Block 48; Lots 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of Block 52; Lots 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of Block 47; Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15 and 16 of Block 51; Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16 of Block 52 of the Village of Hagerman according to the Plat of Hagerman Townsite, in the office of the Recorder of Gooding County, Idaho.			
RAWLINGS, WALTER AND MRS. WALTER RAW- LINGS	.3 Spring	April 1, 1901	Florence Live- stock Spring;
A certain parcel of land, described in metes and bounds as follows: Beginning at the southwest corner of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M., and running thence East 694 feet, thence north 400 feet, thence West 694 feet, thence South 400 feet to the place of beginning, containing 3.45 acres more or less.			
A certain parcel of land, described in metes and bounds as follows: Beginning at a point 400 feet north of the southwest corner of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M. and running thence East 1320 feet, thence North 330 feet, thence West 1320 feet, thence South 330 feet to the place of beginning containing 10 acres.			

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
RAWLINGS, NORMA	.3 Spring	April 1, 1901	Flax me Live- stock Spring;
A certain parcel of land situate in the Hagerman Valley, Gooding County, State of Idaho, and more particularly described as follows: Beginning at a point about 740 feet north of the Southwest corner of the NE$\frac{1}{4}$ of the NE$\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M. and running thence East 1320 feet, thence North about 250 feet, thence West 1320 feet, thence South about 250 feet, containing 7.575 acres, more or less.			
SANBORN, JOHN C., AND JESSIE M. SAN- BORN	.6 Billingsley Creek 1.2 Billingsley Creek 5.7 Billingsley Creek	June 26, 1881 June 26, 1881 June 26, 1881	John Bell Ditch Pipe line; Padgett Ditch;
(The diversion point of said Pipe Line is on Billingsley Creek at the diversion point of the John Bell Ditch; the diversion point of the Padgett Ditch is 30 yards below the diversion point of the John Bell Ditch;) Lots 2, 3, 6 and the NW$\frac{1}{4}$ of the SE$\frac{1}{4}$ and the SW$\frac{1}{4}$ of the SE$\frac{1}{4}$ of Sec. 2, Twp. 7 S. R. 13 E. B. M. Also beginning at the northeast corner of Lot 7 said section 2 and running thence west 4 chains; thence south 20 chains; thence east 4 chains; thence north 20 chains to beginning; also the NW$\frac{1}{4}$ of the NE$\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. B. M. Excepting from the above described land the following described tracts: Beginning at a point on the first standard parallel south 2000 links west from the northeast corner Sec. 2, Twp. 7 S. R. 13 E. B. M. and thence west along said standard parallel 756 links, thence south parallel to eastern boundary of said Sec. 2, 1640 links, thence east parallel to first course 756 links; thence north along the eastern boundary of Lot 2 of the above mentioned Sec. 2, 1640 links to the point of beginning, containing 12.40 acres all in Lot 2, Sec. 2, Twp. 7 S. R. 13 E. B. M. Also beginning at a point on the first standard parallel south 2632 links west from the northeast corner of Sec. 2, Twp. 7 S. R. 13 E. B. M., thence west along said standard parallel 1138 links; thence south along the western boundary of Lot 2, same section, township and range, 1032 links, thence east parallel to the first course 1138 links; thence north parallel to the second course 1032 links, to point of beginning containing 12.05 acres all in Lot 2, Sec. 2, Twp. 7 S. R. 13 E. B. M. Also all that portion of the NW$\frac{1}{4}$ of the SE$\frac{1}{4}$ of Sec. 2, Twp. 7 S. R. 13 E. B. M. lying north and east of the state highway, known as the "Old Oregon Trail" as now laid out and existing over and across said subdivision of land, containing 4$\frac{1}{2}$ acres more or less.			

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	DATE OF APPROPRIATION	IRRIGATION POINT
SANDS, JESSIE	1.5 Billingsley Creek Lot 3 of Sec. 13, Twp. 7 S. R. 13 E. B. M. and the West two acres of Lot 3, Sec. 13 and the West five acres of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 13, Twp. 7 S. R. 13 E. B. M.	April 1, 1905	Sands Ditch
SANDS, JESSIE, AND LA- PRAEL SANDS	7 Billingsley Creek NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ excepting therefrom the West five acres thereof; also the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and Lot 3, excepting from Lot 3 the West two acres thereof all in Sec. 13, Twp. 7 S. R. 13 E. B. M.	April 1, 1905	Sands Ditch
SANDS, MARTHA A.	8 Billingsley Creek S $\frac{1}{2}$ of the NE $\frac{1}{4}$, NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 13, Twp. 7 S. R. 13 E. B. M.	April 1, 1906	Sands Ditch
SCHOOCLER, HENRIETTA	1.2 Billingsley Creek The SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 13, Twp. 7 S. R. 13 E. B. M.	April 1, 1905	Sands Ditch
SHEPARD, FRANK R., AND ALMA A. SHEP- ARD	2 Billingsley Creek The S $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Sec. 13, Twp. 7 S. R. 13 E. B. M.	April 1, 1905	Sands Ditch
SEVEN H. L. SHEEP COMPANY	4.8 Spring (Said Martin Curran Tunnel is located at the head of Billingsley Creek.) The SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, SW $\frac{1}{4}$ of the NW $\frac{1}{4}$, NW $\frac{1}{4}$ of the SE $\frac{1}{4}$, E $\frac{1}{2}$ of the SW $\frac{1}{4}$ all in Sec. 31, Twp. 7 S. R. 13 E. B. M.	April 1, 1902	Martin Curran Tunnel and Curran Ditch;
SKINNER, CHARLES, AND IVA. E. SKIN- NER	1 Billingsley Creek Outlots A62, A63, and A64 of Hagerman Townsite, according to the Plat thereof on file in the office of the Recorder of Gooding County, Idaho.	Sept. 10, 1904	Buckeye Ditch;
STROUD, FLORENCE OWENS,	4 Len Lewis Spring 1 Spring SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ and NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 33, Twp. 7 S.	Sept. 1, 1909 March 3, 1902	Trailfork- Owens Ditch; Weatherby Spring

NAME	AMOUNT OF WATER IN SECONDS FEET AND SOURCE	DATE WHEN OF APPROPRIATION	DIVERSION POINT
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R. 13 E. 3. N. less a 15 foot in width right of way on the north side of the SW $\frac{1}{4}$ of said Sec. 11; and less that certain piece and parcel of land described as follows:

Beginning at a point on the east line of the SW $\frac{1}{4}$ of said Sec. 11, 1890 feet north of the southeast corner of the SW $\frac{1}{4}$ of said Section 11; thence running north 81 degrees west 488 feet; thence North 80 degrees west 838 feet to within 15 feet of the North boundary of said SW $\frac{1}{4}$ of said Section 11; thence 89 degrees 18 minutes east 800 feet, thence south 1035 feet to the place of beginning.

TERRY, JOHN D., AND SARAH F. TERRY	3 Billingsley Creek	April 1, 1880	Barlogi Ditch;
	1 Billingsley Creek	April 30, 1887	Terry Ditch;

(Said Terry Ditch diverts on the north side of Billingsley Creek at a point immediately below the diversion point of said Barlogi Ditch.

SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. 3. N.

THOMPSON, T. E., AND LABEL THOMP- SON	5.4 Billingsley Creek	Sept. 13, 1884	Blackeye Ditch;
	SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 11, Twp. 7 South R. 13 E. 3. N. excepting therefrom Outlot 87 and the South Half of Outlot 88 of Higgenhan Townsite.		

TROVILLO, S. C., AND ESTELLA TROVILLO	1.5 Billingsley Creek	April 1, 1888	Jones Ditch;
	.8 Billingsley Creek	April 1, 1890	Jones Ditch;
	3 Billingsley Creek	Jan. 3, 1891	Longer Ditch;
	.6 Billingsley Creek	June 18, 1891	Padgett Ditch;

SW $\frac{1}{4}$ of the NW $\frac{1}{4}$; the E $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ (the same being known as Lots 3 and 4 of said 40 acre tract according to the plat of the R. L. Justice Ranch) and all of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$, excepting therefrom that portion thereof now belonging to Charles C. Carey and E. W. Billingsh, more particularly described as follows, to-wit:

"Beginning at the southeast corner of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13 E. 3. N.; thence west along the 40 line 1075'; thence north 80 degrees 43' east 120'; thence north 24 degrees 34' east 480 feet; thence south 81 degrees 46' east 583 feet to the east side of forty, thence south along the forty line 1102 feet to the point of beginning.

All in Sec. 11, Twp. 7 S. R. 13 E. 3. N.

A. ONE OF THESE
IN. LOCUS FEET
AND SOURCE

TUPPER, .3 Spring; April 4, 1888 White Spring
W. J., appurtenant to
AND LIL- Lots 1 and 2 of Sec. 13, Twp. 7 S. R. 14 E. B. M.
LIAN TUP-
PER .3 Spring April 1, 1881 2 Unnamed Springs;
(Said Unnamed spring arises in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of
Sec. 13, Twp. 7 S. R. 14 E. B. M.)
appurtenant to
Lot 4 of Sec. 13, Twp. 7 S. R. 14 E. B. M.

WISIN, ELIA, 1.61 Spring Dec. 12, 1901 Weatherby Springs;
AND RUTH J. (Hoagland Tunnel)
SINN, A MINOR,
AND H. J. Lots 3 and 4 of Sec. 31, Twp. 7 S. R. 14 E. B. M.
FRASIER, AND
B. J. STAN,
AS TRUSTEES
AND GUARDIANS
FOR SAID RUTH
WISIN, A MINOR

VADER, .6 Spring April 1, 1886 Spring along
EARL AND Spring Creek;
ETHEL
VADER .1 Spring Dec. 12, 1901 Weatherby Springs;
(Hoagland Tunnel)

(The Spring along said Spring Creek is situated on the
land of Fred Vader described as the W $\frac{1}{2}$ of the E $\frac{1}{2}$ of the
NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the East 10.75 acres of the W $\frac{1}{2}$ of the
NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 31, Twp. 7 S. R. 14 E. B. M.)

The West thirty acres of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the East
ten acres of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 31, Twp. 7 S.
R. 14 E. B. M.

VADER, .2 Spring Dec. 12, 1901 Weatherby Springs;
FRANK J. (Hoagland Tunnel)
AND KATIE .5 Spring July 3, 1913 Weatherby Springs;
VADER .1 Spring April 1, 1886 Spring along
Spring Creek;

(Said spring along Spring Creek is the same as described
above.)

NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the E $\frac{1}{2}$ of the E $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the
NE $\frac{1}{4}$ of Sec. 31, Twp. 7 S. R. 14 E. B. M.

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
VADER, FRED	.9 Spring	April 1, 1886	Spring along Spring Creek;
	(Said Spring along Spring Creek is the same as described above.)		
	W $\frac{1}{2}$ of the E $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the East 12.75 acres of the W $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 31, Twp. 7 S. R. 14 E. B. M.		
VADER, HARVEY W., AND MABEL VADER	1.2 Spring	April 1, 1886	Spring along Spring Creek
	(Said Spring along Spring Creek is the same as described above.)		
	NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 36, Twp. 7 S. R. 13 E. B. M. and the West 30 acres of Lot 1 of Sec. 31, Twp. 7 S. R. 14 E. B. M.		
VADER, VERNON	.3 Spring	April 1, 1886	Spring along Spring Creek;
	(Said Spring along Spring Creek is the same as described above.)		
	The West 7.25 acres of the W $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 31, and the East 2.75 acres of Lot 1, all in Sec. 31, Twp. 7 S. R. 14 E. B. M.		
WEACH, WILLIAM, AND JANE WEACH	.2 Billingsley Creek	Sept. 10, 1884	Buckeye Ditch;
	Lots 1 to 8, both inclusive, in Block 6 and Lots 1 and 2 in Block 6, Hagerman Townsite, according to the Plat thereof on file in the office of the Recorder of Gooding County, Idaho.		
WHARTON, J. A., JR., AND ALPHA WHARTON	1 Riley Creek 1 Riley Creek	May 1, 1883 Oct. 1, 1908	Hunt Ditch; Pipe Ditch
	(Said Hunt Ditch and said Pipe Ditch are the ditches referred to in paragraph 7 of these Findings.)		
	Lots 1 and 2 of Sec. 35, Twp. 7 S. R. 13 E. B. M., excepting all that portion of Lot 1 lying south of the following described line, to-wit: Said line commences at a point in the East line of said Lot 1, 1000 feet south of northeast corner thereof and runs in a straight line to a point on the West boundary of said Lot 1, 200 feet north of the north bank of Snake River.		

That for the irrigation of their land hereinafter described and for water, domestic and other purposes thereon, the defendants Anna C. Bickel and Paul S. A. Bickel and their predecessors in interest diverted and appropriated on the dates hereinafter set out of the waters of Riley Creek the respective amounts of water hereinafter set out which said water is appurtenant to the land hereinafter described to-wit:

2 second feet of a priority of January 18, 1889, the point of diversion of which is 1030 feet south 30 degrees west from the northwest corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 3, Twp. 3 S. R. 14 E. B. M.

1 second foot of a priority of January 18, 1889, the diversion point of which is 840 feet south 11 degrees west from the northwest corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 6, Twp. 3 S. R. 14 E. B. M.

1.5 second feet of a priority of January 18, 1889, the diversion point of which is 820 feet south 8 degrees east from the northwest corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 6, Twp. 3 S. R. 14 E. B. M.

1 second foot of a priority of June 15, 1910, the point of diversion of which is 710 feet south from the northwest corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 6, Twp. 3 S. R. 14 E. B. M.

3 second feet of a priority of June 15, 1910, the point of diversion of which is 390 feet south 51 degrees west from the northwest corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 6, Twp. 3 S. R. 14 E. B. M.

Said land being situated in Gooding County, State of Idaho, and are particularly described as follows, to-wit:

"That certain real property in Sections Five (5), Six (6), and Eight (8), in Township Eight (8) South, of Range Fourteen (14) East, Boise Meridian, in Gooding County, Idaho, more particularly described as follows, to-wit:

The Southwest quarter of the Southwest quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$), Section Five (5), excepting therefrom the portion thereof described as follows: Beginning at the southwest corner of said Section 5; thence north on the west line of said Section 5 to a point 100 feet north of the precipice of the upper Rim Rock of Snake River Canyon; thence southeasterly paralleling the said rim rock at a distance of 100 feet to a point 100 feet east of the intersection of the south line of said Section 5 with the precipice of the upper rim rock of Snake River Canyon; thence west along the south line of said Section 5 to the point of beginning.

Also excepting therefrom a strip of land lying in the northeast corner of the southwest quarter of the southwest quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$)

of Section five (5) Township eight (8) South, Range fourteen (14) E. B. M. described as follows: Beginning at the northwest corner of the southwest quarter of southwest quarter (SW1/4SW1/4) Section five (5) Township eight (8) South, Range fourteen (14) E. B. M., a point from which the section corner of sections 5, 6, 7 and 8, Township 8 South, Range 14 E. B. M., bears south thirty-five degrees thirty-two minutes (45 degrees 32') west 1391.3 feet; thence westerly along the north boundary of the SW1/4SW1/4 Section 5, Township 8 South Range 14 E. B. M. 608.5 feet; thence south 33 degrees 40' East 612.3 feet to the east boundary of the southwest quarter of southwest quarter Section 5 Township 8 S., Range 14 E. B. M.; thence northerly along said east boundary 30.3 feet to the point of beginning. Also a strip of land lying in the northwest corner of the southwest quarter of southwest quarter (SW1/4SW1/4) Section five (5) Township eight (8) South, Range fourteen (14) E. B. M., which is described as follows: Beginning at the northwest corner of the southwest quarter of southwest quarter Section five (5), Township 8 South, Range 14 E. B. M.; a point from which the section corner of Sections 5, 6, 7 and 8, Township 8 S., Range 14 E. B. M.; bears southerly along the section line 1314.3 feet; thence easterly along the north boundary of the southwest quarter of southwest quarter Section 5, Township 8 S., Range 14 E. B. M., 338.3 feet; thence south 67 degrees 0' west 308.3 feet to the west boundary of section 5, Township 8 S. Range 14 E. B. M.; thence northerly along said west boundary 114.6 feet to the point of beginning. The above described pieces of land containing .33 acres.

Lot Eight (8) of Section Six (6), excepting therefrom the portion thereof described as follows: Beginning at the southeast corner of said Lot 8, being the corner common to said Sections 5, 6, 7, and 8; thence north on the east boundary line of said Lot 8 to a point 100 feet north of the precipice of the upper rim rock of Snake River Canyon; thence northwesterly paralleling the said rim rock at a distance of 100 feet to the strip of land in said Lot 8 granted by the grantors herein to the Twin Falls North Side Land and Water Company by deed dated January 17, 1913, and recorded in Book J of Deeds, at page 331, in the records of Gooding County, Idaho, and by said company and its successor occupied with a ditch to convey waste water to Snake River; thence southwesterly along the southern boundary of said strip of land to its intersection with Snake River and thence continuing to the thread of said stream; thence southeasterly following the thread of Snake River upstream to its intersection with the south line of said Lot 8; thence east along the south boundary of said Lot 8 to the place of beginning.

Also excepting therefrom a strip of land seventy-five (75) feet wide, 50 feet on the north or right-hand side and 25 feet on the south or left-hand side respectively to the center line which is described as follows: Said strip of land lying in Lot eight (8), Section six (6), Township eight (8) South, Range fourteen (14) E. B. M. beginning at a point on the east boundary of Section 6, Township 8 S. Range 14 E. B. M., from which point the section corner of Sections 5, 6, 7 and 8 bears southerly along the section line 1084.0 feet, said point being on the center line of the 7-D Waste ditch, at Engineer's station 139 plus 13.6, said engineer's station being 100 feet long.

Thence south 67 degrees 05' west 338.3 feet to station 172 plus 1
Thence south 69 degrees 35' west 39.3 feet to station 170 plus 2

(Note-from station 173 plus 24 to station 175 plus 00, water has no regular course but flows under rocks)
Thence south 55 degrees 24' west 349.3 feet to station 175 plus 00.
Thence south 50 degrees 24' west 135 feet to station 176 plus 35.
Thence south 56 degrees 24' west 130 feet to station 177 plus 35.
Thence south 54 degrees 24' west 135 feet to station 178 plus 90.
Thence south 53 degrees 54' west 105 feet to station 179 plus 95.
Thence south 23 degrees 39' west 189.3 feet to station 181 plus 64.5.
which station is on the bank of the Snake River and a point from which the section corner of sections 5, 6, 7 and 8, T. 3 S. R. 14 E. B. M. bears south 60 degrees 46' east 1143.3 feet; comprising 2.23 acres.

The Southeast quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$), Lots Seven (7) and Nine (9), the North Half of the Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$), and the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$), of Section Six (6), excepting therefrom the portion thereof described as follows: Beginning at the northeast corner of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 6, Twp. 3 S. R. 14 E. B. M., running thence 870 feet west, thence southeasterly to a point on the east line of the said SW $\frac{1}{4}$ NE $\frac{1}{4}$, 870 feet south of the point of beginning, thence north 870 feet to the point of beginning, containing 3.688 acres.

Lot One (1) of Section Eight (8), excepting therefrom the portion described as follows: All that portion of said Lot 1 lying south and west of a line described as follows: Beginning at a point on the north line of said Section 8, which is 100 feet east of the intersection of said north line with the upper Rim Rock of Snake River Canyon; thence southeasterly paralleling the said Rim Rock at a distance of 100 feet to a point 100 feet north of the intersection of the east line of Lot 1 with the upper Rim Rock of Snake River Canyon.

The Northeast quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Eight (8) excepting therefrom that portion described as follows: All that portion of the said NE $\frac{1}{4}$ NW $\frac{1}{4}$ lying south and west of a line described as follows: Beginning at a point on the west line of said subdivision which is 100 feet north of the intersection of said line with the upper Rim Rock of Snake River Canyon; thence southeasterly paralleling said Rim Rock at a distance of 100 feet to a point on the south line of said subdivision which is 100 feet east of the intersection of said south line with the upper Rim Rock of Snake River Canyon.

HIGH & FRITCHMAN COMPANY, a corporation, Intervenor.

I.

That since the commencement of this suit the defendant and intervenor, High & Fritchman Company, a corporation, succeeded to all the right, title and interest of the defendants Curran Sheep Company, a corporation; Martin Curran and Christine A. Curran, husband and wife, and Mary Curran, a widow, in and to the following land, ditch rights and water rights situate in the Hagerman Valley, in Gooding County, State of Idaho, to-wit:

The Southeast Quarter (SE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$); the East Half (E $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Thirty-one (31); the Southwest Quarter (SW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$); the West Half (W $\frac{1}{2}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section Thirty-two (32), all in Township Seven (7) South, Range Fourteen (14) East, B. M., and Lots Three (3) and Four(4) of Section Five (5), Township Eight (8) South, Range Fourteen (14) East, B. M., together with all water rights, ditches and ditch rights of way appurtenant thereto.

That said High & Fritchman Company, a corporation, is the owner of and in the possession of all of said lands, ditch rights and water rights above described.

II.

That for the purpose of reclaiming and irrigating the lands above described now owned by this defendant and intervenor, the predecessors in interest in the title of said lands did, on October 9, 1884, by means of a tunnel, pipe and ditch constructed to and upon the lands now owned by this defendant and intervenor, develop and divert from the waters, seeps, springs and rivulets in the rim rock above the head waters of Billingsley Creek, said tunnel being commonly known as the Curran Tunnel, or Curran Spring, situate on the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 32, Township 7 North, Range 14 E. B. M. Gooding County, Idaho, 3.2 second feet

of water and by means of said pipe line and ditch conducted the same upon and over the said lands hereinbefore described, for the irrigation thereof, and beginning with October 9, 1884, have used said water for the irrigation and cultivation of the lands hereinbefore described and for domestic purposes thereon. That on April 1, 1908, the predecessors in interest of this defendant and intervenor did further develop and divert from said tunnel, by means of said pipe line and ditch, into and upon the lands above described and now owned by this defendant and intervenor, the further amount of 4.8 second feet of water for the irrigation and cultivation thereof, and during each and every year since April 1, 1908, this defendant and intervenor and its predecessors in interest have so diverted and used said waters in the irrigation and cultivation of the lands hereinbefore described.

That the said two water rights, amounting in all to 8.0 second feet of water, and the whole thereof, is necessary for the proper irrigation and cultivation of said lands and the raising of crops thereon and said water rights have become appurtenant to said lands so owned by this defendant and intervenor.

That said lands hereinbefore described, owned by this defendant and intervenor are now in a high state of cultivation by the use of said water rights and have been leveled and prepared for irrigation and cultivation and are highly improved and have growing thereon valuable crops.

BIG BEND IRRIGATION AND MINING COMPANY

I.

That the stockholders of the defendant and cross complainant, Big Bend Irrigation and Mining Company, a corporation, are the owners of approximately 1040 acres of land situated in Hagerman valley, Gooding County, Idaho, in Sections 15, 16, 21, 22, 23, 26, 27, 35 and 36 in Township 7 South, Range 13 East, B. M. and being situate in the following 40 acre tracts in the above named sections, township and range, to-wit:

In Section 15: SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$.

In Section 16: NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$.

In Section 21: NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$.

In Section 22: NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NWP, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NWP SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$.

In Section 23: SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$.

In Section 26: NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$.

In Section 27: NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ SW $\frac{1}{4}$.

In Section 35: NE $\frac{1}{4}$ NE $\frac{1}{4}$.

In Section 36: NW $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$.

II.

That for the purpose of reclaiming and irrigating the above described lands now owned by the stockholders of the defendant Big Bend Irrigation and Mining Company, a corporation, one E. H. Purdy and W. H. Clifford, and others, then being the owners of said above described land, did, on December 17, 1903,

make application to the State of Idaho to appropriate 20 second feet of water from what is known as the large Thompson, or Tucker, spring, being situate in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 36, Twp. 7 S, Range 13 E, B. M. in Gooding County, Idaho, said water to be diverted by means of a tunnel, flume and a ditch to be constructed from said spring and to run in a northwesterly direction approximately six miles in length carrying the water to said above described land to be so irrigated. That on said 17th day of December, 1903, at the hour or 9 o'clock A. M. said application was approved by Wayne Darlington, State Engineer of the State of Idaho, as Permit #388, said application for permit being number #580 and said permit was duly issued on said date, said application and permit being filed in the office of the state engineer of the state of Idaho, at 9 A. M. December 17, 1903, and recorded in Book 2 of Permits at page 338. That said application and permit were thereafter duly recorded in the office of the County Recorder of Lincoln County, Idaho, in Book 1 of Water Rights at page 261, at 10 o'clock A. M. of the 29th day of January, 1929.

That said E. H. Purdy and W. H. Clifford and others immediately thereafter developed said water right by driving a tunnel at the said spring and diverting the said 20 second feet of water by means of said tunnel, flume and ditch constructed to and upon the lands hereinbefore described to be irrigated thereby and during the irrigation season of 1904 and during each and every irrigation season thereafter said full amount of water has been so diverted, carried, and used in the irrigation of said lands and the raising of crops thereon.

That thereafter, to-wit: On or about the 29th day of January, 1904, the said E. H. Purdy, W. H. Clifford, and others, the users of said water represented by said permit No. 338, application No. 580, duly formed and organized, under and in accordance

with the laws of the State of Idaho, the defendant, the said Big Bend Irrigation and Mining Company, and by means of conveyances transferred to said corporation their said water right obtained by said filing, appropriation and use hereinbefore alleged to the full amount of said 20 second feet. That said corporation was formed for the purpose of, and as a convenience to the said owners of said water right in controlling, operating and distributing the said waters so appropriated to the users thereof, each of said users taking stock in said corporation representing his proportion of the water used by him from said water right upon his land. That ever since the organization of said corporation as above mentioned and hereinbefore set forth the said Big Bend Irrigation and Mining Company has been, and now is, the owner and in control of said water right for the use and benefit of its said stockholders who are the owners of the lands irrigated by said waters.

That since the spring of 1911 said 20 second feet of water have been delivered from said spring, through the head works and flume of the plaintiff, New International Mortgage Bank, a corporation, into the ditch of the defendant and cross complainant, Big Bend Irrigation and Mining Company.

III.

That in the spring of 1906 and prior to the beginning of the irrigation season in said year, the defendant and cross complainant, Big Bend Irrigation and Mining Company, a corporation, for the purpose of increasing the water supply for the irrigation of the lands of its stockholders, changed and enlarged its said ditch built by it, as hereinbefore described, for the purpose of appropriating the water from the large spring hereinbefore referred to so as to appropriate and take the entire flow of a smaller spring known as the smaller Thompson, or

Tucker, spring being situate in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 36, Twp. 7 South, Range 13 East, E. M. in Gooding County, Idaho, and estimated to flow 15 second feet. That for the purpose of diverting into its said ditch, and appropriating and using the water of said small spring, it constructed a dam below said spring and thereby diverted and turned into its said ditch the entire flow of said smaller spring. That beginning with April 1, 1906, and during each and every year since that date the said defendant and cross complainant has so appropriated, diverted, and used the entire flow of said smaller Thompson, or Tucker, spring into its said ditch and carried the same by means of said ditch to and upon the lands of its said stockholders and said entire flow of said spring has been used continuously beginning April 1, 1906, each and every year, in the irrigation and raising of crops upon the lands of the said stockholders and for the domestic use of said stockholders.

That by reason of said appropriation and use of said water of said smaller Thompson or Tucker spring the said defendant and cross complainant has become the owner and entitled to the use of said water of said spring for the use of said stockholders for the irrigation of their said lands and for domestic use.

IV.

That by means of the notice, filing, and location, and by appropriation and use, as hereinbefore set out and described, and mense conveyances, this defendant and cross complainant has become the owner and entitled to the use of 20 second feet of water from the larger of said Thompson, or Tucker, springs, as hereinbefore described, for the use and benefit of its said stockholders for the irrigation of their said lands and for domestic purposes.

7.

That by the use of said waters of said two springs so located, appropriated, and used, as hereinbefore alleged, the stockholders of the said defendant and cross complainant, Big Bend Irrigation and Mining Company, have put their said lands in cultivation and for many years last past have been, and now are, raising large and profitable crops thereon and that their lands are well improved and in a high state of cultivation. That all of said water is necessary for the irrigation and cultivation of said land of the stockholders of the defendant and cross complainant, Big Bend Irrigation and Mining Company, and for the growing of profitable crops thereon and for domestic purposes.

That for the irrigation of its lands hereinafter described and for domestic and other uses, the defendant, Idaho Power Company, a corporation, and its predecessors in interest diverted and appropriated on the dates hereinafter set out of the waters of Riley Creek the respective amounts of water hereinafter set out, which water is appurtenant to the land hereinafter described, to-wit:

Eight second feet, with a priority of October 1, 1908, diverted out of Tucker or Thompson Springs through the Pipe Ditch, whose point of diversion has been heretofore in these findings described.

Three second feet, with a priority of April 1, 1901, diverted out of Riley Creek by means of the Hunt Ditch, whose point of diversion has been heretofore in these findings described.

In addition to the above described water rights for irrigation purposes and uses, the said Idaho Power Company and its predecessors have diverted out of the waters of Riley Creek at Thompson or Tucker Springs through said Pipe Ditch one-half second foot of water for domestic uses and purposes and the watering of stock during the non-irrigation season, with a priority date of April 1, 1901, and an additional one-half second foot of the waters of Riley Creek at Thompson or Tucker Springs through said Hunt Ditch for domestic uses and purposes and the watering of stock during the non-irrigation season, with a priority date of May 1, 1912.

Said water rights of the Idaho Power Company out of
or Thompson or Tucker Springs and said Sp:
Riley Creek may be diverted elsewhere out of Riley Creek and
by separate and different diversion works and conveyed through
separate flumes, pipe lines and ditches from those now used in
the diversion of said water rights or any of them, and all of

said water rights may be diverted from other than the existing diversion works and through other than the existing ditches, but such diversion to be at the expense of said Idaho Power Company.

The land to which said water rights are made appurtenant is described as follows, to-wit:

Lot Four (4) in Section One (1) of Township Eight (8) South, Range Thirteen (13) East, B. M.

Lot One (1) of Section Two (2), Township Eight (8) South, Range Thirteen (13) East, B. M.

The Southwest Quarter (SW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Thirty-five (35), Township Seven (7) South, Range Thirteen (13) East, B. M.

Lot One (1) of Section Thirty-five (35), Township Seven (7) South, Range Thirteen (13) East, B. M.

Lots One Hundred Twenty-four (124) and One Hundred Twenty-five (125) of the Buckeye Subdivision.

Lot Five (5) of Section One (1), Township Eight (8) South, Range Thirteen (13) East, B. M.

Lots Two (2), Three (3) and Four (4) of Section Two (2), and the South Half (S $\frac{1}{2}$) of the Northwest Quarter (NW $\frac{1}{4}$) and the South Half (S $\frac{1}{2}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Two (2), Township Eight (8) South, Range Thirteen (13) East, B. M.

Lots One (1), Two (2), Three (3), and the South Half (S $\frac{1}{2}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Three (3), Township Eight (8) South, Range Thirteen (13) East, B. M.

Lot Six (6) of Section Thirty-four (34), Township Seven (7) South, Range Thirteen (13) East, B. M.

Also that certain island situate in the Snake River known as Dolman Island, being South of Sections Thirty-four (34) and Thirty-five (35), Township Seven (7) South, Range Thirteen (13) East, B. M.

The water rights of the defendant and counterclaimant, Idaho Power Company, appropriated, diverted or used for the generation of electricity and electrical energy and for domestic and irrigation purposes incidental thereto and connected with the operation of hydro-electric generating

plants as described in subdivisions (b), (c) and (d) of Paragraph I of the Idaho Power Company's further and separate counterclaim filed in this cause, and the underground flow and sources supplying said water rights, are neither concerned in nor affected by this action.

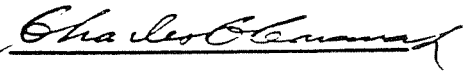
That for the irrigation of the land of the counterclaimant, Mary Curran, hereinafter described, and for domestic and other purposes thereon, the said Mary Curran and her predecessors in interest did, on the 10th day of September, 1884, divert and appropriate 15 second feet of water from Billingsley Creek, on and for use of the South Half of the Northeast Quarter ($S\frac{1}{2}NE\frac{1}{4}$), the Southeast Quarter ($SE\frac{1}{4}$) and the Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$), all of Section Twenty-three (23) Township 7 South, Range 13 E.B.M. and the West Half of the Southwest Quarter ($W\frac{1}{2}SW\frac{1}{4}$) of Section Twenty-four (24) Township 7 South, Range 13 E.B.M. by means of what is known as the Curran ditch. That the diversion point of said ditch is at a point which is 1594 feet South, and 656 feet East of the quarter corner between Sections Thirty (30) and Thirty-one (31), Township 7 South, Range 14 E.B.M. being in the Southeast Quarter of the Northeast Quarter ($SE\frac{1}{4}NE\frac{1}{4}$) of Section Thirty-one (31) Township 7 South, Range 13 E.B.M.

That for the irrigation of the hereinafter described land of the counterclaimant Amanda J. Gooding, her predecessors in interest did, on September 10, 1884, divert and appropriate of the waters of Billingsley Creek, 3 second feet of water for use for domestic and other purposes, on the South Half of the Southwest Quarter ($S\frac{1}{2}SW\frac{1}{4}$) and the South Half of the Southeast Quarter ($S\frac{1}{2}SE\frac{1}{4}$) of Section 27, Township 7 South, Range 13 E.B.M. diverting the same by means of the above described Buckeye ditch.

CONCLUSIONS OF LAW.

WHEREFORE, The Court concludes as a matter of law, that each of the parties to this action, excepting those parties defendant who have made default by failure to plead, is entitled to the use of and the right to use the waters of Riley Creek, Billingsley Creek, and the Spring seeps and trickles described in the Findings of Fact heretofore made, with priority and amount, source, supply, points of diversion and rights of rediversion as in said Findings of Fact set out, for irrigation, domestic, and other purposes, and appurtenant to and for use upon and in connection with the lands described in said Findings, and that the water rights of the defendant and counterclaimant, Idaho Power Company for the generation of electricity and electrical energy as described in said Findings of Fact, are not concerned in or affected by this action; and that decree should be entered herein according to these Findings of Fact and Conclusions of Law.

Dated in open Court this 22nd day of March, 1932.



District Judge.



EXHIBIT G

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 A-36-000123 (partial)
Date Received
Receipt Number

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED
NOV 5 1990

Department of Water Resources

Please type or print clearly

1. Name of Claimant (s) Idaho Dept Fish & Game Phone (208) 334-3700
Mailing Address P.O. 25 600 S. Walnut Boise ID Zip 83707

2. Date of Priority (Only one (1) per claim) Sept. 1, 1889

3. Source of water supply (a) Len Lewis Springs
which is tributary to (b) Riley Creek

4. a. Location of existing point of diversion is: Township 8S Range 14E Section 6.

SE 1/4 of SW 1/4 of NE 1/4, Govt. Lot, _____ B.M., County of Gooding

Additional points of diversion if any: NW 1/4 SE 1/4 SE 1/4 T8S R14E S6, NW 1/4 NW 1/4 SE
T7S R14E S36

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,

_____ 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. Brailsford Ditch headworks and
concrete retaining wall

MICROFILMED

JAN 20 1993

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For irrigation purposes from 3/15 to 11/15 amount 3 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 3 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is 176.1 acre feet per annum.

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

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	
8S	14E	6						18.7	0.5										19.2
7S	13E	36								0.6					~~15.0~~	15.0	0.5	15.4	31.5
7S	14E	31													1.2				1.2
8S	13E	1	6.8																6.8

Total number of acres irrigated 58.7

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 ☒ 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 and 36-2159 or None ()

14. Remarks:

MICROFILMED

JAN 20 1993

Last Name _____ Ident No. 36-CCC12

Copies: White -State, Yellow-Claimant

15. Basis of Claim (check one) Ber. and Use _____ Posted Notice _____ License _____ Permit _____

Decree ☒

If applicable provide IDWR Water Right Number _____

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

Plaintiff vs Defendant New International Mortgage Bank vs. Idaho Power Co.

16. Signature (s)

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

Number of attachments _____

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

Signature of Claimant (s) _____ Date _____

_____ Date _____

For Organizations: I do solemnly swear or affirm that I am Assistant Director Title _____

of IDAHO DEPT. OF FISH & GAME Organization _____, that I have signed the foregoing

document in the space below as Acting Director Title _____ of the Idaho Dept of Fish & Game Organization _____

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

Signature of Authorized Agent Emmett Purice

Title and Organization IDAHO DEPT. OF FISH & GAME Date 11/2/90

State of Idaho for _____)

County of Ada)

SS.

Subscribed and sworn (or affirmed) before me this 2nd day of November 19 90

SEAL

Notary Public Dorothy Baker

Residing at Emmett, Idaho

My Commission Expires 10/31/1991

Please Print Name

17. Notice of Appearance:

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.

Signature _____

Address _____

Date _____

Last Name _____ Ident. Number _____

MICROFILMED
JAN 20 1993

Copies White-State, Yellow-Claimant

RECEIVED

MAY 31 1996

Department of Water Resources
Adjudication Bureau

5/31

1 Claimant:

Edna M. Rea

2 Attorney Name and Address:

HEPWORTH, LEZAMIZ & HOHNHORST,
3 CHARTERED
133 Shoshone St. North
4 P.O. Box 389
Twin Falls, ID 83303-0389
5 Telephone: (208)734-7510

6
7
8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

10 * * * * *

11 In Re SRBA

) Subcase No. 36-00003A

)

12 Case No. 39576

) MOTION FOR SUMMARY JUDGMENT

)

13)

14 * * * * *

15 Comes now claimant through her attorney of record, Patrick D. Brown of the
16 law firm of Hepworth, Lezamiz & Hohnhorst, Chartered, and pursuant to I.R.C.P. 56 moves
17 the Court to grant summary judgment in whole or in part for each element enumerated in
18 I.C. §42-1411(2), according to the description in the attachment to the affidavit in support
19 of summary judgment.

20 The grounds for this motion are that there are no genuine issues of material
21 fact and judgment may be entered as a matter of law.

22 In support of this motion, claimant submits the New International Mortgage
23 decree which confirms the establishment of the right and defines the elements except annual

HLH
Chartered
Hepworth,
Lezamiz &
Hohnhorst

MOTION FOR SUMMARY JUDGMENT - 1

1 volume of consumptive use; the affidavits submitted in support of this motion, including the
2 affidavit of the claimant, which establishes that the claimant's predecessors in interest
3 established a water right and had it confirmed by decree and that there has been no
4 abandonment or forfeiture since that time; the affidavits concerning crop production in the
5 Hagerman Valley and the affidavit of Charles E. Brockway, Ph.D. regarding annual volume
6 of consumptive use; and the affidavit of Patrick D. Brown and attachments.

7 The claimant requests oral argument on this motion. Also, because this is a
8 one party case, that party being the claimant who is objecting to IDWR's recommendation,
9 the claimant requests the opportunity to provide further written briefing concerning legal
10 issues or application of the law to the facts of the subcase in order to thoroughly address any
11 concerns or questions the court may have in that regard.

12 This motion is further supported by the brief submitted contemporaneously
13 with this motion.

14 Dated this 31th day of May, 1996.

15 HEPWORTH, LEZAMIZ & HOHNHORST,
16 CHARTERED

17 By: 

18 Patrick D. Brown
19 Attorneys for Claimant
20
21
22
23

RECEIVED

MAY 31 1996

COPY

Department of Water Resources
Adjudication Bureau

1 Claimants:

Edna M. Rea

2 Attorney Name and Address:

HEPWORTH, LEZAMIZ & HOHNHORST,
CHARTERED
133 Shoshone St. North
P.O. Box 389
Twin Falls, ID 83303-0389
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3
4
5
6
7 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
8 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
9

10 * * * * *

11 In Re SRBA

) Subcase No. 36-00003A

)

)

12 Case No. 39576

)

)

AFFIDAVIT IN SUPPORT OF

MOTION FOR SUMMARY JUDGMENT

13 * * * * *

14
15 Edna M. Rea, being first duly sworn upon oath, deposes and says:

16 1. I, Edna M. Rea, am a claimant of a previously decreed water right,
17 which is the water right before the Court in this subcase. I make the foregoing and
18 following statements in this affidavit based on my personal knowledge and beliefs and I am
19 otherwise competent to testify regarding those statements.

20 2. I own real property described in the deed attached to this affidavit as
21 Exhibit "A" and incorporated by reference into this affidavit. Exhibit "A" is a duplicate of
22 my deed, which is recorded in the official property records of the Gooding County
23 Recorder's Office, Gooding, Idaho. I also own the water right claimed in this subcase.

1 3. The real property described in Exhibit "A" includes decreed,
2 appurtenant water rights. The water right involved in this subcase is appurtenant to that real
3 property. I acquired that water right as successor in interest in the real property to New
4 International Mortgage Bank, to whom the right was decreed in the case of *New*
5 *International Mortgage Bank v. Idaho Power Company, et al*, Equity No. 1602, in the
6 District Court of the United States, for the District of Idaho, Southern Division.

7 4. I request this Court take judicial notice of the contents of the final
8 decree entered in that case, dated March 22, 1932, and decreed by the Honorable Charles
9 Cavanah, Federal District Court Judge. A certified copy of that decree is in the files of this
10 Court.

11 5. Attached to this affidavit as Exhibit "B" and incorporated into it is a
12 duplicate of the portion of the *New International Mortgage Bank* decree which shows the
13 water right I acquired through New International Mortgage Bank.

14 6. My water right has been used and exercised on the real property
15 identified in Exhibit "A" and which is also identified in Exhibit "B". The purposes for which
16 that right has been used and is being used are set forth in the attached Exhibit "C," along
17 with the periods and places of use and other elements of my right. Exhibit "C," which is
18 incorporated into this affidavit, shows how my decreed right has been beneficially used and
19 how it should be decreed.

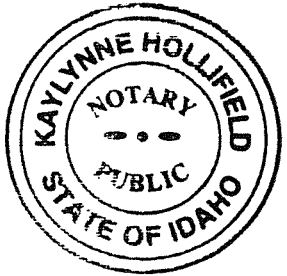
20 7. I have never intended to abandon my right or any part of it. I do not
21 believe that any of my predecessors in interest to the right intended to, or did abandon the
22 water right or any part of it. Since I have owned the water right, there has not been a
23

1 continuous five-year period of nonuse. I understand and believe that there has never been
2 a continuous five-year period of nonuse of the right.

3 Dated May 14, 1996.

4 Edna M. Rea
5 Edna M. Rea

6
7 Subscribed and Sworn to before me this 14 day of May, 1996.

8
9  Kaylynne Hollifield
10 Notary Public for Idaho
11 Residing at: TWIN FALLS, IDAHO
12 My Commission Expires: 10/2001

This Indenture Made this 31st day of December,
 in the year of our Lord, one thousand nine hundred and forty between
May Gardner, a widow,
 of Gooding County of Gooding State of Idaho
 the part Y of the first part, and
H. J. Bell & Edna M. Bell, husband & wife,
 of Hagerman County of Gooding State of Idaho
 the part ies of the second part.

WITNESSETH, That the said part Y of the first part, for and in consideration of the sum
 of -----ONE DOLLAR AND OTHER VALUABLE CONSIDERATIONS----- DOLLARS
her lawful money of the United States of America, to her in hand paid by the said
 part ies of the second part, the receipt whereof is hereby acknowledged, have granted,
 bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto
 the said part ies of the second part, and to their heirs and assigns for
 ever, all the following described real estate situate in Gooding County, State of Idaho, to-wit:

Southwest quarter of the Northeast quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$), Sec. 27, Twp. 7
 S., R. 13 E. B. M., with 1.6 sec. ft. of the waters of Billingsley
 creek with priority of September 10, 1884, as awarded to said land
 in the decree appearing in book 6, page 31, of the records of judg-
 ments of said Gooding county.

(Party of the first part has been a widow since April 13, 1940).

(Said SW $\frac{1}{4}$ NE $\frac{1}{4}$ is sometimes known as and is the same as Outlots 1,
 2, 20 and 21 of the Buckeye Ranch, according to the official plat
 of said ranch of record in said Gooding county).

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereun-
 to belonging or in anywise appertaining, the reversion and reversions, remainder and re-
 mainders, rents, issues and profits thereof, and all estate, rights, title and interest in and to the
 said property, as well in law as in equity, of said part Y of the first part:

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

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



May Gardner (Seal)
(a widow) (Seal)
 _____ (Seal)
 _____ (Seal)

STATE OF IDAHO.
County of Gooding } SS.

On this 31st day of December, in the year 1940, before me,
the undersigned, a notary public in and for said county,
personally appeared May Gardner, a widow,
known to me to be the person... whose name... is subscribed to the within instrument,
and acknowledged to me that... she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day
and year in this certificate first above written.

My commission expires 1943.

Brauch Bird
Notary Public in and for
the State of Idaho
residing at Gooding, Idaho

79464
No. 79464
WARRANTY DEED

May Gardner

To
W. J. Bells

Dated 31st, 1940
STATE OF IDAHO } ss.
County of Gooding

I hereby certify that this instrument
was filed for record at the request of
W. J. Bells
at 15 minutes past 1
o'clock P. M., this 31 day
of December, A. D., 1940
in my office and duly recorded in
Book 21 of Deeds at page 142

By Edith L. Lohr Deputy
Ex-Officio Recorder

Fees, \$ 20

IN THE PROBATE COURT

OF

GOODING

COUNTY, STATE OF IDAHO

IN THE MATTER OF THE ESTATE OF

HARLAND J. BELL,

Deceased.

AMENDEDDECREE OF SETTLEMENT OF FINAL
ACCOUNT AND FINAL DISTRIBUTION**Edna M. Bell**, the **Executrix**

of the estate of

Harland J. Bell,

, deceased,

having on the

7th

day of

August, **1967**

, rendered and presented for

settlement and filed in this Court ^{her} final account and report of ^{her} administration of said estate, which account was for a final settlement, and having with said account filed a petition for the final distribution of the estate;

And the said account and petition this day coming on regularly to be heard, and proof having been made to the Satisfaction of the Court that notice of the day appointed for the settlement of said account and hearing of said petition had been duly given as required by law and the order of this Court, and no exception or objec-

tion in writing to said account or petition having been filed or made; the said **executrix**

appearing by

James, Hobday & Shaw**her** attorneys

And it appearing to the Court after having fully examined the said account and the vouchers filed herein and heard the testimony in support thereof, that said account is in all respects true and correct;

that the residue of money in the hands of the **executrix** at the time of filing said account was **none**;

that the sum of **\$3851.55** has been expended by **said executrix**

as necessary charges, debts, claims and expenses of administration, the vouchers whereof have been presented and filed; and that said account is in all respects true and correct and entitled to be settled, allowed and approved, and the Court having duly considered all the matters aforesaid;

IT IS ORDERED AND DECREED, That the said final account be and the same hereby is in all respects as the same was rendered and presented for settlement, approved, allowed and settled;

And it further appearing that since the rendition of said final account there has been received by said

executrixthe sum of **none**

and that there has been disbursed by

said executrixthe sum of **none**

the vouchers whereof, together with a statement of said receipts and disbursements, is now reported and filed, the said statement, receipts and disbursements are settled, allowed and approved, and it further appearing

No. Filed

, 19

, Clerk.

Recorded in Book

, Page

that the estimated expense of closing the estate will amount to **none**

, leaving a

residue of **none**; and it appearing that all claims and debts against the said decedent, and all State, County and Municipal taxes legally levied on the personal property of said estate, and all transfer and estate taxes that have attached to or accrued

against the said estate, and all debts, expenses and charges of administration have been fully paid and discharged, and that said estate is ready for distribution and in conditions to be closed;

And it further appearing to the Court that the said **Harland J. Bell**

died testate, in the County of **Gooding**, State of **Idaho**
on the **6th** day of **February**, A.D. 1967, leaving surviving

**Edna M. Bell, widow,
Verl C. Bell, son; and
Ruth Carrol Hawkes, daughter**

That the said **above named individuals are**

entitled to **all** the residue of said estate

in the manner and proportions as hereinafter set forth.

To Edna M. Bell: An undivided one-half interest in the hereinafter described property, being a confirmation of her community property interest therein, and, for and during her life, the power and privilege of the use and enjoyment of the remaining undivided one-half interest of the described property being the community property interest of the decedent and, in addition the said Edna M. Bell shall have the full power and authority to sell, mortgage, convey and otherwise dispose of said property, as may be necessary for her comfort, convenience and well-being;

To Verl C. Bell and Ruth Carrol Hawkes; upon the death of the said Edna M. Bell all of the community property interest of the decedent, Harland J. Bell, then and there existing, share and share alike;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the residue of said estate of Harland J. Bell, deceased, hereinafter particularly described and now remaining in the hands of said Executrix described as follows, to wit:

SCHEDULE A

All livestock, farm machinery and crops together with any and all proceeds and receipts from the sale thereof;

Trucks and motor vehicles;

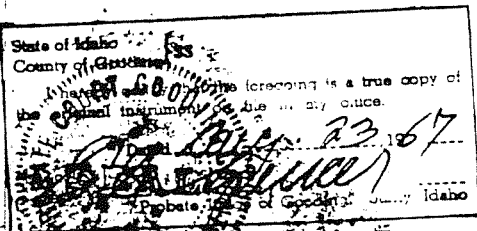
Checking account, Farmers National Bank;

Certificates of Ida-Egg, Ida-Gem and Grange Supply;

Road Runner Trailer House;

Household furniture;

Lots 1, 2, 20 and 21, Section 27, Buckeye Ranch according to the plat thereof on file with the county recorder of Gooding County, Township 7 S.R. 13 E.B.M., Gooding County, Idaho



and any other property not now known or discovered, which may belong to the said estate or to which the said estate may have any interest, be and the same is hereby distributed as follows, to-wit: to

Edna M. Bell
Verl C. Bell
Ruth Carrel Hawkes

in the manner and proportions as hereinabove set forth.

This decree is entered for the purpose of correcting the legal description of the real property.

Done in open Court this 23rd day of August, 1967

C.E. Spencer

Probate Judge.

FILMED

INDEXED

Direct

No.

22705

Indirect

PROBATE COURT

STATE OF IDAHO,

COUNTY OF GOODING

SS.

IN THE MATTER OF THE ESTATE OF

HARLAND J. BELL

Deceased.

DECREE OF SETTLEMENT OF
FINAL ACCOUNT AND FINAL
DISTRIBUTION

Filed

AUGUST 23

, 1967.

SIBYL S. STEVENS

Clerk.

ST. A. GINN & COMPANY, BOISE

FEE \$2.00 pd

Ret. JAMES, HOBDEY & SHAW

and 8 South, Range 13 E. B. M. bears south 75° 50' west 4435 feet distant;

Also 20 second feet of the waters flowing in Billingsley Creek, with a date of priority of September 10, 1884, the same being diverted by means of a dam in, and a ditch leading from, said Billingsley Creek, the point of diversion being in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 11, Twp. 7 South, Range 13 E. B. M., from which the quarter section corner common to Sections 11 and 12, Twp. 7 South, Range 13 E. B. M. bears south 47° 22' east 718 feet distant.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That the amounts of water heretofore set out, diverted from said natural water supply at the points of diversion heretofore mentioned and set out, are necessary for the proper irrigation and cultivation of, and that the same is appurtenant to the following, described land of the plaintiff, viz:

SW $\frac{1}{4}$ of NE $\frac{1}{4}$; NW $\frac{1}{4}$ of SE $\frac{1}{4}$; S $\frac{1}{2}$ of NW $\frac{1}{4}$; N $\frac{1}{2}$ of SW $\frac{1}{4}$, Section 27; SE $\frac{1}{4}$ of NE $\frac{1}{4}$; NE $\frac{1}{4}$ of SE $\frac{1}{4}$; Lots 4, 5, 8, and 9, all in Section 28; Lots 1, 4, 5, and 8; SE $\frac{1}{4}$ of SE $\frac{1}{4}$, all in Sec. 33; Lots 1, 2, 3, 4, 5, and 7; SE $\frac{1}{4}$ of NW $\frac{1}{4}$; NE $\frac{1}{4}$; N $\frac{1}{2}$ of NW $\frac{1}{4}$, all in Sec. 34; SW $\frac{1}{4}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 35, all in Township 7 South, Range 13 E. B. M. Terrace Bar, Big Foot Bar, Union Bar and Comstock Placer Mining Claims according to plat of Mineral survey No. 1, Lot 37, filed in U. S. Land Office at Hailey, Idaho, November 20, 1884; Starr Hunt, Jack Rabbitt and Fractional Terrace Bar Placer Mining Claims according to plat of mineral survey No. 801, Lot 38, filed in U. S. Land Office at Hailey, Idaho, January 2, 1890; all in Township 7 South, Range 13, E. B. M. All islands in Snake River South of said Section 33, Township 7 South, Range 13 E. B. M., excepting tracts 16, 27, 37, 124, and 125 of Map of Buckeye Ranch recorded in Book 1 of Plats, page 44, in the office of the County Recorder of Lincoln County, Idaho.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That said plaintiff may, and is hereby given the right to, change its point of diversion of the waters diverted from Billingsley Creek at the point of diversion hereinbefore described and set out to that certain point of diversion on Riley Creek heretofore designated and set out as the Tucker or Thompson Spring diversion, or elsewhere on Riley Creek;

WATER RIGHT ELEMENTS

1.	Name and Address of Claimant:	Edna M. Rea Box 543 Wendell, ID 83355
2.	Source of Water:	Billingsley Creek
3.	Quantity of Water Used:	1.6 cfs
4.	Date of Priority:	September 10, 1884
5.	Legal Description of the Point of Diversion:	Township 7 South, Range 13 East, Boise Meridian, Section 11, SE1/4SE1/4NE1/4, Gooding County, Idaho
6.	Purpose of Use:	Irrigation; Diversion System Maintenance; Stockwater; Wildlife; Recreation; Aesthetics
7.	Period of Year Water is used for such Purposes:	Irrigation purpose is used during the irrigation season; All other purposes are used year around
8.	Legal Description of the Place of Use:	Township 7 South, Range 13 East, Boise Meridian, Section 27, SW1/4NE1/4, Gooding County, Idaho - 13 acres Other Purposes - Place of use is in each quarter section where there are irrigated acres and in the delivery system from the point of diversion to the property
9.	Annual Volume of Consumptive Use:	58.5 afa
10.	Conditions on the Exercise of Water Right:	None
11.	Remarks necessary for Definition:	None

RECEIVED

MAY 3 1 1996

COPY

1 Claimants:

Department of Water Resources
Adjudication Bureau

Lynn J. Babington and Karen L. Babington

2 Attorney Name and Address:

3 HEPWORTH, LEZAMIZ & HOHNHORST,
4 CHARTERED
5 133 Shoshone St. North
6 P.O. Box 389
7 Twin Falls, ID 83303-0389
8 Telephone: (208)734-7510

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

11 * * * * *

12 In Re SRBA

) Subcase No. 36-00003C

)

13 Case No. 39576

)

) MOTION FOR SUMMARY JUDGMENT

)

)

14 * * * * *

15 Come now claimants through their attorney of record, Patrick D. Brown of the
16 law firm of Hepworth, Lezamiz & Hohnhorst, Chartered, and pursuant to I.R.C.P. 56 move
17 the Court to grant summary judgment in whole or in part for each element enumerated in
18 I.C. §42-1411(2), according to the description in the attachment to the affidavit in support
19 of summary judgment.

20 The grounds for this motion are that there are no genuine issues of material
21 fact and judgment may be entered as a matter of law.

22 In support of this motion, claimants submit the New International Mortgage
23 decree which confirms the establishment of the right and defines the elements except annual

MOTION FOR SUMMARY JUDGMENT - 1

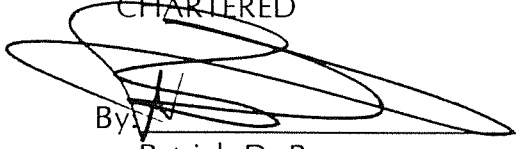
1 volume of consumptive use; the affidavits submitted in support of this motion, including the
2 affidavit of claimant, which establishes that the claimants' predecessors in interest
3 established a water right and had it confirmed by decree and that there has been no
4 abandonment or forfeiture since that time; the affidavits concerning crop production in the
5 Hagerman Valley and the affidavit of Charles E. Brockway, Ph.D. regarding annual volume
6 of consumptive use; and the affidavit of Patrick D. Brown and attachments.

7 The claimants request oral argument on this motion. Also, because this is a
8 one party case, that party being the claimants who are objecting to IDWR's
9 recommendation, the claimants request the opportunity to provide further written briefing
10 concerning legal issues or application of the law to the facts of the subcase in order to
11 thoroughly address any concerns or questions the court may have in that regard.

12 This motion is further supported by the brief submitted contemporaneously
13 with this motion.

14 Dated this 31th day of May, 1996.

15 HEPWORTH, LEZAMIZ & HOHNHORST,
16 CHARTERED

17 By: 

18 Patrick D. Brown
19 Attorneys for Claimants
20
21
22
23

RECEIVED

MAY 31 1996

COPY

Claimants: Department of Water Resources
Adjudication Bureau

Lynn J. and Karen L. Babington

Attorney Name and Address:

HEPWORTH, LEZAMIZ & HOHNHORST,
CHARTERED
133 Shoshone St. North
P.O. Box 389
Twin Falls, ID 83303-0389
Telephone: (208)734-7510

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

) Subcase No. 36-00003C

)

Case No. 39576

) AFFIDAVIT IN SUPPORT OF
) MOTION FOR SUMMARY JUDGMENT
)

* * * * *

Lynn J. Babington, being first duly sworn upon oath, deposes and says:

1. I, Lynn J. Babington, am a claimant of a previously decreed water right, which is the water right before the Court in this subcase. I make the foregoing and following statements in this affidavit based on my personal knowledge and beliefs and I am otherwise competent to testify regarding those statements.

2. I own real property described in the deed attached to this affidavit as Exhibit "A" and incorporated by reference into this affidavit. Exhibit "A" is a duplicate of my deed, which is recorded in the official property records of the Gooding County Recorder's Office, Gooding, Idaho. I also own the water right claimed in this subcase.

HLH
Chartered
Hepworth,
Lezamiz &
Hohnhorst

1 3. The real property described in Exhibit "A" includes decreed,
2 appurtenant water rights. The water right involved in this subcase is appurtenant to that real
3 property. I acquired that water right as successor in interest in the real property to New
4 International Mortgage Bank, to whom the right was decreed in the case of *New*
5 *International Mortgage Bank v. Idaho Power Company, et al*, Equity No. 1602, in the
6 District Court of the United States, for the District of Idaho, Southern Division.

7 4. I request this Court take judicial notice of the contents of the final
8 decree entered in that case, dated March 22, 1932, and decreed by the Honorable Charles
9 Cavanah, Federal District Court Judge. A certified copy of that decree is in the files of this
10 Court.

11 5. Attached to this affidavit as Exhibit "B" and incorporated into it is a
12 duplicate of the portion of the *New International Mortgage Bank* decree which shows the
13 water right I acquired through New International Mortgage Bank.

14 6. My water right has been used and exercised on the real property
15 identified in Exhibit "A" and which is also identified in Exhibit "B". The purposes for which
16 that right has been used and is being used are set forth in the attached Exhibit "C," along
17 with the periods and places of use and other elements of my right. Exhibit "C," which is
18 incorporated into this affidavit, shows how my decreed right has been beneficially used and
19 how it should be decreed.

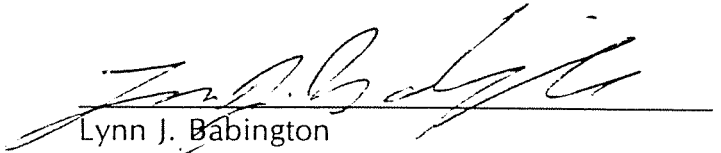
20 7. I have never intended to abandon my right or any part of it. I do not
21 believe that any of my predecessors in interest to the right intended to, or did abandon the
22 water right or any part of it. Since I have owned the water right, there has not been a
23

1 continuous five-year period of nonuse. I understand and believe that there has never been
2 a continuous five-year period of nonuse of the right.

3 Dated May 7, 1996.

4

5


Lynn J. Babington

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7

Subscribed and Sworn to before me this 7th day of May, 1996.

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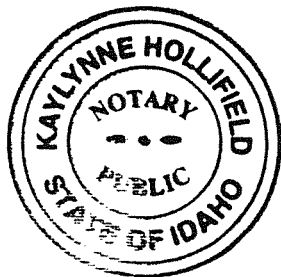
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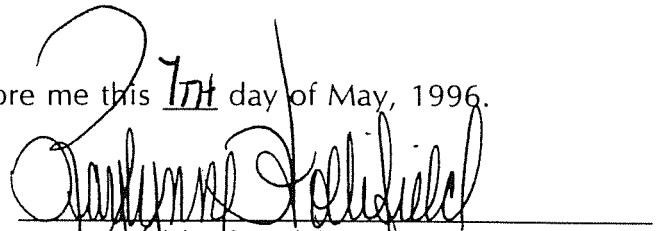
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23




Notary Public for Idaho
Residing at: TWIN FALLS, ID
My Commission Expires: 10/2001



WARRANTY DEED

RECEIVED

MAR 04 1992

Department of Water Resources
Southern Region Office

For Value Received

Michael J. Engles and Jinx Engles, husband and wife,
hereinafter referred to as Grantor, does hereby grant, bargain, sell, and convey unto

Lynn J. Babington and Kathy L. Babington, husband and wife,
hereinafter referred to as Grantee, whose current address is

2849 South 850 East, Hagerman, ID 83332

the following described premises, to-wit;

Lot 19 of BUCKEYE RANCH SUBDIVISION, located in Section 27, Township
7 South, Range 13, East of the Boise Meridian, Gooding County, Idaho,
according to the plat thereof, recorded October 10, 1918 in the
Office of the County Recorder of said County.

TOGETHER with 15 shares of Buckeye Ditch water.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said
Grantee, his heirs and assigns forever. And the said Grantor does hereby covenant
to and with the said Grantee, that Grantor is the owner in fee simple of said
premises; that said premises are free from all encumbrances except current years
taxes, levies, and assessments, and except U. S. Patent reservations, restrictions,
easements of record, and easements visible upon the premises, and that Grantor will
warrant and defend the same from all claims whatsoever.

Dated: January 13, 1991.

Michael J. Engles
Michael J. Engles

Jinx Engles
Jinx Engles

STATE OF IDAHO)

: ss

COUNTY OF Gooding)

On This 13th day of January, in the year 1991, before me, a Notary Public
in and for said State, personally appeared Michael J. Engles and Jinx Engles, known
or identified to me to be the persons whose names are subscribed to the within
Instrument, and acknowledged to me that they executed the same.

AN M. DOLY

and 8 South, Range 13 E. B. M. bears south 75° 50' west 4435 feet distant;

Also 20 second feet of the waters flowing in Billingsley Creek, with a date of priority of September 10, 1884, the same being diverted by means of a dam in, and a ditch leading from, said Billingsley Creek, the point of diversion being in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 11, Twp. 7 South, Range 13 E. B. M., from which the quarter section corner common to Sections 11 and 12, Twp. 7 South, Range 13 E. B. M. bears south 47° 22' east 718 feet distant.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That the amounts of water heretofore set out, diverted from said natural water supply at the points of diversion heretofore mentioned and set out, are necessary for the proper irrigation and cultivation of, and that the same is appurtenant to the following, described land of the plaintiff, viz:

SW $\frac{1}{4}$ of NE $\frac{1}{4}$; NW $\frac{1}{4}$ of SE $\frac{1}{4}$; S $\frac{1}{2}$ of NW $\frac{1}{4}$; N $\frac{1}{2}$ of SW $\frac{1}{4}$, Section 27; SE $\frac{1}{4}$ of NE $\frac{1}{4}$; NE $\frac{1}{4}$ of SE $\frac{1}{4}$; Lots 4, 5, 8, and 9, all in Section 28; Lots 1, 4, 5, and 8; SE $\frac{1}{4}$ of SE $\frac{1}{4}$, all in Sec. 33; Lots 1, 2, 3, 4, 5, and 7; SE $\frac{1}{4}$ of NW $\frac{1}{4}$; NE $\frac{1}{4}$; N $\frac{1}{2}$ of NW $\frac{1}{4}$, all in Sec. 34; SW $\frac{1}{4}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 35, all in Township 7 South, Range 13 E. B. M. Terrace Bar, Big Foot Bar, Union Bar and Comstock Placer Mining Claims according to plat of Mineral survey No. 1, Lot 37, filed in U. S. Land Office at Hailey, Idaho, November 20, 1884; Starr Hunt, Jack Rabbitt and Fractional Terrace Bar Placer Mining Claims according to plat of mineral survey No. 301, Lot 38, filed in U. S. Land Office at Hailey, Idaho, January 2, 1890; all in Township 7 South, Range 13, E. B. M. All islands in Snake River South of said Section 33, Township 7 South, Range 13 E. B. M., excepting tracts 16, 27, 37, 124, and 125 of Map of Buckeye Ranch recorded in Book 1 of Plats, page 44, in the office of the County Recorder of Lincoln County, Idaho.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That said plaintiff may, and is hereby given the right to, change its point of diversion of the waters diverted from Billingsley Creek at the point of diversion hereinbefore described and set out to that certain point of diversion on Riley Creek heretofore designated and set out as the Tucker or Thompson Spring diversion, or elsewhere on Riley Creek;

WATER RIGHT ELEMENTS

1.	Name and Address of Claimant:	Lynn J. Babington and Kathy L. Babington 2849 S. 850 E. Hagerman, ID 83332
2.	Source of Water:	Billingsley Creek
3.	Quantity of Water Used:	.3 cfs
4.	Date of Priority:	September 10, 1884
5.	Legal Description of the Point of Diversion:	Township 7 South, Range 13 East, Boise Meridian, Section 11, SE1/4SE1/4NE1/4 Township 7 South, Range 13 East, Boise Meridian, Section 27, NE1/4SE1/4NW1/4, Gooding County, Idaho
6.	Purpose of Use:	Irrigation; Diversion System Maintenance; Stockwater; Wildlife; Recreation; Aesthetics
7.	Period of Year Water is used for such Purposes:	Irrigation purpose is used during the irrigation season; All other purposes are used year around
8.	Legal Description of the Place of Use:	Irrigation: Township 7 South, Range 13 East, Boise Meridian, Section 27, SE1/4NW1/4 - 10 acres Other Purposes: Place of use is in each quarter section where there are irrigated acres and in the delivery system from the point of diversion to the property.
9.	Annual Volume of Consumptive Use:	45 afa
10.	Conditions on the Exercise of Water Right:	None
11.	Remarks necessary for Definition:	None

RECEIVED

MAY 31 1996

COPY

1 Claimant: Department of Water Resources
Adjudication Bureau Edith L. Vernon

2 Attorney Name and Address: HEPWORTH, LEZAMIZ & HOHNHORST,
3 CHARTERED
4 133 Shoshone St. North
5 P.O. Box 389
6 Twin Falls, ID 83303-0389
7 Telephone: (208)734-7510

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

10 * * * * *

11 In Re SRBA) Subcase No. 36-00003E
12)
13 Case No. 39576) MOTION FOR SUMMARY JUDGMENT
14)

14 * * * * *

15 Comes now claimant through her attorney of record, Patrick D. Brown of the
16 law firm of Hepworth, Lezamiz & Hohnhorst, Chartered, and pursuant to I.R.C.P. 56 moves
17 the Court to grant summary judgment in whole or in part for each element enumerated in
18 I.C. §42-1411(2), according to the description in the attachment to the affidavit in support
19 of summary judgment.

20 The grounds for this motion are that there are no genuine issues of material
21 fact and judgment may be entered as a matter of law.

22 In support of this motion, claimant submits the New International Mortgage
23 decree which confirms the establishment of the right and defines the elements except annual

MOTION FOR SUMMARY JUDGMENT - 1

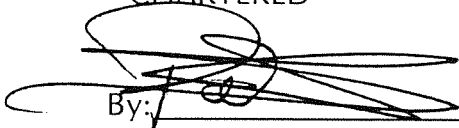
1 volume of consumptive use; the affidavits submitted in support of this motion, including the
2 affidavit of the claimant, which establishes that the claimant's predecessors in interest
3 established a water right and had it confirmed by decree and that there has been no
4 abandonment or forfeiture since that time; the affidavits concerning crop production in the
5 Hagerman Valley and the affidavit of Charles E. Brockway, Ph.D. regarding annual volume
6 of consumptive use; and the affidavit of Patrick D. Brown and attachments.

7 The claimant requests oral argument on this motion. Also, because this is a
8 one party case, that party being the claimant who is objecting to IDWR's recommendation,
9 the claimant requests the opportunity to provide further written briefing concerning legal
10 issues or application of the law to the facts of the subcase in order to thoroughly address any
11 concerns or questions the court may have in that regard.

12 This motion is further supported by the brief submitted contemporaneously
13 with this motion.

14 Dated this 31th day of May, 1996.

15 HEPWORTH, LEZAMIZ & HOHNHORST,
16 CHARTERED

17 By: 

18 Patrick D. Brown
19 Attorneys for Claimant
20
21
22
23

RECEIVED

MAY 3 1 1996

Department of Water Resources
Adjudication Bureau

COPY

1 Claimants:

Edith L. Vernon

2 Attorney Name and Address:

HEPWORTH, LEZAMIZ & HOHNHORST,
CHARTERED
133 Shoshone St. North
P.O. Box 389
Twin Falls, ID 83303-0389
Telephone: (208)734-7510

3
4
5
6
7 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
8 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
9

10 * * * * *

11 In Re SRBA

) Subcase No. 36-00003E

)

12 Case No. 39576

) AFFIDAVIT IN SUPPORT OF
) MOTION FOR SUMMARY JUDGMENT
)

13
14 * * * * *

15 Edith L. Vernon, being first duly sworn upon oath, deposes and says:

16 1. I, Edith L. Vernon, am a claimant of a previously decreed water right,
17 which is the water right before the Court in this subcase. I make the foregoing and
18 following statements in this affidavit based on my personal knowledge and beliefs and I am
19 otherwise competent to testify regarding those statements.

20 2. I own real property described in the deed attached to this affidavit as
21 Exhibit "A" and incorporated by reference into this affidavit. Exhibit "A" is a duplicate of
22 my deed, which is recorded in the official property records of the Gooding County
23 Recorder's Office, Gooding, Idaho. I also own the water right claimed in this subcase.

HLH
Chartered
Hepworth,
Lezamiz &
Hohnhorst

1 3. The real property described in Exhibit "A" includes decreed,
2 appurtenant water rights. The water right involved in this subcase is appurtenant to that real
3 property. I acquired that water right as successor in interest in the real property to New
4 International Mortgage Bank, to whom the right was decreed in the case of *New*
5 *International Mortgage Bank v. Idaho Power Company, et al*, Equity No. 1602, in the
6 District Court of the United States, for the District of Idaho, Southern Division.

7 4. I request this Court take judicial notice of the contents of the final
8 decree entered in that case, dated March 22, 1932, and decreed by the Honorable Charles
9 Cavanah, Federal District Court Judge. A certified copy of that decree is in the files of this
10 Court.

11 5. Attached to this affidavit as Exhibit "B" and incorporated into it is a
12 duplicate of the portion of the *New International Mortgage Bank* decree which shows the
13 water right I acquired through New International Mortgage Bank.

14 6. My water right has been used and exercised on the real property
15 identified in Exhibit "A" and which is also identified in Exhibit "B". The purposes for which
16 that right has been used and is being used are set forth in the attached Exhibit "C," along
17 with the periods and places of use and other elements of my right. Exhibit "C," which is
18 incorporated into this affidavit, shows how my decreed right has been beneficially used and
19 how it should be decreed.

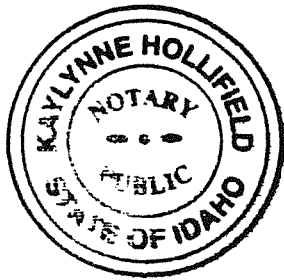
20 7. I have never intended to abandon my right or any part of it. I do not
21 believe that any of my predecessors in interest to the right intended to, or did abandon the
22 water right or any part of it. Since I have owned the water right, there has not been a
23

1 continuous five-year period of nonuse. I understand and believe that there has never been
2 a continuous five-year period of nonuse of the right.

3 Dated May 1, 1996.

4 Edith L. Vernon
5 Edith L. Vernon

6
7 Subscribed and Sworn to before me this 7th day of May, 1996.



Kaylynne Hollifield
Notary Public for Idaho
Residing at: WINN FALLS, IDAHO
My Commission Expires: 10/2001

49 DEEDS

Filed for record at the request of Bird & Hobday
Book, 42.00

BERT BOWLER, Ex-officio Recorder.

By Vera T. Wright, Deputy.

PROOF READ

No. 132434

This WARRANTY DEED made this 24th day of March, 1956, between H. F. LeMoyné (sometimes written Harry F. LeMoyné and sometimes written H. F. LeMoyné, Jr.) and Joy E. LeMoyné, husband and wife, of Hagerman, County of Gooding, State of Idaho, hereinafter referred to as "grantor", and C. A. Vernon and Edith L. Vernon of Jerome, County of Jerome, State of Idaho, hereinafter referred to as "grantee".

WITNESSETH, that grantor, for and in consideration of the sum of Eight Thousand One Hundred dollars, in lawful money of the United States, to grantor in hand paid by grantee, the receipt of which is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto grantee, and to grantee's heirs and assigns forever, all of the following described property situate in Gooding County, State of Idaho:

SW1/4, Sec. 23, Twp. 7 S., R. 13 E.E.M., together with 25 shares of stock in the Big Bend Irrigation & Mining Co.

Subject to a mortgage on said property in favor of H. LeMoyné which grantee hereby expressly assumes and agrees to pay as part consideration hereof.
(\$2.75 U.S.I.R. STAMPS ATTACHED AND CANCELLED.)
TOGETHER with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, the reversion and reversions, remainders and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the grantor.

TO HAVE AND TO HOLD all and singular the above mentioned and described premises, together with the appurtenances, unto the grantee, and to the grantee's heirs and assigns forever. And the grantor, and the grantor's heirs, the said premises in the quiet and peaceable possession of the grantee, and the grantee's heirs and assigns, against the grantor, and the grantor's heirs, and against all and every person and persons whomsoever lawfully claiming the same, shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, the grantor has subscribed this deed the day and year first above written.

H. F. LEMOYNE

JCY E. LEMOYNE

Grantor

85.

In witness whereof I have hereunto set my hand and official seal
and year in this certificate first above written.

10-10-68
 10-10-68
 10-10-68

By Vera F. Williams

IN THE PROBATE COURT OF GOODING COUNTY, STATE OF IDAHO

Decree of Settlement of Final Accounts and Final Distribution

It is further appearing that said
received by said Administratrix the sum of 00 and that
of 00 the vouchers whereof, together with a statement of said
are now reported and filed, the said statement. Receipts

1

EST
IDAHO

Charles Scoggin
Attorney for Petitioner
Box 465, Gooding, Idaho 83330
Telephone 934-5401

3 06

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING
No. 19326

In the Matter of the Estate of)
Cecil Alvin Vernon,) DECREE DETERMINING SURVIVING
Deceased.) SPOUSE AS SOLE BENEFICIARY

The verified petition of Edith Lois Vernon coming on regularly
to be heard by the court, the court makes the following findings:

Notice of the time and place of hearing has been given as
required by the order of the court.

No objections to the petition have been filed and no persons
appeared in opposition to the petition.

Cecil Alvin Vernon died April 19, 1984, while domiciled in
Bagerman, Gooding County, Idaho. The decedent executed a will
on the 20th day of December, 1974. The will was validly executed
and is the last will of the decedent. The original will is filed
with the court.

109204

OF IDAHO, COUNTY OF GOODING, ss.
for record at the request of *Scoggin*

DECREE DETERMINING SURVIVING SPOUSE AS SOLE BENEFICIARY
the next 2 o'clock P.M. this 6 day
1984

Page 1.

WILLIAM F. CLARK, Recorder

Indexed
Filed

Cecil Alvin Vernon and Edith Lois Vernon were married on the 26th day of June, 1937, at Los Angeles, California, and continued to be husband and wife until decedent's death.

Edith Lois Vernon is the sole beneficiary of the decedent's will.

The decedent at the time of his death owned or had an interest in certain property hereinafter described, all of which property was the community property of deceased and Edith Lois Vernon.

The petitioner is the surviving spouse of the decedent.

IT IS THEREFORE DECREED:

Cecil Alvin Vernon and Edith Lois Vernon were married on the 26th day of June, 1937, and were husband and wife until April 19, 1984, the date of decedent's death.

Edith Lois Vernon is the sole beneficiary of the decedent's will and is entitled to distribution of the following property:

SW1/4, Section 23, Township 7 South, Range 13, East of the Boise Meridian, Gooding County, Idaho.

Together with the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, including all water and ditch rights appurtenant thereto, and including 25 shares of stock in the Big Bend Irrigation & Mining Company.

1972 Chevrolet Station wagon, identification No. 1N45R2C-163,495

1978 Dodge Motorhome truck, identification No. F33838V703991
CM6550682

Checking and savings accounts, Idaho State Bank, Hagerman, Idaho

Miscellaneous household furniture, fixtures and appliances

Any any other property of the decedent not now known or discovered.

DECREE DETERMINING SURVIVING
SPOUSE AS SOLE BENEFICIARY

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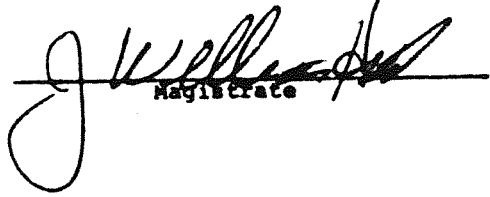
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erman, Idaho
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Edith Lois Vernon shall assume and be liable for any indebt-
edness that might be a claim against the estate of decedent.

Dated this 3rd day of July, 1984.


Magistrate

2

and 8 South, Range 13 E. B. M. bears south 75° 50' west 4435 feet distant;

Also 20 second feet of the waters flowing in Billingsley Creek, with a date of priority of September 10, 1884, the same being diverted by means of a dam in, and a ditch leading from, said Billingsley Creek, the point of diversion being in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 11, Twp. 7 South, Range 13 E. B. M., from which the quarter section corner common to Sections 11 and 12, Twp. 7 South, Range 13 E. B. M. bears south 47° 22' east 719 feet distant. ✓

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That the amounts of water heretofore set out, diverted from said natural water supply at the points of diversion heretofore mentioned and set out, are necessary for the proper irrigation and cultivation of, and that the same is appurtenant to the following, described land of the plaintiff, viz:

SW $\frac{1}{4}$ of NE $\frac{1}{4}$; NW $\frac{1}{4}$ of SE $\frac{1}{4}$; SE $\frac{1}{4}$ of NW $\frac{1}{4}$; NE $\frac{1}{4}$ of SW $\frac{1}{4}$, Section 27; SE $\frac{1}{4}$ of NE $\frac{1}{4}$; NE $\frac{1}{4}$ of SE $\frac{1}{4}$; Lots 4, 5, 8, and 9, all in Section 28; Lots 1, 4, 5, and 8; SE $\frac{1}{4}$ of SE $\frac{1}{4}$, all in Sec. 33; Lots 1, 2, 3, 4, 5, and 7; SE $\frac{1}{4}$ of NW $\frac{1}{4}$; NE $\frac{1}{4}$; NE $\frac{1}{4}$ of NW $\frac{1}{4}$, all in Sec. 34; SE $\frac{1}{4}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 35, all in Township 7 South, Range 13 E. B. M. Terrace Bar, Big Foot Bar, Union Bar and Comstock Placer Mining Claims according to plat of Mineral survey No. 1, Lot 37, filed in U. S. Land Office at Hailey, Idaho, November 20, 1884; Starr Hunt, Jack Rabbitt and Fractional Terrace Bar Placer Mining Claims according to plat of mineral survey No. 801, Lot 38, filed in U. S. Land Office at Hailey, Idaho, January 2, 1890; all in Township 7 South, Range 13, E. B. M. All islands in Snake River South of said Section 33, Township 7 South, Range 13 E. B. M., excepting tracts 16, 27, 37, 124, and 125 of Map of Buckeye Ranch recorded in Book 1 of Plats, page 44, in the office of the County Recorder of Lincoln County, Idaho.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That said plaintiff may, and is hereby given the right to, change its point of diversion of the waters diverted from Billingsley Creek at the point of diversion hereinbefore described and set out to that certain point of diversion on Riley Creek heretofore designated and set out as the Tucker or Thompson Spring diversion, or elsewhere on Riley Creek;

WATER RIGHT ELEMENTS

1. Name and Address of Claimant:
Edith L. Vernon
2722 S. 900 E.
Hagerman, ID 83332
2. Source of Water:
Billingsley Creek
3. Quantity of Water Used:
.2 cfs
4. Date of Priority:
September 10, 1884
5. Legal Description of the Point of Diversion:
Township 7 South, Range 13 East, Boise Meridian, Section 11,
SE1/4SE1/4NE1/4, Gooding County, Idaho
6. Purpose of Use:
Irrigation; Diversion System Maintenance; Stockwater; Wildlife;
Recreation; Aesthetics
7. Period of Year Water is used for such Purposes:
Irrigation purpose is used during the irrigation season; All other
purposes are used year around
8. Legal Description of the Place of Use:
Irrigation: Township 10 South, Range 13 East, Boise Meridian,
Section 23, SW1/4NW1/4, Gooding County, Idaho - 10 acres
Other Purposes: Place of use is in each quarter section where
there are irrigated acres and in the delivery system from the point
of diversion to the property
9. Annual Volume of Consumptive Use:
45 afa
10. Conditions on the Exercise of Water Right:
None
11. Remarks necessary for Definition:
None