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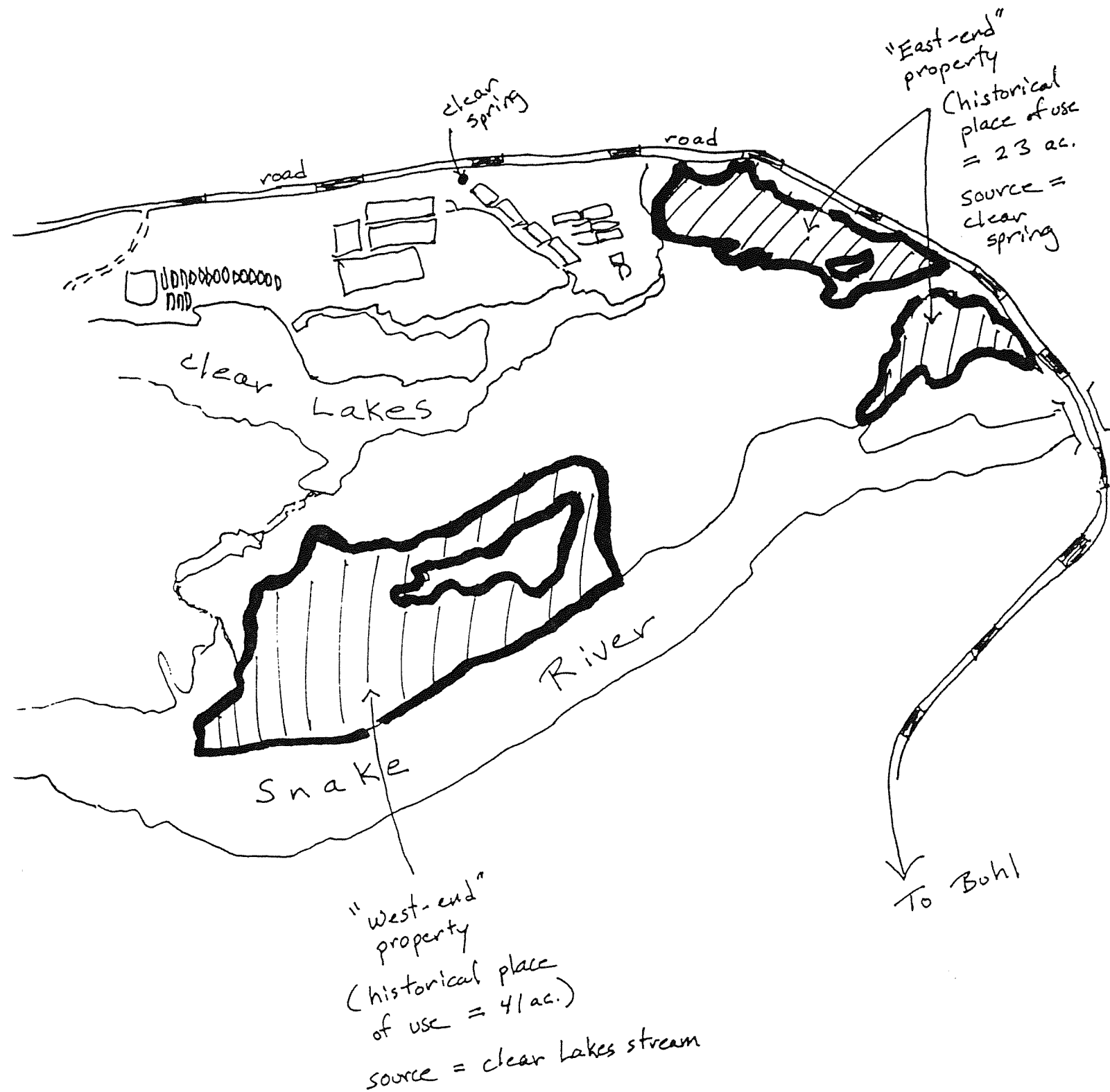
REPORT REGARDING CLAIMS TO WATER RIGHT NO.'S
36-04148A, 36-04148B, 36-04074

In Re SRBA
Twin Falls County Civil Case No. 39576
Subcase no.'s 36-04148A, 36-04148B, 36-04074

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Karl J. Dreher, Director
June 11, 1996

Historical Use of A36-04074 and A36-04148



The Director of the Idaho Department of Water Resources (IDWR) submits this report regarding claims to water right no.'s 36-04148A, 36-04148B, and 36-04074 in response to a request by Special Master Dolan, pursuant to I.R.E. 706, the Director agrees to prepare and submit this report pursuant to §42-1412(4), Idaho Code, and the trial scheduling order of Special Master Haemmerle dated 5/7/1996. The report was prepared under the direction of Karl J. Dreher, Director, and David B. Shaw, the Adjudication Bureau Chief of IDWR. Steve Clelland and Allen Merritt are the Director's designees who will be available at the hearing in this subcase. The claim files for 36-04148A, 36-04148B, supplemental claim file for 36-04148, claim file for 36-04074, and claim file for 36-10154 are incorporated by reference into this report.

I. INVESTIGATION OF CLAIMS GENERALLY

To promote the accuracy and consistency of water right decrees, and to minimize the burden on the court and the claimants in a water rights adjudication, the state has made the specialized expertise of IDWR available through IDWR's investigation and reporting function.¹

The resources the state has available for this function, however, are limited. IDWR has the duty to do a reasonable investigation within the spending authority granted by legislative appropriation. Those resources are not sufficient for IDWR to exhaustively investigate each and every potentially relevant fact regarding each and every claim and to make a conclusive determination of the water right. Rather, IDWR reviews the claim and the information already available to IDWR, and conducts such further investigation as is reasonable to determine whether there is sufficient information to support recommendation of the water right to be decreed.

To make the most effective use of the available resources, IDWR must make determinations as to what is a reasonable level of investigation for various classes of claims prior to making a recommendation to the court regarding any particular claim. IDWR has employed two primary mechanisms to identify a reasonable level of investigation. First, the statutes set criteria and IDWR has developed standards for various types of uses, requiring less information to support a claim to a water right within those standards and more information to support a claim outside those standards. Second, IDWR has adopted a "tier" approach, identifying classes of claims which for various reasons merit further investigation.

¹ Idaho Code § § 42-1410 and 42-1411.

Generally, with claims based on beneficial use², IDWR conducts a "licensing type" field exam which includes the confirmation of the source, point(s) of diversion, purpose(s) of use, place(s) of use including the extent of beneficial use, water delivery system and the quantity of water, and contacts the claimant to obtain information supporting the priority date claimed. This level of examination is conducted because there has been no prior administrative or judicial confirmation of the existence and extent of a water right based on beneficial use³.

Generally, for water rights that have been previously confirmed by license or decree, IDWR begins its examination by comparing the claim to information already available to IDWR. Other information includes, for example, IDWR's decree files; license, permit and transfer files; remote sensing data, including Landsat imagery of irrigated acres and aerial photography; water master reports; applicable laws and IDWR's interpretation of those laws in light of the water resource policies of the state; etc. If there are discrepancies between the claim and information already available to IDWR, IDWR conducts further investigation to resolve the discrepancy, which generally includes a field exam and/or contacting the claimant for further information. Thus, where there has been prior judicial or administrative confirmation of the existence and extent of the water right, IDWR uses information already available to IDWR to limit its review to issues identified by its discrepancy analysis.

Finally, IDWR uses both the court ordered notice of error process⁴ and the statutory objection process to identify claims which merit further review. If this further review yields new information that supports a different description of the water right, then IDWR will revise its recommendation (in the case of a notice of error) or submit a Supplemental Director's Report or

² Water rights based on beneficial use are sometimes referred to as constitutional rights or grandfather rights.

³ IDWR conducts a more summary investigation of beneficial use claims limited to domestic and/or stock water uses which are generally considered to be *de minimis* meeting the definition of § 42-111 or 42-1401A(12), Idaho Code.

⁴ The notice of error process, as originally conceived and implemented, was limited to disagreements between the claimant and IDWR as to fairly straight-forward "errors," such as clerical errors or other readily verifiable matters. Based on its experience in the test basins, IDWR has subsequently recommended that the notice of error process be expanded to also address all types of perceived errors, and disagreements between claimants.

offer a Standard Form 5 (in the case of an objection), consistent with the new information⁵.

II. INVESTIGATION OF CLAIMS NO.'S A36-04148A, A36-04148B, AND A36-04074

Time Line of Development

1890

Priority date claimed for A36-04148. Land patents submitted show dates of 1910. Affidavit by George Brush says he feels 1890 is the right priority date. Copy of agreement between George Lamb and Mary Briggs for use of ditch is dated 1903 but does not contain any information as to any water rights delivered through the ditch.

1927-1930

Indenture between Idaho Power and Syster dated 8/27/27 describes water flows from Clear Lake and Clear Springs. Item 6(a) of the agreement lists 2 cfs from the spring north of Clear Lake and refers to the pipeline across the Clear Lake. Pipeline across the lake has since been abandoned; see Letter from Tim Luke to George Brush dated 11/26/1990. This appears to be a predecessor to claim no. A36-04148. However, item 6(b) of the agreement also listed 2 cfs from Clear Lake source. Item 6(c) of the agreement is for 3 cfs from Clear Lake and Clear Lake stream and appears to be the beginning documentation of claim no. A36-04074.

A pipeline from the spring brought water across Clear Lake to the homestead site located at the western end of the property, and George Brush's affidavit states there were about 40 acres being irrigated. Item 6(c) states the head of the delivery ditch was in lot 5, Section 1, T09S, R14E. There is no reference to the acreage on the other, eastern end of the property irrigated by this ditch.

⁵ This "tiered" approach to determining a reasonable level of investigation is embodied in the statutory framework for water right adjudications. See §42-1410 (which provides for the discretion of the director in determining the level of IDWR's investigation, and allows but does not require the agency to conduct hearings), and §42-1412 (which authorizes IDWR to submit supplemental reports, and authorizes the court or the parties to request further investigation by IDWR in contested subcases. The tiered approach embodied in the statutory framework promotes efficiency and minimizes the burden on the court and the claimants by providing a report/objection process to identify disputed matters, and reserving the highest level of investigation for disputed matters.

The place of use described in the Indenture indicates water diversions and uses were occurring from the sources claimed to the lands generally claimed in the SRBA claims.

1937-1940

Historical information submitted by John LeMoyné indicates golf course was created during this time. Acres under irrigation are 40 to 46 acres as claimed by A36-04074. (Original file review states pump was placed in Clear Lake at this time for use on the 46 acres based on an affidavit by Frank Stewart in claim no. A36-04074. Letter by George Brush dated 10/10/90 states the pump wasn't installed until 1960 to irrigate 40 acres.) Acres irrigated on the east end still not identified.

1940-1960

Frank Stewart affidavit states he was associated with the CLCC parcel since 1940 and says the Clear Lake water was diverted by pump system and the springs were diverted by ditches. No information is submitted to indicate that any changes from past irrigation practices took place during this time.

1964

The Gooding County Assessor's office has a set of older ASCS maps, dated 7/4/64. The place of use for the Ranch and golf course is the same as shown on later ASCS maps (1977, 1987) and photos (1980, 1986, 1987). Maps and aerial photos from this time period forward allow direct comparisons and measurements of the irrigated areas to determine the number of acres irrigated (the maps and photos are listed under their respective time periods).

1960-1977

George Brush affidavit states that the pipeline from the springs across the lake has been abandoned and the pump is in place in Clear Lake to irrigate the homestead area/9-hole golf course site, located on the western end of the property.

A photo of the Clear Lake area was published in 1975 in a publication entitled, "Aquaculture in Idaho"⁶ and shows the irrigated areas consistent with that found in later photos.

ASCS aerial photo from 1977 shows the irrigated areas quite clearly as well as non-irrigated areas. This photo is almost identical to the areas visible in the 1975 photo. The ASCS photos are 8"/mile scale, allowing calculation of actual

⁶ This publication is part of the research library at the Southern Regional IDWR office and the State office in Boise. Klotz, G. and King, J., *Aquaculture in Idaho and Nationwide*, Idaho Water Resources Research Institute, University of Idaho, Moscow, Idaho, IDWR Project 45-080, March, 1975.

irrigated acreage to be performed. A planimeter measurement of the 1977 map found 41 acres irrigated from Clear Lake at the site of the original golf course/homestead. There were 23 acres being irrigated on the eastern end from the spring source.

The Gooding County Assessor's office has a set of ASCS maps that the Assessor's office has estimated to be of the late 1970's. The place of use looks to be the same as described above.

1979

Buhl Country Club filed the statutory claim⁷ 36-04074 for 0.92 cfs from Clear Lake to irrigate 46 acres. Place of use is the original 9-hole golf course site and source from Clear Lake pump system. Buhl Country Club later becomes the Clear Lakes Country Club (CLCC).

1980

An ASCS color slide of an aerial photo of the places of use was compared to the earlier findings stated above. This photo documents the same places of use are being irrigated in 1980 as is shown in the 1977 ASCS map.

1982

Clear Lake Ranch, Inc. (Ranch) files statutory claim 36-04148 for water from the springs for 104 acres with 3.0 cfs and statutory claim no. 36-04149 for water from Clear Lake for 4 acres with 0.05 cfs. NOTE: A36-04149 was later withdrawn by George Brush on 10/31/91. 36-04149 was for a small parcel of 4 ac. next to the 9-hole golf course with a probable additional point of diversion. The statement of withdrawal indicates that water was no longer used under this right. This claim is not being reviewed herein.

1985

CLCC developed additional acres from the Clear Lake pump system and added the driving range to the west of the golf course per affidavit of Larry Francis. This use was claimed as an expansion of claim no. A36-04074 and no increase in diversion rate was indicated (i.e. no upgrade to pumps or diversion works) consistent with an expansion.

⁷ Under §42-243, Idaho Code, a person claiming a beneficial use right had to file a claim with IDWR by June 30, 1983, unless the right fell into exceptions defined under §42-230(d), Idaho Code, or unless the right was represented by a permit, license, decree, adjudicated right, or had been previously filed as a statutory claim. Statutory claims are not investigated by IDWR, and are not confirmed by administrative or judicial proceedings.

1986

ASCS color slide photo is available for this year. The place of use for the Ranch and CLCC is the same as on maps and photos described previously.

1987

An ASCS aerial map was available for this year, showing some changes in the historical irrigation pattern. Fairways on golf course are under construction per the ASCS map and 5.4 acres of irrigation are taken out to construct fish raceways. No diversions exist to the Ranch place of use.

An ASCS color slide photo is available as well. It shows the beginnings of construction of the expanded fairways and fish raceways.

Amendments to statutory claim no. 36-04148 were made on 6/2/87 by George Brush on behalf of the Ranch. This amendment revised the place of use for 36-04148 by moving some acres around and reduced the total acres irrigated to 90 acres but maintained the cfs rate of 3.0 cfs.

Application for permit no. 36-08329 was filed by the Ranch on 6/2/1987 to cover the uses of the proposed subdivision. Source listed is "springs" and listed 1.5 cfs diversion rate to be diverted via pipeline. Intent of this permit was to provide 1/2 acre of irrigation per homesite and not to be used to provide irrigation of historical place of use as evidenced by conversation memo 12/2/1991 between Gary Slette and Steve Clelland. This permit is currently active.

1988

SRBA claims filed at this time. Claim no. A36-04148 was filed by the Ranch on 7/6/88 for irrigation from Clear Spring for 90 acres with 3.0 cfs and stockwater of 100 range cattle with 0.03 cfs. The Ranch never filed a SRBA claim for water from Clear Lake, including statutory claim no. 36-04149.

On the same day, John LeMoyne, on behalf of Clear Lake Country Club filed claim no. A36-04074 for irrigation from Clear Lake of 46 acres with 1.4 cfs of water and claim no. A36-10154 as an expansion of A36-04074.

SRBA claims match the statutory claims filed previously in regards to the diversion rate and total acres irrigated, except for the diversion rate of A36-04074 which has been increased to 1.4 cfs.

Pipeline from the Clear Springs is installed to the pump house owned by the Ranch per conversation memo dated 10/30/91 between George Brush and Steve Clelland. This pipeline was believed to be developed under water right permit 36-08329, which

was not claimed in the SRBA; per conversation memo between Gary Slette and Steve Clelland 12/2/91 and information provided during 1990 and 1991 field exams by CLCC through Denny Kuntz, Larry Francis, and John LeMoynes. Since the pipeline is thought to be developed under a permit that was not claimed in the SRBA, and since the permit process has its own field exam and investigation procedure, no investigation on this pipeline is performed for purposes of the adjudication.

IDWR purchased infra-red NAPP photos to help identify irrigated acres within the region. The photo for this area reveals the full 18-hole golf course is now under irrigation. Planimeter of this current use is measured at 89.9 acres for total irrigated acres. This use was confirmed by SRBA field exams by Lori White, Robert Worstell and Steve Clelland.

1990

Change of ownership for A36-04148 splits the claimed right into parts A and B on 8/30/90. In conjunction with this process the new owners of part B and the original owners of part A both amended their respective claims. CLCC amended A36-04148B to irrigation with 1.5 cfs for 90 acres distributed within their claimed place of use. Likewise, the Ranch amended A36-04148A to irrigate with 1.5 cfs for 73 acres within their remaining place of use. In both cases the amendments result in an increase of claimed acreage from any previously submitted claim or evidence.

On 8/30/90, CLCC amended claim no. A36-04074 to re-distribute the acres within the place of use. The amendment did not increase any claimed acreage but did decrease the claimed flow rate from 1.4 cfs to 1.16 cfs.

IDWR staff conducts field exams. Several visits were made to the area by Lori White (LW), Robert Worstell (RW) and Steve Clelland (SCC) over the years leading up to the final recommendation.

Listing of Exam Schedule for all claims

8/2/90	LW	Initial exam for the Ranch claims with George Brush.
8/21/90	LW/RW	Date listed on pump information sheets; probably should be 8/22/90 as below.
8/22/90	LW/RW/SCC	Exam with CLCC to review claims and perform polysonic measurements. Pump info may have been collected on this day also.
8/30/90	LW	Follow-up exam.
10/11/90	LW/RW	Second polysonic measurements taken.
9/91	SCC	Follow-up exam to review site for claim write up.
10/22/91	SCC	Follow-up exam to confirm point of

diversion and delivery systems in use.

1991

Following the amendment of A36-4148A, the Ranch added L & M, Inc. as part owners of the right by filing a change in ownership form.

Final review for A36-04148A was signed off on 11/27/91 by Steve Clelland. The sign-off date for A36-04074, A36-04148B, and A36-10154 was on 12/2/91. A summary of the rights that were recommended at this time are as follows:

A36-04074	CLCC	0.82 cfs	41 acres (46 acres combined use)
A36-10154	CLCC	0.10 cfs	5.6 acres (46 acres combined use)
A36-04148A	Ranch	0.00 cfs	disallow
A36-04148B	CLCC	0.46 cfs	23 acres

1992

A notice of error (NOE) period followed the issuance of the proposed director's report. NOE's were submitted by the parties for all claims listed above, basically requesting more water and/or more acres be listed. IDWR responded to the NOE's on 10/7/92. Opportunities for filing an Objection and/or submittal of additional information were noted in the response letter.

Letter to John LeMoyné from Steve Clelland, dated 11/19/92 describes the acres found to be without some form of water right appurtenant to it. This information was stated as follows;

Acres irrigated in 1988	89.9 ac
Acres allowed under 36-4148B	23.0 ac
Acres allowed under 36-04074	41.0 ac
Acres allowed under 36-10154	<u>5.6 ac</u>
	69.6 ac

Difference: $89.9 - 69.6 = 20.3$ ac.

Adjustment for calculation error in Lot 9. 0.6 ac were not irrigated:

$20.3 \text{ ac} - 0.6 \text{ ac (unirrigated in Lot 9)} = 19.7$
acres without a water right.

1992-1996

The director's report for Basin 36, SRBA reporting area 3, was filed on 11/2/92.

Objection to right no. 36-04148A was filed by attorneys for the Ranch on 4/30/93 and IDWR followed with a response on 8/30/1993.

Settlement conferences between the Ranch and IDWR take place, but no settlement is reached.

Objections on the CLCC rights were filed on 12/21/95 and an Order granted on 3/20/96. Accompanying the objection forms were affidavits by Ted Eastman and John LeMoyne, dated 8/4/95.

III. ELEMENT REVIEW OF 36-04148A

1. Name and Address

The claim, NOE and objection were all filed by the Ranch. A warranty deed dated 1991 indicates the Ranch as owners of the property as well as the representations made by George Brush.

2. Source

The Ranch claimed the source of claim no. A36-04148 as Clear Springs. This is consistent with: the Idaho Power Indenture, George Brush affidavit dated 10/17/1990, George Brush letter dated 10/10/1990, Larry Francis affidavit dated 10/28/91, and Frank Stewart affidavit dated 10/28/1991. IDWR used ortho-photo quad maps from the USGS to locate the spring. Field exams conducted by IDWR in 1990 and 1991 and discussed in the timeline confirm the spring was the source of the irrigation for 36-04148B. Legal descriptions were determined by ortho-photo quad maps, NAPP photos, ASCS photos, and field exams.

3. Quantity

The diversion rate for A36-04148A was claimed as 1.5 cfs for 73 acres. Examination of the claim considered the number of acres historically irrigated and the requirements of § 42-220, Idaho Code, for showing necessity prior to more than 1 cfs of water for 50 acres for irrigation (also referred to as 1" per acre) being decreed.

For simplicity of discussion's sake, it is easiest to divide the place of use for 36-04148 into the "east end" and the "west end." NOTE: see map for visual reference.

a. The East End

The east end of the place of use includes the land furthest away from Clear Lake. In this case, this part of the property had a historical place of use of 23 irrigated acres watered from the Clear Springs source by means of ditches and gravity as established by aerial maps and photos discussed in the timeline from 1964 to 1987 and with: the Idaho Power Indenture, George Brush affidavit dated 10/17/1990, George Brush letter dated 10/10/1990, Larry Francis affidavit dated 10/28/91, and Frank Stewart affidavit dated 10/28/1991.

In 1987, diversion works from the springs were torn up as part of the construction of fairways on the golf course as evidenced by the 1987 ASCS map and the 1987 ASCS color slide photo. No information was presented to show if water from either Clear Lake or Clear Springs was applied in the fall of 1987. NAPP photography in 1988 shows strong plant growth on the newly constructed fairways in 1988, showing that irrigation was underway. A warranty deed shows that CLCC bought part of the historical place of use for Clear Springs in 1988. Of the land that the Ranch retained, only a fraction of Ranch property included the historical place of use for Clear Springs irrigation water. That retained portion showed no irrigation nor diversion works in the ASCS maps and photos for 1987 and 1988. Additionally, the retained Ranch property showed no irrigation nor diversion works during the IDWR field exams discussed in the timeline from 1990 to 1991.

From the facts discussed, it was concluded that any of the 23 acres historically watered on the east end of the property from the Clear Springs source was transferred to the fairways constructed in 1987 and sold to the CLCC in 1988. The accomplished transfer statute was not implicated as the fairways and historical place of use were in the same legal description. Thus, it was resolved that claim no. A36-04148A should be disallowed; the place of use claimed had no diversion works nor irrigation from 1987 through 1991. By contrast, CLCC's fairways were diverting Clear Springs water as evidenced by polysonic measurements during IDWR field exams in 1990 through 1991 and showed at least 23 acres being beneficially irrigated when the CLCC bought the property in 1988. The deed to the sale shows that 1.5 cfs of Clear Springs water was sold to the CLCC by the Ranch. IDWR recommended 0.46 cfs of Clear Springs water as being beneficially used under 36-04148B.

b. The West End

The west end of the property includes the property closest to Clear Lake. This is the portion of the property that had been rented and irrigated by the Buhl Country Club which later became the CLCC. The west end of the property historically had forty one acres of irrigated land watered from Clear Lake stream as indicated by the ASCS maps and photos from 1964 forward as discussed in the timeline. Since the Ranch only claimed Clear Springs as a source of water and since this portion of property had been watered by Clear Lake stream, none of the west end property was allowed for recommendation under right no. A36-04148A nor A36-04148B.

4. Priority Date

Claim no. A36-04148A had a claimed priority date of 1/1/1890. Since this right was recommended for disallowal, no priority date was recommended.

5. Point of Diversion

Although Clear Springs had historically been diverted by means of ditches and gravity system, ASCS color slide photos in 1987 show that any ditches to the historical place of use were torn up by construction of the fairways. NAPP photos in 1988 also confirm this by showing no irrigation (except for fairways) on the historical place of use for 36-04148. No point of diversion was found during the field exams as discussed in the timeline between 1990 to 1991. In sum, no point of diversion was found for the claimed place of use for right no. 36-04148A.

6. Purpose of Use

Although the Ranch had claimed stockwater and irrigation as purposes of use in claim no. A36-04148, the only use identified in amended claim no. A36-04148A was for irrigation. As has been discussed, the irrigation purpose of use was disallowed. No information was submitted that stockwater was ever a perfected purpose of use for water right no. 36-04148.

7. Period of Use

The notice of claim for claim no. A36-04148A states a period of use of 3/15 to 11/30. The director's report recommends a period of use from 3/15 to 11/15 for irrigation. Since A36-04148A was recommended for disallowal, no period of use was recommended.

8. Place of Use

The Ranch originally claimed 90 acres from the spring for claim no. A36-04148. However, as has been discussed, IDWR found only 23 acres on the east end of the property to be historically irrigated from the spring source. Also, as discussed, IDWR found that the place of use was changed in 1987-1988 to 23 acres on the newly constructed fairways and sold to the CLCC. The accomplished transfer statute was not implicated since the fairways and the historical place of use were in the same legal description. Legal descriptions were determined by ortho-photo quad maps, NAPP photos, ASCS photos, and field exams.

9. Consumptive Use

The Ranch stated in the notice of claim for claim no. A36-04148A that the annual volume of consumptive use is 246 AFY. The director's report for 36-04148A did not recommend any consumptive use figure since no beneficial use of Clear Springs water was found for this right.

IV. **ELEMENT REVIEW OF 36-04148B**

1. Name and Address

Claim no. A36-04148 was split by change in ownership with the Ranch retaining ownership of 36-04148A and the CLCC being the new owners of part A36-04148B. A deed dated 1988 indicates that the Ranch sold the place of use recommended under 36-04148B and 1.5 cfs of water from the springs to the CLCC. Also, representations by George Brush on behalf of the Ranch and John LeMoyne on behalf of CLCC confirm that CLCC are the owners of 36-04148B.

2. Source

The Ranch claimed the source of claim no. A36-04148 as Clear Springs. This is consistent with: the Idaho Power Indenture, George Brush affidavit dated 10/17/1990, George Brush letter dated 10/10/1990, Larry Francis affidavit dated 10/28/91, and Frank Stewart affidavit dated 10/28/1991. IDWR used ortho-photo quad maps from the USGS to locate the spring. Field exams conducted by IDWR in 1990 and 1991 and discussed in the timeline confirm the spring was the source of the water for irrigation for 36-04148B. Legal descriptions were determined by ortho-photo quad maps, NAPP photos, ASCS photos, and field exams.

3. Quantity

The diversion rate claimed for A36-04148B was 1.5 cfs for 90 acres. Examination of the claim considered the number of acres historically irrigated and the requirements of § 42-220, Idaho Code, for showing necessity prior to more than 1 cfs of water for 50 acres for irrigation (also referred to as 1" per acre) being decreed.

For simplicity of discussion's sake, it is easiest to divide the place of use for 36-04148 into the "east end" and the "west end." NOTE: see map for visual reference.

a. The East End

The east end of the place of use includes the land furthest away from Clear Lake. In this case, this part of the property

had a historical place of use of 23 irrigated acres watered from the Clear Springs source by means of ditches and gravity as established by aerial maps and photos discussed in the timeline from 1964 to 1987 and the affidavits and letters listed under the "source" element for 36-04148A.

In 1987, diversion works from the springs were torn up as part of the construction of fairways on the golf course as evidenced by the 1987 ASCS map and the 1987 ASCS color slide photo. No information was presented to show if water from either Clear Lake or Clear Springs was applied in the fall of 1987. NAPP photography in 1988 shows strong plant growth on the newly constructed fairways in 1988, showing that irrigation was underway. A warranty deed shows that CLCC bought part of the historical place of use for Clear Springs in 1988. Of the land that the Ranch retained, only a fraction of Ranch property included the historical place of use for Clear Springs irrigation water. That retained portion showed no irrigation nor diversion works in the ASCS maps and photos for 1987 and 1988. Additionally, the retained Ranch property showed no irrigation nor diversion works during the IDWR field exams discussed in the timeline from 1990 to 1991.

From the facts discussed, it was concluded that any of the 23 acres historically watered on the east end of the property from the Clear Springs source was transferred to the fairways constructed in 1987 and sold to the CLCC in 1988. The accomplished transfer statute was not implicated as the fairways and historical place of use were in the same legal description. Thus, it was felt that claim no. A36-04148A should be disallowed; the place of use claimed had no diversion works nor irrigation from 1987 through 1991. By contrast, CLCC's fairways were diverting Clear Springs water as evidenced by polysonic measurements during IDWR field exams in 1990 through 1991 and showed at least 23 acres being beneficially irrigated when the CLCC bought the property in 1988. The deed to the sale shows that 1.5 cfs of Clear Springs water was sold to the CLCC by the Ranch. IDWR recommended 0.46 cfs of Clear Springs water as being beneficially used under 36-04148B.

As to the question of the quantity of water needed to irrigate the 23 acres of land historically irrigated, IDWR found that all the irrigation occurred under sprinkler during its field exams. IDWR applied the statutory diversion rate of 0.02 cfs per acre. Although the historical method of irrigation was by gravity and flood systems, in the absence of the historical irrigation system, IDWR did not have any information to conclude that the irrigated acreage required more than 0.02 cfs per acre. The total diversion rate recommended in the director's report under 36-04148B was 0.46 cfs for 23 acres.

b. The West End

The west end of the property includes the property closest to Clear Lake. This is the portion of the property that had been rented and irrigated by the Buhl Country Club which later became the CLCC. The west end of the property historically had forty one acres of irrigated land watered from Clear Lake stream as indicated by the ASCS maps and photos from 1964 forward as discussed in the timeline. Since the Ranch only claimed Clear Springs as a source of water and since this portion of property had been watered by Clear Lake stream, none of the west end property was allowed for recommendation under right no. A36-04148A nor A36-04148B.

4. Priority Date

Claim no. A36-04148B had a claimed priority date of 1/1/1890. Although the Ranch did submit a ditch agreement dated 9/10/1903, this agreement does not state any elements of a water right. Thus, it was impossible to tell what water right was being used through the ditch. The first documentation of a priority date was the Idaho Power Indenture, dated 8/27/1927. This indenture describes the spring source being used on basically the same place of use historically irrigated as was claimed in A36-04148. IDWR has recommended a priority date of 1/1/1927, the same year as the first evidence of priority.

5. Point of Diversion

Although Clear Springs had historically been diverted by means of ditches and gravity system, ASCS color slide photos in 1987 show that any ditches to the historical place of use were torn up by construction of the fairways. NAPP photos in 1988 also confirm this by showing no irrigation (except for fairways) on the historical place of use for 36-04148.

The point of diversion described for the fairways in A36-04148B was a concrete headbox and pipe leading to a sprinkler system. During the field exams discussed in the timeline between 1990 to 1991, IDWR confirmed a point of diversion described in the claim. Legal descriptions were determined by ortho-photo quad maps, NAPP photos, ASCS photos, and field exams.

6. Purpose of Use

Although the Ranch had claimed stockwater and irrigation as purposes of use in claim no. A36-04148, the only use identified in amended claim no. A36-04148B was for irrigation. No information was submitted that stockwater was ever a perfected purpose of use for water right no. 36-04148.

7. Period of Use

The notice of claim for claim no. A36-04148B states a period of use of 3/1 to 11/30. The director's report recommends a period of use from 3/15 to 11/15 for irrigation.

In the Memorandum Decision and Order Re: Basin-Wide Issue 5, the Presiding Judge concluded that this general provision was not necessary and would not be decreed. This decision further provided that, "all decrees for irrigation in the SRBA shall set the period of use as the "irrigation season." Order, pp. 15-16. The district court denied a subsequent motion for permission to appeal the decision. Pending any further proceedings on the decision, any further statement of the basis of IDWR's recommendation as to the season of use for irrigation appears to be unnecessary.

8. Place of Use

The Ranch originally claimed 90 acres from the spring for claim no. A36-04148. However, as has been discussed, IDWR found only 23 acres on the east end of the property to be historically irrigated from the spring source. Also as discussed, IDWR found that the place of use was changed in 1987-1988 to 23 acres on the newly constructed fairways and sold to the CLCC. The accomplished transfer statute was not implicated since the fairways and the historical place of use were in the same legal description. Legal descriptions were determined by ortho-photo quad maps, NAPP photos, ASCS photos, and field exams.

9. Consumptive Use

The notice of claim for A36-04148B states an annual volume of consumptive use of 270 AFY. The annual volume of consumptive use recommended in the director's report is 69 AFY. The claimant's late objection does not contest the consumptive use recommendation.

IDWR developed standards for annual volume of consumptive use for the various climatic areas throughout the state. The standard for the area in which the claimant's place of use is located is 3.0 AFY/acre. IDWR's recommendation is based on this standard. The development of IDWR's standards for annual volume of consumptive use is being compiled in an appendix which will be attached to 706 reports due 7/1/96. The appendix is not currently completed.

V. ELEMENT REVIEW OF 36-04074

1. Name and Address

The CLCC filed claim no. A36-04074. A deed dated 1988 indicates that the Ranch sold the place of use recommended under 36-04074 to the CLCC. Representations by George Brush on behalf of the Ranch and John LeMoyné on behalf of CLCC confirm that CLCC are the owners of 36-04074.

2. Source

The source claimed under A36-04074 was Clear Lake stream. This is consistent with; the Idaho Power Indenture, George Brush affidavit dated 10/17/1990, George Brush letter dated 10/10/1990, Larry Francis affidavit dated 10/28/1991, and Frank Stewart affidavit dated 10/28/91. Field exams conducted by IDWR in 1990 and 1991 and described in the timeline confirm the Clear Lake stream source. Legal descriptions were determined by ortho-photo quad maps, NAPP photos, ASCS photos, and field exams.

3. Quantity

The diversion rate claimed for A36-04074 was 1.4 cfs for 46 acres. Examination of the claim considered the number of acres historically irrigated and the requirements of § 42-220, Idaho Code, for showing necessity prior to more than 1 cfs of water for 50 acres for irrigation (also referred to as 1" per acre) being decreed.

For simplicity of discussion's sake, it is easiest to divide the place of use for 36-04074 into the "east end" and the "west end."

a. The East End

The east end of the place of use includes the land furthest away from Clear Lake. As discussed earlier, this part of the property was not historically watered from the Clear Lake stream source. All property recommended for irrigation on the east end was recommended under right no. 36-04148B.

b. The West End

The west end of the property includes the property closest to Clear Lake. This is the portion of the property that had been rented and irrigated by the Buhl Country Club which later became the CLCC. The west end of the property historically had forty one acres of irrigated land watered from Clear Lake stream as indicated by the ASCS maps and photos from 1964 forward as discussed in the timeline. This was consistent with the representations made by George Brush in a letter dated 10/10/90

to IDWR. The IDWR field exams in 1990 to 1991 as discussed in the timeline found that the irrigation from Clear Lake stream did cover at least 41 acres.

Since the property was irrigated by sprinkler, IDWR applied the statutory diversion rate of 0.02 cfs per acre. Although the historical method of irrigation was by gravity and flood systems, in the absence of the historical irrigation system, IDWR did not have any way to conclude that the irrigated acreage required more than 0.02 cfs per acre⁸. The total diversion rate recommended in the director's report under 36-04070 was 0.46 cfs for 23 acres

4. Priority Date

The CLCC claimed a priority date of 2/1/1937. The first documentation of a priority date was the Idaho Power Indenture, dated 8/27/1927. This indenture describes the Clear Lake source being used on basically the place of use historically irrigated with right no. 36-04074. Since the Indenture shows that the right was being used by the claimed priority date, IDWR recommended the priority date as claimed.

5. Point of Diversion

The point of diversion described for A36-04074 was a diversion system consisting of a check dam and gates to a sprinkler system. During the field exams discussed in the timeline between 1990 to 1991, IDWR confirmed a point of diversion described by the claim. Legal descriptions were determined by ortho-photo quad maps, NAPP photos, ASCS photos, and field exams.

6. Purpose of Use

The SRBA claim for A36-04074 listed irrigation as the only purpose of use. This use was confirmed and recommended in 36-04074. No other purposes of use were claimed, nor evidence of any other purposes of use submitted to IDWR.

⁸ The CLCC did give references to general conditions on the Hagerman area. The CLCC submitted a report from the U.S.D.A. Soil Conservation Service, dated 10/2/92, to Hagerman Water Users containing general information on the Hagerman area. Also included is a U.S.D.A. Soil Conservation letter dated 10/7/92, addressed to Dan McFadden containing information, "specific to your farm."

7. Period of Use

The notice of claim for claim no. A36-04074 states a period of use of 2/1 to 11/15. The director's report recommends a period of use from 3/15 to 11/15 for irrigation.

In the Memorandum Decision and Order Re: Basin-Wide Issue 5, the Presiding Judge concluded that this general provision was not necessary and would not be decreed. This decision further provided that, "all decrees for irrigation in the SRBA shall set the period of use as the "irrigation season." Order, pp. 15-16. The district court denied a subsequent motion for permission to appeal the decision. Pending any further proceedings on the decision, any further statement of the basis of IDWR's recommendation as to the season of use for irrigation appears to be unnecessary.

8. Place of Use

The CLCC claimed a place of use for A36-04074 of 46 acres. As previously discussed, IDWR found a historical place of use of 41 acres. IDWR found that 36-04074 was an expanded water right in conjunction with 36-10154 under § 42-1416⁹, Idaho Code. To accurately reflect this fact, IDWR recommended a 46 acre place of use with the limitation that actual irrigation pursuant to right no. 36-04074 was limited to 41 acres in any given irrigation season.

9. Consumptive Use

The notice of claim for A36-04074 states an annual volume of consumptive use of 184 AFY. The annual volume of consumptive use recommended in the director's report is 139.8 AFY. The claimant's late objection does not protest the consumptive use recommendation.

IDWR developed standards for annual volume of consumptive use for the various climatic areas throughout the state. The standard for the area in which the claimant's place of use is located is 3.0 AFY per acre. IDWR's recommendation is based on this standard. The development of IDWR's standards for annual volume of consumptive use is being compiled in an appendix which will be attached to 706 reports due 7/1/96. The appendix is not currently completed.

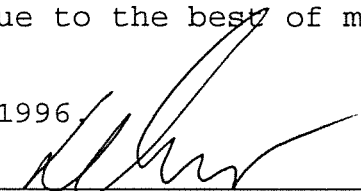
⁹ Repealed and replaced by § 42-1426, Idaho Code.

STATE OF IDAHO)
) ss.
County of Ada)

David B. Shaw, being first duly sworn, upon oath, deposes and says:

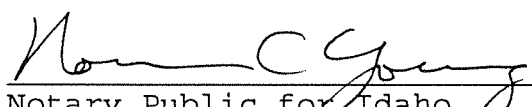
That I am the Adjudication Bureau Chief for IDWR, that I have read the foregoing report, know its contents, and that the statements contained therein are true to the best of my knowledge and belief.

DATED this 11 day of June, 1996.



David B. Shaw

SUBSCRIBED AND SWORN before me, a Notary Public in and for the State of Idaho, this 11th day of ~~May~~ ^{June}, 1996.



Notary Public for Idaho,
residing in Boise, Idaho
My commission expires:

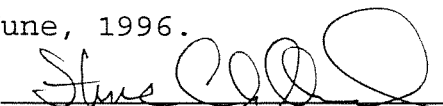
July 25, 1999

STATE OF IDAHO)
) ss.
County of Ada)

Steve Clelland, being first duly sworn, upon oath, deposes and says:

That I am a water agent involved in investigating these subcases for IDWR, that I have read the foregoing report, know its contents, and that the statements contained therein are true to the best of my knowledge and belief.

DATED this 11th day of June, 1996.



Steve Clelland

SUBSCRIBED AND SWORN before me, a Notary Public in and for the State of Idaho, this 11th day of ~~May~~ ^{June}, 1996.


Notary Public for Idaho,
residing in BOISE, Idaho
My commission expires:

July 25, 1999

CERTIFICATE OF MAILING

I certify that on the ¹²11th day of June, 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:

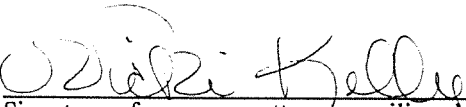
1. Original to:

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:

Patrick D. Brown
P.O. Box 389
Twin Falls, ID 83303-0389

Gary Slette
P.O. Box 1906
Twin Falls, ID 83303-1906


Signature of person or attorney mailing document(s)