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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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REPORT REGARDING CLAIM TO WATER RIGHT NO. 36-00103F

In Re SRBA
Twin Falls County Civil Case No. 39576
Sub-Case No. 36-00103F

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Karl J. Dreher, Director
David B. Shaw, Adjudication Bureau Chief
David R. Tuthill Jr., Acting Adjudication Bureau Chief

July 1, 1996

COPY

REPORT REGARDING CLAIM TO WATER RIGHT NO. 36-00103F

The Director of the Idaho Department of Water Resources (IDWR) submits this report regarding claim to water right no. 36-00103F in response to the request of Special Master Haemmerle, pursuant to Idaho Code §42-1412(4) and the court's Order Re: Contested Claims for Amounts Claimed in Excess of .02 CFS. This report was prepared under the supervision of Karl J. Dreher, Director, David B. Shaw, Adjudication Bureau Chief, and David R. Tuthill Jr., Acting Adjudication Bureau Chief for IDWR. The following persons assisted in the preparation of the following portions of this report:

David B. Shaw, Adjudication Bureau Chief, reviewed and verified this Report Regarding Claim to Water Right No. 36-00103F. The Affidavit of David B. Shaw describes Mr. Shaw's education and work experience, and is incorporated by reference herein. Mr. Shaw also reviewed IDWR's Report Regarding Evaluation of Irrigation Diversion Rates, described below.

David R. Tuthill Jr., Acting Adjudication Bureau Chief, also reviewed this Report Regarding Claim To Water Right No. 36-00103F. The Affidavit of David R. Tuthill Jr. describes Mr. Tuthill's education and work experience, and is incorporated by reference herein.

Steven C. Clelland, Senior Water Resource Agent, investigated and prepared the preliminary recommendation for claim no. A36-00103F. The Affidavit of Steven C. Clelland describes Mr. Clelland's education and work experience, and is incorporated by reference herein. The affidavit also includes a general description of his investigation of claims in the Hagerman area. The affidavit of Steven C. Clelland Regarding Claim No. 36-00103F describes Mr. Clelland's investigation of the place of use of this water right; it is attached hereto and incorporated herein by reference.

Helen L. Harrington-Thornton, formerly Senior Water Resource Agent and currently Hydrogeologist, participated in the field examination for claim no. 36-00092. The Affidavit of Helen L. Harrington-Thornton describes Ms. Thornton's education and work experience, and is incorporated by reference herein. The Affidavit of Helen L. Harrington-Thornton Regarding Claim No. 36-00103F describes her investigation of the place of use of this water right, and is attached hereto and incorporated by reference herein.

I. INVESTIGATION AND RECOMMENDATION OF CLAIMS GENERALLY

IDWR's general methodology for the investigation and recommendation of claims is described in Appendix A, which is incorporated herein by reference.

II. WATER RIGHT NO. 36-00103F

A. Basis of Claim

This claim, originally numbered A36-00108F, was filed with IDWR by Basil Lester and Myrle Hyde Zink on August 15, 1988.¹ As a result of its investigation of this claim, IDWR recommended the claim as 36-00103F, as further described in section I below. The claim is to a portion of a right decreed to Charles and Iva E. Skinner in the *New International Mortgage* decree, entered in 1932.² The water right decreed to the Skinners is numbered in IDWR's files as water right nos. 36-00103. This right was decreed, along with numerous other rights, for "irrigation, domestic power and other purposes." Portions of right no. 36-00103 were claimed by and recommended to various claimants.

B. Name and Address of Claimant

The name and address of the claimant set forth in the claimant's motion for summary judgment is the same as recommended in the director's report.

C. Source of Water

The source of water set forth in the claimant's motion for summary judgment is Billingsley Creek. The source of water is described in the director's report as Billingsley Creek tributary to Snake River.

The director's report includes the body of water to which the source of the right is tributary for each water right in the director's report, except for rights to ground water. IDWR adopted this standard for the description of the source of water rights because there are so many instances, sometimes in the same administrative basin, where different surface water sources bear the same name.³

¹ The original notice of claim is currently located in the files of the SRBA District Court, attached to IDWR's response to the claimant's objection.

² *New International Mortgage Bank v. Idaho Power Co., et al.*, Equity No. 1602 (D.S.Id. 1932), at pp. 3-4.

³ IDWR relied upon the following in reaching its conclusion: Idaho Code §42-1411(2) (which provides that the director shall determine the source of the right to the extent the director deems appropriate and proper to define and administer water rights acquired under state law).

D. Date of Priority

The priority date set forth in the claimant's motion for summary judgment is the same as recommended in the director's report.

E. Point of Diversion

The point of diversion set forth in the claimant's motion for summary judgment is the same as recommended in the director's report.

F. Purpose of Use

The purpose of use stated on the notice of claim and recommended in the director's report is domestic. The objection does not contest the purpose of use. The claimant's motion for summary judgment now seeks to add irrigation, stockwater, wildlife, recreation, aesthetics, and "diversion system maintenance."

The description of the purposes of use of this right in the decree is ambiguous in that it describes the purposes of use for the Skinner right and others in the same list collectively as "irrigation, domestic, power and other purposes," rather than specifically identifying each purpose of use for each right.⁴ IDWR's investigation confirmed the use of water for domestic purposes, as further described below in the section addressing place of use. Neither the claimant nor IDWR's investigation has yielded information that would confirm the beneficial use of water for the other purposes listed in the motion, either pursuant to the right as originally appropriated or as currently used.⁵ Such information is necessary not only to confirm the use but to quantify the amount of water beneficially used for that purpose.

⁴ IDWR relied upon the following in reaching its conclusion: *Morgan v. Udy*, 58 Idaho 670, 79 P.2d 295 (1938) (a water right decree that omitted the description of the point of diversion necessarily determined the point of diversion but was ambiguous as to its location).

⁵ IDWR relies upon the following in reaching this conclusion: Idaho Code §42-1427 (which allows an ambiguity in a prior decree or license to be resolved based on current beneficial use); the statement of the Presiding Judge that this section "cannot change or exceed the previously decreed or recorded element of the decreed or licensed right" nor "be used to claim an expansion of use beyond the beneficial use existing at the time the right was originally memorialized in a decree or license," Revised Memorandum Decision and Order on Basin-Wide Issue 4, dated May 17, 1995, at page 9; and the statement of the Presiding Judge that, "the purpose of use is defined by the intentional application of water to an intended beneficial use of water," Memorandum Decision and Order Re: Basin-Wide Issue 5, dated April 26, 1996, at page 8.

G. Quantity of Water Used

The quantity claimed in the notice of claim and recommended in the director's report is 0.02 cfs. The objection contests the quantity element, but does not state the quantity claimed. The motion for summary judgment states a quantity of 0.02 cfs, the same as recommended. Any further information as to the basis for IDWR's recommendation of 0.02 cfs therefore appears to be unnecessary.

The director's report includes a further description of non-irrigation uses, which states: DOMESTIC, 1 HOUSE LAWN. The objection did not contest the further description of non-irrigation uses, but it is omitted in the claimant's motion for summary judgment. The further description of non-irrigation uses is based in part on the notice of claim. Additional information as to the basis for the further description of non-irrigation uses is described in IDWR's Report Regarding Quantification of Small Domestic and Stockwater Rights. As part of Basin Wide Issue 12, however, IDWR has proposed that the further description of non-irrigation uses be rephrased as: THE QUANTITY FOR NON-IRRIGATION USE IS LIMITED TO THE AMOUNT OF WATER BENEFICIALLY USED FOR: DOMESTIC, 1 HOUSE LAWN. The basis for this rephrasing is also described in IDWR's Report Regarding Quantification of Small Domestic and Stockwater Rights.⁶

H. Period of Year Water is Used for Each Purpose of Use

Both the notice of claim and the director's report state a period of use of 3/15 to 11/15 for domestic use. The claimant's objection states a period of use of 1/1 to 12/31. The claimant's motion for summary judgment states the period of use as "the irrigation season" for the irrigation purpose of use asserted in the claimant's motion for summary judgment, and "year around" for the claimed and recommended domestic use as well as other purposes listed in the motion for summary judgment. The *New International Mortgage* decree does not state a period of use for this right.

This right was claimed and recommended for domestic use, which consists of household lawn and garden watering. Recommendation of an irrigation season of use for this right is therefore consistent both with the claim and with the actual use of the right. In addition, limitation of this right to an irrigation season of use is necessary to prevent enlargement and injury to other water rights from an expansion in the season of use. The claimant's lands consist of a portion of the original decreed place of use for right no. 36-00103, which portion was historically used for irrigation. The

⁶ Special Master Haemmerle has issued his recommendation regarding Basin Wide Issue 12; a motion by the United States for reconsideration is pending.

original decreed place of use was later divided into smaller lots, and a home was later built on the portion now owned by the claimant. A year-round season of use for this portion of right no. 36-00103 would therefore constitute an enlargement in use and would result in injury to junior water users. Injury would result to junior water rights outside the irrigation season because they would be subject to a priority to which they were not previously subject.⁷

The irrigation season of use claimed and recommended for this right is 3/15 to 11/15. The recommended season of use is consistent with season of use standards for irrigation developed by IDWR for various climatic regions throughout the state, which are based on a 75% chance of a 24 degree Fahrenheit frost. In addition, the director's report included general provision 12b, which allowed use of water for irrigation outside the season of use stated in the description of the individual right subject to certain conditions. In the Memorandum Decision and Order Re: Basin-Wide Issue 5, the Presiding Judge concluded that general provision 12 is 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 for IDWR's recommendation as to the season of use for irrigation appears to be unnecessary.

As to the season of use for other purposes of use stated in the claimant's motion for summary judgment, neither the claimant nor IDWR's investigation has yielded information that would confirm the beneficial use of water for other purposes, as noted in section F above. Therefore, IDWR does not have information that would confirm the season of use for the other purposes.

I. Legal Description of the Place of Use

The legal description under item 8 in the claimant's motion for summary judgment is the same as the legal description of the place of use for domestic recommended in the director's report. As part of its investigation of the claim, IDWR discovered that there was an error in the legal description of the place of use for domestic. The correct legal description coincided with the decreed place of use for

⁷ IDWR relies upon the following in reaching this conclusion: Idaho Code §42-222 (prohibiting injury *or* enlargement) and §42-1425 (permitting accomplished transfers to be claimed in the adjudication where there is no injury *or* enlargement). *See also* Idaho Code §42-1426 (allowing enlargements in violation of the mandatory permit statute to be claimed in the SRBA with a priority as of the date of the enlargement).

water right no. 36-00103. Therefore, although the claim was originally filed as claim no. 36-00108F, IDWR recommended the claim as 36-00103F.

As to the legal description of the place of use for other purposes of use stated in the claimant's motion for summary judgment, neither the claimant nor IDWR's investigation has yielded information that would confirm the beneficial use of water for other purposes, as noted in section F above. Therefore, IDWR does not have information that would confirm the place of use for the other purposes.

As noted in subsection F above, the only purpose of use claimed for this right is domestic. This claim was filed as a small domestic claim for which a \$25.00 filing fee was required and was paid by the claimant. The filing fee for other claims is a flat \$50.00 fee, plus a variable of \$1.00 per acre for any claimed irrigation use, plus a per cfs variable fee for other claimed purposes of use.⁸ A small domestic right includes irrigation of up to ½ one-half acre of lawn and garden.⁹ Although irrigation was not claimed, the claimant's motion for summary judgment seeks a right for irrigation of 0.69 acres. A claim to water for irrigation of an area greater than ½ acre must be filed as an irrigation claim, and is subject to the greater filing fees described above. The size of the lot described in the deed attached to the claimant's motion for summary judgment is approximately 0.69 acres. However, once unirrigated areas such as the house, roadway, and ditch are accounted for, the irrigated area is less than ½ acre. The examination of the place of use for this claim is described in the Affidavit of Steven C. Clelland Regarding Claim No. 36-00103F and the Affidavit of Helen L. Harrington-Thornton Regarding Claim No. 36-00103F.

J. Annual Volume of Consumptive Use

The notice of claim states an annual volume of consumptive use of 3 AFY. The claimant's objection contests the recommended consumptive use, but does not state an amount. The claimant's motion for summary judgment states an amount of 3.105 AFY, or 4.5 AFY per acre. The Affidavit of Charles E. Brockway, submitted by the claimant in support of the motion for summary judgment, states "that 3.75 acre feet per acre per annum is the amount of consumptive use that is reasonable [in the Hagerman area] based upon a yield of ten tons [of alfalfa] per acre." Applying this standard, the total annual consumptive use volume would be 2.59 AFY.

⁸ The filing fee schedule is set forth at Idaho Code §42-1414.

⁹ Domestic use, for purposes of the adjudication statute, is defined at Idaho Code §42-111.

The director's report recommended the annual volume of consumptive use as "de minimis" in General Provision 9. In response to the request of the Presiding Judge, the director filed an Amended Director's Report for Reporting Area 3 (Basin 36), which substantially reduced the number of general provisions in the director's report. Attachment 2 to the amended report explains the changes made to the general provisions, and further explains the changes to the list of recommended rights necessitated by the changes to the general provisions. The amended report deleted General Provision 9. In 1996, the legislation was adopted amending the adjudication statute, which provides that annual volume of consumptive use need not be determined for rights other than irrigation unless reported in the director's report. IDWR continues to recommend that this right be decreed as a domestic right; IDWR therefore recommends that determination of the annual volume of consumptive use for this right is not necessary.

K. Conditions on the Exercise of the Right and Other Necessary Matters

The recommendation of this right in the director's report includes the following remarks:

WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.

The claimant's objection does not contest the remark. The claimant's motion for summary judgment seeks deletion of the remark.

In response to the request of the Presiding Judge, IDWR submitted IDWR's Report for September 19, 1995 Status Conference. In this report, IDWR indicated that it had reviewed its use of remarks in the description of the individual water right, both to address concerns identified by the court, and to separate explanatory material from material the Director recommends be included in the decree of water rights pursuant to the 1994 amendments to the adjudication statute.¹⁰ The remark identifying the common name of the ditch through which the water right is delivered is explanatory material.

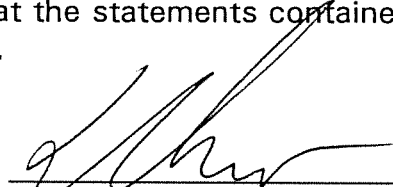
¹⁰ See Idaho Code §42-1411 (which addresses the form and content of director's reports).

REPORT REGARDING CLAIM TO WATER RIGHT NO. 36-00103F

State of Idaho)
) ss.
County of Ada)

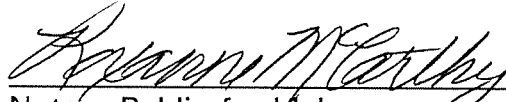
David B. Shaw, being first duly sworn, upon oath, deposes and says:

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.



David B. Shaw

Subscribed and sworn to before me this 1st day of July, 1996.

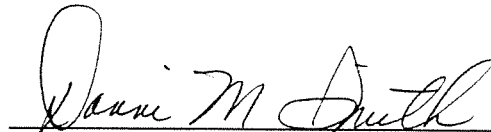


Notary Public for Idaho,
Residing at: Boise, ID
My commission expires: 5-16-2007

Certificate of Service

I certify that on the 1st day of July, 1996, I hand-delivered copies of the foregoing document, including all attachments, to the following:

Patrick D. Brown
133 Shoshone St North
Twin Falls, ID 83303



Person delivering document(s)

APPENDIX A

A. INVESTIGATION AND RECOMMENDATION 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 right adjudication, the state has made the specialized expertise of IDWR available through IDWR's investigation and reporting function.¹

The resources the state has made available for this function, however, are limited. IDWR has the duty to conduct 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 efficient 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 water 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.

Generally, with claims based on beneficial use², IDWR conducts a "licensing type" field exam, which includes confirmation of the source, point(s) of diversion, purpose(s) of use, place(s) of use, and an examination of the water delivery system and the quantity of water beneficially used. IDWR also 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

¹ Idaho Code §§ 42-1410 and 42-1411.

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

confirmation of the existence and extent of a water right based on beneficial use.³

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; remotely sensed data, including Landsat imagery of irrigated acres and aerial photography; watermaster 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 a prior judicial or administrative confirmation of the existence and extent of a 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 offer a standard form 5 (in the case of an objection), consistent with the new information.⁵

Further information as to IDWR's standards and procedures for the investigation and recommendation is set forth in IDWR's Claim Investigation Manual, Field Examiner's Handbook, Administrative Memorandums, and

³ IDWR conducts a more summary investigation of beneficial use claims limited to domestic and/or stockwater use up to 0.24 cfs.

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 address any type of perceived error, as well as to address disagreements between claimants.

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.

B. METHODOLOGY TO DETERMINE IRRIGATED ACREAGE

The area of irrigated acreage can be determined by information obtained from scaled and non-scaled photographs of the place of use supplied by one of several U.S. government agencies. The use of aerial photography by the U.S. government dates back to 1937, when the U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service (ASCS, now known as the Farm Service Agency, or FSA) began photographing selected counties of the United States on a repetitive basis. This coverage continues today and aerial photos are used by the ASCS (FSA) to figure acreage planted on farms for purposes of managing farm programs. Photos used by IDWR typically include: ASCS photos and 35 mm color slides⁷; NAPP photos⁸; ortho-photoquads⁹; and U2

⁶ These documents set forth general standards and procedures and do not address all possible exceptions to the general standards and procedures. In addition, as a result of its experience in the test basins, statutory changes, judicial decisions, etc., IDWR has identified refinements and revisions to its standards and procedures for the investigation and recommendation of claims that have not yet been included in these documents.

⁷ Both the photos and slides are high oblique and vertical aerial photography. The ASCS photos are scaled and have selected features, such as roads, section lines, ditches, and field acreage superimposed on them by the ASCS. The color slides are simply color slides frequently taken with hand-held 35mm equipment. IDWR staff typically obtain copies (which are not scaled) of maps for lands claimed as the place of use during the investigation of the claims, either from the claimant or from the local ASCS office. Color slides may also be checked-out from the local ASCS office as needed; IDWR sometimes obtains the color slides as they are discarded by the local ASCS office.

⁸ NAPP (National Aerial Photography Program) photos are all color-infrared aerial photography. IDWR obtained coverage for most of the Snake River Basin, including all of the test basins; the photos are primarily from flights during 1987 and 1988, though some are from 1986 or 1989. The date of the flight is shown on the photo. NAPP photography is available from the U.S. Geological Survey Earth Resources Observation Systems (EROS) data center in Sioux Falls, South Dakota.

⁹ The full name for an ortho-photoquad is "orthographic photograph quadrangle." These are black and white photoimages prepared from aerial photographs that have been rectified to eliminate image displacement due to terrain relief that cover a systematically subdivided area of latitude and longitude. IDWR obtained coverage for most of the Snake River Basin, including all the test basins; the photos are primarily from flights during the 1970's. The date of the flight is shown on the quad sheet. Most of the orthophotos were obtained from the U.S. Geological Survey National Cartographic Information Center (NCIC) in Menlo Park, California. In some areas, maps were not available from U.S.G.S. but were available from other agencies, such as the United States Department of Agriculture, Forest Service.

aerial photos¹⁰.

A photographic "scale," like a map scale, is an expression that states that one unit of distance on a photograph represents a specific number of units of actual ground distance.

$$S = \text{Photo scale} = \frac{\text{Photo distance}}{\text{Ground distance}} = \frac{d}{D}$$

The scale may be expressed as unit equivalents, representative fractions, or ratios. For example, if 1 mm on a photo represents 25 m on the ground, the scale of the photo can be expressed as 1 mm = 25 m (unit equivalents), or 1/25,000 (representative fraction), or 1:25,000 (ratio).

The photo(s) used by IDWR personnel have varying scales. The ASCS photographs have map features drawn in by the ASCS. These photos are stated to be "not to scale," but do include the field acreage as determined by ASCS written on the places of use. NAPP photography is at a nominal scale of 1:40,000; U2 aerial photography is at a nominal scale of 1:120,000; and ortho-photoquads have a scale of 1:24,000.

To determine the area used, IDWR staff employed various transparent overlays, known as grid templates. These templates are available at most blueprint supply stores. One type consists of lines forming rectangles or squares of known area in the same scale that is utilized in the scaled photograph. The grid is placed over a scaled photograph and the area of a ground unit is estimated by counting grid units that fall within the unit to be measured.

Another commonly used grid is the dot grid, which is composed of uniformly spaced dots on a transparent overlay. The grid is placed over the photograph and the dots falling within the region to be measured are counted. The value assigned to each dot is dependent on the scale of the photograph. First, the number of acres per centimeter (or other measuring unit) is computed. This figure is then divided by the number of dots per measuring unit on the grid to obtain the acreage represented by each dot. For instance, a square 3.4 cm on each side containing 640 dots will cover 160 acres on a photo with a nominal

¹⁰ These photos are color-infrared aerial photography obtained by the National Aeronautics and Space Administration (NASA) Airborne Instrumentation Research Project, and available from EROS. IDWR obtained coverage of most of the southern portion of the Snake River Basin, most of which was flown in 1977. In addition, because the State of Idaho was part of an ongoing project with NASA to photograph selected areas, photography from various areas in various years is also available. The date of the flight is shown on the photo.

scale of 1:24000; 640 dots divided by 160 acres equals 4 dots to the acre, thus 1 dot equals 0.25 acres.

Because of its simplicity, the grid system is a practical method to determine the size of irrigated areas; it nonetheless requires some training and experience to be used effectively.

For non-scaled photos, such as the ASCS 35 mm photos, IDWR did not directly make acreage determinations. Instead, these photos were used to confirm whether the place of use and amount of irrigated acreage had changed for that year according to common landmarks visible in the photographs.

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State of Idaho

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Deputy Attorney General
Chief, Natural Resources Division

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Fax: (208)327-5400

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. 36-00103F
	)	
Case No. 39576	)	AFFIDAVIT OF STEVE CLELLAND
	)	REGARDING CLAIM NO. 36-00103F
	)	

STATE OF IDAHO	)
	) ss.
County of Twin Falls	)

I, STEVE CLELLAND, being first duly sworn on oath, depose and state as follows:

1. I am a Senior Water Resource Agent with the Idaho Department of Water Resources (IDWR).
2. My work address is Idaho Department of Water Resources (IDWR), Southern Regional Office, 222 Shoshone St. East, Twin Falls, ID 83301-6105. I reside in Twin Falls, Idaho.

3. My educational background and work history both outside and within IDWR are detailed in my Affidavit of Steve Clelland as to the Investigation of Claims in the Hagerman Area.

4. As part of my duties as a senior water agent, I investigated claim no. 36-00103F. The pertinent details of that investigation are as follows:

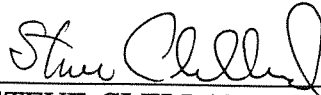
A. On July 26, 1990, IDWR water agent Helen Thornton and I conducted a field examination to verify certain aspects of claim no. 36-00103F.

B. I observed that the claimants used water pursuant to claim no. 36-00103F solely for the purpose of watering their lawn and garden.

C. I observed that within the claimed place of use there were present the following: a house, a portion of a roadway, and a portion of a ditch.

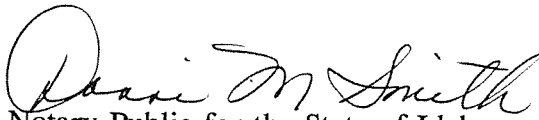
D. I observed that according to the plat map, the size of the lot claimed as the place of use was .69 acres in size. I concluded from my observations of the plat map and the claimed place of use during the field exam that the actual place of use pursuant to claim no. 36-00103F was less than .50 acres in size. I based this conclusion on an estimate of the watered lawn and garden areas arrived at by subtracting the size of an area comprising the house, roadway and ditch from the size of the lot.

DATED this 1st day of July, 1996.



STEVE CLELLAND

SUBSCRIBED AND SWORN to before me this 1st day of July, 1996.


Notary Public for the State of Idaho
Residing at: BOSTON
My commission expires: 12-5-2000

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

BRENT KING
CHARLES L. HONSINGER
Deputy Attorneys General
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
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In Re SRBA	)	Subcase No. 36-00103F
	)	
Case No. 39576	)	AFFIDAVIT OF HELEN THORNTON
	)	REGARDING CLAIM NO. 36-00103F
	)	

STATE OF IDAHO	)
	) ss.
County of Ada	)

I, HELEN THORNTON, being first duly sworn on oath, depose and state as follows:

1. I am currently a Hydrogeologist with the Idaho Department of Water Resources (IDWR). At the relevant time for purposes of this affidavit, I was employed as a Senior Water Resource Agent with IDWR.

2. My work address is Idaho Department of Water Resources (IDWR), 1301 N. Orchard, Boise, ID 83706. I reside in Boise, Idaho.

3. My educational background and work history both outside and within IDWR are detailed in my Affidavit of Helen Thornton as to the Investigation of Claims in the

Hagerman Area.

4. As part of my duties as a senior water agent, I investigated claim no. 36-00103F. The pertinent details of that investigation are as follows:

A. On July 26, 1990, IDWR water agent Steve Clelland and I conducted a field examination to verify certain aspects of claim no. 36-00103F.

B. I observed that the claimants used water pursuant to claim no. 36-00103F solely for the purpose of watering their lawn and garden.

C. I observed that within the claimed place of use there were present the following: a house, a portion of a roadway, and a portion of a ditch.

DATED this 1st day of July, 1996.

Helen L. Harrington-Thornton
HELEN L. HARRINGTON-THORNTON

SUBSCRIBED AND SWORN to before me this 1st day of July, 1996.

Russell M. Hartley
Notary Public for the State of Idaho
Residing at: Base 36
My commission expires: 5-16-2002