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

REPORT REGARDING CLAIM TO WATER RIGHT NO. 36-00035J

In Re SRBA

Twin Falls County Civil Case No. 39576
Sub-Case No. 36-00035J

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. 36-00035J

The Director of the Idaho Department of Water Resources (IDWR) submits this report regarding claim to water right no. 36-00035J 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. 36-00035J. 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.

Jeff Peppersack, Adjudication Engineer, prepared and verified IDWR's Report Regarding Evaluation of Irrigation Diversion Rates, which is incorporated by reference herein. The Affidavit of Jeff Peppersack describes Mr. Peppersack's education and work experience, and is incorporated by reference herein. Mr. Peppersack also reviewed IDWR's Report Regarding Consumptive Use for Irrigation in the Hagerman Area, described below.

David R. Tuthill Jr., Acting Adjudication Bureau Chief, prepared IDWR's Report Regarding Consumptive Use for Irrigation in the Hagerman Area, which is incorporated by reference herein. Mr. Tuthill also reviewed this Report Regarding Claim To Water Right No. 36-00035J. 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. 36-00035J. 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. 36-00035J describes Mr. Clelland's investigation of the place of use of this water right; it 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. 36-00035J

A. Basis of Claim

The claim, originally numbered 36-00034B, was filed with IDWR by Betty B. Hoskovec on August 16, 1988.¹ A notice of change in ownership signed November 7, 1990, was filed with IDWR informing IDWR of a change in ownership to Manfred Muller. As part of its investigation of this claim, IDWR renumbered the claim as 36-00035J, as further described in section D below. As a result, this claim was recommended in the director's report as right no. 36-00035J to Manfred Muller. The claimant filed an objection to the director's recommendation (noting that the claimant's name is spelled Mueller); subsequent to the filing of the objection a Standard Form 3 was filed with the court notifying the court of a change in ownership to Richard D. Simon.

The claim is to a portion of one of five rights decreed to Edna N. Clifford and others in the *New International Mortgage* decree, entered in 1932.² The water rights decreed to the Cliffords are numbered in IDWR's files as water right nos. 36-00033, 36-00034, 36-00035, 36-00036 and 36-00037. All were decreed for use on the same lands, and all were decreed for "irrigation, domestic, power and other purposes." These rights were claimed by and recommended to various claimants; all except 36-00036 involve numerous splits.

B. Name and Address of Claimant

The name of the claimant set forth in the claimant's motion for summary judgment is the same as shown on the Standard Form 3 filed with the court, but the claimant's address as shown on the motion for summary judgment appears to be new.

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.

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.

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

D. Date of Priority

The priority date stated on the notice of claim is 03/30/1884, which is the priority date in the *New International Mortgage* decree for right no. 36-00034. The priority date recommended in the director's report is September 10, 1884, which is the priority date in the *New International Mortgage* decree for right no. 36-00035. The objection contested the priority date, seeking the "previously decreed" priority. The claimant's motion for summary judgment states a priority date of 03/30/1884, the same as the notice of claim.

As noted above, five water rights were decreed to Edna N. Clifford in the *New International Mortgage* decree, all for use on the same lands, which are numbered in IDWR's files as water right nos. 36-00033, 36-00034, 36-00035, 36-00036 and 36-00037. Water right no. 36-00033 is to water from Weatherby Springs. The other four are to water from Billingsley Creek, and each is decreed with a different priority and for delivery through a different ditch. Water right number 36-00034 is decreed for delivery through the Bell ditch, with a priority of March 30, 1884; water right number 36-00035 is decreed for delivery through the Buckeye ditch, and has a decreed priority of September 10, 1884. Because this claim is to water delivered through the Buckeye ditch, IDWR renumbered the claim from 36-00034D to 36-00035J and recommended the priority decreed for right no. 36-00035.

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.

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.

F. Purpose of Use

The purpose of use stated on the notice of claim and recommended in the director's report is irrigation. The objection sought to add stockwater as a purpose of use. The claimant's motion for summary judgment now seeks to add wildlife, recreation, aesthetics, and "diversion system maintenance" in addition to stockwater.⁴

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 five Clifford rights 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.⁵ IDWR's investigation confirmed the use of water for irrigation, as further described below in the section 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 not listed in the claim, either pursuant to the right as originally appropriated or as currently used.⁶ Such information is necessary not only to confirm the use but to quantify the amount of water beneficially used for that purpose.

G. Quantity of Water Used

The quantity claimed in the notice of claim and recommended in the director's report is 0.40 cfs. The objection contests the quantity element, but does not state the quantity claimed. The motion for summary judgment states a quantity of 0.40

⁴ The filing fee for claims other than small domestic and stockwater claims consists of a \$50.00 flat fee, plus a variable fee of \$1.00 per acre for any claimed irrigation use, plus a per cfs fee for other claimed purposes of use. The filing fee paid for this claim was limited to the purposes of use claimed in the notice of claim. Filing fees are set forth in Idaho Code §42-1414 and IDWR's Adjudication Rules, IDAPA 37.03.01 *et seq.*

⁵ IDWR relied upon the following in reaching its conclusion: *Morgan v. UDC*, 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).

⁶ 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.

cfs, the same as recommended. Any further information as to the basis for IDWR's recommendation as to quantity therefore appears to be unnecessary.

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 irrigation. The claimant's objection states a period of use of 1/1 to 12/31. The claimant's motion for summary judgment state the period of use as "the irrigation season." The *New International Mortgage* decree does not state a period of use for irrigation.

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 irrigation recommended in the director's report. The number of acres following the legal description is different than the number of irrigated acres per 40-acre subdivision recommended in the director's report. The notice of claim states 38 acres; the objection and motion for summary judgment state 12 acres. The director's report states 9 acres.

The irrigation of no more than 9 acres with water from the Buckeye ditch was confirmed by IDWR Senior Water Resource Agent Steve Clelland, by his personal observation and by aerial photography. The nine acres recommended in the director's report consist of the 6 irrigated acres below the Bell ditch, which are irrigated by gravity flow from the Buckeye ditch via a flume across the Bell ditch, and 3 acres between the Bell and Buckeye ditches where the ditches are further apart. There is a small strip of land where the area between the ditches is narrower, and that area has more vegetation than other non-irrigated lands in the vicinity, but there is no means to deliver water to that area for irrigation. The vegetation therefore appears to be the result of seepage from the two ditches. This area was not included in the recommended irrigated acreage because there is no intentional application of water for irrigation purposes pursuant to this right; if the water right were transferred to a different place of use the area would continue to be vegetated due to seepage from other water rights delivered through the ditch. The examination of the place of use for this claim is described in the Affidavit of Steven C. Clelland Regarding Claim No. 36-00035J. Figure 1, attached hereto and incorporated herein by reference, is an illustration of the recommended irrigated acreage.

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.

J. Annual Volume of Consumptive Use

The notice of claim states an annual volume of consumptive use of 114 AFY, or 3.0 AFY per irrigated acre. The annual volume of consumptive use recommended in the director's report is 27 AFY, or 3.0 AFY per irrigated acre. 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 54 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 per acre 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 45 AFY for the 12 acres stated in the claimant's objection and motion for summary judgment, or 33.75 AFY for the 9 recommended acres.

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. IDWR's recommendation is based on this standard. The development of IDWR's standards for annual volume of consumptive use is described in IDWR's Report Regarding Evaluation of Irrigation Diversion Rates. IDWR has conducted further analysis of the annual volume of consumptive use based on further information IDWR received subsequent to its original analysis. The further analysis is described in IDWR's Report Regarding Consumptive Use for Irrigation in the Hagerman Area. Based on this further analysis, IDWR recommends an annual volume of consumptive use of 3.5 AFY per acre, for a total of 31.5 AFY for this right.

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.

A DIVERSION RATE OF 0.34 CFS AT THE FIELD HEADGATE IS RECOMMENDED FOR THE PLACE OF USE DESCRIBED ABOVE.

0.15 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT.

The claimant's objection seeks deletion of the last two remarks. The claimant's motion for summary judgment seeks deletion of all three remarks.

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 changes to the list of recommended rights necessitated by the changes to the general provisions. The amended report deleted General Provision 16, which set forth certain provisions as to conveyance losses. The remark in the description of the individual right is a corollary to the deleted general provision. As a result, the remark in the description of this right as to conveyance losses is no longer necessary. (Deletion of the remark does not change IDWR's recommendation as to the quantity for this right.)

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

REPORT REGARDING CLAIM TO WATER RIGHT NO. 36-00035J

pursuant to the 1994 amendments to the adjudication statute.⁷ Both the remark identifying the common name of the ditch through which the water right is delivered and the remark identifying the quantity recommended at the field headgate are explanatory material.

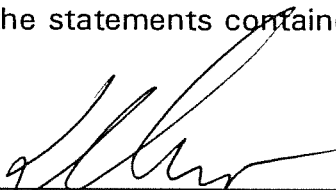
⁷ See Idaho Code §42-1411 (which addresses the form and content of director's reports).

REPORT REGARDING CLAIM TO WATER RIGHT NO. 36-00035J

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.

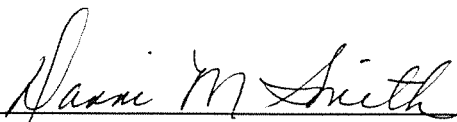


Notary Public for Idaho
Residing at: Boise ID
My commission expires: 11-14-1998

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.

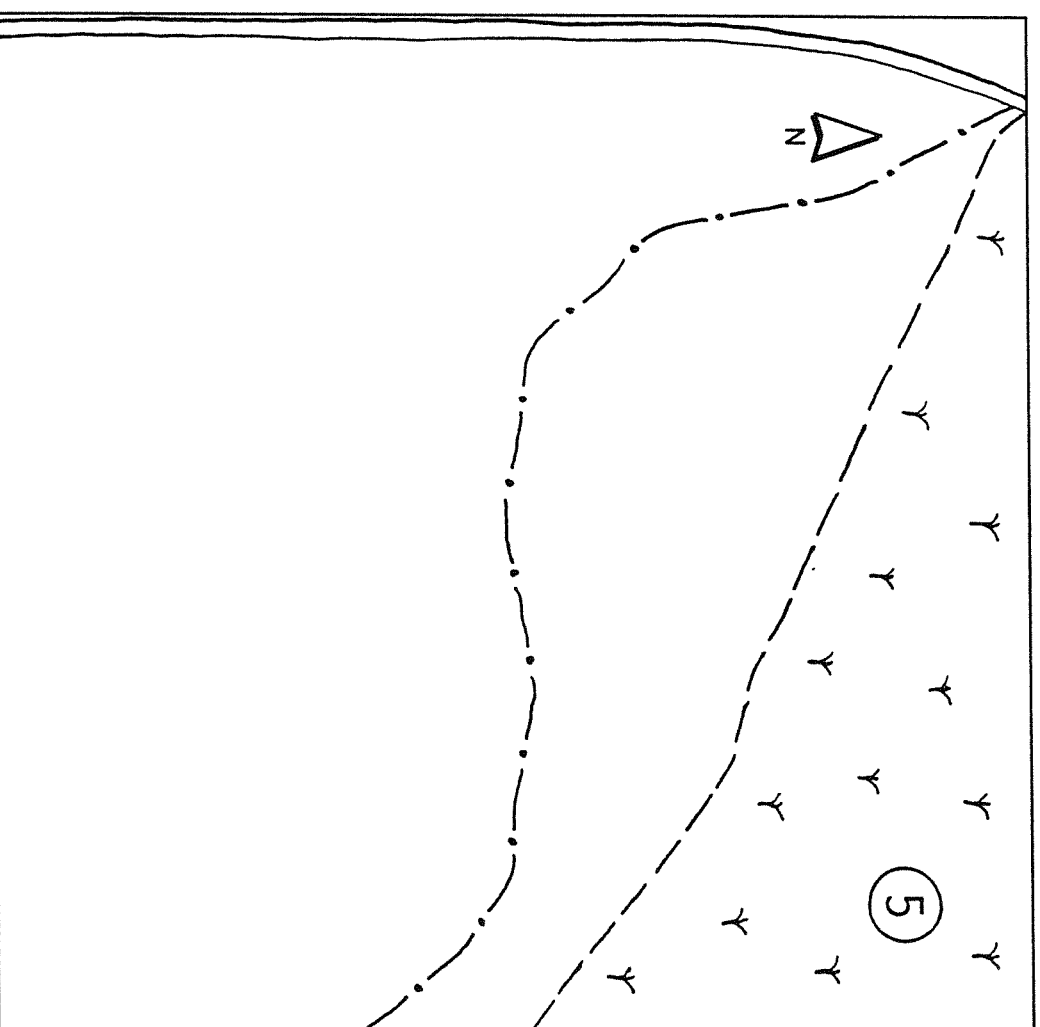
For non-scaled photos, such as the ASCS 35 mm photos, IDWR did not directly make acreage determinations. Instead, these photos were used to confirm whether the place of use and amount of irrigated acreage had changed for that year according to common landmarks visible in the photographs.

FIGURE 1

T. 7 S., R. 13 E.
Section 23
SW 1/4 NW 1/4
Gooding County

Legend

- — Buckeye ditch
- · — Big Bend ditch
- == road
- irrigated land



IDWR QUAD AA-69

Water Right No. 36-00003E

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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. 36-00035J
	)	
Case No. 39576	)	AFFIDAVIT OF STEVE CLELLAND
	)	REGARDING CLAIM NO. 36-00035J
	)	
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 the acreage claimed as irrigated pursuant to claim no. 36-00035J. The pertinent details of that investigation are as follows:

A. On August 16, 1990, I conducted a field examination to verify the acreage claimed as irrigated pursuant to claim no. 36-00035J.

B. During that examination, I observed that water was delivered from the Buckeye ditch to the irrigated acreage below and west of the Bell ditch via a flume across the Bell ditch.

C. During that examination, I observed that water from the Buckeye ditch was delivered to the claimant's land solely by means of gravity. On the date of the field exam, Mrs. Betty Hoskovec, the owner of the parcel at the time, indicated to me that no system was in place then nor had ever been in place to deliver water from the Buckeye ditch to land above the Buckeye ditch. I noted this conversation in the claim file on the point of diversion review sheet of the CVR.

D. During that examination, I observed one parcel below and west of the Bell ditch, and two parcels between the Bell and the Buckeye ditches in the southwest portion of claimant's property that were irrigated with water from the Buckeye ditch.

E. During that examination, I walked the narrow strip of land between the Buckeye and Bell ditches in the northwest portion of claimants property that had been claimed as irrigated by water from the Buckeye ditch. I observed that no delivery

system existed to apply water out of the Buckeye ditch to this area. I further observed that this area contained many very large boulders and was thus unirrigable.

F. Upon returning to the office, I observed that the pertinent ASCS maps showed as irrigated the parcel below and west of the Bell ditch that I had observed was actually irrigated, and the more southern of the two parcels between the Buckeye and the Bell ditches that I had observed was actually irrigated. The ASCS map from 1977 indicated that those parcels were 5.7 acres and 1.6 acres in size, respectively. However, neither the ASCS map from 1977 nor the ASCS map from 1987 showed as irrigated the more northern of the two parcels between the Buckeye and the Bell ditches that I had observed was also actually irrigated.

G. Using the relevant ortho photo quad from 1974 and the grid system described in described in Appendix A to IDWR's Report Regarding Claim to Water Right No. 36-00035J, I determined that the total area of land irrigated by this water right was 9.0 acres.

DATED this 1st day of July, 1996.

Steve Clelland
STEVE CLELLAND

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

Danni M. Smith
Notary Public for the State of Idaho
Residing at: Boise
My commission expires: 12-5-2000