

CHRIS M. BROMLEY, ISB No. 6530
MCHUGH BROMLEY, PLLC
380 SOUTH 4TH STREET, SUITE 103
BOISE, IDAHO 83702
Telephone: (208) 287-0991
Facsimile: (208) 287-0864
Email: cbromley@mchughbromley.com

RECEIVED
APR 28 2014
DEPARTMENT OF
WATER RESOURCES

Attorney for Bruce and Glenda McConnell

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

Subcase Nos. 74-00361, 74-00362,
74-00363, 74-00364, 74-00365,
74-00367, and 74-00368

**AFFIDAVIT OF
TIMOTHY J. LUKE**

STATE OF IDAHO)
) ss.
County of Ada)

Timothy J. Luke, being first duly sworn upon oath, deposes and says:

1. My name is Timothy J. Luke. I am the Chief, Water Compliance Bureau, for the Idaho Department of Water Resources ("IDWR"). I have been employed at IDWR since September 1988. My work address is Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho 83720-0098. I reside in Boise, Idaho.

2. My responsibilities include the implementation and management of the water measurement program, providing assistance to water districts, periodic training of watermasters, and assistance or resolution of water distribution/water right disputes.

3. I have reviewed the annual watermaster's reports for Water District No: 74-Z (Big Eightmile and Lee Creeks) for the period 1983 through 2013. The annual watermaster's reports

for Water District No. 74-Z are on file with IDWR. The annual watermaster's reports for Water District No. 74-A, for the period 1983 through 2013, show delivery of water to Parley Arave (1983 – 1992) and Bruce McConnell (1993 – 2013).

4. Approximately in the summer of 2000, the Department conducted a water rights inventory for Water District No. 74-Z. Attached hereto as Exhibit A are true and correct copies of the documents associated with that inventory. Upon my review of these records, in preparing this affidavit, I determined that references to Bruce McCollum in the water rights inventory were intended to refer to Bruce McConnell.

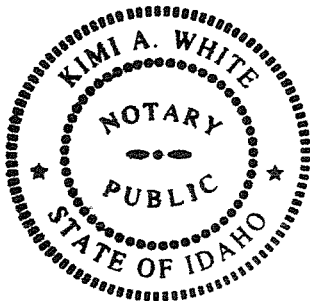
Further your Affiant sayeth naught.

DATED this 22nd day of April, 2014.


TIMOTHY J. LUKE

SUBSCRIBED AND SWORN TO BEFORE ME this 22nd day of April, 2014.

(s e a l)




NOTARY PUBLIC for Idaho
Residing at: Burien, Idaho
My Commission Expires: 04/10/16

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of April, 2014, I caused to be served a true and correct copy of the foregoing AFFIDAVIT OF TIMOTHY J. LUKE to the following by the method indicated:

Clerk of the District Court
SRBA
P.O. Box 2707
Twins Falls, ID 83303-2707

☒ U.S. Mail/Postage Prepaid
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

Director of IDWR
PO Box 83720
Boise, Idaho 83720-0098

☒ U.S. Mail/Postage Prepaid
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

Chris M. Bromley

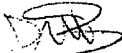
EXHIBIT A

WD 74Z 2002

State of Idaho
Department of Water Resources
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866

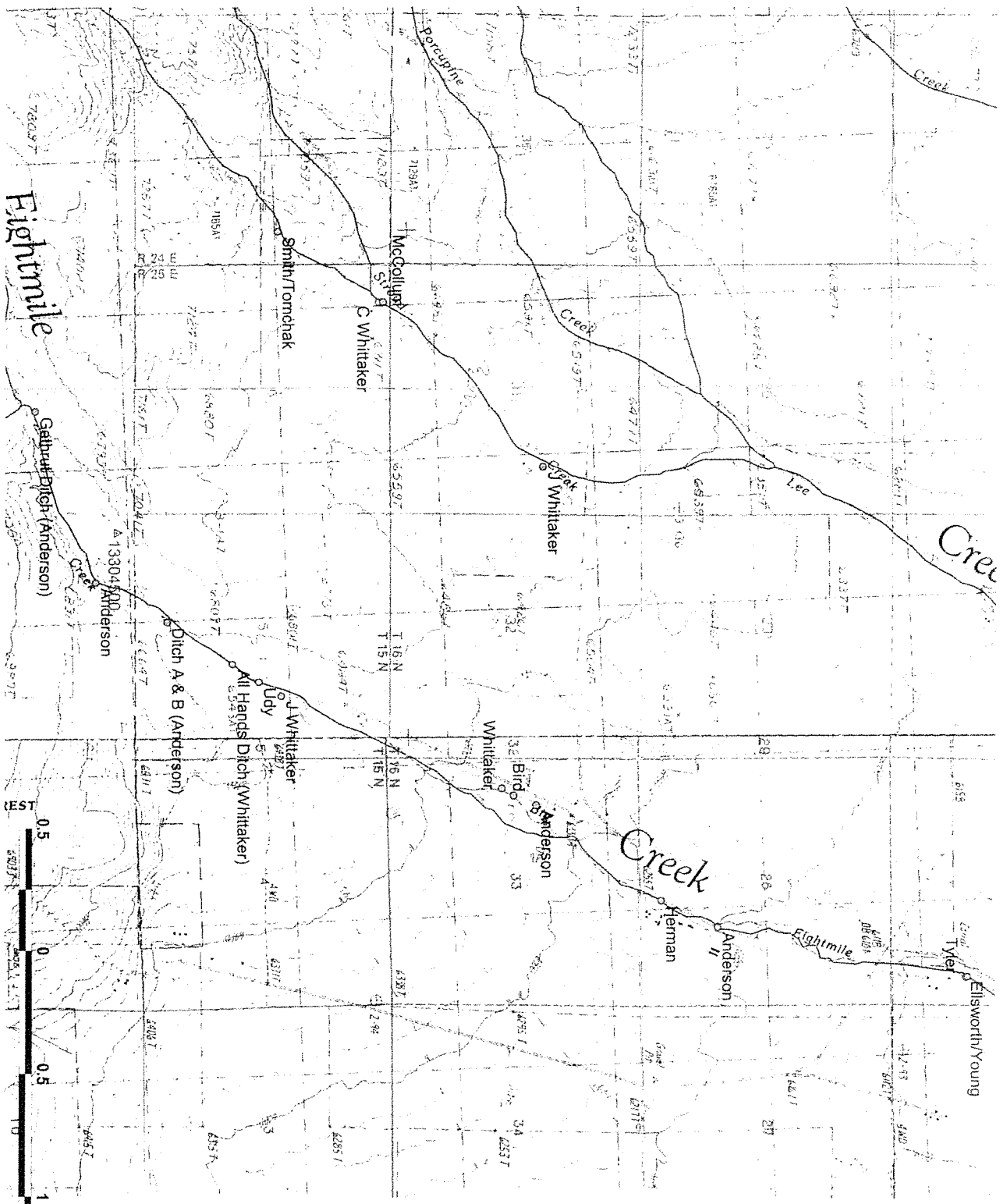
Date: July 10, 2002

To: Cal Whittaker, Advisory Board Chairman
Big 8 Mile & Lee Crks Water Dist 74-Z
PO Box 10
Leadore Id 83464
208-768-2485

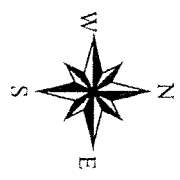
From: Dayna Ball *for* Tim Luke 
Water Distribution
327-7907
Fax 327-7866

Enclosed is a copy of the memo from Jane Tallman dated August 2, 2000 regarding Inventory of water district 74-Z and a recent detailed map of the diversions.

Please feel free to contact Tim Luke at 327-7864 with any questions regarding these items



Eightmile



- Diversion Location
- ~ Stream
- - - Canal or Ditch
- - - Intermitent
- Highways
- Roads
- ▲ USGS GAGE

WATER DIST.
74-Z BIG EIGHTMILE CR.

MEMORANDUM

To: File
From: Jane Tallman
Date: August 2, 2000
Subject: Water District 74-Z Inventory

A general inventory of diversions was made of the diversions in this district on June 14-15, 2000. The inventory was part of a general inventory of diversions in the Lemhi River Basin for water management and distribution purposes. Richard Moll is the watermaster in this district. There are a total of 19 diversions in the district. The diversions are described here in order from upstream to downstream.

Gethrut Ditch is accessible from Eight Mile Creek Road and diverts only during high water. The wood diversion box has been damaged and is set to be replaced before next year. The trees that have fallen on it and branches that have clogged its entrance need to be cleaned out. The Cipolletti weir is broken on one side and Moll has been told it will be replaced by a metal structure.

The following diversions visited are accessible by way of the unnamed road across the creek from Eight Mile Creek Road. The two uppermost ditches, Cartwright Ditch (not decreed) and an unnamed ditch owned by Dare Anderson, are high water diversions only, their head gates being within 10 feet of one another. The Cartwright Ditch is used only as a safeguard to protect head gates downstream from being "blown out" in very high water so the fact that the wooden diversion structure is no longer functional is not an issue to the other water users, based on my discussion with Moll. The neighboring unnamed ditch does need to have the wooden diversion structure reset as water is leaking under the boards and through the sides of the structure. Neither of these two ditches contains a measuring device, which is not critical, as these are high water diversions.

Ditch "A" and Ditch "B" have parallel headgates in a shared wooden structure in good condition. Both have adequate Cipolletti weirs in good condition but the silt build up needs to be cleaned out from behind each to obtain accurate measurements.

The Kent Bird Ditch, All Hands Ditch and the Tom Udy Ditch are accessible from Eight Mile Creek Road or from the unnamed road across Big Eight-Mile Creek. The All Hands and Udy ditches have head gates in good condition. The Kent Bird Ditch has a wooden gate with stop logs that provides good control but no lockable control. The weir in the Bird Ditch is silted in and requires weir pool maintenance. The weir in the All Hands Ditch should be reset for a more accurate measurement as it is leaning downstream. The weir in the Udy Ditch is in very good condition.

The Ted Peterson Ditch is located just downstream of the Bird Ditch. It has an adequate lockable

steel crew gate. The owner installed a Cipolletti weir in a steel box below the headgate but the weir is welded in the box at about a 60-degree downstream sloping angle. This device needs to be reset in the box at a 90-degree angle, leveled, and perpendicular to the flow. James Whittaker owns a small-unnamed ditch just upstream of the Ted Peterson Ditch. This ditch has a headgate but is used for high water diversion only. The watermaster indicated the ditch had not been used in a number of years.

The head gate and weir on the Ted Whittaker Ditch are in good condition but the moss build-up on the weir was not readily removed and needs to be cleaned out.

The Herman Ditch, Jimmy and Anderson Ditch are accessible from Eight-Mile Creek Rd through the James Whittaker Ranch. Both ditches have adequate lockable control gates. The Herman Ditch has a 6-ft. wood crest Cipolletti weir that requires some minor maintenance. The Anderson Ditch has no measuring device.

The Carl Tyler and Ellsworth-Young Ditches are the lower most diversions and are formed by a split in the creek. Neither diversion has any control device or structure. Both diversions have weirs which are in good condition.

There are a total of four diversions on Lee and Stroud Creeks. One of the diversions is actually located on Everson Creek while the other three are actually on Stroud Creek, both tributary to Lee Creek. Three of the four diversions had some limited type of stoplog control structure, while the fourth had no control. Three of the diversions had measuring devices but only one was operable (Tomchak-Smith diversion had two good broad crested weirs where the ditch splits). The remaining ditches need to have new devices installed or have significant repairs to the existing structures. The watermaster does not make regular visits to these diversions. Regulation of these diversions appears to be rather limited, occurring perhaps from time to time as needed.

The watermaster appears to be diligent in his inspection, measurement, and regulation of all diversions on Big Eight Mile Creek. There is adequate control over flow in all but the uppermost high water diversions, and limited control of the four diversions on the Lee Creek tributaries.

CERTIFICATE OF SERVICE

On August 3, 2000 (am), copies of the inventory sheets, photos, basin map, and memo for Water District 74-Q and 74-Z were mailed to the following:

Richard Moll, Watermaster
Water District 74-Q & 74-Z
PO Box 153
Leadore, Id 83464

Bob Foster
IDWR Salmon Field Office

Harold Jones
IDWR Eastern Region Office

DAB
Dayna M. Ball, Office Specialist II
Water Distribution Section

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WD-THZ

DATE: 6/15/00

Site TAG # = A0008124

GPS FN 4061516 B

STREAM/SOURCE: STRAUD CREEK, TRIB to LEE CR. TAG to DIVERSION structure

DIVERSION NAME: CAL WHITTAKER Ditch

POINT OF DIVERSION: _____

ACCESS: _____

USGS MAP: _____
(name)

(number)

WATERMASTER CONTROL: _____ YES X NO

DIVERSION DESCRIPTION: WOOD/TIMBER STRUCTURE IN
CREEK CHECKS/DIVERTS water to Ditch. TWO RECTANGULAR
OPENINGS IN STRUCTURE BYPASS water to CR.
CAN PLACE BOARDS ACROSS OPENINGS TO ADJUST flow

MEASUREMENT: None

CURRENT WATER RIGHTS: CAL WHITTAKER = current owner

NOTE: GPS Down Ditch
≈ 10 ft. (SE of Div. Structure)

Lee CR. TRIB to Big Eight mile CR.

source may also be known as Lee Creek

SCANNED

JUN 12 2006



Copyright © 1995 by [illegible]

SCANNED BY
[illegible]





View of the stream bed from the bridge at the mouth of the stream.

WD 747

SIDE TAG: A0011439

DATE: 6/15/00 T. Luke

GPS FN: H061517A

STREAM/SOURCE: Stroud Creek, trib. to Lee CR Tag on Wood Headgate

DIVERSION NAME: Bruce McCollum ditch Div.

Bin Frame
Nailed to Box

POINT OF DIVERSION: _____

ACCESS: _____

USGS MAP: _____ (name) _____ (number)

WATERMASTER CONTROL: ☒ YES ☐ NO
NO LICENSE

DIVERSION DESCRIPTION: ^{DAM} Wood Diversion ^{Structure} Across
creek chucks & diverts water to wood diversion
Box headgate. Flow can be controlled by
boarding diversion Box or lowering/removing
boards from Div. Dam.

MEASUREMENT: 3 Ft. wood Cappelletti weir in ditch
below H.G. Box. Weir is washed out, flow goes
around weir. Should be reset. Weir is set in
wood weir box. Edges & sides are wood/no thin
metal plate installed for crest or sides.

CURRENT WATER RIGHTS: Bruce McCollum - owner

SCANNED

JUN 12 2006

Examiner - Tim Luke

input 9-13-00 WLB



Lee CK. Bruce William Davidson. Western. May 8, 1967. 6/15/70



SCANNED

10/11/2011

Stream CR. 14th Ave. 6-12-11



Bruce McClellan has seen
view of opposite, was
(with-out) to reach before morning

WD-74-Z

DATE:

6/15/00

Site Tag: A0011440

waited to reach 5:30 AM

STREAM/SOURCE:

Stroud Creek, trib to Lee Cr. GPS TN Nch/517B

DIVERSION NAME:

James Whitaker Ditch

POINT OF DIVERSION:

ACCESS:

USGS MAP:

(name)

(number)

WATERMASTER CONTROL:

X YES

NO

limited, no Lockmaster control

DIVERSION DESCRIPTION:

Widely Diverging Ditch structure

Across creek directs water to ditch. Some control possible using board across diversion dam.

This ditch has (a cast structure) but - can't see it.

This is last diversion so generally no control, ditch takes whole of creek.

MEASUREMENT:

3' ft 1.00m, Cippolletti weir in ditch

3 ft 3 in head water on weir. Weir should be removed,

ACSO - no other metal plate on crest or sides

Weir Slope 1/5

CURRENT WATER RIGHTS:

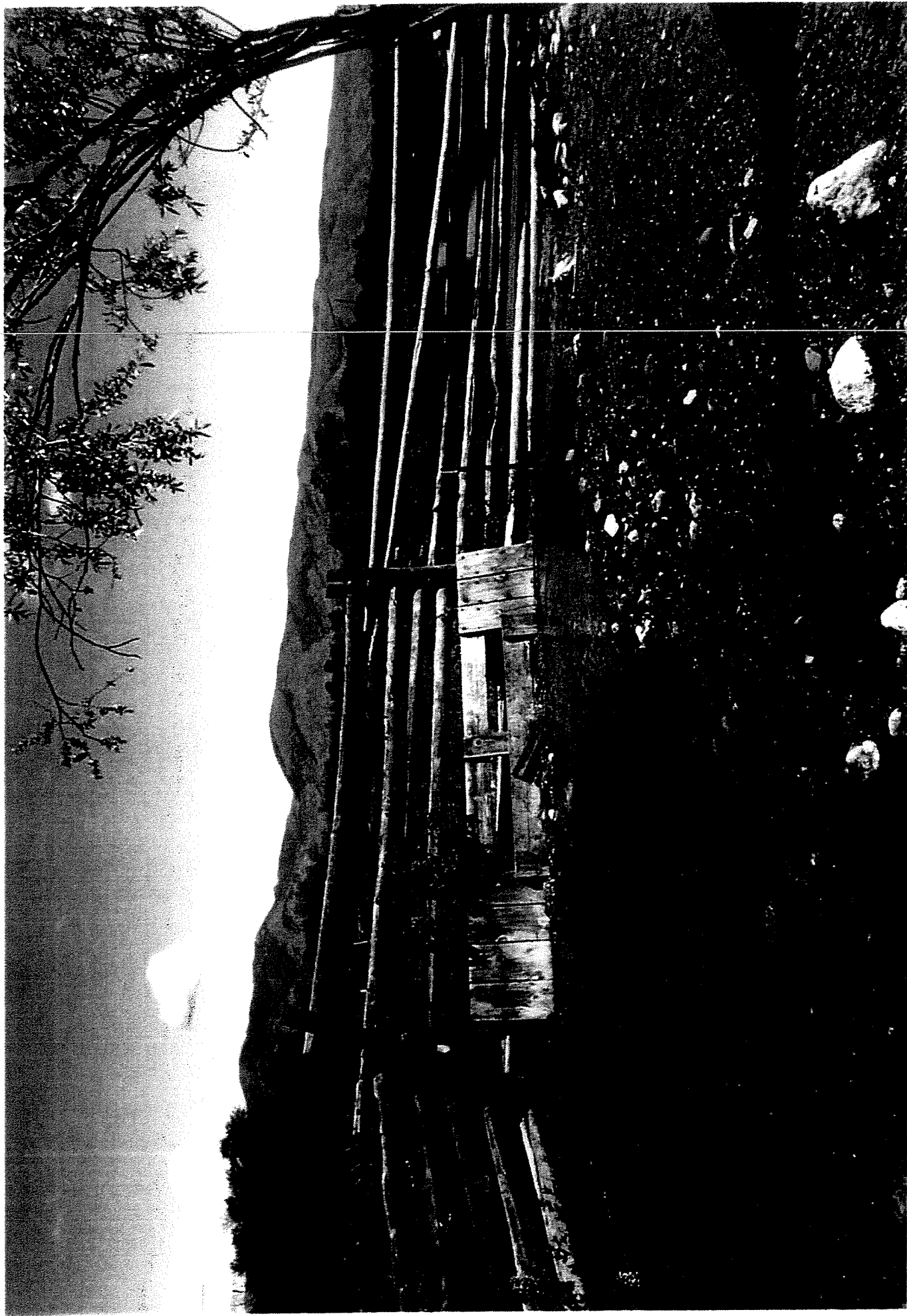
James Whitaker - owner

SCANNED

JUN 12 2006

Examiner Tom Luke

entered 7-13-00 8:15



LEE CK JAMES WHITTAKER DIVERSION
HEAD OF DIVERSION CHICK STRUCTURE, BIRCHMOUNT, N.Y. 11101
6/15/55



6440A James white-tailed Duck
- west of 3000 ft. altitude, 1000 ft. from water



20470-0

1971

Stream in meadow near the river 1/10/71

04/11/2014

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 61-12296

NAME AND ADDRESS: STATE OF IDAHO
DEPT OF LANDS
300 N 6TH ST STE 103
PO BOX 83720
BOISE ID 83720-0050

TKN

SOURCE: SPRING

TRIBUTARY: UNNAMED STREAM

me

QUANTITY: 1.15 AFY

The capacity of the pond 1.25 AF.

The quantity of water under Right Nos. 61-7417 and
61-12296 shall not exceed 13,000 gallons per day.

su

PRIORITY DATE: 09/10/1981

This water right is subordinate to all water rights
with a priority date earlier than April 12, 1994, that
are not decreed as enlargements pursuant to Section
42-1426, Idaho Code. As between water rights decreed
as enlargements pursuant to Section 42-1426, Idaho
Code, the earlier priority right is the superior right.

POINT OF
DIVERSION:

T01N R06E S34 SESE Within ELMORE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER FROM STORAGE	06/01 11/30	1.15 AFY
STOCKWATER STORAGE	01/01 12/31	1.15 AFY

PLACE OF
USE:

STOCKWATER FROM STORAGE in ELMORE County
T01N R06E S34 SESE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER
RIGHT:

The quantity of water decreed for this water right is
not a determination of historical beneficial use.

This right is based upon an enlargement of Right No.
61-7417 pursuant to Section 42-1426, Idaho Code.

This partial decree is subject to such general
provisions necessary for the definition of the rights
or for the efficient administration of the water rights
as may be ultimately determined by the Court at a point
in time no later than the entry of a final unified
decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use
Parcel No. RP01N06E340020

This right is a split from right 61-7417.