

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

IN RE THE GENERAL ADJUDICATION  
OF RIGHTS TO THE USE OF WATER FROM  
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A36-00003B  
Date Received: 8/18/1988  
Receipt No: S001535  
Received By: *O/C HEB*

COPY FOR  
YOUR FILES

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

COPY FOR  
YOUR FILES

1. Name: DAVID O KINGSTON  
Address: PO BOX 158  
UCON ID 83454  
208-524-4398
2. Date of Priority: SEP 10, 1884
3. Source: BILLINGSLEY CREEK Trib. to: SNAKE RIVER
4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 of | Lot | County  |
|----------|-------|---------|--------|--------|--------|-----|---------|
| 07S      | 13E   | 11      | SE     | SE     | NE     |     | GOODING |
|          |       | 27      | NE     | SE     | NW     | R   | GOODING |
|          |       |         | NW     | SE     | NW     | R   | GOODING |
|          |       | 28      |        | SE     | NE     | R   | GOODING |

5. Description of diverting works:  
HEADGATE & BUCKEYE DITCH, REDIVERSIONS FROM DITCH

6. Water is used for the following purposes:

| Purpose          | From  | To    | C.F.S | (or) | A.F.A. |
|------------------|-------|-------|-------|------|--------|
| IRRIGATION       | 03/15 | 11/01 | 7.160 |      |        |
| STOCKWATER       | 01/01 | 12/31 | 0.050 |      |        |
| FISH PROPAGATION | 08/01 | 04/01 | 7.160 |      |        |

7. Total Quantity Appropriated is:  
7.160 C.F.S. (and/or) 442.70 A.F.A.
8. Total consumptive use is 332.7 Acre Feet Per Annum.
9. Non-irrigation uses:  
STOCKWATER, 200 RANGE CATTLE; COMMERCIAL FISH PROPAGATION

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10. Place of Use:

| Township | Range | Section | 1/4           | of | 1/4 | Lot | Use  | Acres |
|----------|-------|---------|---------------|----|-----|-----|------|-------|
| 07S      | 13E   | 27      |               |    |     |     | FISH |       |
|          |       |         | SW            |    | NW  |     | IRR  | 25.0  |
|          |       |         | NW            |    | SW  |     | FISH | 11.0  |
|          |       |         | Section Acres |    |     |     |      | 36.0  |
|          |       | 28      |               |    |     |     | FISH |       |
|          |       |         |               |    |     |     | FISH |       |
|          |       |         | SW            |    | NE  |     | IRR  | 11.0  |
|          |       |         | SE            |    | NE  |     | IRR  | 22.0  |
|          |       |         | NE            |    | SE  |     | FISH | 40.0  |
|          |       |         | NW            |    | SE  |     | IRR  | 20.0  |
|          |       |         | Section Acres |    |     |     |      | 93.0  |
|          |       |         | Total Acres   |    |     |     |      | 129.0 |

11. Place of use in counties: GOODING

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:  
NONE

14. Remarks:

UNDER THE 1932 DECREE, WE ARE CLAIMING FISH PROP. AS ANOTHER USE UNDER THE ORIGINAL PRIORITY DATE FOR IRRIGATION. PONDS WERE DEVELOPED IN THE 1920'S FOR RECREATION USE. COMMERCIAL TROUT PRODUCTION STARTED IN THE EARLY 1970'S. THERE ARE 12 PONDS 18' WIDE X 150' LONG X 3-4' DEEP.

THE UPPER PONDS CAN GET WASTEWATER FROM THE PONDS CLAIMED UNDER A36-00003J IF BARBARA GARDNER SO ALLOWS.

STOCK DRINK FROM DITCHES ANYWHERE ON THE PROPERTY.

THIS CLAIM REPRESENTS ROBERT'S PORTION. A36-00003J REPRESENTS MY PORTION OF DECREE...FILED SEPERATELY.

\*\*\*\*\*

OWNERSHIP CHANGE MADE 1/16/96 BY TLB.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: 3/22/1932

NEW INTERNATIONAL MORTGAGE BA  
Decree Plaintiff

IDAHO POWER COMPANY, ET. AL.  
vs Decree Defendant

Manufactured by  
Alexander Clark Business Forms  
10801 Emerald Boise, Idaho (208) 322-0811

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JAN 08 1996

Form 42-1409(7)



# NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Department of Water Resources

Please print or type  
(see instructions on back of page)

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JAN 10 1996

Department of Water Resources  
Southern Region

DATE OF CLOSING: \_\_\_\_\_

LEGAL DESCRIPTION OF PROPERTY: Township \_\_\_\_\_

Range \_\_\_\_\_

Section \_\_\_\_\_, 1/4 of \_\_\_\_\_

1/4 of \_\_\_\_\_

1/4, Govt. Lot \_\_\_\_\_

B.M. \_\_\_\_\_

Lot \_\_\_\_\_, Block \_\_\_\_\_, Subdivision/Townsite \_\_\_\_\_

If you have additional legal descriptions, please attach separate sheet.

- ☐ Served Only by a Public Service Water Supply (all water is received from a city or company who maintains water supply system, owns the water right, and bills the customer on a regular basis)

- ☐ Water Right Number(s)  
Assigned by IDWR: 36-00003B

- ☐ Name and Address of Former  
Owner/Claimant(s)(Seller): BARBARA GARDNER

- ☐ New Owner/Claimant  
(Purchaser): \_\_\_\_\_

- ☐ New Mailing Address: \_\_\_\_\_

- ☐ New Telephone Number: ( ) \_\_\_\_\_

- ☐ Does the change in ownership result in a splitting of the water right owned/claimed? yes no  
If yes, then describe the portion of the water right that is now owned/claimed by the new owner:

- ☐ Attach proof of  
ownership, describe  
proof attached: \_\_\_\_\_

(proof of ownership must describe either the property conveyed or include the claim number. Proof of ownership is not required if this form is signed by the former owner/claimant.)

- ☐ Signature of New  
Owner/Claimant(s): David O Kingston

Date 1/3/96

Date \_\_\_\_\_

- ☐ Signature of Former  
Owner/Claimant(s): Barbara Gardner

Date 12/20/95

Date \_\_\_\_\_

(Signature of former claimant(s) is not required if proof of  
ownership is attached.)

## FOR IDWR USE ONLY:

Initial Review and Data Entry

Date: 1/16/96By: HLB

Further Action Needed:

Further Action Taken

Date: \_\_\_\_\_

By: \_\_\_\_\_

Final Review and Data Entry

Date: 1/16/96By: HLB

Claim Numbers of Split, if any:

Original to be mailed to Idaho Department of Water Resources  
Copies to Former Owner and New Owner

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DEC 04 1996



# NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Please print or type  
(see instructions on back of page)

RECEIVED

JAN 08 1996

DATE OF CLOSING: \_\_\_\_\_

LEGAL DESCRIPTION OF PROPERTY: Township \_\_\_\_\_ Range \_\_\_\_\_ Department of Water Resources

Section \_\_\_\_\_, \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4, Govt. Lot \_\_\_\_\_, BM.

Lot \_\_\_\_\_, Block \_\_\_\_\_, Subdivision/Townsite \_\_\_\_\_.

If you have additional legal descriptions, please attach separate sheet.

RECEIVED

JAN 10 1996

Department of Water Resources  
Southern Region

☐ Served Only by a Public Service Water Supply (all water is received from a city or company who maintains water supply system, owns the water right, and bills the customer on a regular basis)

☐ Water Right Number(s)  
Assigned by IDWR:

36-000003B

☐ Name and Address of Former  
Owner/Claimant(s)(Seller):

BARBARA GARDNER

☐ New Owner/Claimant  
(Purchaser):

☐ New Mailing Address:

☐ New Telephone Number: ( ) \_\_\_\_\_ - \_\_\_\_\_

☐ Does the change in ownership result in a splitting of the water right owned/claimed? yes no  
If yes, then describe the portion of the water right that is now owned/claimed by the new owner:

☐ Attach proof of  
ownership, describe  
proof attached:

(proof of ownership must describe either the property conveyed or include the claim number. Proof of ownership is not required if this form is signed by the former owner/claimant.)

☐ Signature of New  
Owner/Claimant(s)

Date

Date

☐ Signature of Former  
Owner/Claimant(s):

x Barbara Gardner

Date

Date

(Signature of former claimant(s) is not required if proof of ownership is attached.)

## FOR IDWR USE ONLY:

Initial Review and Data-Entry

Date:

By:

Further Action Needed:

Further Action Taken

Date:

By:

Final Review and Data-Entry

Date:

By:

Claim Numbers of Split, if any:

Original to be mailed to Idaho Department of Water Resources  
Copies to Former Owner and New Owner

MICROFILMED

DEC 04 1996

RECEIVED

JAN 08 1996

Department of Water Resources

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

In Re the General Adjudication of Rights  
to the Use of Water From the Snake River  
Basin Water System.

Case No. 39576

STANDARD FORM 3

The State of Idaho, ex rel. R. Keith  
Higginson in his official capacity as  
Director of the Idaho Department  
of Water Resources,

STANDARD FORM FOR NOTICE  
OF CHANGE IN ADDRESS

OR

Petitioner,

CONSENT TO SUBSTITUTION OF  
PARTY

vs.

The United States; the State of Idaho; and  
all Claimants to the Use of Water From  
the Snake River Basin Water System,

Respondents.

## INSTRUCTIONS FOR USE

This form must be used to provide notice of change in address or to substitute a party whose water right recommendation is in a director's report which has been filed with the court. The filing of Standard Form 3 cannot result in a contested matter. A hearing will not be scheduled.

This form has been adopted by the court in *SRBA Administrative Order I* (amended June 21, 1993), Section 4A, which may be consulted for further information.

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JAN 08 1996

Department of Water Resources

Standard Form 3 shall not operate to excuse compliance with the statutory requirements of I.C. § 42-1409(7) where a water right recommendation is not before the court.

As used in this form, the term "prior claimant/seller" means any person who, pursuant to I.C. § 42-1409(2), (3) and (6), filed a notice of claim asserting the right to the use of water or on whose behalf the right to the use of water was asserted. "New claimant/purchaser" means any successor in interest of a "prior claimant/seller," whether the interest is acquired by purchase, gift, inheritance or other means.

A *Consent to Substitution of Party (Substitution)* must be signed by the prior claimant/seller and the new claimant/purchaser. The *Substitution* shall be filed by the new claimant/purchaser.

Check either the *Change in Address* or *Consent to Substitution of Party* box and fill in the requested information. A party may copy or reproduce the standard form. The text of the form must be on the front and back of each page, exactly as it appears here.

Follow the instructions on the form or the court will not accept it for filing. The Verification and the Certificate of Mailing must be completed.

The standard form may be obtained from the Idaho Department of Water Resources and the court. You must provide a copy of this form to each party, or to their legal counsel, in any subcase in which you are a party.

☐ CHANGE IN ADDRESS

My name is David A. Hargston

I am the claimant of \_\_\_\_\_

(Insert each water right number)

I have filed an objection/response to the following water right(s) \_\_\_\_\_

(Insert each water right number)

My new mailing address is P.O. Box 158 Ucon, Idaho 83454

My phone number is: Work 522-2365 Home 524-4398  
(208) (208)

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JAN 08 1996

☐ CONSENT TO SUBSTITUTION OF PARTY

My name is \_\_\_\_\_ Department of Water Resources

My address is \_\_\_\_\_

My phone number is: Work \_\_\_\_\_ Home \_\_\_\_\_

The name and address of the party who I wish to be substituted for are:

I am the new claimant/purchaser of 36-0000-3B and  
(Insert each water right number)

I am submitting proof of acquisition of the interest of the prior claimant/seller, *which is required by the court* to support my *Substitution*. Proof must contain a legal description of the property, including the water right numbers conveyed. You must describe the documents you are submitting.

X Barbara Gardner  
(Signature of prior claimant/seller)

David A. Knutson  
(Signature of new claimant/purchaser)

☐ ATTORNEY OF RECORD COMPLETING FORM

My name is \_\_\_\_\_

I am the attorney of record for \_\_\_\_\_  
(Identify party/claimant)

My address and phone number are \_\_\_\_\_

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JAN 08 1996

## VERIFICATION

Department of Water Resources

(Must be completed for either a *Notice of Change in Address* or for *Consent for Substitution of Party*)

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, upon oath, deposes and says:  
(insert name of party/claimant filing form)

That I am the person or entity filing this form, that I am a water right claimant or party or their successor in interest, defined by I.C. §§ 42-1401A(1), (7) or (10); and that I have read this form, know its contents and that the statements are true to the best of my knowledge and belief.

\_\_\_\_\_  
Signature of person filing form

By: \_\_\_\_\_  
Attorney signing in representative capacity

Subscribed and sworn to before me on \_\_\_\_\_  
(Insert Date)

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

## INSTRUCTIONS FOR MAILING

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

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

## CERTIFICATE OF MAILING

I certify that on \_\_\_\_\_, 199\_\_, 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

RECEIVED

JAN 08 1996

Department of Water Resources

2. A *Change of Address* must be served on each party, or their attorney, in each subcase in which you are a party at the following address(es):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. A *Consent to Substitution of Party* must be served on the prior claimant/seller or their attorney at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. A *Consent to Substitution of Party* must be served on each party, or their attorney, to each subcase in which the prior claimant/seller is a party at the following address(es):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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JAN 08 1996

Department of Water Resources

4. One copy to:

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

5. One copy to:

United States Department of Justice  
Environment and Natural Resource Division  
550 West Fort Street, Box 33  
Boise, Idaho 83734

---

(Signature of person or attorney mailing the form)

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

IN RE THE GENERAL ADJUDICATION  
OF RIGHTS TO THE USE OF WATER FROM  
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A36-00003B

Date Received: 8/18/1988

Receipt No: 500/535

Received By: *[Signature]*

**COPY**

**FOR YOUR FILES  
DO NOT RETURN**

**NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW**

1. Name: ROBERT B. GARDNER - *claim owner* 208-837-4902

Address: P. O. 41  
HAGERMAN, ID 83332

AND/OR

Name: BARBARA GARDNER - *filed for husband's portion* 208-837-4902

Address: P. O. 41  
HAGERMAN, ID 83332

2. Date of Priority: SEP 10, 1884

3. Source: BILLINGSLEY CREEK Trib. to: SNAKE RIVER

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 | Lot | County  |
|----------|-------|---------|--------|--------|-----|-----|---------|
| 07S      | 13E   | 11      | SE     | SE     | NE  |     | GOODING |
|          |       | 27      | NE     | SE     | NW  | R   | GOODING |
|          |       | 28      | NW     | SE     | NW  | R   | GOODING |
|          |       |         |        | SE     | NE  | R   | GOODING |

5. Description of diverting works:  
HEADGATE & BUCKEYE DITCH, REDIVERIONS FROM DITCH

6. Water is used for the following purposes:

| Purpose          | From  | To    | C.F.S | (or) | A.F.A. |
|------------------|-------|-------|-------|------|--------|
| IRRIGATION       | 03/15 | 11/01 | 7.160 |      |        |
| STOCKWATER       | 01/01 | 12/31 | 0.050 |      |        |
| FISH PROPAGATION | 08/01 | 04/01 | 7.160 |      |        |

7. Total Quantity Appropriated is:  
7.160 C.F.S. (and/or) 442.70 A.F.A.

8. Total consumptive use is 332.7 Acre Feet Per Annum.

9. Non-irrigation uses:  
LIVESTOCK/200 RANGE, COMMERCIAL FISH PROPAGATION

A36-00003B

Page

1

Date: 08/18/88

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**OCT 11 1994**  
JAN 10 1995

10. Place of Use:

| Township | Range | Section | 1/4 of 1/4    | Lot | Use  | Acres |
|----------|-------|---------|---------------|-----|------|-------|
| 07S      | 13E   | 27      | SW            | NW  | FISH |       |
|          |       |         | NW            | SW  | IRR  | 25.0  |
|          |       |         |               |     | FISH | 11.0  |
|          |       |         | Section Acres |     |      | 36.0  |
|          |       | 28      |               |     | FISH |       |
|          |       |         |               |     | FISH |       |
|          |       |         | SW            | NE  | IRR  | 11.0  |
|          |       |         | SE            | NE  | IRR  | 22.0  |
|          |       |         | NE            | SE  | FISH | 40.0  |
|          |       |         | NW            | SE  | IRR  | 20.0  |
|          |       |         | Section Acres |     |      | 93.0  |
|          |       |         | Total Acres   |     |      | 129.0 |

11. Place of use in counties: GOODING

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:  
NONE

14. Remarks:

UNDER THE 1932 DECREE, WE ARE CLAIMING FISH PROP. AS ANOTHER USE UNDER THE ORIGINAL PRIORITY DATE FOR IRRIGATION. PONDS WERE DEVELOPED IN THE 1920'S FOR RECREATION USE. COMMERCIAL TROUT PRODUCTION STARTED IN THE EARLY 1970'S. THERE ARE 12 PONDS 18' WIDE X 150' LONG X 3-4' DEEP.  
THE UPPER PONDS CAN GET WASTEWATER FROM THE PONDS CLAIMED UNDER A36-00003A IF BARBARA GARDNER SO ALLOWS.  
STOCK DRINK FROM DITCHES ANYWHERE ON THE PROPERTY.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: 3/22/1932

NEW INTERNATIONAL MORTGAGE BAN  
Decree Plaintiff

vs

IDAHO POWER COMPANY, ET. AL.  
Decree Defendant

A36-00003B

Page

2

Date: 08/18/88

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OCT 11 1994

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do \_\_\_\_\_ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: \_\_\_\_\_

**For Individuals:**

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): Barbara Gardner Date: Aug 18, 1988  
\_\_\_\_\_  
Date: \_\_\_\_\_

State of Idaho

County of Twin Falls )  
SS.

Subscribed and sworn (or affirmed) before me this 18th day

of August 19 88

Lixanne Storey  
Notary Public

Seal

Residing at Buhl, Id

My Commission Expires 6-30-94

21 22  
20 27 14.4

5  
8.4  
(692c)

PA  
D 4.0  
11.7  
B 3.7

C239  
(640)

Buckeye Ditch

E 13.6  
I 6.4  
B 11.2

POOR ORIGINAL

7687 C267  
(510c)  
A 13.0

C 8.4

B 48.6

D 25.6

E 3.3

OCT 11 1994

|            |            |            |            |            |            |            |            |             |             |
|------------|------------|------------|------------|------------|------------|------------|------------|-------------|-------------|
| A36-00003B | A36-00003C | A36-00003E | A36-00003F | A36-00003G | A36-00003J | A36-00006  | A36-00007  | A36-00008   | A36-00021B  |
| A36-00022  | A36-00023  | A36-00033F | A36-00034B | A36-00035J | A36-00039C | A36-00039D | A36-00039E | A36-00039J  | A36-00039M  |
| A36-00039N | A36-00041A | A36-00041C | A36-00042A | A36-00048A | A36-00049  | A36-00050D | A36-00051D | A36-00055AF | A36-00055BC |
| A36-00060  | A36-00061  | A36-00062  | A36-00063  | A36-00064B | A36-00068  | A36-00069  | A36-00070  | A36-00071A  | A36-00075   |
| A36-00077C | A36-00079  | A36-00086C | A36-00089A | A36-00090A | A36-00090F | A36-00092  | A36-00094A | A36-00096A  | A36-00097   |
| A36-00098  | A36-00099  | A36-00100  | A36-00101  | A36-00103C | A36-00103F | A36-00106  | A36-00108A | A36-00108B  | A36-00110A  |
| A36-00110B | A36-00111A | A36-00111B | A36-00112A | A36-00112B | A36-00113H | A36-00113J | A36-00119  | A36-00120   | A36-00121   |
| A36-00123A | A36-00123E | A36-00133  | A36-00134A | A36-00134C | A36-00135B | A36-00135C | A36-00141  | A36-00192   | A36-02002   |
| A36-02038  | A36-02169  | A36-04091  | A36-04142  | A36-04260  | A36-07071  | A36-07081  | A36-07089  | A36-07092A  | A36-07142   |
| A36-07142A | A36-07172  | A36-07229  | A36-07233  | A36-07346  | A36-07658  | A36-07875  | A36-08099  | A36-08317   | A36-10055   |
| A36-10119  | A36-10120  | A36-10140  | A36-10141  | A36-10168  | A36-10231  | A36-10249  | A36-10283  | A36-10283B  | A36-10405   |
| A36-10520  | A36-10906  | A36-15166  | A36-15168  | A36-15240  | A36-15463  |            |            |             |             |

TOTAL RECORDS IN SELECTION FILE: 116

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OCT 11 1994

HP LaserJet 3100  
Printer/Fax/Copier/Scanner

SEND CONFIRMATION REPORT for  
WATER RESOURCES  
2083275400  
Jul-17-02 4:09PM

| Job   | Start Time  | Usage | Phone Number or ID | Type             | Pages | Mode  | Status         |
|-------|-------------|-------|--------------------|------------------|-------|-------|----------------|
| 741   | 7/17 4:04PM | 5'01" | 208 331 0954       | Send.....        | 20/20 | EC144 | Completed..... |
| Total |             | 5'01" | Pages Sent: 20     | Pages Printed: 0 |       |       |                |



State of Idaho  
DEPARTMENT OF WATER RESOURCES  
1381 North Orchard Street, P.O. Box 83726, Boise, Idaho 83726-0000  
Phone: (208) 327-7900 FAX: (208) 327-7066

WATER RESOURCES  
CONFIRMATION  
PAGE 1 OF 1

### FAX Transmittal Cover Sheet

Number of pages including this one: 20

Date: 7-17-02  
To: MATT HOWARD  
Fax No.: 331-0954  
From: STEVE CLELLAND  
Fax No.: \_\_\_\_\_  
Phone No.: 327-5450  
Subject: 36-38, -SB -19 B claims  
I left off the maps for SB #19B  
It was not good quality & didn't show PAU.



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

DICK KEMPTORNE  
GOVERNOR

KARL J. DREHMER  
DIRECTOR

## FAX Transmittal Cover Sheet

Number of pages including this one: 20

Date: 7-17-02

To: MATT HOWARD

Fax No.: 331-0954

From: STEVE CLELLAND

Fax. No.: \_\_\_\_\_

Phone No.: 327-5450

Subject: 36-3B, -5B -19 B claims

I left off the maps for SB & 19B  
it was not good quality & didn't show POH.

SF.1 - Objection  
Amended 10/16/97 (over) Page 1

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OCT 4 - 2001

Department of Water Resources

RECEIVED

OCT 16 2001

Department of Water Resources  
Southern Region

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            )  
                                  )  
Case No. 39576        )  
                                  )  
                                  )

A. Subcase 36-00003B  
(Insert water right number)

STANDARD FORM 1  
OBJECTION

Please fill in the following information:

**B. NAME AND ADDRESS OF PERSON OBJECTING**

Name: Maria Yvonne Anderson

Address: 1945 S. Weimaraner Wy  
Meridian, ID 83642

Daytime Phone: 208-888-7178

Name & Address of Attorney, if any:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT**

Name: KINGSTON PROPERTIES LP

Address: 477 SHOUP AVE STE 207

IDAHO FALLS, ID 83402

\_\_\_\_\_

**D.** I object to the following elements as recommended in the Director's Report.  
(Please check the appropriate box(es)).

1. ☒ **Name and Address**  
Should be: Maria Y. Anderson, 1945 S. Weimaraner Wy, Meridian, ID
2. ☐ **Source**  
Should be: \_\_\_\_\_
3. ☐ **Quantity**  
Should be: \_\_\_\_\_
4. ☐ **Priority Date**  
Should be: \_\_\_\_\_
5. ☐ **Point(s) of Diversion**  
Should be: \_\_\_\_\_
6. ☐ **Instream Flow Description**  
Should be: \_\_\_\_\_
7. ☐ **Purpose(s) of Use**  
Should be: IRRIGATION/STOCKWATER
8. ☒ **Period of Year**  
Should be: IRRIGATION 02-15 THROUGH 11-30  
STOCKWATER 01-01 THROUGH 12-31
9. ☒ **Place of Use**  
Should be: IRRIGATION STOCKWATER  
T07S R13E S27 SWNW 11 T07S R13E S27 SWNW  
T07S R13E S27 SENW 11 T07S R13E S27 SENW
11. **I object because:** TOTAL 22 ACRES  
☐ This water right should not exist.  
☐ This water right was not recommended, but should be recommended with the elements described above.

**E. REASONS SUPPORTING OBJECTION(S):** Heretofore the transfer of ownership from Gardner to Bothwell and Wickham on 10/30/95, henceforth to Kingston Properties all water rights for the approximately 129 acres plus all remaining original water rights were granted by the courts to Kingston Properties through an illegal transfer of water rights rendering the above property dry waste land.

F. **VERIFICATION** (Must be Completed)

State of IDAHO )  
 )ss.  
County of ADA )

MARIA Y. ANDERSON, duly sworn, upon oath, deposes and says:  
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

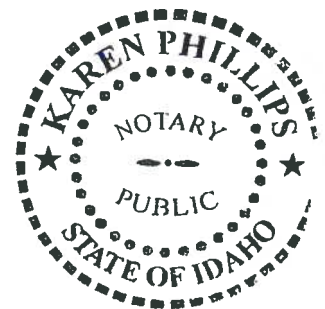
*Maria Y. Anderson*  
(Signature of person filing objection)

\_\_\_\_\_  
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: Oct. 3 2001

*Karen Phillips*

Notary Public for Idaho  
Residing at: Boise  
My Commission Expires: 9-15-07



## INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

## G. CERTIFICATE OF MAILING

I certify that on OCT. 04, 2001, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court  
Snake River Basin Adjudication  
253 Third Avenue North  
PO Box 2707  
Twin Falls, ID 83303-2707

One copy to the claimant of the water right at the following address:

Name: KINGSTONE PROPERTIES LP  
Address: 477 SHOUP AVE STE 207  
IDAHO FALLS, ID 83402

3. Copies to:

IDWR Document Depository  
PO Box 83720  
Boise, ID 83720-0098

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
PO Box 44449  
Boise, ID 83711-4449

United States Department of Justice  
Environment and Natural Resource Division  
550 West Fort Street, MSC 033  
Boise, ID 83724

Maria J. Anderson  
Signature of Objector or attorney  
mailing on Objector's behalf



**D.** I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**  
Should be: \_\_\_\_\_
2. ☐ **Source**  
Should be: \_\_\_\_\_
3. ☒ **Quantity**  
Should be: Less than 7.16 cfs
4. ☐ **Priority Date**  
Should be: \_\_\_\_\_
5. ☐ **Point(s) of Diversion**  
Should be: \_\_\_\_\_
6. ☐ **Instream Flow Description**  
Should be: \_\_\_\_\_
7. ☐ **Purpose(s) of Use**  
Should be: \_\_\_\_\_
8. ☐ **Period of Year**  
Should be: \_\_\_\_\_
9. ☐ **Place of Use**  
Should be: \_\_\_\_\_

11. **I object because:**

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

**E. REASONS SUPPORTING OBJECTION(S):** Contrary to the SRBA district court's ruling in the subcases involving this right, the sum of the rights recommended under the various 36-00003 splits exceeds the amount originally allocated to 36-00003 in the New International Decree. Further, the recommended quantity exceeds one inch/acre yet gives no indication if a portion of the quantity is allocated to conveyance loss.

VERIFICATION

State of Idaho                     )  
                                          ) ss.  
County of Ada                    )

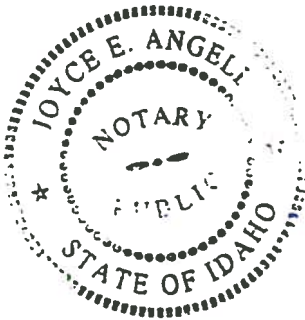
Deborah E. Nelson, duly sworn, upon oath, deposes and says:

That I am the attorney for the party filing this objection, as defined by I.C. §§ 42-1401A(i) and (6), and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

\_\_\_\_\_  
(Signature of person filing objection)

Deborah E. Nelson  
\_\_\_\_\_  
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: June 28, 2001



Joyce E. Angeli  
\_\_\_\_\_  
Notary Public for the State of Idaho  
Residing at: Boise, Idaho  
My Commission Expires: 07-24-02

## CERTIFICATE OF MAILING

I certify that on June 28, 2001, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to (via hand delivery):

Clerk of the District Court  
Snake River Basin Adjudication  
253 Third Avenue North  
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

|          |                             |                                          |
|----------|-----------------------------|------------------------------------------|
| Name:    | Kingston Properties LP      | Patrick D. Brown (Attorney for Claimant) |
| Address: | 477 Shoup Avenue, Suite 207 | 109 S. Adams Street                      |
|          | Idaho Falls, ID 83402       | Jerome, ID 83338                         |
|          |                             | (Via Certified Mail)                     |

3. Copies to:

David Barber  
Deputy Attorney General  
P. O. Box 83720  
Boise, ID 83720-0010

IDWR Document Depository  
PO Box 83720  
Boise, ID 83720-0098

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

United States Department of Justice  
Environment and Natural Resource Division  
550 West Fort Street, MSC 033  
Boise, ID 83724

  
\_\_\_\_\_  
Signature of attorney mailing on Objector's behalf

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

Case No. 39576

RECEIVED )

JUN - 4 2001 )

Department of Water Resources )

A. Subcase No.: 36-00003B

STANDARD FORM 1  
OBJECTION

RECEIVED

AUG 07 2001

Department of Water Resources  
Southern Region

Please fill in the following information:

**B. NAME AND ADDRESS OF PERSON OBJECTING**

Name: Kingston Properties, LP

Address: 477 Shoup Avenue, Suite 207

Idaho Falls, ID 83402

Daytime Phone: (208) 522-2365

Name & Address of Attorney, if any:

Patrick D. Brown, P.C.

109 South Adams Street

Jerome, ID 83338 (644-1967)

**C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT**

Name: Kingston Properties, LP

Address: 477 Shoup Avenue, Suite 207

Idaho Falls, ID 83402

**D. I OBJECT TO THE FOLLOWING ELEMENTS AS RECOMMENDED IN THE DIRECTOR'S REPORT. [PLEASE CHECK THE APPROPRIATE BOX(ES).]**

1. ☐ Name and Address  
Should be: \_\_\_\_\_
2. ☐ Source  
Should be: \_\_\_\_\_
3. ☐ Quantity  
Should be: \_\_\_\_\_
4. ☐ Priority Date  
Should be: \_\_\_\_\_
5. ☐ Point(s) of Diversion  
Should be: \_\_\_\_\_
6. ☐ Instream Flow Description  
Should be: \_\_\_\_\_
7. ☐ Purpose(s) of Use  
Should be: \_\_\_\_\_
8. ☒ Period of Use  
Should be: Fish Propagation should be 1/1 to 12/31 not 8/1 to 4/1
9. ☐ Place of Use  
Should be: \_\_\_\_\_

10. I object because:

☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

**E. REASONS SUPPORTING OBJECTION(S):** Fish propagation occurs year  
round, not just from August to April.

State of Idaho )  
 ) ss  
County of Jerome )

That I am the party/claimant filing this Objection, as defined by I.C. §§ 42-1401A(1) and (6), or that I am the attorney for the party/claimant objecting and that I have read this Objection, know its contents, and believe that the statements are true to the best of my knowledge.

Attorney signing in representative capacity)

Notary Public for: Idaho  
Residing at: Twin Falls  
My Commission Expires: 11-09-04

### INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the SRBA Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

### G. CERTIFICATE OF MAILING

I certify that on May 31, 2001, I served the original and copies of this Objection, including all attachments, to the following persons, by the method indicated:

1. Original hand delivered to:

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

2. One copy to the Claimant of the water right at the following address:

Name: n/a  
Address: \_\_\_\_\_

3. Copies to:

Deputy AG  
Office of the Attorney General  
P. O. Box 44449  
Boise, ID 83711-4449

☒ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy (Fax)

Idaho Dept. of Water Resources  
Document Depository  
P. O. Box 83720  
Boise, ID 83701-0098

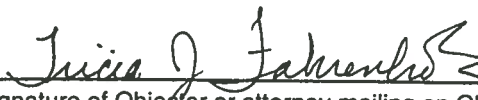
☒ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy (Fax)

Nicholas Spencer  
Idaho Department of Water Resources  
1301 North Orchard Street  
Boise, ID 83705  
(208) 327-7866

☒ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy (Fax)

Josephine Beeman  
Beeman & Hofstetter  
608 W. Franklin St.  
P. O. Box 1427  
Boise, ID 83701-1427

☒ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy (Fax) (208) 388-8900

  
(Signature of Objector or attorney mailing on Objector's behalf)

RECEIVED

JUL 27 2001

Department of Water Resources

RECEIVED

AUG 07 2001

Department of Water Resources  
Southern Region

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 )

Case No. 39576 )

A. Subcase 36-00003B

(Insert water right number  
From the Objection Form)

STANDARD FORM 2  
RESPONSE TO OBJECTION

Please print or type the following information:

**B. NAME AND ADDRESS OF PERSON RESPONDING**

Name: North Snake Ground Water District  
Address: 2092 East 3600 South  
Wendell, ID 83355  
Daytime Phone: (208) 536-6553

Name & Address of Attorney, if any:

Josephine P. Beeman  
Dana L. Hofstetter  
Deborah E. Nelson  
Beeman & Hofstetter, P.C.  
608 West Franklin Street  
Boise, ID 83702-5509  
(208) 388-8900

**C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO  
WHICH YOU ARE RESPONDING**

Name: Edna M. Rea  
Address: P.O. Box 543  
Wendell, ID 83355

D. I am responding to the objections to the following elements. (Please check the appropriate box(es)).

- 1. ☐ Name and Address
- 2. ☐ Source
- 3. ☐ Quantity
- 4. ☐ Priority Date
- 5. ☐ Point(s) of Diversion
- 6. ☐ Instream Flow Description
- 7. ☐ Purpose(s) of Use
- 8. ☒ Period of Year
- 9. ☐ Place of Use

11. Recommendation

- ☒ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. VERIFICATION (Must be Completed)

State of Idaho )  
 ) ss:  
County of Ada )

Deborah E. Nelson duly sworn, upon oath, deposes and says:  
(Name of person filing response)

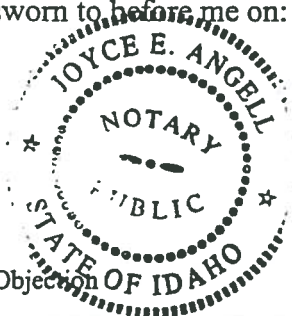
That I am the party/claimant filing this response as defined by I.C. § 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this response, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing response)

*Deborah E. Nelson*

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: July 26, 2001



*Joyce E. Angell*

Notary Public for the State of Idaho

Residing at: Boise, Idaho

My Commission Expires: 7-24-02

## INSTRUCTIONS FOR MAILING

You must mail the response, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

### F. CERTIFICATE OF MAILING

I certify that on July 26, 2001, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

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

2. One copy to the claimant of the water right at the following address:

Name: Edna M. Rea  
Address: P.O. Box 543  
Wendell, ID 83355

3. One copy to the party who filed the objection at the following address:

Name: Patrick D. Brown, P.C.  
Address: 109 South Adams Street  
Jerome, ID 83338  
(208) 644-1967

4. Copies to:

IDWR Document Depository  
P. O. Box 83720  
Boise, ID 83720-0098

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

United States Department of Justice  
Environment & Natural Resource Division  
550 West Fort Street, MSC 033  
Boise, ID 83724

David Barber  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010



Your signature or signature of attorney  
mailing on your behalf

RECEIVED

JUL 27 2001

Department of Water Resources

RECEIVED

AUG 07 2001

Department of Water Resources  
Southern Region

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     | ) | A. Subcase 36-00003B  |
|                | ) |                       |
| Case No. 39576 | ) | STANDARD FORM 2       |
|                | ) | RESPONSE TO OBJECTION |
|                | ) |                       |
|                | ) |                       |
|                | ) |                       |
|                | ) |                       |

**B. NAME AND ADDRESS OF PERSON RESPONDING**

Name: Kingston Properties, L.P.  
Address: 477 Shoup Avenue, Suite 207  
Idaho Falls, ID 83402

Daytime Phone: (208) 522-2365

*Name & Address of attorney, if any:*

Patrick D. Brown, P.C.  
109 S. Adams Street  
Jerome, Idaho 83338  
ph: (208) 644-1967

**C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO WHICH YOU ARE RESPONDING:**

Name: North Snake Ground Water District  
Address: 2092 East 3600 South  
Wendell, ID 83355

D. I am responding to the objections to the following elements. (Please check the appropriate box(es)).

1. Name and Address
2. Source
3. ☒ Quantity      Should be decreed as claimed.
4. Priority Date
5. Point(s) of Diversion
6. Instream Flow Description
7. Purpose(s) of Use
8. Period of Year
9. Place of Use

11. **Recommendation**

This water right should not exist.  
This water right was not recommended, but should be recommended with the elements described above.

E. **VERIFICATION (Must be Completed)**

State of Idaho      )  
                                         ss:  
County of Jerome    )

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

That I am the party/claimant filing this response, as defined by I.C. 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this response, know its contents and believe that the statements are true to the best of my knowledge.

  
(Signature of person filing response)

(Attorney signing in representative capacity)



Subscribed and sworn to before me on: 7-10-01

Patricia J. Fahrenholz  
Notary Public for Idaho  
Residing at: Twin Falls  
My Commission Expires: 11-09-04

## INSTRUCTIONS FOR MAILING

You must mail the response to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

### F. CERTIFICATE OF MAILING

I certify that on July 26, 2001, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court  
Snake River Basin Adjudication  
253 Third Avenue North  
PO Box 2707  
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Kingston Properties, L.P.  
Address: 477 Shoup Avenue, Suite 207  
Idaho Falls, ID 83402

3. One copy to the party who filed the objection at the following address:

Name: North Snake Ground Water District  
2092 East 3600 South  
Wendell, ID 83355

4. Copies to:

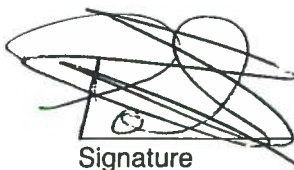
Nick Spencer  
Idaho Department of Water Resources  
1301 North Orchard  
Boise, ID 83720

IDWR Document Depository  
PO Box 83720  
Boise, ID 83720-0098

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
PO Box 44449  
Boise, ID 83711-4449

United States Department of Justice  
Environment and Natural Resource Div.  
5550 West Fort Street, MSC 033  
Boise, ID 83724

Josephine P. Beeman, Dana L. Hofstetter, Deborah E. Nelson  
Beeman & Hofstetter, P.C.  
608 West Franklin Street  
P.O. Box 1427  
Boise, ID 83701-1427



Signature

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

05/18/2001

RIGHT NUMBER: **36-00003B**

NAME AND ADDRESS: KINGSTON PROPERTIES LP  
477 SHOUP AVE STE 207  
IDAHO FALLS, ID 83402

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 7.16 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE  
SHALL NOT EXCEED 13,000 GALLONS PER DAY.

THE APPROPRIATOR IS ENTITLED TO THE QUANTITY OF WATER  
DESCRIBED FOR STOCK WATER PURPOSES AT A POINT OF MEASUREMENT  
WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED.

PRIORITY DATE: 09/10/1884

POINT OF DIVERSION: T07S R13E S11 SESENE Within GOODING County

PURPOSE AND  
PERIOD OF USE:

| PURPOSE OF USE   | PERIOD OF USE | QUANTITY |
|------------------|---------------|----------|
| IRRIGATION       | 02-15 11-30   | 7.16 CFS |
| STOCKWATER       | 01-01 12-31   | 0.05 CFS |
| FISH PROPAGATION | 08-01 04-01   | 7.16 CFS |

PLACE OF USE:

IRRIGATION Within GOODING County

|               |            |    |               |      |    |
|---------------|------------|----|---------------|------|----|
| T07S R13E S27 | SWNW       | 24 | T07S R13E S27 | NWSW | 9  |
| T07S R13E S28 | SWNE       | 9  | T07S R13E S28 | SENE | 25 |
| T07S R13E S28 | NESE       | 40 |               |      |    |
| T07S R13E S28 | LOT 5 NWSE | 22 |               |      |    |

STOCKWATER Within GOODING County

|               |            |  |               |      |  |
|---------------|------------|--|---------------|------|--|
| T07S R13E S27 | SWNW       |  | T07S R13E S27 | NWSW |  |
| T07S R13E S28 | LOT 4 SWNE |  | T07S R13E S28 | SENE |  |
| T07S R13E S28 | NESE       |  |               |      |  |
| T07S R13E S28 | LOT 5 NWSE |  |               |      |  |

FISH PROPAGATION Within GOODING County

|               |      |  |               |       |      |
|---------------|------|--|---------------|-------|------|
| T07S R13E S27 | SWNW |  | T07S R13E S28 | LOT 4 | SWNE |
| T07S R13E S28 | SENE |  |               |       |      |

129 ACRES TOTAL

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED  
TO THE IRRIGATION OF A COMBINED TOTAL OF 129 ACRES IN A SINGLE  
IRRIGATION SEASON. COMBINED RIGHT NOS.: 36-00003B, 36-00005B &  
36-00019B.

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

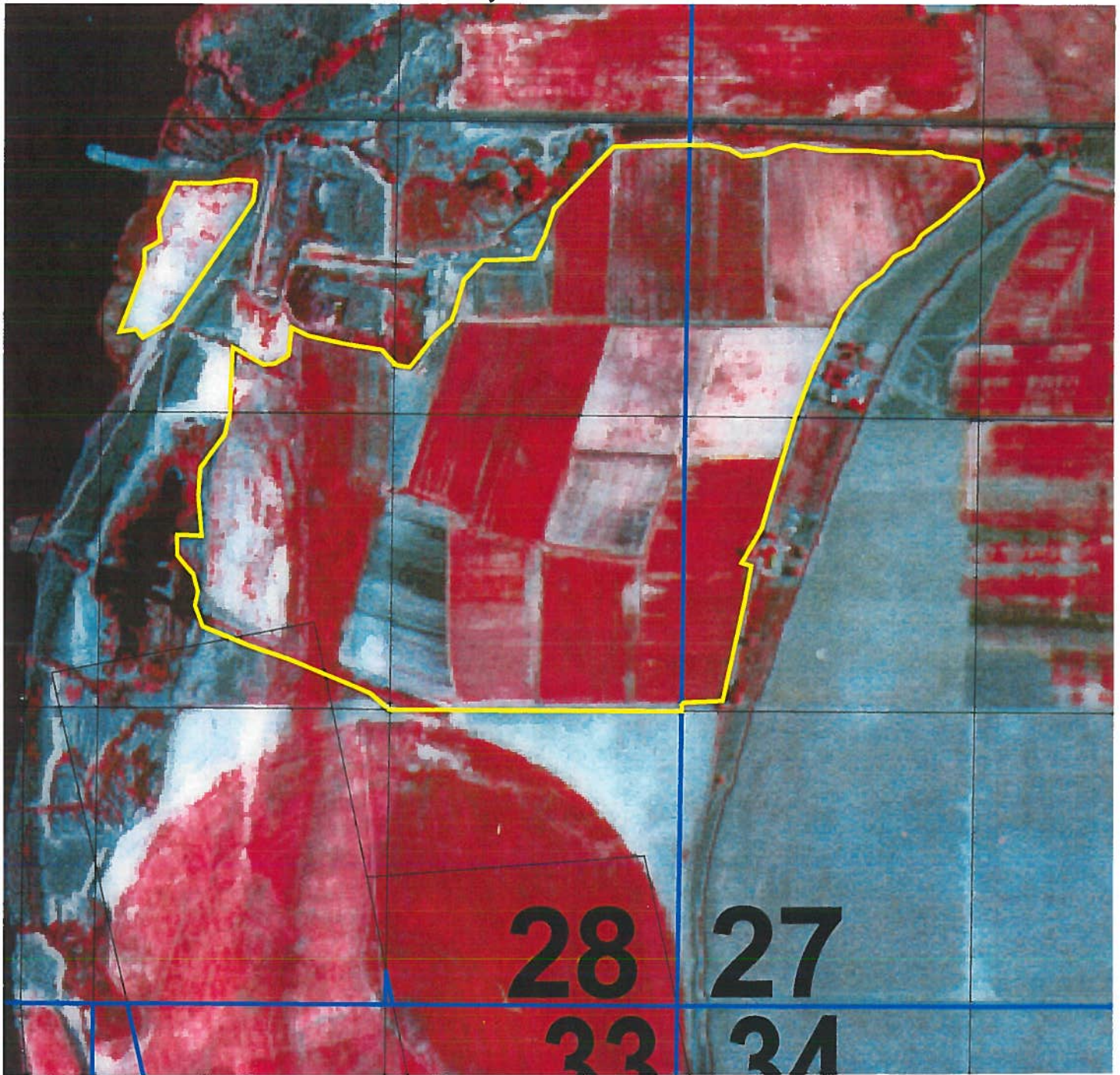
THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR  
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL  
USE.

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 - Decreed

WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.

**IDAHO DEPT OF WATER RESOURCES**  
**36-00003B, -0005B & -0019B**



660 0 660 1320 Feet

**T07S R13E**  
**SEC. 27 & 28**



**GIS PLACE OF USE PRESENTATION**  
**1987 &/OR 1988 NAPP PHOTOGRAPHY**

**DATA ENTRY BY: STEVE CLELLAND**  
**DATE: MAY 18, 2001**  
**\*\*\*REVISED\*\*\***

- **RECOMMENDED PLACE OF USE**
- **POINT OF DIVERSION**
- ▬ **SECTION LINES**
- **1/4 - 1/4 LINES**

|           | 3                                                                                                                                                    | 5                                                                                                                                                                                                           | 19                                                                                | Total                                                 |
|-----------|------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-------------------------------------------------------|
| Babington | $\checkmark$ ecvr<br><del>3C</del> $\checkmark$ (1.97) $\checkmark$ ecvr<br>0.87 cfs <del>0.70 cfs</del> (.96)<br>(24 AC)                            | $\checkmark$ ecvr<br><del>SA</del><br>+ .09 cfs                                                                                                                                                             | $\checkmark$ ecvr<br>-19A<br>X $\emptyset$ cfs                                    | (2" AC) .04<br>0.87<br>+ .09<br>0.96 cfs              |
| Simcoe    | $\checkmark$ ecvr<br><del>3F</del> $\checkmark$ (1.32) $\checkmark$ ecvr<br>1.54 cfs <del>1.67 cfs</del> (1.54)<br>(58 ac)                           | $\checkmark$ ecvr<br>-5C<br>X                                                                                                                                                                               | $\checkmark$ ecvr<br>-19C<br>X                                                    | (13" ac) .0266                                        |
| Kuytson   | $\checkmark$ ecvr<br><del>3B</del> $\checkmark$ (7.16) $\checkmark$ ecvr<br>4.69 cfs <del>3.71 cfs</del> 129<br>→                                    | $\checkmark$ ecvr<br><del>5B</del><br>+ .55 cfs (2.16 cfs)<br>(136 AC)                                                                                                                                      | $\checkmark$ ecvr<br><del>19B</del><br>+ 1.92 cfs                                 | 4.69 cfs<br>+ .55<br>+ 1.92<br>7.16 cfs<br>(.056 cfs) |
| Gardner   | $\checkmark$ ecvr<br>0.04 cfs $\checkmark$ ecvr<br><del>3K</del> $\checkmark$ (1.37) $\checkmark$ ecvr<br>1.37 cfs <del>1.03 cfs</del> 136 ac<br>(?) | * Reel is for 1 acre as found by aerial & field exams. Not combined into the same system with 3B until recently (c.1996). Use found was part of the sprinkler system used by Babington above Buckeye Ditch. |                                                                                   |                                                       |
| McClure   | $\checkmark$ ecvr<br>- 3D<br>X (DISALLOW)                                                                                                            | $\checkmark$ ecvr<br>NO CLAIM<br>→ see 19D →                                                                                                                                                                | $\checkmark$ ecvr<br><del>19D</del> (No Hubble)<br>Rec'd $\checkmark$ layout<br>✓ | .24 cfs<br>8.5 AC.                                    |
| V. Bell   | $\checkmark$ ecvr<br><del>3A</del> $\checkmark$ ecvr<br>1.57 cfs $\checkmark$ ecvr<br>Temp. ALLOWANCE                                                | $\checkmark$ ecvr<br>NO CLAIM<br>NO CLAIM                                                                                                                                                                   | $\checkmark$ ecvr<br>NO CLAIM                                                     |                                                       |

10WR:  
.42 cfs  
.15 CL  
.57 cfs  
Reverse Hubble

Split Right Review  
5/17/01  
SCC

Balances:  $\emptyset 3$   
7.71 cfs  
~~7.60~~ (bell)  
~~6.11~~  
See page 2

$\emptyset 5$   
3.0  
- .09  
2.91

19  
2.16  
- .24 (19D)  
1.92  
- 1.92 (3B w/ 19B)  
 $\emptyset$  19D & 19B  
split all of 19 right  
as decreed.

5/17/01  
SCC

Ø3 SPLIT REVIEW:

Balance: 7.71 cfs

$$\begin{array}{r} - .57 \\ \hline 7.14 \text{ cfs} \end{array} \quad (-3A \text{ Bell})$$

(didn't claim 05-02-19.)  
(- even tho' claimant states 03/15/19 are used together & commingled.)

1<sup>ST</sup> PRO RATA:

|         |      |           |   |      |   |                     |
|---------|------|-----------|---|------|---|---------------------|
| 129     | (3B) | $129/212$ | X | 7.14 | = | 4.34 cfs            |
| 24      | (3C) | $24/212$  | X |      | = | 0.81                |
| * 58    | (3F) | $58/212$  | X |      | = | 1.95 (> claim 1.54) |
| 1       | (3K) | $1/212$   | X |      | = | 0.03                |
| <hr/>   |      |           |   |      |   |                     |
| 212 AC. |      |           |   |      |   |                     |

\* Adjust for 3F: (pro rata share > claim)

$$\begin{array}{r} 7.14 \text{ cfs} \\ - 1.54 \text{ (3F)} \\ \hline 5.60 \end{array} \quad (\text{all from 03 right})$$

2<sup>ND</sup> PRO RATA:

|         |      |           |   |      |   |          |
|---------|------|-----------|---|------|---|----------|
| 129     | (3B) | $129/154$ | X | 5.60 | = | 4.69 cfs |
| 24      | (3C) | $24/154$  | " |      | = | 0.87     |
| 1       | (3K) | $1/154$   | " |      | = | 0.04     |
| <hr/>   |      |           |   |      |   |          |
| 154 AC. |      |           |   |      |   |          |

\* full rec'd based on same system as Babington's claim of 6.04 cfs/AC  
Common sprinkler system is used.

PORTIONS OF Ø3 SPLIT:

|                                                |                            |                            |
|------------------------------------------------|----------------------------|----------------------------|
| - 3B<br>129 AC.<br>0.04 AC<br>- 3K<br>4.69 cfs | - 3C<br>24 AC.<br>0.87 cfs | - 3A<br>13 AC.<br>0.57 cfs |
|                                                | - 3F 58 AC.<br>1.54 cfs    |                            |

Total = 7.71 cfs

**MAPS & INFORMATION**

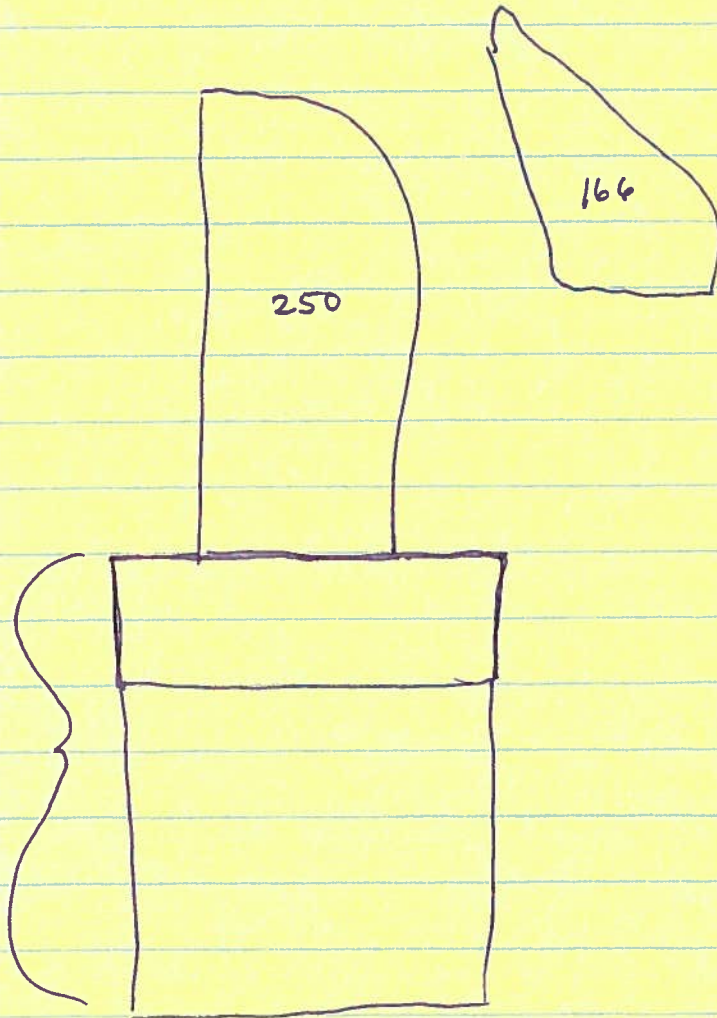
**RELATED TO**

**36-00003 SPLITS**

# Buckeye TRANSFER

4/25/00

$$\begin{aligned} \text{Duty of water} &= 0.004 \\ &= 0.036 \text{ cfs/Ac} \end{aligned}$$



$$\begin{aligned} &36-00004 \\ &4/6 \text{ Ac} \\ &15 \text{ cfs} \end{aligned}$$

P. Decree: 36-00018

$$\begin{aligned} &20 \text{ cfs} / 264 \text{ Ac (South)} \\ &= \cancel{0.076 \text{ cfs/Ac}} \\ &219 \text{ Ac (North)} \\ &\underline{\quad\quad\quad} \\ &483 \text{ Ac} \end{aligned}$$

$$= 0.041 \text{ cfs/Ac}$$

BUCKEYE TRANS.  
36-03 splits

M

## Clelland, Steve

---

**From:** Clelland, Steve  
**Sent:** Tuesday, April 13, 1999 2:20 PM  
**To:** Spencer, Nick  
**Cc:** Clelland, Steve; Merritt, Allen; Tuthill, Dave  
**Subject:** Buckeye acres and settlement

Nick,

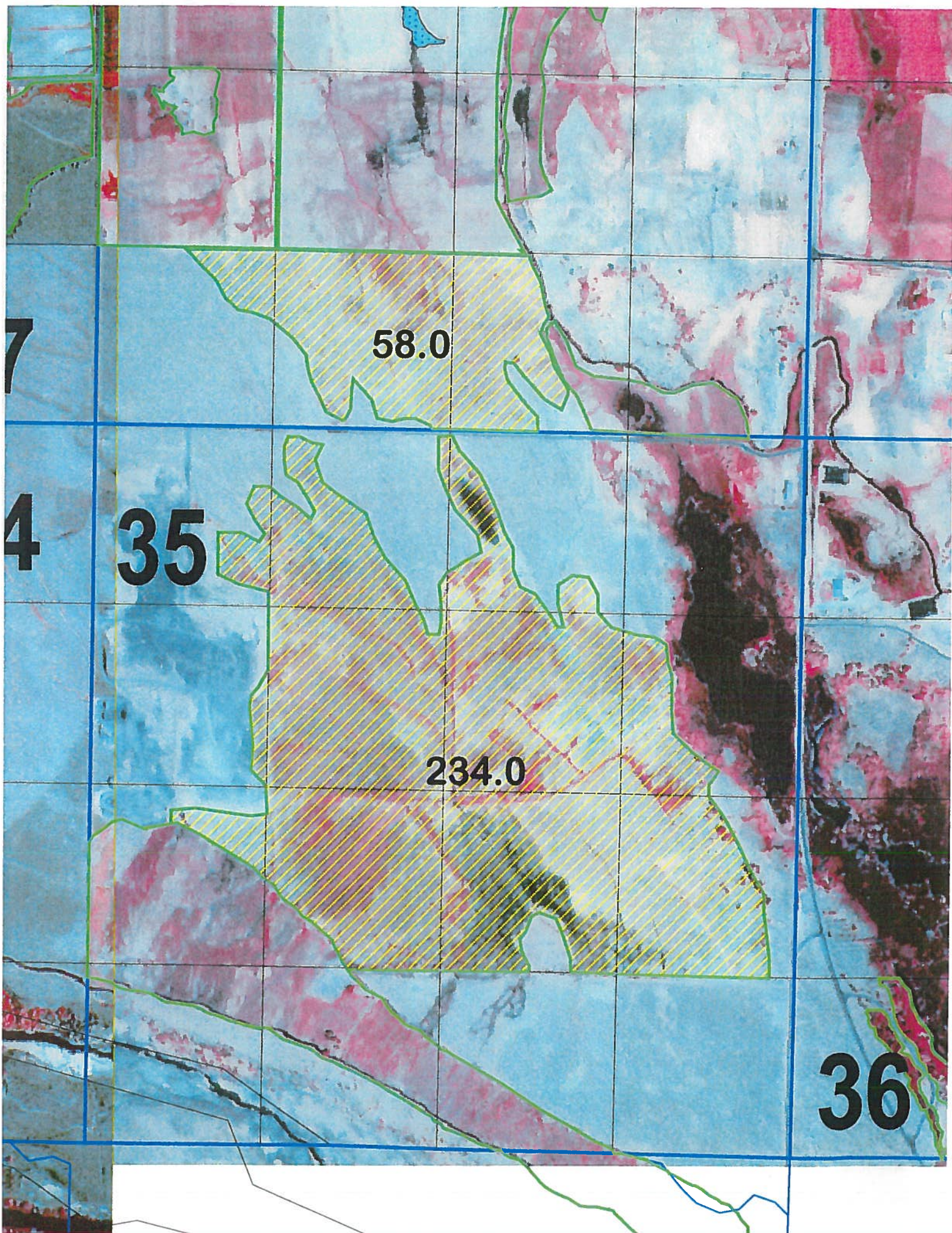
I Just spoke with John Simpson about the acres and issues... He seemed to agree the acres were close to a resolution (320-350 ac.) and I told him my latest GIS edits show about 320 acres. He thought we were trying to come to an agreeable acreage PLUS a duty of water for the full 20 cfs. I told him you and I had discussed this earlier today and concluded the same. He has been trying to call you to confirm this idea. He will contact Brockway to see how the duty numbers work with the 320 acres and I offered to forward these numbers along with this email to see if our staff can live with the duty of water.

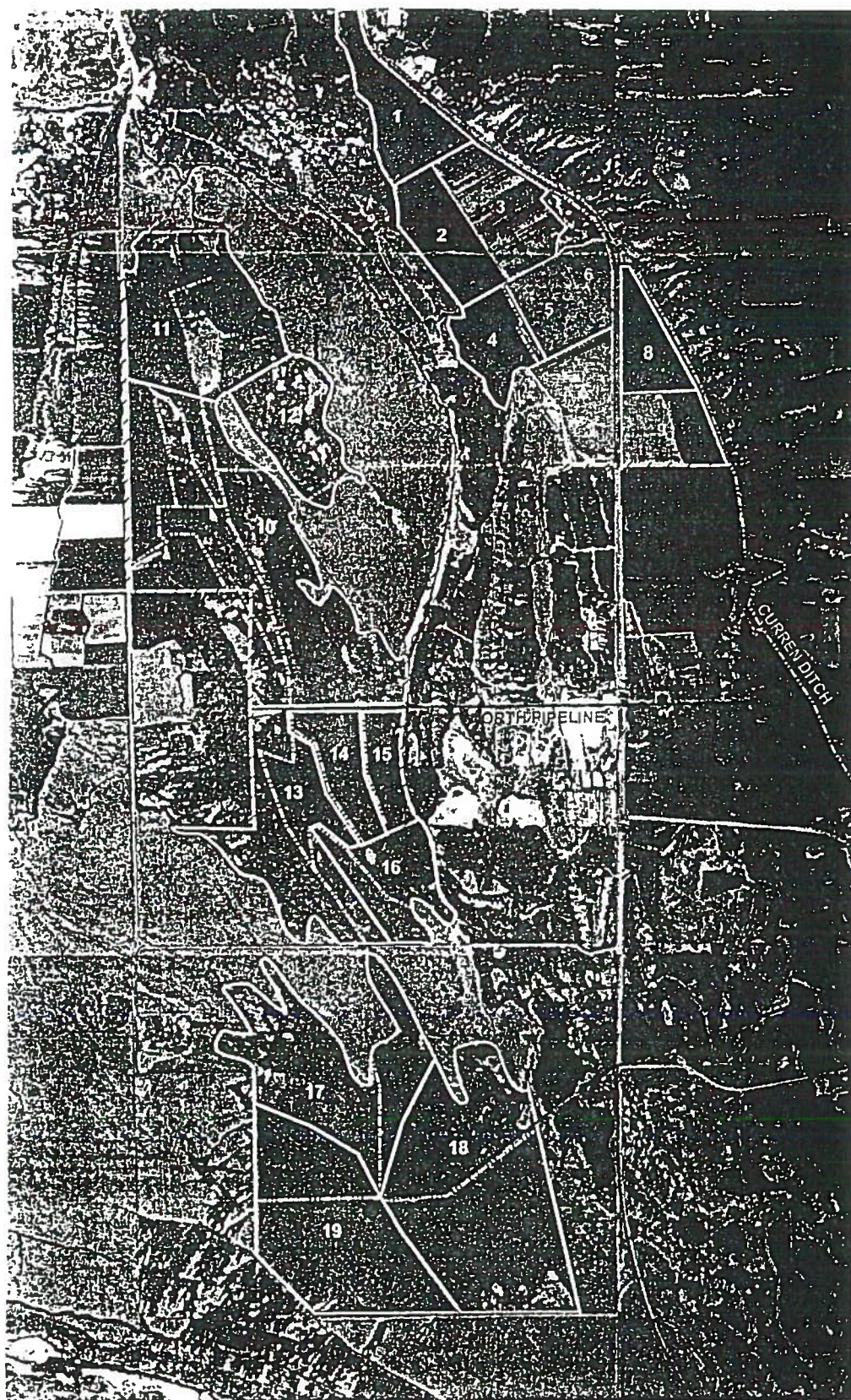
If you get a chance maybe you can give John S. a call...

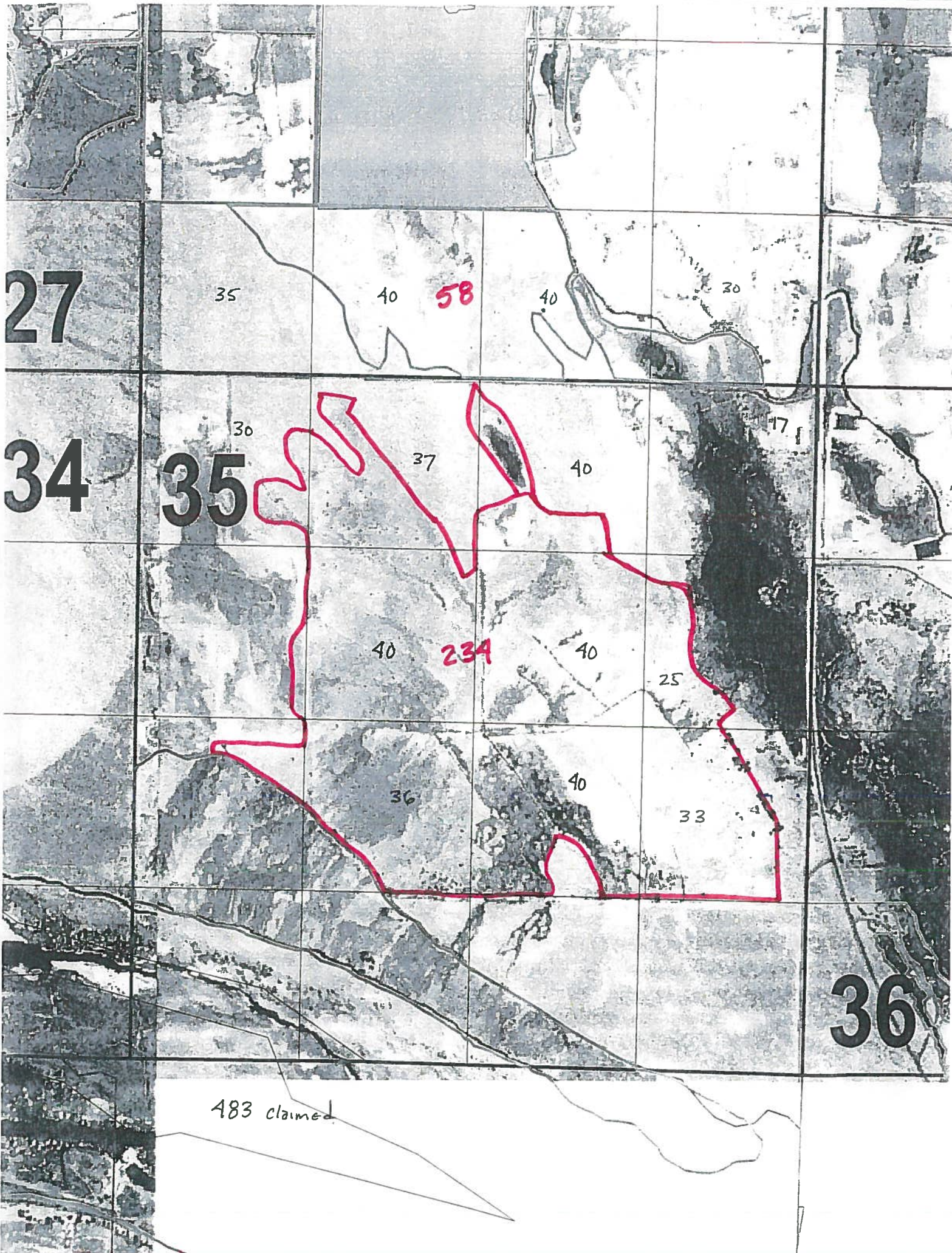
Steve

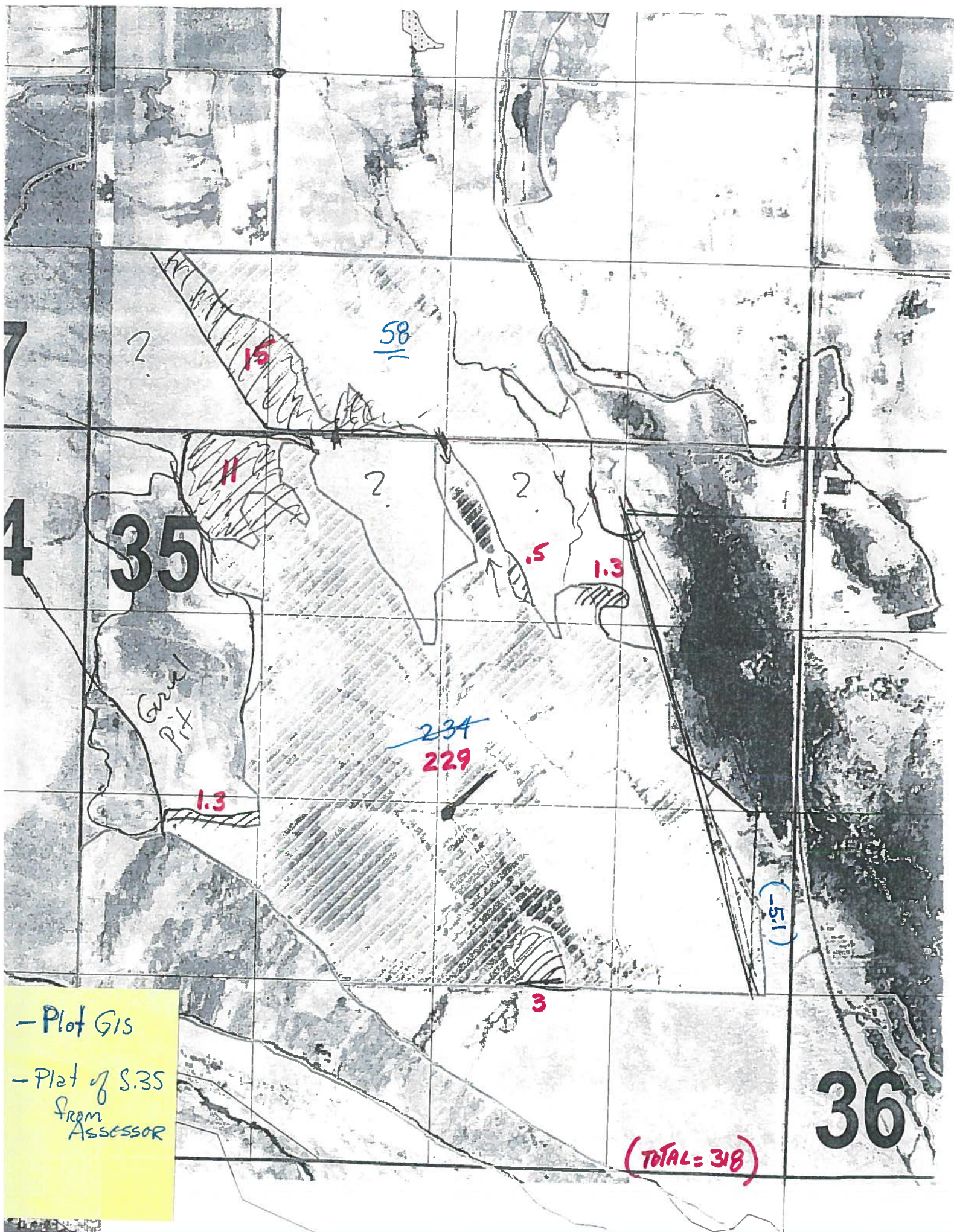
.036 cfs/Ac

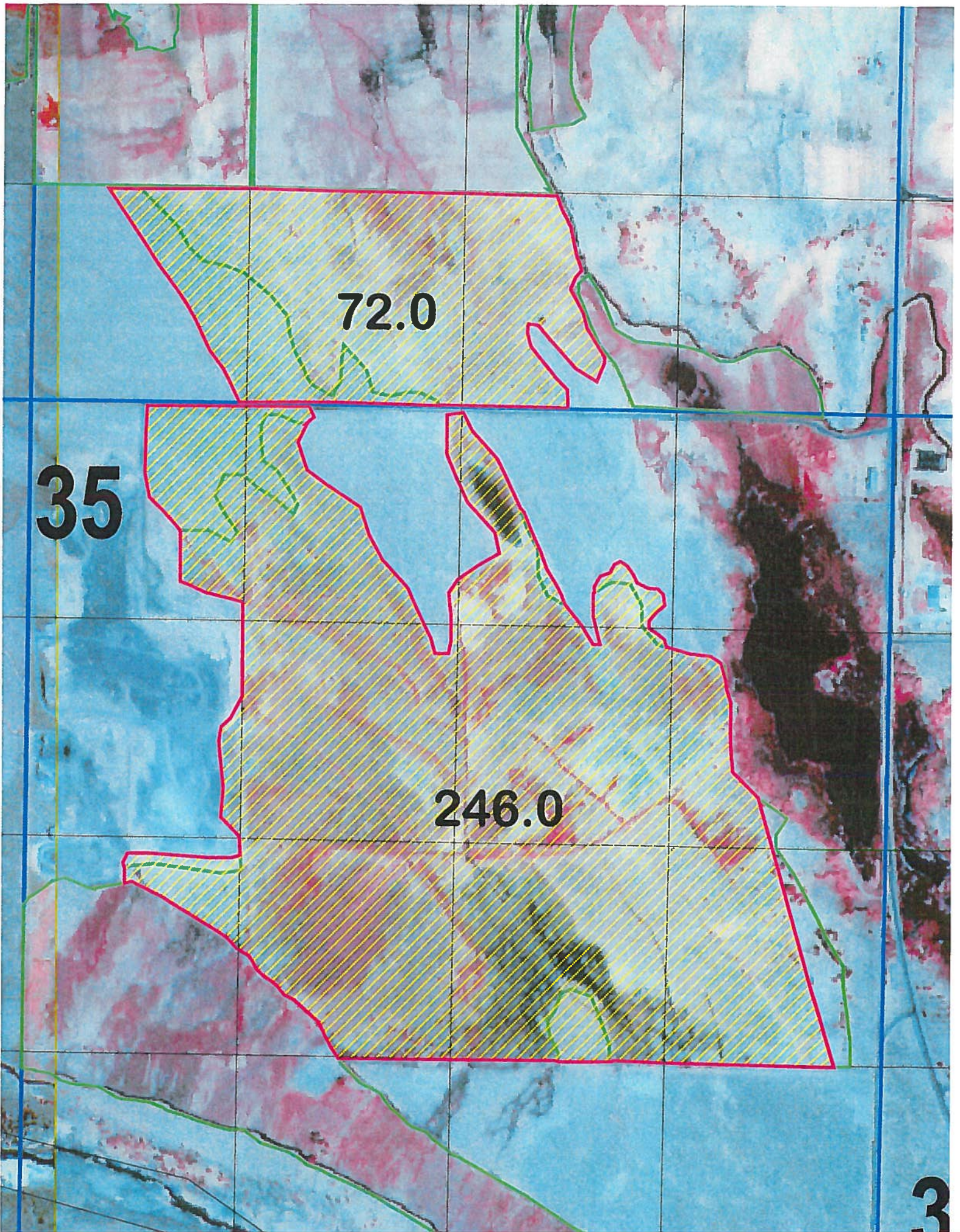
$\times 318 \text{ Ac} = 11.45$

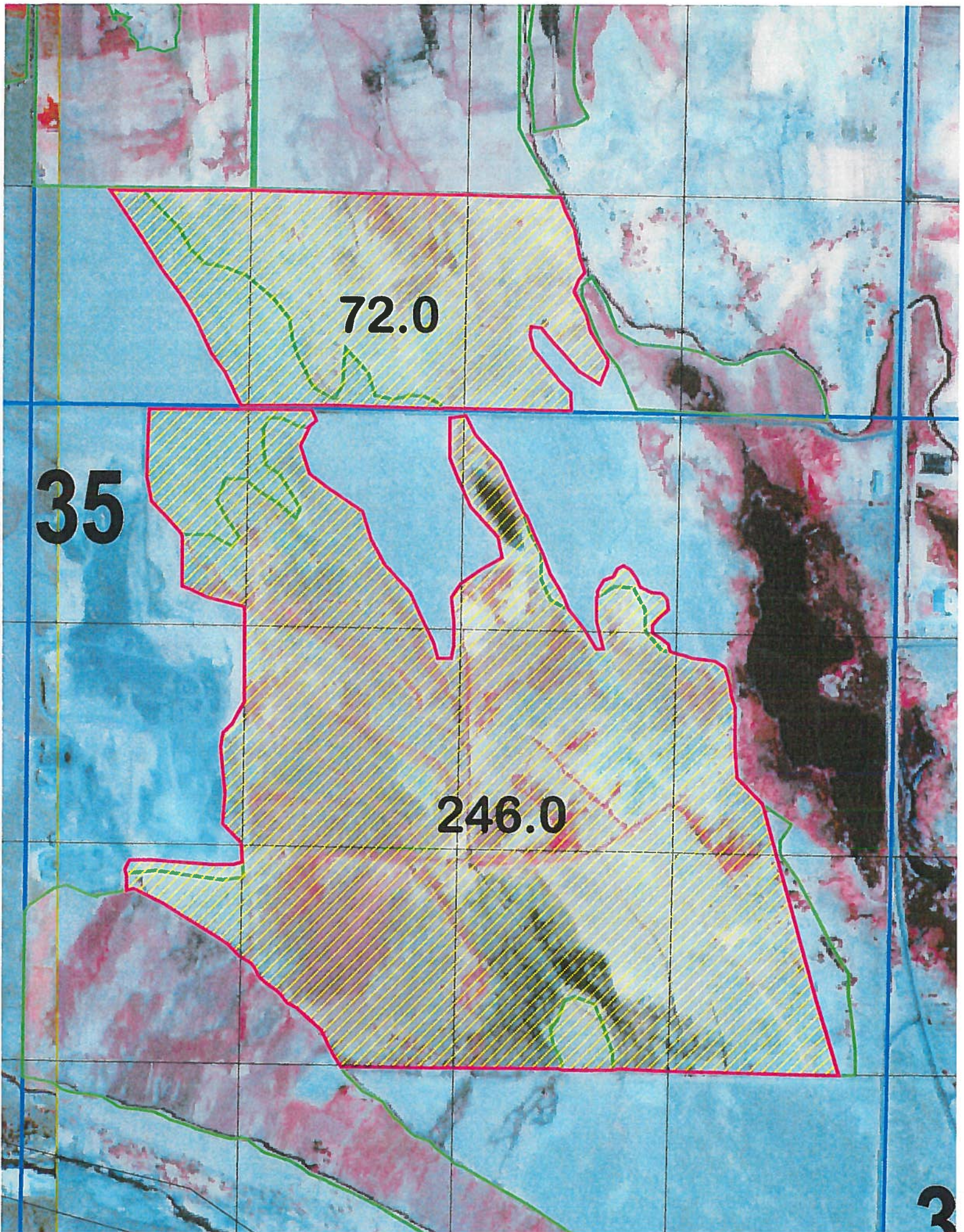












14

13

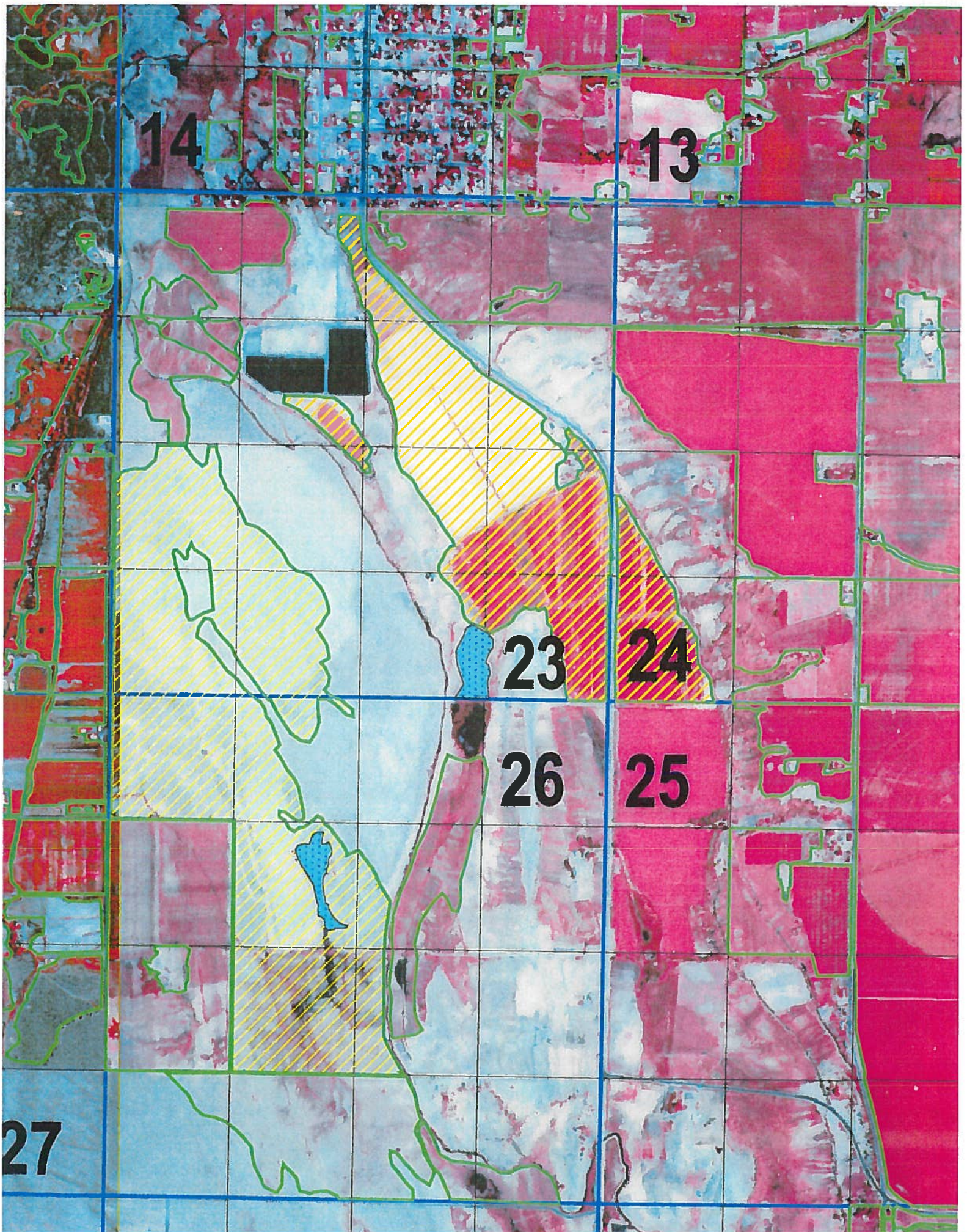
23

24

26

25

27



**36-00004, 36-00018, 36-00015**

**Place of Use**

**Historical Use:** all three water rights have historically been used on the subject property at various times as illustrated by historical data previously submitted.

This historical use is further supported by the three Claims for Water Rights filed by the Rosholt Law Firm.

Had the 36-00004 right been adjudicated at the same time as the 36-00018 and 36-00015, this administrative error of "Place of Use" might have been eliminated.

Place of Use is further supported by the following documents:

Agreement for Sale  
Transfer Deed  
Pasture Lease Agreement

These documents were not discovered prior to the 36-00018 and 36-00015 adjudication, thus the error in "Place of Use" of these two water rights.

18/15

04

Historic  
water  
use

36-00004

when

36-00018/15  
not available

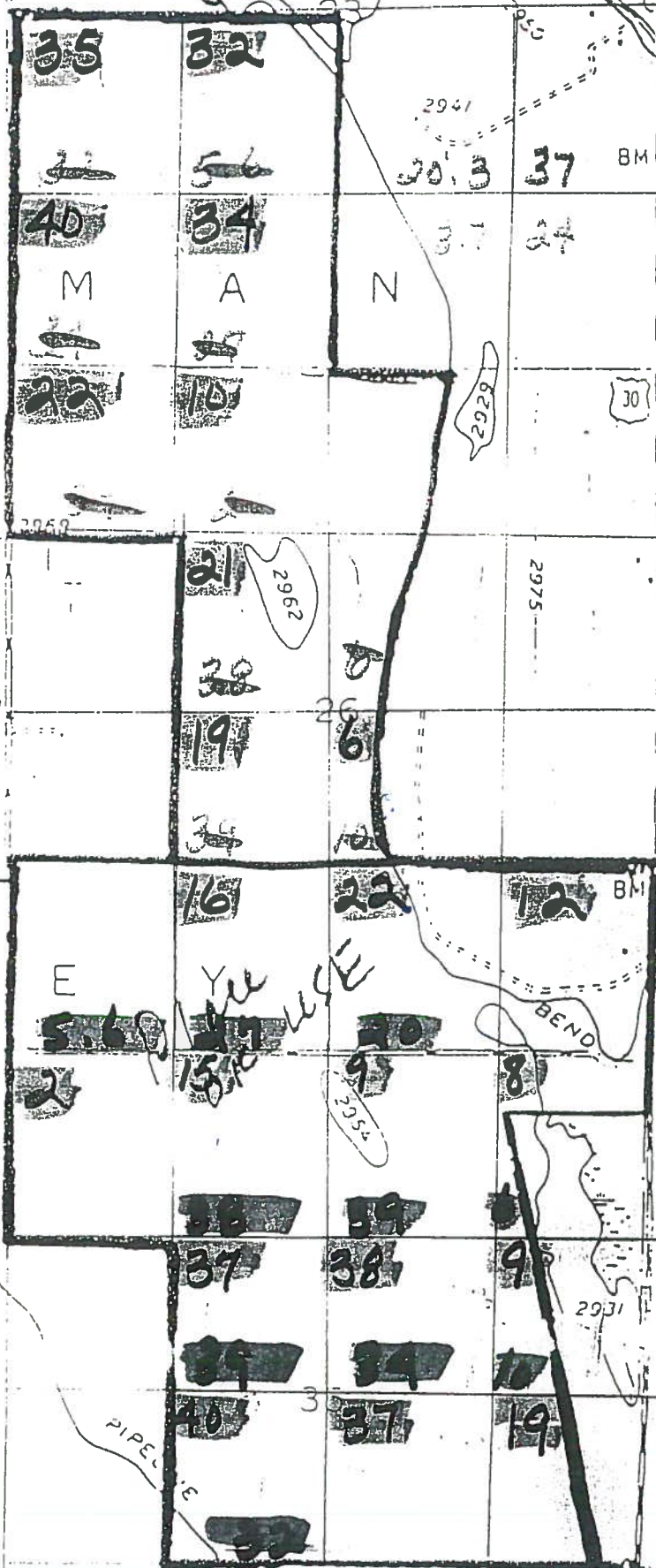
36-00004

→  
leased land

partially  
Decreed  
North Bars  
219 acres

Total  
Decreed  
483 acres  
36-00018  
36-00015

Partially  
Decreed  
South Bars  
264 acres



Place of use

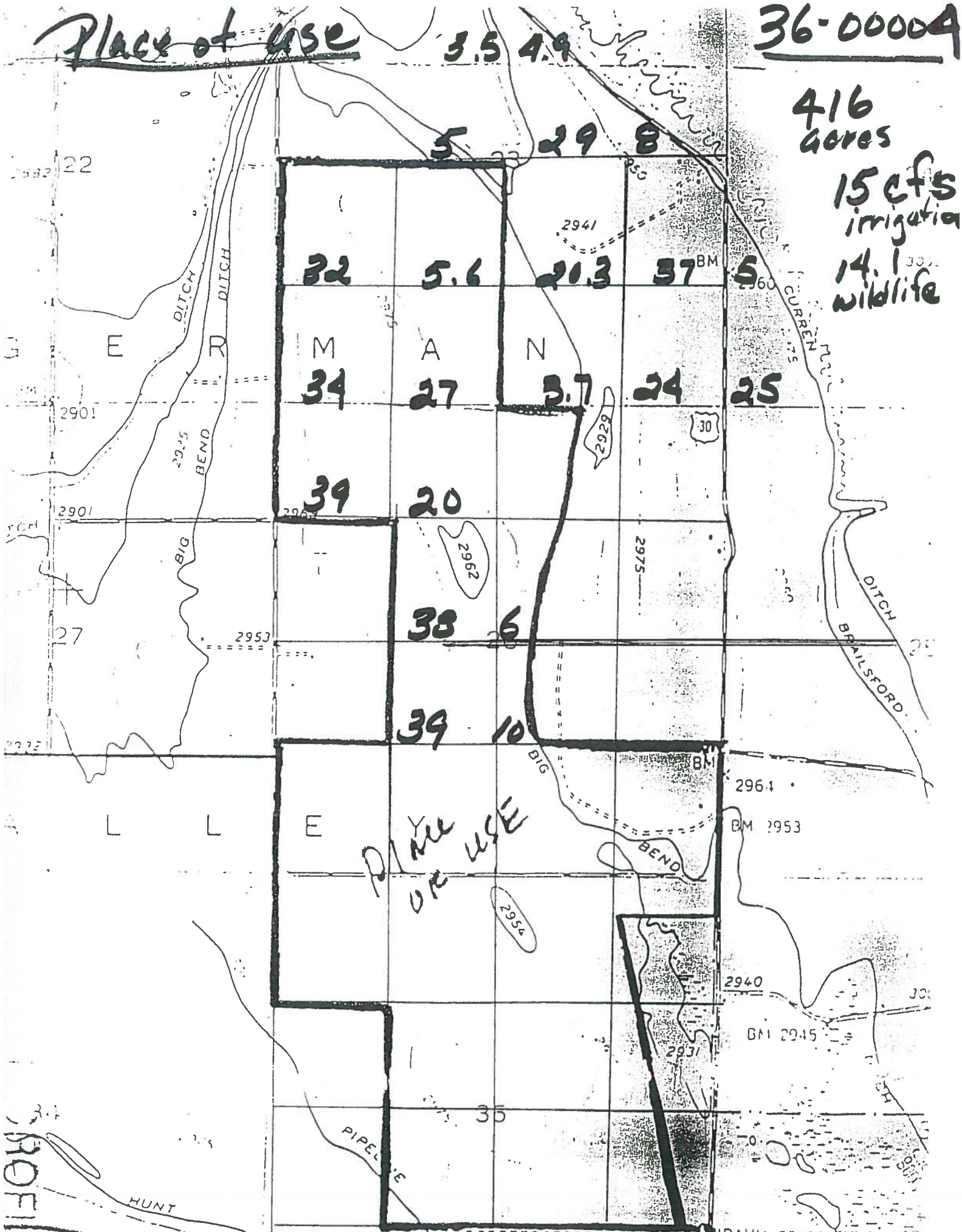
3.5 4.9

36-00004

416  
Acres

15 cfs  
irrigation

14.1  
wildlife



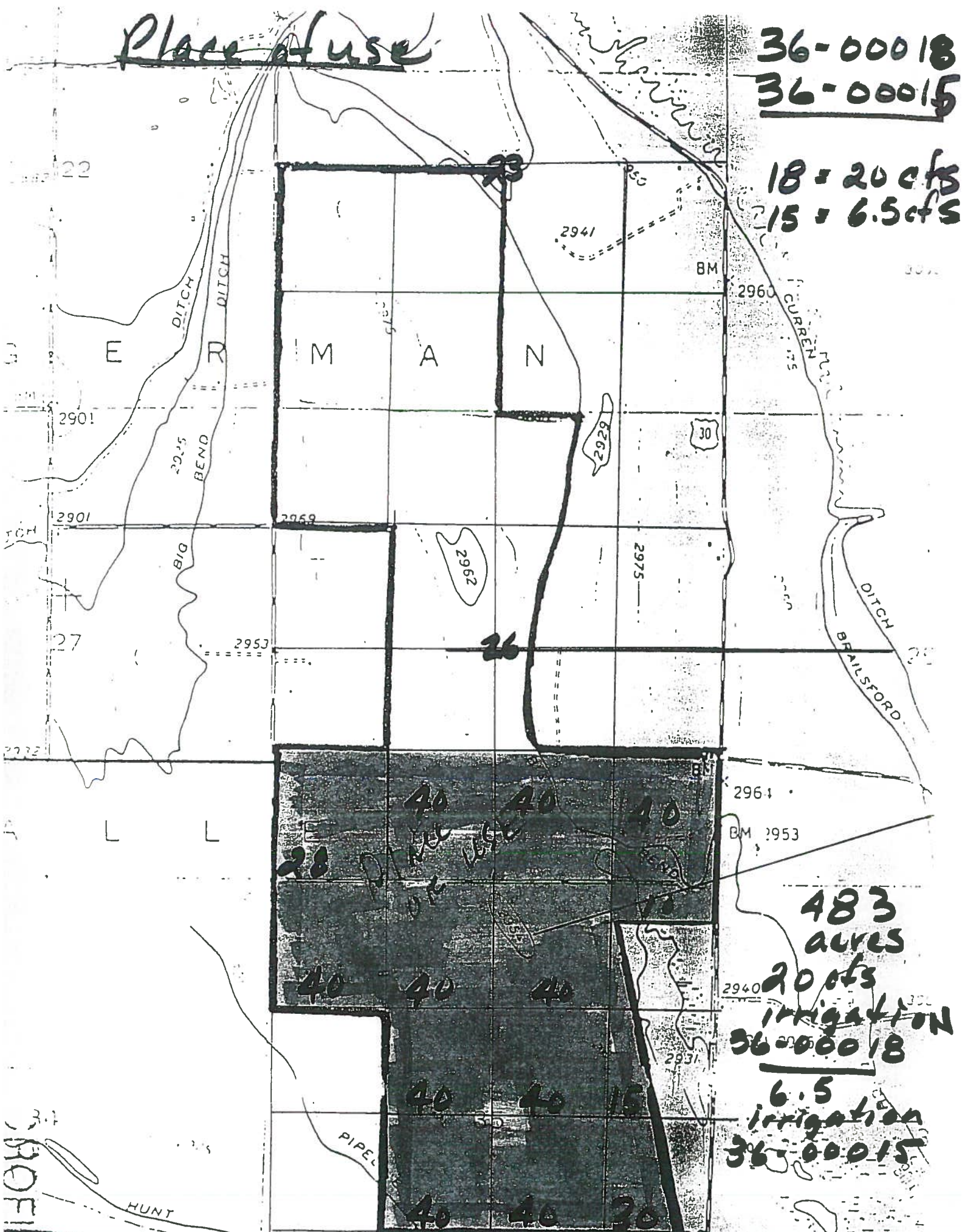
Place of use

36-00018

36-00015

18 = 20 cfs

15 = 6.5 cfs



483  
acres

20 cfs  
irrigation

36-00018

6.5  
irrigation

36-00015

## Points of use

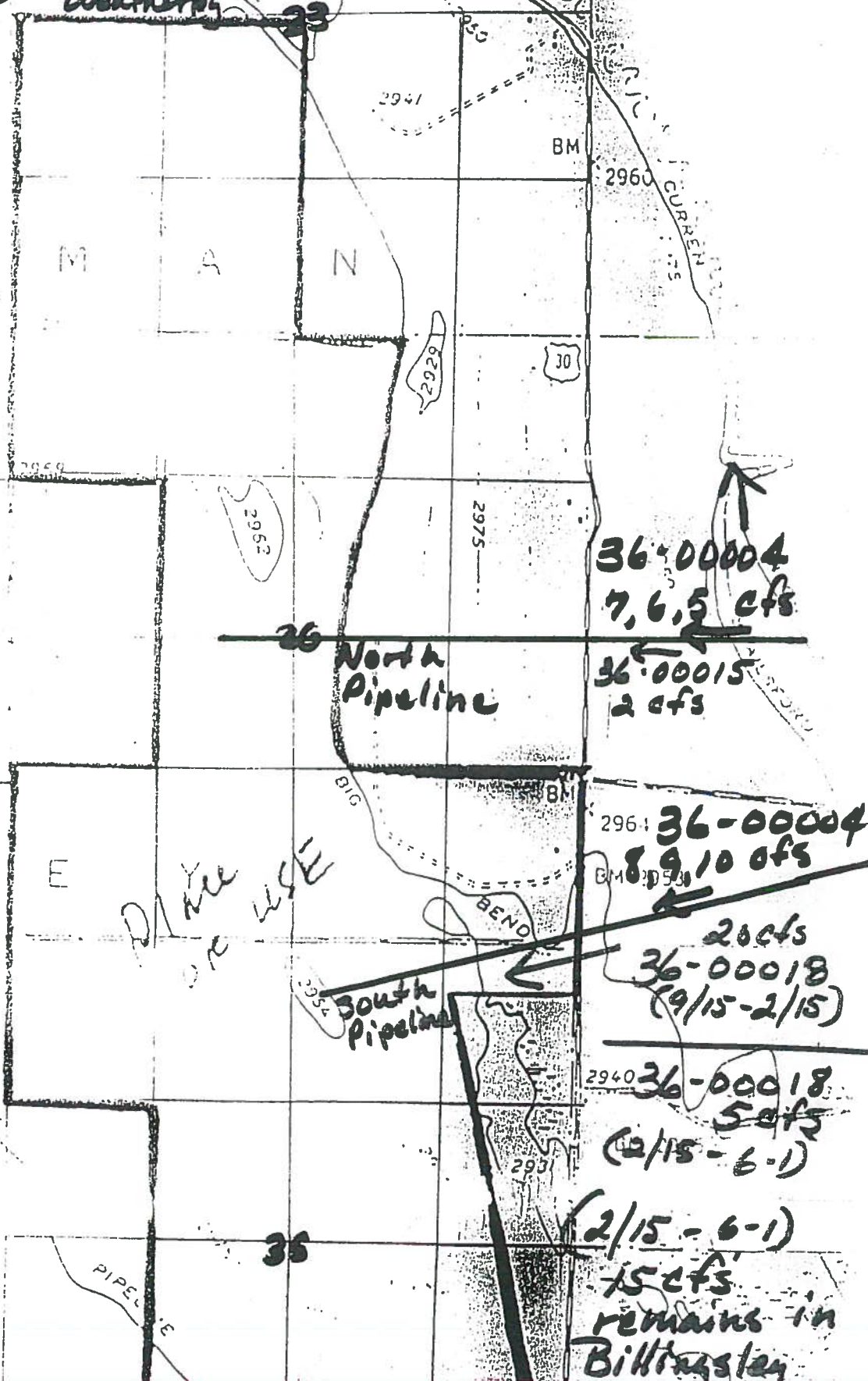
**36-08335**

36-00003H

8, 9, 10, 11

Sept 15 -  
May 15 -

(2/15-5/15) (-245-36-00015)  
Weatherby





**MEMORANDUM**

TO: Dave Tuthill/Nick Spencer  
Via Fax: (208) 327-5400

Via Fax: Steve Clelland/Allen Merritt, IDWR Twin Falls  
(208) 736-3037

Via Fax: Charles Brockway, Sr.  
(208) 736-8506

Via Fax: John Simpson, Attorney for Buckeye Farms, Inc.  
(208) 344-6034

Via Fax: Brian Barsotti, Buckeye Farms, Inc.  
(208) 726-2922

FROM: Pam Wascher, Western Legends LC  
Via Fax: (208) 837-6641

RE: Transfer of Rights 36-00018/36-00015

DATE: April 12, 1999

---

I will be delivering to IDWR in Boise this date, the Exhibit Boards referenced herein.

I would like to summarize in writing the meeting of April 9, 1999. Due to schedules and illness, several parties either were absent or had to leave early. After several hours of negotiations, no resolution was reached. The meeting turned into a debate rather than a cohesive plan for effectuating the transfer.

**The immediate problem: the Judge has stated that a SF5 must be signed by Wednesday, April 14, 1999.**

Discussion was held concerning the criteria for determining this transfer. Chuck Brockway, Sr. inquired as to whether the photos were the sole source of determining irrigated acres. IDWR's response was that unless there were affidavits as to irrigation practices and acres irrigated, the photos would be the information upon which they would base their decision.

There are two factors which IDWR must consider in making their determination as to the Place of Use in this transfer.

1. The criteria in the Idaho Code 42-222, and
2. The historical information concerning acres irrigated.

Idaho Code 42-222 requires the director of IDWR to examine all the evidence and available information, and specifically issues set out in 42-222 must be addressed.

*...the change does not constitute an enlargement in use of the original right.*

*IC 42-1416B(5)(a) "Expanded use" means an increase in the number of acres irrigated, or other additional use, under a valid ground water right without any increase in the rate of diversion or volume of water diverted."*

**Dovel v. Dobson, 122 Idaho 59, 831 P.2d 527 (1992)** The transfer of water to divert 1.6 cfs of water to three separate fields did not result in an enlargement of the existing right even though consumptive use to one of the fields had been forfeited by nonuse.

The fact that the entire 560 acres has not been consistently irrigated over the 90 plus years should not prohibit the transfer. There has been no forfeiture, and there have been periods of time when the entire water right could not be delivered. Engineering studie proved up the duty of water for 483 acres.

Section 35 and portions of Section 26 have historically irrigated 560 acres. There are numerous documents relative to the Weatherby water (36-00015) and the Curran water (36-00018) substantiating this fact:

#### **EXHIBIT BOARD NO. 1**

1. Certificate of Completion of Works (Curran water) dated October 31, 1918, which identifies 520 acres in Section 35 as being the section for place of use of this water.
2. Engineer's Map (1918) showing Section 35 being owned by F. D. Brown showing the portion of Section 35 historically irrigated with the Curran water.
3. Certificate of Completion of Works dated October 31, 1918 issued by Fred A. Wilkie, State Engineer of the State of Idaho showing this Section as being the land to which this water is applied.
4. Deposition of Holder, F. D. Brown, dated March 21, 1918, testifying that the water has been turned into the works and is "running full of water". (Curran water on the 560 acres).

5. Deposition of Witness, Nat Owsley, dated March 21, 1918, describing the capacity of the "works" delivering the Curran water to Section 35.

6. Deposition of Witness A. T. Ingalls, dated March 21, 1918, describing the capacity of the "works" delivering the Curran water to Section 35.

### **EXHIBIT BOARD NO. 2**

1. Indenture Agreement dated April 27, 1911, wherein The Buckeye Land Company, Inc. sells to Henry Bryant, thirty-five (35) inches of water to be used and applied on Lots numbered one and two (1 & 2) of Section Thirty-five (35), said water to be delivered from the Buckeye Ditch.

This document shows that water was historically delivered to the corner of Section 35 in question.

2. 1946 aerial photo showing the ditch system to Section 35 from the Buckeye Ditch.

3. 1964 aerial photo showing the ditch system to Section 35 from the Buckeye Ditch.

### **EXHIBIT BOARD NO. 3**

1. 1946 aerial photo showing the irrigated acres reference in board documents.

2. 1918 Engineer Drawing indicating the location of a pipeline running parallel to Highway 30, which delivered water to the NE1/4 of the NE1/4 of Section 35, which was irrigated with the Weatherby water (IDWR determined that this 1/4 section could not have been irrigated by Weatherby water).

3. 1928 Engineer Drawing showing pipelines and the NE1/4 of the NE1/4 of Section 35 being irrigated by the Weatherby water.

4. Proof of Application of Water to Beneficial Use (Weatherby water) Deposition of Witness, Fred J. Vader, dated June 28, 1928, testifying to the acres being used for irrigation in Section 26 and the NE1/4 of the NE1/4 of Section 35.

5. 1911 Decree showing the Weatherby Water being decreed to the Ormsby Land and Livestock Company (then the owner of the Bar S property) in Section 26 and Section 35.

The total acreage referenced in these documents is 560 in Section 35 and the portions of Section 26 in question. These documents show that historically at least "483 acres" (as Decreed in Water Rights 36-00015 and 36-00018) were irrigated.

**EXHIBIT BOARD NO. 4**

1. 1946 aerial photo with colored arrows showing the North pipeline and the pipeline heading south which irrigated the NE1/4 of the NE1/4 of Section 35.
2. Photos of the pipeline from the North pipeline used to irrigate the NE1/4 of the NE1/4 of Section 35.

**EXHIBIT BOARD NO. 5**

1. Photos of the ditch system from the "North Bar S" in Section 26 to the South quarter sections.
2. Photos of the old gates and pipeline used to irrigate the south portion of Section 26.

**EXHIBIT BOARD NO. 6**

A number of documents support the use of 18/15 water on Section 35 and Section 26.

1. 1932 New International Decree.
2. Agreement for Sale of Spring Valley Ranch, Inc.
2. Corporate Warranty Deed.
3. Transfer Deed.

Idaho Code 42-222 further states:

*...the change is consistent with the conservation of water resources within the state of Idaho.*

Idaho Code 42-1501 references minimum stream flow and the Legislative Purpose. Buckeye Farms, Inc. is complying with this statute by way of allowing a major portion of their water rights to be diverted into Billingsley Creek for five (5) months of each year, and they will use these waters after it has been beneficially used in Billingsley Creek.

*... is in the public interest as defined in section 42-203A(5)*

- (a) this transfer will not reduce water supply
- (b) water supply is sufficient
- (c) application is made in good faith
- (d) financial resource is not an issue
- (e) this transfer will not conflict with public interest
- (f) this transfer complies with the state's conservation of water resources.

Again, Buckeye's allowing water to flow through Billingsley Creek before their use of their water rights, certainly supports this criteria of ID 42-222 as to public interest.

*...significantly affect the agricultural base of the local area*

This transfer does not negatively affect the agricultural base.

*...The transfer of a right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby.*

This criteria does not apply in that this transfer is not to the use of stored water for irrigation purposes.

This transfer is only asking for 483 acres to be placed where historically 560 acres have been irrigated, yet this statute would allow more acres to be irrigated with stored water.

### CONCLUSION

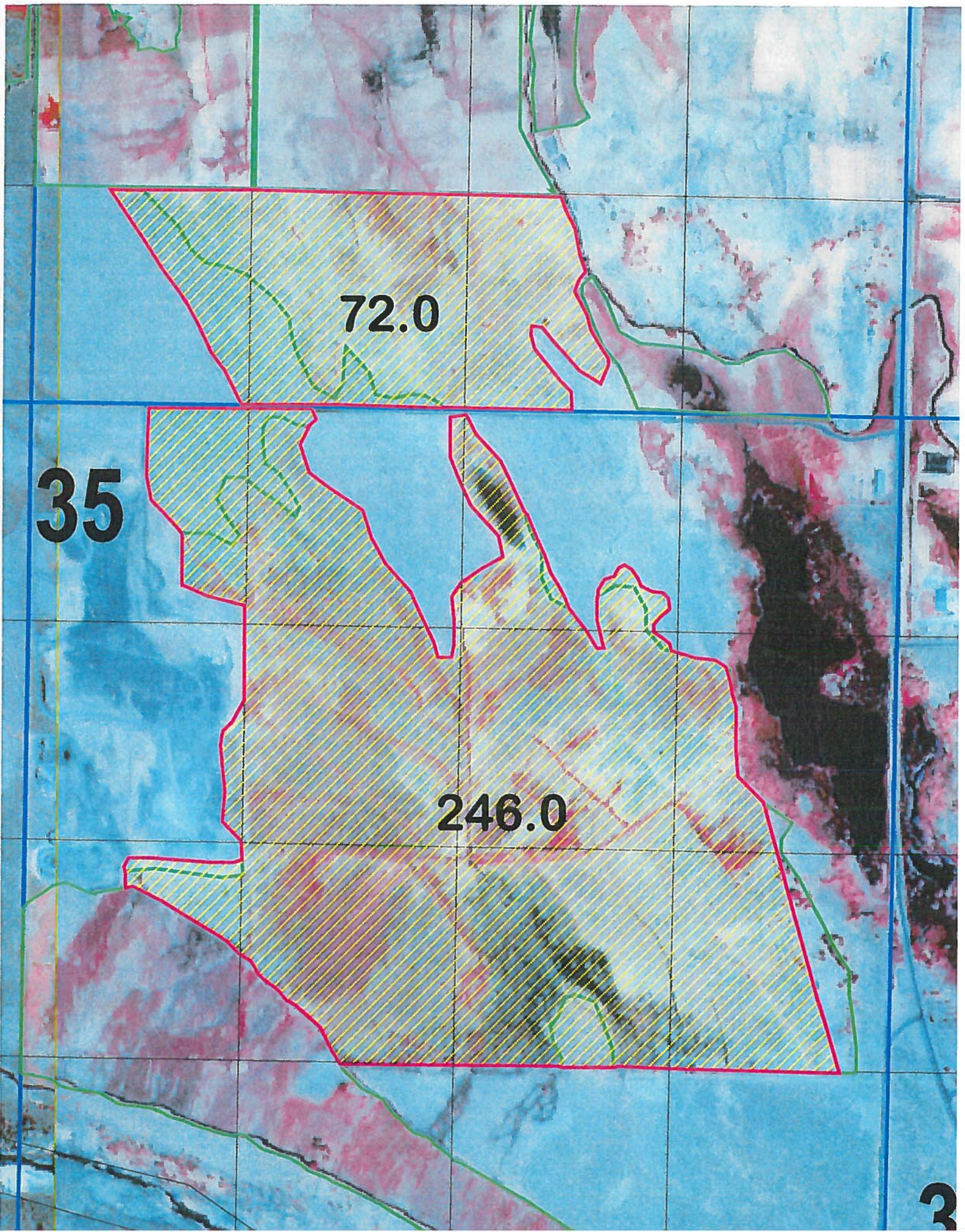
In our prior meeting in Twin Falls with Dave Tuthill, Nick Spencer, et al, the transfer was initially discussed, as well as historical irrigation practices. Issues of the protestants were also discussed. The issues of the protestants have been addressed. Buckeye Farms, Inc. and Western Legends LC (who was originally one of the protestants, and has withdrawn its protest), with the assistance of Chuck Brockway, Sr., is ready,

willing and able to obtain the withdrawal of all protests from protestants, having addressed their concerns immediately upon IDWR's approval of this transfer.

IDWR has stated from the inception of the Settlement Negotiations of 36-00004 that the removal of the 36-00015 and 36-00018 rights from the North Bar S must take place prior to the decreeing the 36-00004 right.

- All parties have complied with the requirement of the IDWR. Substantial evidence as to the historical use in Section 35 and Section 26 has been presented.
- IDWR stated that if Buckeye could prove that 483 acres were available in the South Bar S that either an administrative transfer or statutory transfer could take place, based on the fact that had the 04 right been adjudicated at the same time as the 15/18 right, this error in "place of use" would not have occurred.
- Time is of the essence in the conclusion of this matter due to the ruling of the Judge in the 36-00004. All parties to this adjudication have settled their differences, and IDWR needs to uphold their oral commitments in decreeing this 04 water right.
- Photos presented showing irrigated acreage are 5 examples of 1 day in 1 year, out of 90 plus years of irrigation on this property. These photos were presented to support IDWR's resolution to correcting an error in place of use.

IDWR has a fiduciary duty to complete this transfer based on their oral representations made to Buckeye Farms, Inc. and Western Legends LC., and based on the substantial evidence which more than adequately supports the Idaho Code requirements of this transfer.



5-3-92

## CONVEYANCE LOSS - WORSTELL

| REACH  | LENGTH<br>(FT) | AVE<br>WIDTH<br>(FT) | SEEPAGE<br>(FT/DAY) | WORSTELL<br>LOSS<br>(CFS) | DELIVERY<br>(CFS) | DELIVERY<br>LEFT<br>(CFS) | LOSS<br>FACTOR | DELIVERY<br>LOSS<br>(CFS) | FLOW<br>(CFS) |
|--------|----------------|----------------------|---------------------|---------------------------|-------------------|---------------------------|----------------|---------------------------|---------------|
| 1      | 1600           | 10.0                 | 2.00                | 0.40                      | 0.06              | 31.06                     | 0.0130         | 0.00                      | 32.80         |
| 2      | 200            | 10.0                 | 2.00                | 0.05                      | 20.69             | 31.00                     | 0.0016         | 0.30                      | 32.34         |
| 3      | 1700           | 10.0                 | 2.00                | 0.43                      | 1.00              | 10.31                     | 0.0417         | 0.06                      | 11.60         |
| 4      | 1500           | 10.0                 | 2.00                | 0.38                      | 6.25              | 9.31                      | 0.0407         | 0.61                      | 10.17         |
| 5      | 6300           | 3.0                  | 2.00                | 0.48                      | 3.06              | 3.06                      | 0.1561         | 0.77                      | 3.54          |
| 6      | 0              | 0.0                  | 0.00                | 0.00                      | 0.00              | 0.00                      | 0.0000         | 0.00                      | 0.00          |
| 7      | 0              | 0.0                  | 0.00                | 0.00                      | 0.00              | 0.00                      | 0.0000         | 0.00                      | 0.00          |
| 8      |                |                      |                     | 0.00                      |                   | 0.00                      | 0.0000         | 0.00                      | 0.00          |
| 9      |                |                      |                     | 0.00                      |                   | 0.00                      | 0.0000         | 0.00                      | 0.00          |
| 10     |                |                      |                     | 0.00                      |                   | 0.00                      | 0.0000         | 0.00                      | 0.00          |
| 11     |                |                      |                     | 0.00                      |                   | 0.00                      | 0.0000         | 0.00                      | 0.00          |
| 12     |                |                      |                     | 0.00                      |                   | 0.00                      | 0.0000         | 0.00                      | 0.00          |
| 13     |                |                      |                     | 0.00                      |                   | 0.00                      | 0.0000         | 0.00                      | 0.00          |
| 14     |                |                      |                     | 0.00                      |                   | 0.00                      | 0.0000         | 0.00                      | 0.00          |
| 15     |                |                      |                     | 0.00                      |                   | 0.00                      | 0.0000         | 0.00                      | 0.00          |
| 16     |                |                      |                     | 0.00                      |                   | 0.00                      | 0.0000         | 0.00                      | 0.00          |
| 17     |                |                      |                     | 0.00                      |                   | 0.00                      | 0.0000         | 0.00                      | 0.00          |
| 18     |                |                      |                     | 0.00                      |                   | 0.00                      | 0.0000         | 0.00                      | 0.00          |
| 19     |                |                      |                     | 0.00                      |                   | 0.00                      | 0.0000         | 0.00                      | 0.00          |
| 20     |                |                      |                     | 0.00                      |                   | 0.00                      | 0.0000         | 0.00                      | 0.00          |
| TOTALS | 11300          |                      |                     | 1.74                      | 31.06             |                           |                | 1.74                      |               |

REACH = SECTION OF CHANNEL

LENGTH = LENGTH OF REACH, THE CHANNEL CAN BE DIVIDED INTO EQUAL LENGTH REACHES  
OR ACTUAL LENGTHS BETWEEN DELIVERY POINTS

AVE WIDTH = AVERAGE TOP WIDTH OF REACH

SEEPAGE = SOIL SEEPAGE RATE OF REACH

WORSTELL LOSS = CONVEYANCE LOSS IN REACH BASED ON WORSTELL METHOD

DELIVERY = TOTAL DELIVERIES IN REACH

DELIVERY LEFT = SUM(DELIVERIES OF CURRENT AND REMAINING REACHES)

LOSS FACTOR = WORSTELL LOSS/DELIVERY LEFT

DELIVERY LOSS = SUM(LOSS FACTORS OF CURRENT AND PREVIOUS REACHES) X DELIVERY,  
REPRESENTS THE LOSSES ASSIGNED TO THE DELIVERIES IN THE REACH

FLOW = TOTAL FLOW AT BEGINNING OF EACH REACH

\* THESE RIGHTS SHARE THIS PORTION:

36-00015

36-00011B

36-00189A

36-00011C

36-11142

36-00011D

36-00198A

36-00033B

36-15157

36-00033C

36-00033D

36-00033E

$$0.61 \div 12 = 0.05 \text{ cfs per right}$$

COPY

⊗ Some rights will not have their  
conveyance loss identified in Deed.

APR 19 1999

Department of Water Resources  
Southern Region

1977 FEB -8 AM 11: 11

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     | ) | <b>SPECIAL MASTER’S REPORT</b>   |
|                | ) |                                  |
| Case No. 39576 | ) | <b>FINDINGS OF FACT AND</b>      |
|                | ) | <b>CONCLUSIONS OF LAW</b>        |
|                | ) |                                  |
|                | ) | <b>FOR WATER RIGHT 36-00003B</b> |
|                | ) |                                  |

## I. FINDINGS OF FACT

A notice of claim was filed for this water right pursuant to I.C. § 42-1409 (1990). The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. The *Director's Report* contained a recommendation or abstract for the elements of this water right.

All objections, except for season of use, were resolved at trial. After the trial, the court entered *Findings of Fact and Conclusions of Law* (July 29, 1998), incorporated by reference herein. As to season of use, IDWR has informed the court that it intends to recommend February 15 through November 30 as the season of use in the Hagerman Valley in a forthcoming Director's Report. All parties, including the claimants, will be able to object to that recommendation when the Director's Report is filed. Until that time, the court will recommend February 15 through November 30 for the irrigation use in this water right, with the understanding that the season of use for the irrigation claims are not final.

## II. CONCLUSIONS OF LAW

Therefore, based on the file and record herein, IT IS RECOMMENDED that this water right be decreed with the elements as set forth in the *Partial Decree Pursuant to I.R.C.P. 54(b) for Water Right 36-00003B*.

DATED: FEB - 8 1999

**FRITZ X. HAEMMERLE**  
Special Master  
Snake River Basin Adjudication

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 )  
Case No. 39576 )

PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR

Water Right 36-000038

1999 FEB -8 AM 11:11  
DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILED

NAME AND ADDRESS: KINGSTON PROPERTIES L.P.  
477 SHOUP AVE, STE 207  
IDAHO FALLS, ID 83402

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 7.16 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER  
PURPOSES SHALL NOT EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 09/10/1884

POINT OF DIVERSION: T07S R13E S11 SESENE Within Gooding County

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE   | PERIOD OF USE  | QUANTITY |
|-------------------------------|------------------|----------------|----------|
|                               | Irrigation       | 02-15 TO 11-30 | 7.16 CFS |
|                               | Stockwater       | 01-01 TO 12-31 | 0.05 CFS |
|                               | Fish Propagation | 01-01 TO 12-31 | 7.16 CFS |

|               |                       |           |                       |
|---------------|-----------------------|-----------|-----------------------|
| PLACE OF USE: | Irrigation            |           | Within Gooding County |
|               | T07S R13E S27         | NWSW 9.0  | SWNW 23.0             |
|               | S28 LOT 04 (SWNE) 9.0 | SENE 25.0 |                       |
|               |                       | NESE 40.0 | LOT 05 (NWSE) 23.0    |
|               | 129.0 Acres Total     |           |                       |
|               | Stockwater            |           | Within Gooding County |
|               | T07S R13E S27         | NWSW      | SWNW                  |
|               | S28 LOT 04 (SWNE)     | SENE      | SENE                  |
|               |                       | NESE      | LOT 05 (NWSE)         |
|               | Fish Propagation      |           | Within Gooding County |
|               | T07S R13E S27         | SWNW      |                       |
|               | S28                   | NESE      | SWNE                  |
|               |                       | SENE      |                       |

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

THE QUANTITY OF WATER DECREED FOR THIS RIGHT FOR STOCKWATER  
USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

RECOMMENDATION

FEB - 8 1999

SPECIAL MASTER

Barry Wood  
Administrative District Judge  
Interim Presiding Judge of the  
Snake River Basin Adjudication

1999 FEB -8 AM 11: 11

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_

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 )

CERTIFICATE OF MAILING

Case No. 39576 )

Water Right(s): 36-00003B

CERTIFICATE OF MAILING

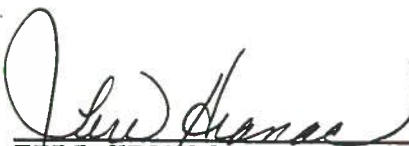
I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on February 08, 1999, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR  
PO BOX 83720  
BOISE, ID 83720-0098

STATE OF IDAHO  
Represented by:  
CLIVE STRONG  
NATURAL RESOURCES  
DEP AG OFFICE OF ATTY GEN  
STATEHOUSE MAIL  
BOISE, ID 83720-0010  
Phone: 208-334-2400

DAVID O. KINGSTON  
KINGSTON PROPERTIES L.P.  
Represented by:  
PATRICK D. BROWN  
812 SHOSHONE ST E  
TWIN FALLS, ID 83301  
Phone: 208-735-8812

CERTIFICATE OF MAILING

  
TERI HRANAC  
Deputy Clerk

PAGE 1  
02/08/99

1999 FEB -8 AM 11:11

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO

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  
Case No. 39576

)  
)  
)  
)  
)  
NOTICE OF ISSUANCE OF  
SPECIAL MASTER'S  
RECOMMENDATION

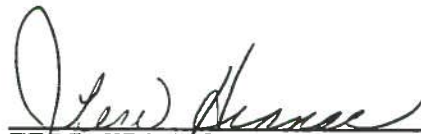
Water Right(s): 36-00003B

On February 08, 1999, Special Master FRITZ X HAEMMERLE issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED February 08, 1999.



TERI HRANAC  
Deputy Clerk

May 26, 1998

**NOTE TO FILE**

FROM: V.Hancock

CLAIM NO: >36-00004 36-00047 36-15094 36-10446 36-00003B  
36-00003L 36-00077E

MADE COPIES OF ABOVE FILES FOR MATT HOWARD FOR BEEMAN & HOFSTETTER

**SUPPLEMENTAL REPORT REGARDING CLAIM TO  
WATER RIGHT NO. 36-00003B**

In Re SRBA  
Twin Falls County Civil Case No. 39576  
Sub-Case No. 36-00003B

**DRAFT**

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

April 17, 1998

**DRAFT**

The Director of the Idaho Department of Water Resources (IDWR) submits this Supplemental Report Regarding Claims to Water Right No. 36-00003B in response to the Special Master's order of March 11, 1998., in accordance with section 42-1412(4), Idaho Code, and in accordance with Administrative Order 1. This supplemental director's report was prepared under the supervision of Karl J. Dreher, Director, and David R. Tuthill Jr., Adjudication Bureau Chief for IDWR.

### **ELEMENTS OF WATER RIGHT No. 36-00003B AT ISSUE**

This supplemental report addresses the elements of these claims that are in dispute pursuant to the objections to the original Director's Report for this right. The elements of water right number 36-00003B at issue are quantity and purpose of use.

### **LEGAL PRINCIPLES UNDERLYING RECOMMENDATION OF WATER RIGHT NUMBER 36-00003B**

IDWR's recommendations of the Water Rights are based upon its application of the following legal principles. These principles are not described for purposes of legal argument, but simply for the purpose of describing the basis of IDWR's recommendations for these water rights. If IDWR's understanding of these principles is erroneous or inaccurate, the recommendations made in this report may change.

1. Previous private adjudication decrees evidence a legal right to the use of water; however, they are not the only evidence, nor are they conclusive evidence.
2. Parties to private adjudications and those in privity are bound by such adjudication.
3. A standard diversion rate of 0.02 cfs per acre for irrigation is set by statute. Idaho Code §§ 42-202, 42-220
4. An irrigation right cannot be decreed for more than 0.02 cfs per acre absent a showing that a greater quantity is necessary. Idaho Code §§ 42-202, 42-220
5. A reasonable conveyance loss can be decreed as part of a water right.

6. The purpose of use of a water right is that purpose for which the water is intended to be used at the inception of the right, or as subsequently changed pursuant to I.C. § 42-222.

**FACTUAL FINDINGS UNDERLYING RECOMMENDATION  
OF WATER RIGHT WATER RIGHT NO. 36-00003B**

**A. GENERAL FINDINGS.**

**New International Mortgage Bank v. Idaho Power Co., et al, Decree.**

Water Right 36-00003 was at issue in New International Mortgage Bank v. Idaho Power Co., et al, In Equity No. 1602. The right was decreed for 20 cfs appurtenant to a 1440 acre place of use. The decree in this private adjudication was issued based upon the pleadings and stipulations of fact. A copy of the relevant portions of IDWR's copy of the Decree in this case is attached to this Report as Exhibit A. A certified copy of this report is on file with the SRBA District Court and can be compared to this copy. The original decreed right has been split several times as the property appurtenant to the decreed right has been divided and sold. Water right no. 36-00003B is a portion of the right decreed in the New International Mortgage decree. A chart showing the various splits of the original right and the claimed and recommended acreage and quantities is attached as Exhibit B

A portion of water right 36-00019 also decreed in the New International Mortgage decree is appurtenant to the land claimed under water right no 36-00003B. Water right 36-00019 has not been claimed in the SRBA.

**B. FINDINGS REGARDING ELEMENTS AT ISSUE.**

**1. Quantity of Water Used**

**A. Quantity for Irrigation**

The original Notice of Claim claims a quantity of 7.16 cfs for irrigation on 129 acres, or 0.06 cfs per acre (equivalent to 3 inches per acre).

The quantity decreed for right no. 36-00003 in the New International Mortgage decree is 20 cfs. The decreed place of use for this right contains 1440 acres. Using the decreed rate of diversion and the decreed place of use, the per acre rate of diversion is approximately 0.014 cfs per acre (equivalent to 0.7 inches per acre). The decreed per acre diversion rate for the 13 acres claimed and recommended under water right no 36-00003B equals 1.8 cfs.

More than 0.02 cfs per acre is necessary to irrigate the claimed place of use. Using the claimant's gravity irrigation system in place in July of 1990, 3.25 cfs, or 0.025 inches per acre (equivalent to 1.25 inches per acre). This quantity was calculated using the Hubble methodology. The details of the Hubble methodology are described in the Report Regarding Evaluation of Irrigation Diversion Rates filed in the SRBA court under subcase number 36-00003A on July 1, 1996.

#### **B. Quantity for Conveyance Loss**

In addition to 3.25 cfs necessary for irrigation, an additional 1.75 cfs is necessary to cover the conveyance losses associated with this right. Conveyance loss for this right was calculated using the Worstell method. The specifics behind the Worstell method are explained in the Report Regarding Evaluation of Irrigation Diversion Rates filed with the SRBA in this subcase on July 1, 1996. The conveyance loss was calculated for the entire ditch and then proportioned out to the various users on the ditch based upon the size of their respective deliveries.

#### **2. Purpose of Use**

The Notice of Claim for water right 36-00003B claims 7.16 cfs for fish propagation. The Notice of Claim states that recreation ponds were created in the 1920s and that commercial fish propagation began in the 1970s.

Fish propagation constitutes an additional use of water not covered under the original decreed water right no. 36-00003B. This additional use requires either a separate beneficial use right or a licensed right depending on when the fish propagation use began.

### **RECOMMENDATIONS FOR WATER RIGHT WATER RIGHT NO. 36-00003B**

#### **1. Quantity for Irrigation**

IDWR recommends a quantity of 5.0 cfs for irrigation on 129 acres, or 0.04 cfs per acre (equivalent to 2 inches per acre). This 5.01 cfs is the total of 3.25 cfs for irrigation (0.025 cfs per acre) and 1.75 cfs for conveyance loss.

**2. Purpose of Use**

IDWR does not recommend fish propagation under the 1884 priority date claimed for water right no. 36-00003B. Fish propagation was not a contemplated use under the New International Mortgage Decree. This use requires a separate water right.

**3. Water Right Description.**

Based upon the foregoing, IDWR recommends that this water right be decreed as shown in the original Director's Report for water right 36-00003B on file with the SRBA court.

AJ0749NP  
No. R36-00003B

IDAHO DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIM PROFILE REPORT  
(REGIONAL)

DATE: 11/25/97  
PAGE: 1

| OWNER<br>CODE    | NAME & ADDRESS                                                                            | PRIORITY<br>DATE | WATER USE                              | USE PERIOD<br>FROM TO                     | DIVERSION<br>RATE                | DIVERSION<br>VOLUME |
|------------------|-------------------------------------------------------------------------------------------|------------------|----------------------------------------|-------------------------------------------|----------------------------------|---------------------|
| C                | KINGSTON PROPERTIES LP<br>477 SHOUP AVE STE 207<br>IDAHO FALLS ID 83402<br>(208) 522-2365 | 09/10/1884       | IRRIGATION<br>STOCKWATER<br>STOCKWATER | 03-15 11-15<br>03-15 11-15<br>11-16 03-14 | 5.00 CFS<br>0.05 CFS<br>1.80 CFS |                     |
| TOTAL DIVERSION: |                                                                                           |                  |                                        |                                           | 5.00 CFS                         |                     |
| D                | ROBERT B GARDNER                                                                          |                  |                                        |                                           |                                  |                     |
| D                | BARBARA GARDNER<br>PO BOX 41<br>HAGERMAN ID 83332<br>(208) 837-4902                       |                  |                                        |                                           |                                  |                     |

Water Source: BILLINGSLEY CREEK

Tributary to: SNAKE RIVER

Stage: DECREED

Point(s) of Diversion: T07S R13E S11

SESENE

GOODING County

Place of use Legal Description for: IRRIGATION

|     |     |    |   | NE |    |       |    | NW |    |    |    | SW |    |    |    | SE |    |    |       |             |       |
|-----|-----|----|---|----|----|-------|----|----|----|----|----|----|----|----|----|----|----|----|-------|-------------|-------|
| T   | R   | S  | : | Lt | Ac | Lt    | Ac | Lt | Ac | Lt | Ac | Lt | Ac | Lt | Ac | Lt | Ac | Lt | Ac    | :           | SUM   |
| 07S | 13E | 27 | : |    |    |       |    |    |    |    |    |    |    |    |    |    |    |    |       | :           | 32.0  |
| 07S | 13E | 28 | : |    |    | 04-09 | 25 | :  |    |    |    |    |    |    |    |    |    | 40 | 05-23 | :           | 97.0  |
|     |     |    |   |    |    |       |    |    |    |    |    |    |    |    |    |    |    |    |       | TOTAL ACRES | 129.0 |

Place of use Legal Description for: STOCKWATER

|     |     |    |   | NE |    |      |    | NW |    |    |    | SW |    |    |    | SE |    |    |      |   |  |
|-----|-----|----|---|----|----|------|----|----|----|----|----|----|----|----|----|----|----|----|------|---|--|
| T   | R   | S  | : | Lt | Ac | Lt   | Ac | Lt | Ac | Lt | Ac | Lt | Ac | Lt | Ac | Lt | Ac | Lt | Ac   | : |  |
| 07S | 13E | 27 | : |    |    |      |    |    |    |    |    |    |    |    |    |    |    |    |      | : |  |
| 07S | 13E | 28 | : |    |    | 04-S | S  | :  |    |    |    |    |    |    |    |    |    | S  | 05-S | : |  |

Place of use location for STOCKWATER is the same location as described for: STOCKWATER

POU County: GOODING

Other Rights: NONE

Conditions of Approval:

- N05 - THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE  
- SHALL NOT EXCEED 13,000 GALLONS PER DAY.
- N08 - THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR  
- STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL  
- USE.

Remarks: EXP WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.  
STOCKWATER, 200 RANGE CATTLE.

AJ0749NP  
No. R36-00003B

IDAHO DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIM PROFILE REPORT  
(REGIONAL)

DATE: 11/25/97  
PAGE: 2

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|        |                 |                |            |                       |
|--------|-----------------|----------------|------------|-----------------------|
| Dates: | Exam Made Date: | Verified Date: | 11/25/1997 | Objection Filed Date: |
|--------|-----------------|----------------|------------|-----------------------|

|       |                            |                        |
|-------|----------------------------|------------------------|
| Misc: | Water District Number: 36A | Field Inspection Flag: |
|       |                            | Presumption Flag:      |

Comments: Date: 08/05/1992 User-ID: WORSTELL Subject: COPIED FROM REMARKS UNDER THE 1932 DECREE, WE ARE CLAIMING FISH PROP. AS ANOTHER USE UNDER THE ORIGINAL PRIORITY DATE FOR IRRIGATION. PONDS WERE DEVELOPED IN THE 1920'S FOR RECREATION USE. COMMERCIAL TROUT PRODUCTION STARTED IN THE EARLY 1970'S. THERE ARE 12 PONDS 18' WIDE X 150' LONG X 3-4' DEEP. THE UPPER PONDS CAN GET WASTEWATER FROM THE PONDS CLAIMED UNDER A36-00003J IF BARBARA GARDNER SO ALLOWS. STOCK DRINK FROM DITCHES ANYWHERE ON THE PROPERTY. THIS CLAIM REPRESENTS ROBERT'S PORTION. A36-00003J REPRESENTS MY PORTION OF DECREE...FILED SEPERATELY.

Date: 09/21/1992 User-ID: THORNTON Subject: NOTICE OF ERROR FLAG I ADDED AN "A" FLAG.

Date: 10/19/1992 User-ID: CHRISTEN Subject: RESPONSE TO NOE CLAIMANT WANTED ADDITIONAL USES. NOT RECOMMENDED. NO CHANGES MADE AT THIS TIME. KKC 10-19-1992.

Date: 10/21/1992 User-ID: CHRISTEN Subject: CHANGE TO CLAIM 10-21-92 CHANGED SEASON OF USE FOR STOCKWATER TO AGREE WITH IRR SEASON.KKC

Date: 02/19/1993 User-ID: SCHULTZ Subject: ADDED NEW ATTORNEY RECEIVED NOTICE OF APPEARANCE FROM HEPWORTH NUNGESTER LEZAMIZ 2/10/93. CLAIM VERIFIED 10/21/92. DID NOT REVERIFY ANY PART OF CLAIM.

Date: 01/16/1996 User-ID: TBACKLUN Subject: NAME CHANGE OWNERSHIP CHANGE WITH 42-1409(7). SF3 WAS SENT TO COURT. BOTH SIGNATURES (GARDNER & KINGSTON) WERE ON THE FORMS.

Date: 06/20/1996 User-ID: DSHAFF Subject: ATTORNEY ADD ADDED ATTORNEY TO RECORD WITH NOA RECEIVED 6/19/96

Date: 04/03/1997 User-ID: TFAWCETT Subject: NAME CHANGE OWNERSHIP CHANGED DAVID KINGSTON TO KINGSTON PROPERTIES PER BARGAIN AND SALE DEED.

Date: 11/25/1997 User-ID: SCLELLAN Subject: COPIED FROM REMARKS

AJ0749NP  
No. R36-00003B

IDAHO DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIM PROFILE REPORT  
(REGIONAL)

DATE: 11/25/97  
PAGE: 3

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Comments: Date: 11/25/1997 User-ID: SCLELLAN Subject: COPIED FROM REMARKS  
WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.  
A DIVERSION RATE OF 3.25 CFS AT THE FIELD HEADGATE IS  
RECOMMENDED FOR THE PLACE OF USE DESCRIBED ABOVE.  
1.75 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE  
LOSSES IN DELIVERY OF THIS RIGHT.

Date: 11/25/1997 User-ID: SCLELLAN Subject: REFORMAT  
REFORMAT  
ADDED STOCKWATER POU TO MATCH IRRIGATION POU

Audit: 11/25/97 SCLELLAN

# SPLIT REVIEW ANALYSIS - 36-00003

## A Review of the SRBA Claims and Recommendations of 36-00003 Portions.

November 14, 1997 by Steve Clelland

| CLAIM<br>PART<br>36-00003 | NAME                    | "A"<br>RECORD |       | DIRECTOR'S<br>REPORT |       | "R"<br>RECORD<br>OR<br>DECREE |       | COMMENTS<br>OR<br>REMARKS                  |
|---------------------------|-------------------------|---------------|-------|----------------------|-------|-------------------------------|-------|--------------------------------------------|
|                           |                         | CFS           | ACRE  | CFS                  | ACRE  | CFS                           | ACRE  |                                            |
| A                         | Rea                     | 1.60          | 13.0  | 0.41                 | 13.0  | 0.45                          | 13.0  | Stock use.                                 |
| B                         | Kingston                | 7.16          | 129.0 | 5.00                 | 129.0 | 5.00                          | 129.0 | Stock use.<br>Fish use. <sup>1</sup>       |
| C                         | Babington               | 0.30          | 10.0  | 0.30                 | 10.0  | 0.30                          | 10.0  | Trial set: 12/17/97                        |
| D                         | Harbison                | 0.24          | 10.0  | 0.24                 | 2.0   | 0.24                          | 2.0   | Late Obj. filed                            |
| E                         | Vernon                  | 0.20          | 10.0  | 0.20                 | 5.0   | 0.20                          | 6.0   | SF5 - 10/21/97                             |
| F                         | Simcoe                  | 0.80          | 40.0  | 0.80                 | 40.0  | 0.80                          | 40.0  |                                            |
| G                         | Lloyd                   | 0.40          | 20.0  | 0.12                 | 3.0   | 0.19                          | 3.0   | Special Mstr. Rec.                         |
| H                         | Buckeye Farms           | 12.0          | 455.0 | 11.9                 | 290.0 | 11.9                          | 290.0 | Partial Decree <sup>2</sup>                |
| J                         | <B. Gardner><br><Split> | 0             | 0     | 0.46                 | 15.0  | 0                             | 0     | Split into K-L-M<br>by Ownership<br>Change |
| K                         | B. Gardner              | 0.71          | 10.0  | 0                    | 0     | 0.03                          | 1.0   |                                            |
| L                         | Babington               | 1.97          | 27.5  | 0                    | 0     | 0.43                          | 14.0  | Stock use.<br>Fish use. <sup>3</sup>       |
| M                         | Simcoe                  | 1.32          | 18.5  | 0                    | 0     | 0                             | 0     | This Claim<br>Disallowed. <sup>4</sup>     |
| Totals                    |                         | 26.70         | 743   | 19.43                | 507   | 19.54                         | 508   | See Footnote <sup>5</sup>                  |

\* Listings for Diversion Rates reflect the irrigation flow rates only: No Stockwater rates are listed.

<sup>1</sup> Commercial fish production did not begin as a use until the early 1970's. Not a decreed use, Not recommended.

<sup>2</sup> Partial Decree issued for this right on March 6, 1997.

<sup>3</sup> Commercial fish production did not begin as a use until the early 1970's. Not a decreed use, Not recommended.

<sup>4</sup> 36-00003M if reinstated as a valid right would apply to 18.5 acres.

<sup>5</sup> Total Acres would increase to 526.5 acres if right 36-00003M is reinstated. Based on rates shown, remaining flow portion of this right is 0.46 cfs; some or all of this amount may be associated with the disallowed right 36-00003M.

**SUBCASE NO. 36-00003B - CLASS 2**

|                               | <b>CLAIM<br/>(8/18/1988)</b>                             | <b>AMENDED CLAIM</b> | <b>RECOMMENDATION</b>                                                                                                   | <b>OBJECTION</b>                                                              |
|-------------------------------|----------------------------------------------------------|----------------------|-------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| <b>NAME</b>                   | Robert & Barbara<br>Gardner *                            | N/A                  | Robert & Barbara<br>Gardner **                                                                                          | Robert & Barbara<br>Gardner                                                   |
| <b>BASIS OF CLAIM</b>         | Decree                                                   |                      | Decree                                                                                                                  |                                                                               |
| <b>SOURCE</b>                 | Billingsley Creek                                        |                      | Billingsley Creek                                                                                                       |                                                                               |
| <b>QUANTITY</b>               | 7.160 cfs                                                |                      | 5.00 cfs                                                                                                                | XX - requests 7.16 cfs                                                        |
| <b>PRIORITY DATE</b>          | 9/10/1884                                                |                      | 9/10/1884                                                                                                               |                                                                               |
| <b>PURPOSE OF USE</b>         | Irrigation<br>Stockwater<br>Fish Propagation             |                      | Irrigation<br>Stockwater                                                                                                | XX - requests that fish<br>propagation and wildlife<br>preservation be added. |
| <b>PERIOD OF USE</b>          | Irr.: 3/15- 11/1<br>S.W.: 1/1 - 12/31<br>F.P.: 8/1 - 4/1 |                      | Irr.: 3/15 - 11/15<br>(re-formatted on<br>4/4/1997 to Irrigation<br>Season)<br>S.W.: 3/15 - 11/15<br>S.W.: 11/16 - 3/14 | XX - requests year<br>round for all uses.                                     |
| <b>POINT OF<br/>DIVERSION</b> | T07S R13E S11<br>T07S R13E S27<br>T07S R13E S28          |                      | T07S R13E S11                                                                                                           |                                                                               |
| <b>PLACE OF USE</b>           | T07S R13E S27<br>T07S R13E S28<br>129.0 acres            |                      | T07S R13E S27<br>T07S R13E S28<br>129.0 acres                                                                           |                                                                               |

|         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                         |
|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| remarks | <p>"Under the 1932 Decree, we are claiming fish propagation as another use under the original priority date for irrigation. Ponds were developed in the 1920's for recreation use. Commerical trout production started in the early 1970's. There are 12 ponds 18' wide X 150" long X 3-4' deep. The upper ponds can get wastewater from the ponds claimed under A36-00003A if Barbara Gardner so allos. Stock drink from ditches anywhere on the property."</p> |  | <p>"Water is delivered through the Buckeye Ditch. A diversion rate of 3.25 cfs at the field headgate is recommended for the place of use described above. 1.75 cfs of this right is limited to use for conveyance losses in delivery of this right."</p> | <p>XX - requests that all remarks after "Buckeye Ditch" be deleted.</p>                                                                                                                                                 |
| Other   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |                                                                                                                                                                                                                                                          | <p>XX - "The application of commercial propagation of fish for the acquiring of a water right when the water right has been appropriated under the 1932 Decree and since 1920 for the private propagation of fish."</p> |

\* Notice of Change of Ownership - Barbara Gardner filed for husband's portion and sold the water right to David Kingston.

\*\* NCAP filed 4/22/97 - David Kingston to Kingston Properties L.P.

COPY

Kingston Properties, L.P.

✓ ~~101~~  
HEPWORTH, LEZAMIZ & HOHNHORST,  
CHARTERED  
133 Shoshone St. North  
P.O. Box 389  
Twin Falls, ID 83303-0389  
Telephone: (208)734-7510

RECEIVED

NOV 20 1997

Department of Water Resources

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

Case No. 39576

\*\*\*\*\*

*again 11-21-97* *No obi*  
*done 2-10-93!*  
)  
) Subcase No(s) 36-00003B, 36-00003J, &  
) 36-00003K  
) *no prefix record*  
) **NOTICE OF APPEARANCE**

*only  
Kingston  
prop.*

\*\*\*\*\*

COMES NOW the firm of Hepworth, Lezamiz & Hohnhorst, Chartered, and  
appears on behalf of claimants for the water right number listed above.

Dated this 18 day of November, 1997.

HEPWORTH, LEZAMIZ & HOHNHORST,  
CHARTERED

By: *ja*

Patrick D. Brown

## CERTIFICATE OF MAILING

The undersigned, a resident attorney of the State of Idaho, with offices at 133 Shoshone St. North, P.O. Box 389, Twin Falls, Idaho 83303, and one of the attorneys for the claimants in this matter, certifies that he caused to be mailed a copy of the above and foregoing NOTICE OF APPEARANCE on the 18 day of November, 1997, to:

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

IDWR Document Depository  
P. O. Box 83720  
Boise, ID 83720-0098

  
\_\_\_\_\_  
Patrick D. Brown

(\KINGSTON.NOA)\lm

CLAIM NUMBERS 36-00003B

DATE 10/9/97

AGENT JR

TRANSFER NUMBER \_\_\_\_\_

OBJECTION FILED \_\_\_\_\_

TOTAL ACRES FROM RECOMMENDATION 129

GEOGRAPHIC INFO SYSTEM 129

| RIGHT<br>NO |     |     |     | NE |    |                      |       | NW |    |      |    | SW |     |    |    | SE   |       |    |        |
|-------------|-----|-----|-----|----|----|----------------------|-------|----|----|------|----|----|-----|----|----|------|-------|----|--------|
|             | TNS | RNG | SEC | NE | NW | SW                   | SE    | NE | NW | SW   | SE | NE | NW  | SW | SE | NE   | NW    | SW | SE     |
| RECOM       | 07S | 13E | 27  |    |    |                      |       |    |    | 23   |    |    | 9   |    |    |      |       |    | 32     |
| GIS         |     |     |     |    |    |                      |       |    |    | 23.5 |    |    | 9.4 |    |    |      |       |    | 32.9   |
| RECOM       | 07S | 13E | 28  |    |    | 9                    | 25    |    |    |      |    |    |     |    |    | 40   | 23    |    | 97     |
| GIS         |     |     |     |    |    | 4.62<br>4.84<br>9.44 | 24.74 |    |    |      |    |    |     |    |    | 39.7 | 22.05 |    | 95.98  |
| RECOM       |     |     |     |    |    |                      |       |    |    |      |    |    |     |    |    |      |       |    | 128.88 |
| GIS         |     |     |     |    |    |                      |       |    |    |      |    |    |     |    |    |      |       |    |        |
| RECOM       |     |     |     |    |    |                      |       |    |    |      |    |    |     |    |    |      |       |    |        |
| GIS         |     |     |     |    |    |                      |       |    |    |      |    |    |     |    |    |      |       |    |        |

UPDATED

POLYGON #

UPDATED

B36-DBPOU.DBF

563, 564 ✓

B36-DBPOD.DBF

454 ✓

POLYGON CREATED ON 604 ( )

ATTRIBUTES OF B36-POU.SHP

563, 564

ATTRIBUTES OF B36-POD.SHP

454 SESENE - II

(Buckeye Ditch)

Polygon #563 = 124.26 Ac } 128.88  
Polygon #564 = 4.62 Ac } Ac

P/U CONFLICT yes ( ) no ( ) ✓

P/D CONFLICT yes ( ) no ( ) ✓

READY FOR DECREE yes ( ) ✓ no ( )

SENT FOR DECREE yes ( ) no ( )

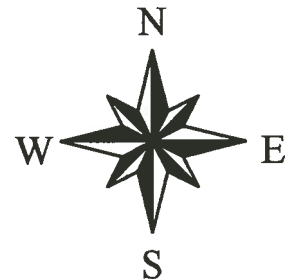
IDAHO DEPARTMENT OF WATER RESOURCES

**36-00003B**  
**DAVID KINGSTON**



660 0 660 1320 Feet

**TNS 7S, RNG 13E, SEC 27 & 28**



● RECOMMENDED POINT OF DIVERSION

□ RECOMMENDED PLACE OF USE

— SECTION LINES

□ QUARTER/QUARTER LINES

GIS PLACE OF USE PRESENTATION  
1987 and/or 1988 NAPP PHOTOGRAPHY  
DATA ENTRY OCTOBER 1997  
BY JEANIE ROBERTSON

IDAHO DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIMS PROOF READING REPORT  
(REGIONAL)

Water right number - 36-000038

Prefix Translation: WATER RIGHT

+ - - - - - Adjudication Rights Dates and Flags Area - - - - - +

|                      |              |                       |              |                         |         |
|----------------------|--------------|-----------------------|--------------|-------------------------|---------|
| Court Report Filing  | - 11/02/1992 | Field Inspection Made | - 00/00/0000 | Civil Case Number       | - 39576 |
| Objection Filed Date | - 04/29/1993 | Field Inspection Flag | -            | Old Case Number         | -       |
| Response Filed Date  | - 09/09/1993 | Verified Date         | - 00/00/0000 | Old Judicial District   | -       |
| Claim Received Date  | - 08/18/1988 | Last Amended Date     | - 00/00/0000 | Temporary Right         | - P     |
|                      |              | Receipt Number        | - S001535    | Water District          | - 36A   |
|                      |              | POU Ownership Flag    | - Y          | Federal/State Indicator | - S     |
|                      |              | Name Connector        | - AND/OR     | Presumption Flag        | -       |
|                      |              |                       |              | Notice of Error Flag    | - B     |

MICROFILMED  
DEC 04 1996

COPY

197 123 25 PM 2: 59

DISTRICT COURT-S.E.  
TWIN FALLS CO., IDAHO  
FILED

**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**

## NOTICE OF COMPLETED ADMINISTRATIVE PROCEEDINGS

**Case No. 39576**

**SUB CASE NO. 36-00003B**

**IDWR has completed the following Administrative proceeding: SUBSTITUTION OF PARTY**

Does the change in "ownership" result in a splitting of the water right claimed? ☐ Yes ☒ No

**FROM: Claimant/Seller(s):**

**Name and Address of Claimant/Seller(s):**

David O Kingston  
PO Box 158  
Ucon ID 83454

**TO: Claimant/Purchaser(s):**

**Name and Address of Claimant/Purchaser(s):**

**Kingston Properties L.P.**  
**477 Shoup Ave Ste 207**  
**Idaho Falls ID 83402**

**Phone: 524-4398**

**Phone: 522-2365**

IDWR certifies that it has completed its investigation into the changes to the elements of the water rights listed above as set forth in the attached *Amended Director's Reports* for said water rights. No other changes have been made to the elements of these water rights except as set forth above.

IDWR has served copies of the *Notice of Completed Administrative Proceeding* and *Amended Director's Report(s)* on the claimant(s), prior claimant(s) and all parties in the subcases affected, if any, as reflected on the attached certificate of mailing.

**DATED:**

4/22/97

Signature of IDWR Representative

**NOTICE OF COMPLETED  
ADMINISTRATIVE PROCEEDING  
5/21/96**

**Water Right(s): 36-00003B**

## CERTIFICATE OF MAILING

I certify that on 4-25, 1997, I mailed the original and copies of this form to the following persons, postage prepaid and addressed as follows:

1. Original to:  
Clerk of the District Court  
Snake River Basin Adjudication  
253 Third Avenue North  
PO Box 2707  
Twin Falls ID 83303-2707
2. One Copy to:  
Claimant/Seller for Substitution of Party or attorney of record:  
Patrick D Brown  
Hepworth Lezamiz & Hohnhorst  
PO Box 389  
Twin Falls ID 83303-3089
3. One Copy to:  
Claimant/Purchaser for Substitution of Party or attorney of record:  
Kingston Properties LP  
477 Shoup Ave Ste 207  
Idaho Falls ID 83402
4. One Copy to:  
Each party in the subcase or attorney of record:
5. One Copy to:  
Chief Natural Resources Division  
Office of the Attorney General  
PO Box 44449  
Boise ID 83711-4449
6. One Copy to:  
United States Dept Of Justice  
Environment & Natural Resource Div  
550 West Fort Street MSC 033  
Boise ID 83724

  
Signature of person or attorney mailing the form

AJ5856NP

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

DATE: APR-4-1997  
PAGE: A-1

-----  
RIGHTS FROM: SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER  
-----

RIGHT NUMBER: 36-000038

NAME & ADDRESS: KINGSTON PROPERTIES LP  
477 SHOUP AVE STE 207  
IDAHO FALLS ID 83402

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 5.00 CFS

PRIORITY DATE: 09/10/1884

POINT OF DIVERSION: T07S R13E S11 SESENE Within GOODING County

PURPOSE AND

| PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE     | QUANTITY |
|----------------|----------------|-------------------|----------|
|                | IRRIGATION     | Irrigation Season | 5.00 CFS |
|                | STOCKWATER     | 03-15 11-15       | 0.05 CFS |
|                | STOCKWATER     | 11-16 03-14       | 1.8 CFS  |

PLACE OF USE: IRRIGATION Within GOODING County  
T07S R13E S27 SWNW 23.0 NWSW 9.0  
S28 Lot 4 (SWNE) 9.0 SENE 25.0 NESE 40.0 Lot 5 (NWSE) 23  
129.0 ACRES TOTAL

Place of use for STOCKWATER is same as IRRIGATION

Place of use for STOCKWATER is same as IRRIGATION

CONSUMPTIVE USE: 387.0 AFY

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

WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.  
A DIVERSION RATE OF 3.25 CFS AT THE FIELD HEADGATE IS  
RECOMMENDED FOR THE PLACE OF USE DESCRIBED ABOVE.  
1.75 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE  
LOSSES IN DELIVERY OF THIS RIGHT.

EXPLANATORY MATERIAL: BASIS OF CLAIM - DECREE



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

April 25, 1997

PHILIP E. BATT  
GOVERNOR

KARL J. DREHER  
DIRECTOR

KINGSTON PROPERTIES LP  
477 SHOUP AVE STE 207  
IDAHO FALLS ID 83402

RE: SRBA Claim(s) 36-00003B

Dear Claimant:

Please find the enclosed copy of the Notice of Completed Administrative Proceeding which the department has filed with the SRBA Court regarding the above referenced claims. You have received this notice pursuant to SRBA Court Administrative Order 11 requiring IDWR to report to the court and interested parties any pending changes to adjudication claims in basins for which a Director's Report has been filed with the court.

Please contact this office if you have any questions about the notice or the administrative process.

Sincerely,

Trish Fawcett  
Technical Records Specialist

/tf

cc: Patrick Brown

LAW OFFICE

D. JOHN THORNTON & ASSOCIATES, P.A.

TAX • BUSINESS • ESTATE PLANNING • WEALTH PRESERVATION

THE GOLDEN EAGLE AT FOREST RIVER  
1101 WEST RIVER STREET, SUITE 340  
BOISE, IDAHO 83702-7067

POST OFFICE BOX 7156  
BOISE, IDAHO 83707-1156

TELEPHONE (208) 344-8600  
FACSIMILE (208) 344-8720

RECEIVED

JAN 30 1997

Department of Water Resources  
Southern Region

RECEIVED

JAN 17 1997

Department of Water Resources

D. JOHN THORNTON  
B. TODD BAILEY, M.Acc.  
GREGORY A. BYRON, LL.M.

KATHLEEN A. ROCKNE  
LEGAL ASSISTANT

LICENSED TO PRACTICE:  
IDAHO, OREGON, WASHINGTON

STRATEGIC LEGAL ALLIANCES:  
ARIZONA, CALIFORNIA, NEVADA, UTAH

January 15, 1997

Department of Water Resources  
Adjudication Bureau  
1301 N. Orchard  
Boise, ID 83706

COPY

Re: David O. Kingston/Kingston Properties L.P.  
AJ0749NP; Water Right No. 36-00003B (Gooding County)  
AJ5809NP; Water Right No. A35-02576B (Jefferson County)

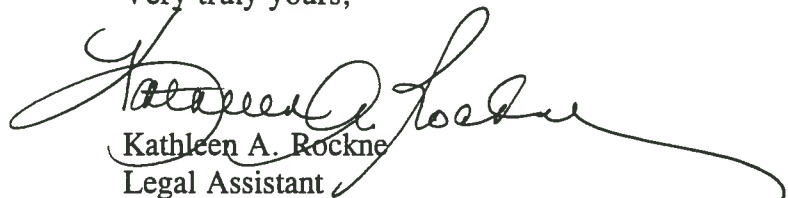
To Whom It May Concern:

The above listed water rights are currently held by David O. Kingston individually. He has formed Kingston Properties L.P., an Idaho limited partnership, and wishes to transfer his interest in those rights to that partnership. To accomplish that, enclosed are two Notices of Change in Water Right Ownership, together with Bargain and Sale Deeds which have been duly recorded in each county to transfer the real property to Kingston Properties L.P.

Please change your records accordingly and forward your acknowledgment to the undersigned.

Thank you very much for your assistance. If you have any questions, please call.

Very truly yours,

  
Kathleen A. Rockne  
Legal Assistant

/K  
Enclosures

obj. claimant

RECEIVED

STATE OF IDAHO

IDAHO DEPARTMENT OF WATER RESOURCES

JAN 17 1997

**NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP**

Department of Water Resources

Department of Water Resources

Print name or type. Attach pages with additional information. Instructions are on the back of this page.

Incomplete forms will be returned.

cc: W.D. 01-22-97 so  
to W.A.  
records not modified.

1. Water Right Number(s) 36-00003B

Adjudication Claim Number(s) AJ0749NP

2. The following **REQUIRED** information must be submitted with this form.

A. A copy of the most recent DEED, TITLE POLICY, CONTRACT OF SALE, or other legal document indicating your ownership of the property and water rights or claims in question, WITH ATTACHED LEGAL DESCRIPTION.

AND

B. PLAT OF PROPERTY or SURVEY MAP for parcel of ten acres or less. (These are usually on file with the county.)

OR

C. For water rights or adjudication claims involving ten or more irrigated acres, a USDA Farm Service Agency (formerly ASCS) AERIAL PHOTO with irrigated acres outlined and point(s) of diversion clearly marked.

3. Name and Address of Former Owner/Claimant(s) David O. Kingston

477 Shoup Avenue, Suite 207, Idaho Falls, ID 83402

4. New Owner/Claimant(s) Kingston Properties L.P., an Idaho limited partnership

Name connector (Check one): ☐ AND, ☐ OR, ☐ AND/OR

New Mailing Address 477 Shoup Avenue, Suite 207

City, State and ZIP Code Idaho Falls, ID 83402

New Telephone Number (208) 522 - 2365

5. Date you acquired the property January 1, 1996

6. If you have acquired only a portion of the former owner's property, IDWR may need to split the water right(s) or adjudication claim(s). If this applies, describe in detail your portion of each water right or adjudication claim in the spaces below. If necessary, attach additional pages.

Number of acres actually irrigated \_\_\_\_\_ Number and type of stock \_\_\_\_\_

Diversion rate in CFS 5.00 Number of homes \_\_\_\_\_ Other uses Irrigation  
cubic feet per second

If a water right or adjudication claim is being split and you are not sure how to identify your portion of the original right or claim, please contact the nearest IDWR office for assistance.

7. Signature of New Owner/Claimant(s) KINGSTON PROPERTIES L.P.,  
BY ITS GENERAL PARTNER:

Date 1/1/96

DK ENTERPRISES, INC.

By: David O. Kingston

Date \_\_\_\_\_

(Corporations or other organizations must submit a list of directors/officers demonstrating authority to sign form.)

8. For Snake River Basin Adjudication Claims: If you are represented by an attorney and you want IDWR to correspond directly with your attorney for all matters related to your claims, please attach a Notice of Appearance completed by your attorney.

RECEIVED

168903

JAN 17 1997

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: Department of Water Resources

D. JOHN THORNTON & ASSOCIATES, P.A.  
1101 WEST RIVER STREET, SUITE 340  
POST OFFICE BOX 7156  
BOISE, ID 83707-1156  
208/344-8600

STATE OF IDAHO COUNTY OF GOODING

Filed for record at the request of D. Thornton Assoc.  
41 min. past 9 o'clock A m. this 17  
of Dec, 19 96 12.00  
By Adriana Sells Deputy

(SPACE ABOVE LINE FOR RECORDER'S USE)

## BARGAIN AND SALE DEED

\*\*\*\*\*

FOR VALUE RECEIVED, DAVID O. KINGSTON, a single man, individually, and sometimes doing business as D & D INVESTMENT COMPANY, as Grantor, does hereby grant, bargain, sell and convey unto KINGSTON PROPERTIES L.P., an Idaho limited partnership, whose current address is P.O. Box 158, Ucon, Idaho 83454, as Grantee, all that certain real property located in Gooding County, Idaho, as more particularly described on Exhibit A attached hereto and made a part hereof by this reference.

TOGETHER WITH Water Right Number assigned by IDWR 36-00003B, and FURTHER TOGETHER WITH all improvements, easements, hereditaments and appurtenances thereto, and subject to such rights, easements, covenants, restrictions and zoning regulations as appear of record or based upon the premises.

IN WITNESS WHEREOF, Grantor has hereunto subscribed his name to this instrument effective the first day of January, 1996.

GRANTOR:

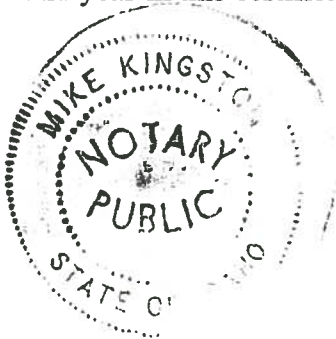
David O. Kingston

DAVID O. KINGSTON, INDIVIDUALLY,  
AND SOMETIMES DOING BUSINESS AS  
D & D INVESTMENT COMPANY

STATE OF IDAHO                    )  
                                          ss.  
COUNTY OF BONNEVILLE        )

On this 19 day of Nov., 1996, before me, the undersigned Notary Public in and for said State, personally appeared DAVID O. KINGSTON, a single man, individually and sometimes doing business as D & D INVESTMENT COMPANY, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Mike Kingston  
NOTARY PUBLIC, State of Idaho  
Residing at Idaho Falls, Id.  
Commission expires: 11-24-2000

JAN 17 1997

## EXHIBIT A

\*\*\*\*\*

Township 7 South, Range 13 East of the Boise Meridian, Gooding County,  
Idaho

Section 27: Lots 6, 16, 27, and 37, and Lots 4, 5, 17, West  
of the access road

EXCEPTING THEREFROM the following described parcel:

BEGINNING at the Southwest corner of Lot 37, Buckeye Ranch, as the  
same is platted in the official plat thereof now of record in the office  
of the County Recorder of Gooding County, Idaho;  
Thence East along the South line of said Lot 37, 190 feet to the TRUE  
POINT OF BEGINNING;  
Thence East along said South line to the Southeast corner of said Lot 37;  
Thence North to the Northeast corner of said Lot 37;  
Thence in a Northeasterly direction to a point on the North line of Lot 26 of  
the Buckeye Ranch, 820 feet East of the Northwest corner of Lot 27  
of the Buckeye Ranch;  
Thence West along the North line of said Lot 27. 305 feet;  
Thence in a Southwesterly direction to a point 280 feet East of the  
Southwest corner of said Lot 27;  
Thence in a Southwesterly direction to the TRUE POINT OF BEGINNING.

Township 7 South, Range 13 East of the Boise Meridian, Gooding County,  
Idaho

Section 28: Lots 7 through 15, Inclusive and Lots 28 through  
36, Inclusive of the Buckeye Ranch

EXCEPTING THEREFROM that part of Lots 9, 10 and 11 of Buckeye Ranch  
according to the plat thereof on file in the office of the County Recorder of  
Gooding County, Idaho described as follows:

BEGINNING at a point on the North boundary of Lot 4, Section 28, which  
point is West 660.00 feet from the Northeast corner of said Lot 4;  
Thence South 214.00 feet to a point in the existing fence;  
Thence South 60°42' West along said fence line 175.70 feet;  
Thence West 345.80 feet to a steel pipe set on the East bank of the  
reservoir of Lower Salmon Falls Dam;  
Thence continuing West to the River Bank, according to the original GLO  
Land Survey;

---

Thence Northerly following along the river to the point of intersection with  
the North boundary line of Lot 4;  
Thence East to the POINT OF BEGINNING.

ALSO EXCEPTING the North 20 feet of the S1/2 of the NW1/4, Section 27,  
and the SE1/4 of the NE1/4 and the East 548 feet of Lot 4 of Section 28,  
Township 7 South, Range 13 East of the Boise Meridian, for road purposes  
as set forth in Deed to Hagerman Highway District, a Municipal Corporation  
of Idaho, dated June 6, 1951 and recorded October 16, 1951 in Book 45  
Deeds Page 187.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

May 1, 1997

PHILIP E. BATT  
GOVERNOR

KARL J. DREHER  
DIRECTOR

ATTN KATHLEEN ROCKNE  
D JOHN THORNTON & ASSOCIATES  
PO BOX 7156  
BOISE ID 83707-1156

RE: SRBA Claim(s) 36-00003B  
David O. Kingston/Kingston Properties L.P.

Dear Ms. Rockne:

Please find the enclosed copy of the Notice of Completed Administrative Proceeding which the department has filed with the SRBA Court regarding the above referenced claims. You have received this notice pursuant to SRBA Court Administrative Order 11 requiring IDWR to report to the court and interested parties any pending changes to adjudication claims in basins for which a Director's Report has been filed with the court.

Our records show Patrick Brown of Hepworth Lezamiz and Hohnhorst as attorney of record for Mr. Kingston. If one of the attorneys in your office has been retained as legal counsel for Kingston Properties, a Notice of Appearance will need to be filed with the SRBA court in Twin Falls. My apologies for the delay in getting this to you and should you have any questions please contact this office.

Sincerely,

Trish Fawcett  
Technical Records Specialist

/tf



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033  
Fax (208) 736-3037

PHILIP E. BATT  
Governor

KARL J. DREHER  
Director

JANUARY 16, 1996

DAVID KINGSTON  
PO BOX 158  
UCON, ID 83454

RE: SRBA CLAIM 36-00003B  
GARDNER

DEAR CLAIMANT(S):

IN PURSUANT TO THE NOTIFICATION WITH THE SF3 AND 42-1409(7) THAT YOU HAVE PURCHASED PROPERTY WITH ABOVE-REFERENCED ADJUDICATION CLAIM(S). WE HAVE CHANGE THE DEPARTMENT'S RECORDS AS YOU HAVE REQUESTED. **THIS COPY IS FOR YOUR RECORDS.** PLEASE REVIEW THE RECORDS FOR ACCURACY.

IF YOU HAVE ANY QUESTIONS, PLEASE FEEL FREE TO CONTACT ME AT THIS OFFICE.

SINCERELY,

TARA L BACKLUND  
SNAKE RIVER BASIN ADJUDICATION  
RECORDS CLERK

/TLB  
ENCLOSURES

MICROFILMED

DEC 04 1996

IDAHO DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIMS PROOF READING REPORT  
(REGIONAL)

01/16/96 11:06:19

Page 1

Water Right Number - 36-00003B

Prefix Translation: WATER RIGHT

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

\*\*\* C - CURRENT OWNER \*\*\*

KINGSTON

DAVID O

1 - PO BOX 158

2 -

3 -

City- UCON

State- ID Zip- 83454

Phone - 208-524-4398

\*\*\* D - DIR RPT OWNER \*\*\*

GARDNER

ROBERT B

1 - PO BOX 41

2 -

3 -

City- HAGERMAN

State- ID Zip- 83332

Phone - 208-837-4902

GARDNER

BARBARA

1 - PO BOX 41

2 -

3 -

City- HAGERMAN

State- ID Zip- 83332

Phone - 208-837-4902

\*\*\* O - ORIGINAL OWNER \*\*\*

BROWN

PATRICK D

1 - HEPWORTH NUNGESTER LEZAMIZ

2 - 133 SHOSHONE ST N

3 - PO BOX 389

City- TWIN FALLS

State- ID Zip- 833030389

Phone - 208-734-7510

+ - - Priority Date - - +  
09/10/1884+ - - Region - - - +  
ERROR IN REGION+ - - Stage - - - +  
D - DECREED

+ - - Status - - - +

+ - - - - Source - - - - - +  
BILLINGSLEY CREEK+ - - - - Tributary - - - - - +  
SNAKE RIVER+ - - - - Point of Diversion - - - - - +  
Twn Rng Sec Tract Lot RFlg County

07S 13E 11 SE SE NE (47) GOODING

+ - - - - Water Use - - - - - +  
Code Description Period From Period To Diversion Rate Diversion Volume

01 - IRRIGATION

03/15

11/15

5.000

04 - STOCKWATER

03/15

11/15

0.050

04 - STOCKWATER

11/16

03/14

1.800

+ - Total Div. Rate - + + - Total Div. Volume - +  
5.000+ - Total Consumptive Use - + + - KW Usage - +  
387.0+ - - - - Place of Use - - - - - +  
Twn Rng Sec Tract Lot Acres Code Description County

07S 13E 27 SW NW

23.0

01

IRRIGATION

(47) GOODING

07S 13E 27 NW SW

9.0

01

IRRIGATION

(47) GOODING

07S 13E 28 SW NE

4

9.0

01

IRRIGATION

(47) GOODING

07S 13E 28 SE NE

25.0

01

IRRIGATION

(47) GOODING

MICROFILMED  
DEC 04 1996

Water right number - 36-00003B

Prefix Translation: WATER RIGHT

| Tw  | Rng | Sec | Tract | Lot | Acres | Code | Description | County       |
|-----|-----|-----|-------|-----|-------|------|-------------|--------------|
| 07S | 13E | 28  | NE SE |     | 40.0  | 01   | IRRIGATION  | (47) GOODING |
| 07S | 13E | 28  | NW SE | 5   | 23.0  | 01   | IRRIGATION  | (47) GOODING |

Total Acres: 129.0

+ - - Diversion Means - HEADGATE &amp; BUCKEYE DITCH, REDIVERIONS FROM DITCH

+ - - Non-Irrigation Use - STOCKWATER, 200 RANGE CATTLE.

+ - - Other Rights for Same Use - NONE

Remarks

WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.  
A DIVERSION RATE OF 3.25 CFS AT THE FIELD HEADGATE IS  
RECOMMENDED FOR THE PLACE OF USE DESCRIBED ABOVE.  
1.75 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE  
LOSSES IN DELIVERY OF THIS RIGHT.

Old Water Right Numbers

3600003

Conditions of Approval

No Conditions of Approval found.

|                                 |                              |             |
|---------------------------------|------------------------------|-------------|
| Decree Plaintiff                | Decree Defendant             | Decree Date |
| NEW INTERNATIONAL MORTGAGE BANK | IDAHO POWER COMPANY, ET. AL. | 03/22/1932  |

Comments

Date: 08/05/1992 User Id: WORSTELL Subject: COPIED FROM REMARKS  
UNDER THE 1932 DECREE, WE ARE CLAIMING FISH PROP. AS ANOTHER USE  
VELOPED IN THE 1920'S FOR RECREATION USE. COMMERCIAL TROUT PROD-  
X 150' LONG X 3-4' DEEP.

A36-00003J IF BARBARA GARDNER SO ALLOWS.  
THIS CLAIM REPRESENTS ROBERT'S PORTION. A36-00003J REPRESENTS  
Date: 09/21/1992 User Id: THORNTON Subject: NOTICE OF ERROR FLAG  
I ADDED AN "A" FLAG.

Date: 10/19/1992 User Id: CHRISTEN Subject: RESPONSE TO NOE  
CLAIMANT WANTED ADDITIONAL USES. NOT RECOMMENDED. NO CHANGES  
Date: 10/21/1992 User Id: CHRISTEN Subject: CHANGE TO CLAIM 10-21-92  
CHANGED SEASON OF USE FOR STOCKWATER TO AGREE WITH IRR SEASON.KKC

Date: 02/19/1993 User Id: SCHULTZ Subject: ADDED NEW ATTORNEY  
RECEIVED NOTICE OF APPEARANCE FROM HEPWORTH NUNGESTER LEZAMIZ  
CLAIM VERIFIED 10/21/92. DID NOT REVERIFY ANY PART OF CLAIM.

Date: 01/16/1996 User Id: TBACKLUN Subject: NAME CHANGE  
OWNERSHIP CHANGE WITH 42-1409(7). SF3 WAS SENT TO COURT.

2/10/93.

BOTH SIGNATURES (GARDNER & KINGSTON) WERE ON THE FORMS.

+ - - Audit Fields - - +

01/16/96 TBACKLUN

MICROFILMED  
DEC 04 1996

**R PROOF**

**CVR**

**MAPS**

**PHOTOS**

**MISC**

**MICROFILMED**  
**OCT 5 1994**



# State of Idaho

## DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

March 1, 1993

Patrick D. Brown  
Hepworth, Nungester and Lezamiz  
133 Shoshone St. N.  
P.O. Box 389  
Twin Falls, ID 83303-0389

Re: Notice of Appearance

Dear Mr. Brown:

We received your Notice of Appearance on behalf of Hagerman Water Owners, Inc. and its individual members on February 10, 1993. The records listed on the notice were updated with some exceptions.

Claim numbers with "A" prefixes identify claims filed in the SRBA. Claim numbers without prefixes identify recommendations in the Director's Report. The following table identifies claimants for which you filed a notice of appearance, but the number you referred to is actually the identification of the recommendation. They have been updated with the notice information.

| Claimant's Name                                                 | Recommendation No.<br>(no "A" prefix) |
|-----------------------------------------------------------------|---------------------------------------|
| Bybee, Gertrude B. Owsley                                       | 36-00042A<br>36-00041C                |
| Candy, Walter W. & Margaret                                     | 36-00135B                             |
| Crandlemire, Roger C.                                           | 36-00134C<br>36-00135C                |
| Gustafson Family Trust/Gustafson, Ivan J. & Lucille co-trustees | 36-00033F                             |
| McFaddan, Dan H. & Irma R.                                      | 36-00048A                             |
| Muller, Manfred                                                 | 36-00035J                             |
| Zink, Basil Lester & Myrle Hyde                                 | 36-00103F                             |

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Mr. Patrick D. Brown  
 March 1, 1993  
 Page 2

The following is a list of claims that have been updated with the notice information, however, there is a discrepancy between IDWR records and the notice list (see third column).

| Claimant's Name<br>as listed on<br>Notice of Appearance            | As Claimed/<br>As Recommended                                                        | Claim No. or<br>Claimant's Name in<br>IDWR's Records                   |
|--------------------------------------------------------------------|--------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| Anderson, Anita G.                                                 | A36-00050D/36-00050D                                                                 | Andersen (name spelling is different)                                  |
| Brailsford, Robert H.                                              | A36-04260/36-04260                                                                   | A36-04260B/36-04260B<br>(claim was split--"B" suffix)                  |
| Brooks, Allen L. & Andree                                          | A35-00060                                                                            | A36-00060/36-00060<br>(Basin 36 instead of Basin 35)                   |
| Crandlemire, Roger C. & George C.                                  | A36-00113J/36-00113J                                                                 | Crandlemire, Roger C.<br>(George C. not listed as claimant)            |
| Gisler, Harry R.                                                   | A36-00021B/36-00021B                                                                 | A36-00021/36-00021<br>(claim was renumbered)                           |
| Glauner, Frank L. & Joan                                           | A36-00039E/36-00039E                                                                 | Jean instead of Joan                                                   |
| Gustafson Family<br>Trust/Gustafson, Ivan J. & Lucille co-trustees | A36-00011C/36-00033F                                                                 | Gustafson, Ivan J. (not listed as a trust)                             |
| Johnson, Ira L. & Huguette M.                                      | A36-07142/36-07142                                                                   | Johnson, Ira L.<br>(Huguette M. not listed as claimant)                |
| Joint Hagerman School Dist.<br>233                                 | A36-15463/36-15463                                                                   | Original claim & IDWR records show school dist. as #3.                 |
| Jones, John W., Jr.                                                | A36-00068/36-00068<br>A36-00069/36-00069<br>A36-07071/36-07071<br>A36-00070/36-00070 | Jones, John W. Jr. & Deloris D. (Deloris D. is included as a claimant) |

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 OCT 11 1994

Mr. Patrick D. Brown  
 March 1, 1993  
 Page 3

| Claimant's Name<br>as listed on<br>Notice of Appearance | As Claimed/<br>As Recommended                                  | Claim No. or<br>Claimant's Name in<br>IDWR's Records                                                 |
|---------------------------------------------------------|----------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| Mueller, Manfred                                        | A36-00034D/36-00035J                                           | Muller (name spelling is<br>different in IDWR records)                                               |
| Strange, Wm. (Penelope Turn-<br>er-remainder man)       | A36-00006/36-00006<br>A36-00007/36-00007<br>A36-00008/36-00008 | Strange, Wm. & Louise<br>(Louise is included as a<br>claimant, Penelope Turner<br>is not in records) |
| Veenendaal, Dick J.                                     | A36-00108A/36-00108A<br>A36-00039C/36-00039C                   | Veenendaal, Dick J. &<br>Sigrid E. (Sigrid E. is<br>included as a claimant)                          |
| Wiens, M. J., Jr.                                       | A36-80317                                                      | A36-08317/36-08317<br>(no. was transposed on<br>notice)                                              |
| Wiens, M. J., Jr.                                       | A36-00098/36-15384                                             | 36-15384<br>(claim was combined with<br>no. 36-00141 into no. 36-<br>15384)                          |
| Wiens, M. J., Jr.                                       | A36-00141/36-15384                                             | 36-15384<br>(claim was combined with<br>no. 36-00098 into no. 36-<br>15384)                          |

The following claims have not been updated with the notice information because of the discrepancies listed in the third column.

| Claimant's<br>Name | Claim No.<br>as listed on<br>Notice of Appearance                                                          | Discrepancy Between<br>Notice of Appearance<br>and IDWR Records |
|--------------------|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
| Hagerman Gun Club  | A36-00100/36-00100<br>A36-00099/36-00099<br>A36-07233/36-07233<br>A36-07172/36-07172<br>A36-10249/36-10249 | Owners are listed as Bob<br>Porter and Fred Surbaugh            |

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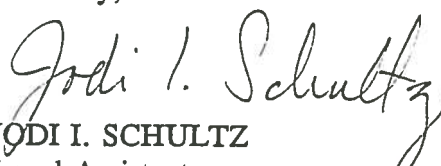
Mr. Patrick D. Brown  
March 1, 1993  
Page 4

| Claimant's Name             | Claim No.<br>as listed on<br>Notice of Appearance | Discrepancy Between<br>Notice of Appearance<br>and IDWR Records                                                            |
|-----------------------------|---------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| Ya-Ta-Hay Investments, Inc. | A36-07875/36-07875                                | No record of this claim no.,<br>nor any other claim no. for<br>claimant other than A36-<br>10283A/36-10283A (as<br>listed) |

Please review the claimants and claim numbers and let me know if you have any questions or problems with the claims as listed in IDWR's records. Also, please review the claims in the last table. We need to solve these discrepancies before IDWR's records are updated with the notice information. My phone number is 327-5444.

Please note we have received your supplemental and second supplemental notices of appearance and are currently working to update those records. We will inform you if there are any discrepancies.

Sincerely,

  
JODI I. SCHULTZ  
Legal Assistant  
Idaho Department of Water Resources

cc: IDWR Southern Region

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OCT 11 1994

RECEIVED  
FEB 10 1993  
Department of Water Resources

1 HEPWORTH, NUNGESTER & LEZAMIZ,  
2 CHARTERED  
3 133 Shoshone St. North  
4 P.O. Box 389  
5 Twin Falls, ID 83303-0389  
6 Telephone: (208)734-7510  
7 Attorneys for Claimant  
8 (PPK\HAGERMAN.NOA\lmr)

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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

\* \* \* \* \*

10 In Re the General Adjudication )  
11 of Rights to the Use of Water )  
12 from the Snake River Basin )  
13 Water System )

Case No. 39576

14 The State of Idaho, ex rel.  
15 R. Keith Higginson in his  
16 official capacity as director  
17 of the Idaho Department of  
18 Water Resources,

NOTICE OF APPEARANCE

19 Petitioner,

20 vs.

21 United States; State of Idaho;  
22 and all claimants to the use  
23 of water from the Snake River  
Basin Water System,

Respondents.

\* \* \* \* \*

PLEASE BE NOTIFIED that the firm of Hepworth, Nungester  
& Lezamiz, Chartered, hereby appears on behalf of Hagerman Water

NOTICE OF APPEARANCE - 1

1 Users, Inc. and its individual members:

|    |                                   |             |
|----|-----------------------------------|-------------|
| 2  | Anderson, Anita G.                | A36-00050D  |
|    | Babington Lynn J. & Kathy         | A36-00003C  |
| 3  | Banbury Pipe Co., Inc.            | A36-10906   |
|    | Banbury Pipe Co., Inc.            | A36-02038   |
|    | Big Bend Irrigation & Mining Co.  | A36-00192   |
| 4  | Big Bend Irrigation & Mining Co.  | A36-00133   |
|    | Big Spring Water User's Assoc.    | A36-00022   |
| 5  | Big Springs Water User's Assoc.   | A36-00023   |
|    | Big Springs Water User's Assoc.   | A36-15166   |
| 6  | Blastock, Alma E.                 | A36-00108B  |
|    | Bolduc, Mark E.                   | A36-00103C  |
| 7  | Boyer, Dale E. & Elaine M.        | A36-00079   |
|    | Brailsford, Robert H.             | A36-04260   |
|    | Brooks, Allen L. & Andree         | A35-00060   |
| 8  | Brooks, Allen L. & Andree         | A36-07346   |
|    | Bybee, Gertrude B. Owsley         | A36-00042A  |
| 9  | Bybee, Gertrude B. Owsley         | A36-00041C  |
|    | Candy, Walter W. & Margaret       | A36-00135B  |
| 10 | Candy, Walter W. & Margaret       | A36-00134A  |
|    | Clouser, Doris H. & John F.       | A36-00090A  |
| 11 | Clouser, Doris H. & John F.       | A36-00089A  |
|    | Crandlemire, Roger C. & George C. | A36-00113H  |
| 12 | Crandlemire, Roger C. & George C. | A36-00112B  |
|    | Crandlemire, Roger C. & George C. | A36-00111B  |
|    | Crandlemire, Roger C. & George C. | A36-00113J  |
| 13 | Crandlemire, Roger C. & George C. | A36-00110B  |
|    | Crandlemire, Roger C.             | A36-00134C  |
| 14 | Crandlemire, Roger C.             | A36-00135C  |
|    | Crandlemire, Roger C.             | A36-10140   |
| 15 | Crandlemire, Roger C.             | A36-10141   |
|    | DeVries, Abraham & Hermina        | A36-00055AF |
| 16 | Dice, Philip F. & Judith A.       | A36-00041A  |
|    | Dice, Philip F. & Judith A.       | A36-10405   |
|    | Erwin, Frank C. & Peggy           | A36-00092   |
| 17 | Fleming, Michael J. & Paul F.     | A36-00064B  |
|    | Flint, William E. and Vera C.     | A36-00110A  |
| 18 | Flint, William E. and Vera C.     | A36-00111A  |
|    | Flint, William E. and Vera C.     | A36-00112A  |
| 19 | Flint, William E. and Vera C.     | A36-10168   |
|    | Fuell, Keith L. & Jolene          | A36-00086C  |
| 20 | Gardner, Barbara & Robert B.      | A36-00003B  |
|    | Gardner, Barbara                  | A36-00003J  |
| 21 | Gisler, Harry R.                  | A36-00021B  |
|    | Gisler, Bradley                   | A36-00077C  |
|    | Glauner, Frank L. & Joan          | A36-00039E  |
| 22 | Grigg, Mattie P. & Golden T.      | A36-10283B  |
|    | Gustafson Family Trust/Gustafson  | A36-00033F  |
| 23 | Ivan J. & Lucille co-trustees     |             |
|    | Hagerman Gun Club                 | A36-00100   |



Hepworth,  
Nungester,  
& Lezamiz

|    |                                                            |             |
|----|------------------------------------------------------------|-------------|
| 1  | Hagerman Gun Club                                          | A36-00099   |
|    | Hagerman Gun Club                                          | A36-07233   |
| 2  | Hagerman Gun Club                                          | A36-07172   |
|    | Hagerman Gun Club                                          | A36-10249   |
| 3  | Hagerman Water Users Assoc.                                | A36-15168   |
|    | Jensen, Alice                                              | A36-00055BC |
|    | Johnson, Ira L. & Huguette M.                              | A36-07142   |
| 4  | Joint Hagerman School Dist 233                             | A36-15463   |
|    | Jones, John W., Jr.                                        | A36-00068   |
| 5  | Jones, John W., Jr.                                        | A36-00069   |
|    | Jones, John W., Jr.                                        | A36-07071   |
| 6  | Jones, John W., Jr.                                        | A36-00070   |
|    | Kipp, Rudy B. & Elberta M.                                 | A36-10119   |
| 7  | Kipp, Rudy B. & Elberta M.                                 | A36-10120   |
|    | Kipp, Rudy B. & Elberta M.                                 | A36-07658   |
|    | Kiser, John & Karl Woodall & Sons, Inc                     | A36-00071A  |
| 8  | Kiser, John & Karl Woodall & Sons, Inc                     | A36-00075   |
|    | Korbis, George J. & Nellie W.                              | A36-00039N  |
| 9  | Laughlin, Craig J. & Rita D.                               | A36-7089    |
|    | Laughlin, Craig J. & Rita D.                               | A36-00051D  |
| 10 | Littlefair, Larry & Tara                                   | A36-0121    |
|    | Littlefair, Larry & Tara                                   | A36-10055   |
| 11 | Littlefair, Larry & Tara                                   | A36-00119   |
|    | Littlefair, Larry & Tara                                   | A36-00120   |
| 12 | Lloyd, Cleave C.                                           | A36-04142   |
|    | Lloyd, Cleave C.                                           | A36-00003G  |
|    | McFaddan, Dan H. & Irma R.                                 | A36-2169    |
| 13 | McFaddan, Dan H. & Irma R.                                 | A36-00048A  |
|    | McFaddan, Dan H. & Irma R.                                 | A36-00049   |
| 14 | Morris, Howard & Rhonda                                    | A36-00063   |
|    | Morris, Howard & Rhonda                                    | A36-00061   |
| 15 | Morris, Howard & Rhonda                                    | A36-00062   |
|    | Mueller, Manfred                                           | A36-00035J  |
| 16 | Norwood Subdivision/<br>Ruby Springs Water Company         | A36-15240   |
|    | Potter, Mark B. & Susan H.                                 | A36-07092A  |
| 17 | Rawson, Frank S. & Carol A.                                | A36-00039J  |
|    | Reese, Bruce W. & LaRose A.                                | A36-00123A  |
| 18 | Reese, Bruce W. & LaRose A.                                | A36-04091   |
|    | Reese, Bruce W. & LaRose A.                                | A36-10231   |
| 19 | Rue, James O. & Beverly Jane                               | A36-07142A  |
|    | Shaffer, Roger                                             | A36-00034B  |
| 20 | Simcoe, Doyt H. & Roxie J.                                 | A36-00003F  |
|    | Simpson, Michael, on behalf of<br>Josephine Simpson Estate | A36-0123E   |
| 21 | Simpson, Michael, on behalf of<br>Josephine Simpson Estate | A36-0096A   |
|    | Strange, Wm. (Penelope Turner-remainder man)               | A36-00006   |
| 22 | Strange, Wm. (Penelope Turner-remainder man)               | A36-00007   |
|    | Strange, Wm. (Penelope Turner-remainder man)               | A36-00008   |
| 23 | Veenendaal, Dick J.                                        | A36-00108A  |
|    | Veenendaal, Dick J.                                        | A36-00039C  |

|   |                                 |             |
|---|---------------------------------|-------------|
| 1 | Vernon, Edith L.                | A36-00003E  |
|   | Walmsley, Fred J. & Susan K.    | A36-00039D  |
| 2 | Ward, John P. & Rush, Ruth E.   | A36-00094-A |
|   | Ward, John P. & Rush, Ruth E.   | A36-00090F  |
| 3 | Watkins, Paul E. & Inez S.      | A36-00106   |
|   | Watkins, Paul E. & Inez S.      | A36-08099   |
| 4 | Wiens, M.J., Jr.                | A36-07229   |
|   | Wiens, M.J., Jr.                | A36-07081   |
|   | Wiens, M.J., Jr.                | A36-80317   |
| 5 | Wiens, M.J., Jr.                | A36-00098   |
|   | Wiens, M.J., Jr.                | A36-00097   |
| 6 | Wiens, M.J., Jr.                | A36-02002   |
|   | Wiens, M.J., Jr.                | A36-00101   |
| 7 | Wiens, M.J., Jr.                | A36-00141   |
|   | Wiens, M.J., Jr.                | A36-10520   |
|   | Woolley, Max J. & Blanche       | A36-00039M  |
| 8 | Ya-Ta-Hay Investments, Inc.     | A36-10283A  |
|   | Ya-Ta-Hay Investments, Inc.     | A36-07875   |
| 9 | Zink, Basil Lester & Myrle Hyde | A36-00103F  |

10 the respondents in the above-entitled action, as counsel of record  
 11 for said Hagerman Water Users, Inc. and said individuals.

12 DATED This 9 day of February, 1993.

13 HEPWORTH, NUNGESTER & LEZAMIZ

14  
 15 By   
 16 PATRICK D. BROWN  
 Attorneys for Respondents

17  
 18 CERTIFICATE OF MAILING

19 The undersigned, a resident attorney of the State of  
 20 Idaho, with offices at 133 Shoshone St. North, P.O. Box 389, Twin  
 21 Falls, Idaho 83303, and one of the attorneys for the respondents  
 22 in this matter, certifies that she caused to be mailed a copy of  
 23 the above and foregoing NOTICE OF APPEARANCE on the 9 day of

1 February, 1993, to:

2 Snake River Adjudication  
3 District Court  
4 P.O. Box 27070  
5 Twin Falls, ID 83303-0126

6 Clive Strong  
7 Chief Natural Resources Division  
8 Office of Attorney General  
9 Statehouse  
10 Room 210  
11 Boise, Idaho 83720

12 David Shaw  
13 Adjudications Bureau Chief  
14 Department of Water Resources  
15 1301 North Orchard  
16 Boise, Idaho 83706

17 United States Department of Justice  
18 Environment and Natural Resources Division  
19 550 West Fort Street, Box 33  
20 Boise, ID 83734

21   
22 Patrick D. Brown



Hepworth,  
Nungester,  
& Lezamiz

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OCT 11 1994



State of Idaho

# DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS  
Governor

R. KEITH HIGGINSON  
Director

24-Dec-1992

BARBARA GARDNER  
RT 1 BOX 41  
HAGERMAN ID 83332

RE: Copy of SRBA File(s): 36-00003B, 36-00003J

Dear Mrs. Gardner:

Please find enclosed the copies of documents you recently requested contained in the above referenced SRBA file(s) as of this date. Please note that copies of orthophoto quad maps or NAPP photography or aerial slides which may have been used in the review of your claim(s) have not been included since they are not easily reproduced. These items are however available for your review at our office. Please also note that in some situations some water rights may have other associated files which contain privileged information between IDWR staff and our legal council which has not been copied.

Please remit the following for the cost of the copies and postage:

\$7.64

Sincerely,

  
Jeanie Robertson  
Records Clerk

Encl:

# 5015251  
12/29/92

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OCT 11 1994

Dec. 21, 1992

Ida Dept of Water Resources  
222 Shoshone St. East  
Twin Falls, Ida. 83301

RECEIVED

DEC 23 1992

Department of Water Resources  
Southern Region Office

Dear Sirs:

I am unable to go to Twin Falls at this time, so would you please send me the following material:

A copy of all the information used by the IDWR to develop their recommendations for our water rights that are in our files.

Robert B Gardner

Right number

Barbara Gardner

36-00003B

Barbara Gardner

Right number

36-00003J

I would like copies of Motive of Error Forms I sent you + a copy of the letter I sent that was attached. Perhaps they are in the file.

Enclosed is a check for \$10. If this does not cover cost, call me at 837-4902 + I will send additional money.

Thank you

Barbara Gardner

829 AC 2830 S

Hagerman, Ida 83332

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OCT 11 1994

IDWR'S RESPONSE TO ANSWER, AFFIRMATIVE DEFENSES AND PRAYER FOR  
RELIEF OF CLAIMANT

This portion of the response addresses the multi-page attachment to the objection (hereinafter "the attachment"), wherein the claimant admits or denies all sections of Parts I, II, and III of the director's report, asserts 27 affirmative defenses, and alleges a prayer for relief. The attachment contains the following sections, corresponding to the various sections of the director's report:

- (1) I. GENERAL RESPONSE
- (2) II. DESCRIPTIVE SUMMARY, (first unnumbered page of Part I of the director's report)
- (3) III. TABLE OF CONTENTS (second and third unnumbered pages of Part I of the director's report)
- (4) IV. 1. INSTRUCTIONS FOR USING THIS REPORT PART I (page 1 of Part I of the director's report)
- (5) IV. 2. SCOPE OF THE ADJUDICATION (pages 1-3 of Part I of the director's report)
- (6) IV. 3. PURPOSE OF THIS REPORT PART I (pages 3-4 of Part I of the director's report)
- (7) V. 1. BOUNDARIES OF BASIN (pages 4-6 of Part I of the director's report)
- (8) V. 2. WATER SOURCES (page 6 of Part I of the director's report)
- (9) V. 3. DEVELOPMENT OF WATER USE (pages 6-9 of Part I of the director's report)
- (10) VI. GENERAL PROVISIONS 1-8 APPLY TO ALL WATER RIGHTS IN BASIN 36 (page 9 of Part I of the director's report)
- (11) VI. General Provision 1. EFFECT OF ADJUDICATION (page 9 of Part I of the director's report)
- (12) VI. General Provision 2. GENERAL ADMINISTRATIVE PROVISIONS (pages 9-10 of Part I of the director's report)
- (13) VI. General Provision 3. CONJUNCTIVE ADMINISTRATION (page 10 of Part I of the director's report)
- (13) VI. General Provision 4. ADMINISTRATION OF GROUND WATER RIGHTS (page 10 of Part I of the director's report)
- (14) VI. General Provision 5. ADMINISTRATION OF BASIN 36 RELATIVE TO THE SNAKE RIVER (page 10 of Part I of the director's report)
- (15) VI. General Provision 6. ADMINISTRATION OF SMALL DOMESTIC AND STOCK WATER RIGHTS (page 11 of Part I of the director's report)
- (16) VI. General Provision 7. MEASURING DEVICES AND CONTROL

- OCL 1 1864  
FILED
- WORKS (page 11 of Part I of the director's report)
- (17) VI. General Provision 8. FIRE FIGHTING PURPOSES (page 11 of Part I of the director's report)
  - (18) VI. General Provision 9. CONSUMPTIVE USE (page 12 of Part I of the director's report)
  - (19) VI. GENERAL PROVISION 10 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH DOMESTIC USE AS A PURPOSE OF USE (page 12 of Part I of the director's report)
  - (20) VI. General Provision 10. DOMESTIC USE (page 12 of Part I of the director's report)
  - (21) VI. GENERAL PROVISION 11 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH STOCK WATER USE AS A PURPOSE OF USE (page 13 of Part I of the director's report)
  - (22) VI. General Provision 11. STOCK WATER USE (page 13 of Part I of the director's report)
  - (23) VI. GENERAL PROVISIONS 12-16 APPLY TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH IRRIGATION AS A PURPOSE OF USE (page 13 of Part I of the director's report)
  - (24) VI. General Provision 12. IRRIGATION USE (pages 13-14 of Part I of the director's report)
  - (25) VI. General Provision 13. DIVERSION VOLUME FOR IRRIGATION (page 14 of Part I of the director's report)
  - (26) VI. General Provision 14. CONSUMPTIVE USE FOR IRRIGATION (pages 14-15 of Part I of the director's report)
  - (27) VI. General Provision 15. AMOUNT OF COMBINED WATER RIGHTS FOR IRRIGATION (page 15 of Part I of the director's report)
  - (28) VI. General Provision 16. DIVERSION RATES IN EXCESS OF .02 CFS PER ACRE (pages 15-16 of Part I of the director's report)
  - (30) VI. 17. INSTRUCTIONS FOR USE OF LIST OF RECOMMENDED WATER RIGHTS (pages A-i through A-iii of Part I of the director's report)
  - (31) VI. 18. IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW (pages A-1 through B-25 of Part I of the director's report)
  - (32) DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36), (DIRECTOR'S REPORT PART II)
  - (33) DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36), (DIRECTOR'S REPORT PART III)

The attachment also contains part VIII, AFFIRMATIVE DEFENSES (pp. 20 through 28) and a PRAYER FOR RELIEF (untitled, p. 28).

In response to each of the items enumerated above IDWR responds that pursuant to Section 4 a.(2)(c) of SRBA Administrative Order 1, Rules of Procedure, IDWR generally denies each and every allegation, if any, contained in each enumerated portion of the attachment. IDWR affirmatively responds that neither SRBA Administrative Order 1, Rules of Procedure, nor Title 42, Chapter 14, Idaho Code, make provision for IDWR to affirm, amplify, or otherwise respond to the claimant's admissions, or to deny the claimant's denials, and that IDWR therefore does not believe that it is required to do so. Title 42, Chapter 14, Idaho Code solely defines the content and scope of the director's report. It is to contain a description of the water system and is to provide a recommendation as to each water right claimed and as to those matters necessary for administration of those water rights. Therefore, the content and scope of the objection is limited to those same matters. The attachment to the present objection asserts or otherwise raises matters not directly addressing the elements of the water right as recommended, the description of the water system, or the general provisions. Rather, the attachment raises broad issues as to the constitutional, statutory and administrative efficacy of the entire adjudication process. All such issues should be raised by means of motions to designate basinwide issues and similar procedural vehicles specifically designed to provide for basinwide notice and participation. They should not be permitted to divert the focus of any individual subcase away from the issues directly connected to the elements of the water right and the administration thereof. Therefore, because the attachment to the present objection is not within the scope of the statutory purpose of an objection it should be stricken.

However, in the event that the court should determine that all or part of the attachment is properly within the scope of the objection, IDWR further responds as follows:

IDWR affirmatively responds that all statements within the director's report are properly included therein pursuant to Title 42, Chapter 14, Idaho Code, and in particular pursuant to Idaho Code §§ 42-1411 and 42-1412(8); and that the provisions of the Idaho Rules of Civil Procedure regarding pleadings are inapplicable to the extent that they are in conflict with the statutory requirements. Therefore IDWR denies all allegations directed at the contents of the director's report.

As to the enumerated portions of the attachment addressing the listings of recommended water rights, abstracts of federal reserved water right claims, or negotiated agreements, other than the individual recommendation that is the subject of this objection, IDWR responds that such claims or agreements are not brought before this court by this objection.

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Responding to the 27 affirmative defenses asserted in the attachment, IDWR generally denies each and every affirmative defense asserted. IDWR further responds that affirmative defense numbers 1, 2, 4, 5, 10, 11, 12, 18, and 22, asserting various violations of civil or constitutional rights, fail to comply with the requirements I.R.C.P. 9(b) providing that in all averments of violation of civil or constitutional rights the factual circumstances constituting such violation must be stated with particularity. Accordingly, IDWR asserts that those affirmative defenses should be stricken.

In response to that portion of the multi-page attachment to the objection wherein the claimant asserts a prayer for relief, IDWR responds as follows:

1. IDWR denies that the director's report asserts any claims against the claimant; rather, the director's report contains only the recommendation of the director as to how the claimant's water right should be decreed and administered.
2. IDWR denies that the claimant is entitled to have the water right decreed as claimed unless in the director's report the water right has been recommended as claimed.
3. IDWR denies that any acts upon its part constitute the taking of private property for which just compensation should be allowed and awarded.
4. IDWR denies that the claimant is entitled to recover court costs and reasonable attorney fees.
5. IDWR denies that the claimant by this objection has raised any claims against IDWR entitling such claimant to any relief other than the eventual judicial determination and decree of the various elements of the claimant's water right, if any, and of those related matters necessary to describe and administer that water right.

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

In Re the General Adjudication  
of the Rights to the Use of Water  
from the Snake River Basin  
Water System

Case No. 36-00003B -0001

The State of Idaho, ex rel.  
R. Keith Higginson in his  
official capacity as Director  
of the Idaho Department of  
Water Resources,

RESPONSE TO OBJECTION

Petitioner,

vs.

The United States; the State  
of Idaho; and all Claimants to  
the use of water from the Snake  
River Basin Water System,

Respondents.

I. GENERAL INFORMATION

1. Person responding to objection:

Name: R. KEITH HIGGINSON, DIRECTOR

Address: IDAHO DEPARTMENT OF WATER RESOURCES  
P.O. BOX 44449  
BOISE, ID 83711-4449

Briefly describe your interest in this water right:

IDWR is required to file a response to an objection to part  
I of the director's report pursuant to I.C. section 42-1412(2).

(Over)

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2. Person who filed objection:

Name: BARBARA & ROBERT B GARDNER  
Address: PO BOX 41  
HAGERMAN ID 83332

3. If this response is filed by an attorney:

Attorney Name(s): NICHOLAS B. SPENCER

Attorney Address: DEPUTY ATTORNEY GENERAL(S)  
IDAHO DEPARTMENT OF WATER RESOURCES  
P.O. BOX 44449  
BOISE, ID 83711-4449

Attorney Phone No.: (208) 327-7900

II. STATEMENT OF THE RESPONSE

3. ☒ Quantity: I respond to the objection concerning:
- 3a. ☒ The total quantity of water used in cubic feet per second.
- 3c. ☒ The total quantity of water reserved for each and every purpose, including all present and future uses.
7. ☒ Purposes of Use: I respond to the objection concerning the purpose(s) of use.
8. ☒ Period of Year: I respond to the objection concerning the period of year when water is used or is necessary for the purpose stated.
10. ☒ Consumptive Use: I respond to the objection concerning the annual volume of consumptive use.
11. ☒ Remarks: I respond to the objection concerning the "remarks" listed with the water right.

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Department of Water Resources  
Adjudication Bureau

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

In Re the General Adjudication  
of Rights to the Use of Water  
from the Snake River Basin  
Water System

Case No. A36-00003B  
(You must insert the  
water right number you  
are objecting to)

The State of Idaho, ex rel.  
R. Keith Higginson in his  
official capacity as Director  
of the Idaho Department of  
Water Resources,

OBJECTION

Petitioner,

vs.

36-00003B -0001/  
93-04-0005

The United States; the State  
of Idaho; and all Claimants to  
the use of water from the Snake  
River Basin Water System,

Respondents.

INSTRUCTIONS

This form must be used to file an objection to any water right recommended in the Director's Report. You may object to one water right per objection form. The water right number you are objecting to must be indicated above in the blank space following "Case No." To object to more than one water right, you must file a separate objection form for each. Forms may be obtained from the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form, as long as it is identical to the court's form. You must file your objection by the deadline shown in the notice that IDWR mailed to you. The objection must be received by the court on or before the deadline specified. Instructions for mailing this objection are found at Page 6, and must be strictly followed.

Any party physically filing 25 (twenty-five) or more objections must make an appointment with the Clerk of the Adjudication Court and arrange for an appointment to file multiple objections.

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By filing an objection form, you are certifying that the objection is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and that it is not filed for any improper purpose, such as to harass, cause unnecessary delay or needless increase in the cost of litigation.

**I. GENERAL INFORMATION**

Please fill in the following information:

1. Person objecting:

Name: Barbara Gardner & Robert B. Gardner

Address: P. O. Box 41

Hagerman, Idaho 83332

Briefly describe your interest in this water right:

Priority date September 10, 1884

Judicial Decreed right pursuant to New

International Mortgage Bank v. Idaho Power

Company dated 3/22/32

2. Owner of the water right:

Name: Barbara Gardner & Robert B. Gardner

Address: P. O. Box 41

Hagerman, Idaho 83332

3. If this objection is filed by an attorney:

Attorney Name: Patrick D. Brown & Penelope Parker

Attorney Address: Hepworth, Nungester & Lezamiz

P.O. Box 389, Twin Falls, ID 83303

Attorney Phone No.: (208) 734-7510

If filed by an attorney, notice of pending court proceedings will be sent to the attorney only.

## II. STATEMENT OF THE OBJECTION

Please check each "box" which states your objection to the recommendation in the Director's Report.

1. ☐ Name and Address: I object to the name and/or address of the owner of the water right.
2. ☐ Source: I object to the source of water.
3. ☒ Quantity: I object to:
  - a. ☒ the total quantity of water used in cubic feet per second; or
  - b. ☐ the total quantity of water stored in acre-feet per year; or
  - c. ☒ the total quantity of water reserved for each and every purpose, including all present and future uses.
4. ☐ Priority Date: I object to the priority date.
5. ☐ Points of Diversion: I object to the legal description of the point(s) of diversion.
6. ☐ Instream Flow: I object to the legal description of the beginning and ending points of the instream flow.
7. ☒ Purpose(s) of Use: I object to the purpose(s) of use.
8. ☒ Period of Year: I object to the period of year when water is used or is necessary for the purpose stated.
9. ☐ Place of Use: I object to:
  - a. ☐ the legal description of the place of use; or
  - b. ☐ - the number of irrigated acres within each forty (40) acre subdivision.
10. ☒ Consumptive Use: I object to the annual volume of consumptive use.
11. ☒ Remarks: I object to the "remarks" listed with the water right.

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12. ☐ Water Right Recommendation: I object to:
- a. ☐ this water right being recommended at all; or
- b. ☐ this water right not being recommended.
13. ☐ Description of Reservation: I object to the legal description of the reservation.
14. ☒ Other: I object to: The application of commercial  
propagation of fish for the acquiring of a water right  
when the water has been appropriated under the 1932 Decree  
and since 1920 for the private propagation of fish. Also,  
see attached.

REASONS SUPPORTING EACH BOX CHECKED

In the space following, you must state the reason(s) by number for each box checked. You may use additional pages if necessary.

See page 7

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CHANGES TO THE DIRECTOR'S REPORT

Specifically describe how you want the Director's Report to be changed. You may use additional pages if necessary.

Irrigation 7.16 cfs from 01/01 to 12/31; fish propagation and  
wildlife preservation 7.16 cfs from 1/1 to 12/31; consumptive  
use changed accordingly; Remarks: strike everything after  
"Buckeye Ditch"

Please note: You should attach copies of documents which support your objection. Note on each document the "box number" it supports.

☒

Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary. \_\_\_\_\_

See Hagerman Water Right Owners, Inc.'s

Compendium "A"

**VERIFICATION (Must be Completed)**

State of Idaho

County of Gooding

BARBARA GARDNER

, being first duly

(Name of person filing objection)

sworn, upon oath, deposes and says:

That I am the person or entity filing this objection, that I am a water claimant or party in this proceeding, as defined by I.C. Sec 42-1401A(1) and (7), and that I have read the foregoing objection, know its contents and that the statements contained therein are true to the best of my knowledge and belief.

Barbara Gardner

Signature of person filing objection

By: [Signature]

(Attorney signing in  
representative capacity)

Subscribed and sworn to before me this 19<sup>th</sup> day of April,  
1993.

[Signature]  
Notary Public for Idaho

Residing at: HAGERMAN IDAHO

My Commission Expires: 5-10-97

(Over)

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**INSTRUCTIONS FOR MAILING**

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You must mail the objection, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted by the Clerk of the Court.** You must also send a copy to the owner of the water right, if other than yourself; to the Office of the Attorney General, State of Idaho; and to the United States Department of Justice, as set out below in the Certificate of Mailing. Finally, you must sign the Certificate of Mailing to show that you followed these steps.

**CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_\_ day of April, 1993, I mailed the original and copies of the foregoing objection, including all attachments, to the following persons, by mailing the original and/or true and correct 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. One copy to the owner of the water right, and you must fill in the following information:

Owner name: Barbara Gardner & Robert B. Gardner

Owner's address: P. O. Box 41

Hagerman, Idaho 83332

3. One copy to:

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

4. One copy to:

United States Department of Justice  
Environment and Natural Resource Division  
550 West Fort Street, Box 33  
Boise, ID 83724

  
\_\_\_\_\_  
Signature of Objector or attorney  
mailing on Objector's behalf

REASONS SUPPORTING EACH BOX CHECKED, page 4

Box 3, 3a and 10 - IDWR recommends an amount less than decreed and/or beneficially used. A reduction in water right would constitute a taking.

Box 7 - Beneficially used for purposes set forth in notice of claim.

Box 8 - IDWR recommends a period of use less than decreed and/or beneficially used. A reduction in water right would constitute a taking.

Box 11 - This is beyond the statutory authority vested in the Director.

CHANGES TO DIRECTOR'S REPORT, page 4

Objectors reserve the right to claim all purposes of use and quantities of use as shown by the evidence at trial.

Question 14., page 4, Other

I.

GENERAL RESPONSE

Except as specifically admitted herein, objectors deny each and every allegation contained in the Director's Report, any related or subsidiary pleadings, and/or any attachments thereto.

II.

DESCRIPTIVE SUMMARY

(DIRECTOR'S REPORT PART I)

(hereinafter DRP-I)

(DRP-I at first unnumbered page)

The objectors admit that Part I of the Director's recommendation contains some claims to water rights appropriated under state law from Reporting Area 3. The objectors deny all other averments because the objectors lack sufficient knowledge or information upon which to form a belief as to the truth of the averments.

III.

TABLE OF CONTENTS

(DRP-I at 2nd and 3rd unnumbered pages)

The objectors admit that the Table of Contents reflects the page numbers of the referenced sections and deny all other averments based upon the objectors' lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments and because any averment, expressed or implied, is so

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indefinite that it prevents the objectors from knowing what would be admitted or denied.

#### IV.

##### INTRODUCTION

#### 1. INSTRUCTIONS FOR USING THIS REPORT PART I. (DRP-I at page 1)

The objectors admit that Part I consists of seven sections; that the description of the water system includes a brief description of Reporting Area 3 and an illustration of the boundaries of the reporting area; that the water rights and the list of the recommended rights are grouped alphabetically by source and listed chronologically by priority date; that the rights or claims in the list of claims/rights not recommended are listed numerically by water right number; and that brief instructions are found at the beginning of the applicable sections. The objectors deny that any description or any implication that the description of the water system or the illustrations are true and accurate due to lack of knowledge or information regarding the truth of the averment; deny that the general provisions apply to all water rights or define or limit classes of water rights; and deny that the general provisions "will affect your water right," based upon insufficient knowledge or information upon which to form a belief as to the truth of the averments.

#### 2. SCOPE OF THE ADJUDICATION. (DRP-I at page 1 - 3)

The objectors deny all averments in paragraph a., due to lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments.

Regarding paragraph b., the objectors lack sufficient information or knowledge upon which to form a belief as to whether water rights which are not claimed in the adjudication will or will not exist upon entry of the court's decree and, therefore, deny such averment. The objectors admit that the court entered an order dated January 17, 1989, but presently lack sufficient knowledge to know whether any of the other averments concerning the court's order are true or accurate and, therefore, deny the same. The objectors deny that a right must be adjudicated before water may be distributed by the director. The objectors deny all other averments in paragraph b.

**3. PURPOSE OF THIS REPORT PART I. (DRP-I at page 3 - 4)**

The objectors admit that portion of the first sentence which states "This report contains the Director's recommendations to the SRBA District Court as to the nature and extent of water rights," but deny that such recommendations "are necessary for administration of water rights in Reporting Area 3," and further deny the Director has authority to "administer" such rights.

Regarding the second paragraph, the objectors admit that all water rights remain subject to the applicable law generally, but deny the remainder of the second paragraph.

Regarding the third paragraph of this section, the objectors deny all averments therein based upon lack of knowledge or information upon which to form a belief as to the truthfulness of the averments.

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V.

DESCRIPTION OF THE WATER SYSTEM: BASIN 36

1. **BOUNDARIES OF BASIN.** (DRP-I at pages 4 - 6)

Regarding the first paragraph of this section, the objectors deny all averments due to a lack of knowledge or information upon which to admit or deny.

Regarding the second, third and fourth paragraphs of this section, the objectors admit that as broad statements, those paragraphs are generally accurate but the statements are so broad and attenuated from any matter relevant to the objectors' water right that the objectors are unable to know what would be implicitly admitted or denied and therefore, deny the same.

With respect to the fifth paragraph of this section, the objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred and, therefore, deny the averments.

2. **WATER SOURCES.** (DRP-I at page 6)

The objectors admit that the Snake River Plain Aquifer is the source of outflows of springs located along the Snake River Canyon Wall in the Hagerman Valley. The objectors presently lack sufficient knowledge or information upon which to form an opinion as to the truth of the other averments set out in this section and, therefore, deny the same.

3. **DEVELOPMENT OF WATER USE.** (DRP-I at pages 6 - 9)

The objectors admit that numerous factual and historical averments are set out in this section, which may be accurate, but

these objectors have no basis for knowing whether some or all of the averments are intended to relate to the objectors' claims and, thus, are prevented from knowing what would be admitted or denied. Therefore, the averments are denied.

## VI.

### GENERAL PROVISIONS

**GENERAL PROVISIONS 1 - 8 APPLY TO ALL WATER RIGHTS IN BASIN 36.**

(DRP-I at page 9)

The objectors deny that "General Provisions 1 - 8" apply to all water rights in Basin 36 as the statements are so broad and attenuated from any matter relevant to the objectors' water rights, that the objectors are unable to know what would be explicitly admitted or denied. The objectors also specifically deny that general provisions 1-8 apply to the objectors' right.

#### **1. EFFECT OF ADJUDICATION. (DRP-I at page 9)**

With respect to paragraph a., the objectors presently have no knowledge or information upon which to form a belief as to the truth of whether a future decree would supersede prior decrees, or whether unclaimed rights would cease to exist and, therefore, deny the same.

Regarding paragraph b., the objectors deny that the Director has any powers to administer water rights other than those specifically delegated by the Legislature of the State of Idaho, and which do not violate the objectors' state and federal constitutional rights, and therefore the averments are denied.

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**2. GENERAL ADMINISTRATIVE PROVISIONS. (DRP-I at pages 9 - 10)**

The objectors admit paragraphs a. and b.

**3. CONJUNCTIVE ADMINISTRATION (DRP-I at page 10)**

The objectors deny the conjunctive administration provisions based upon the objectors' lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments and because any averment expressed or implied is so indefinite that it prevents the objectors from fairly understanding what would be admitted or denied. Additionally, the objectors deny that the Department of Water Resources has any statutory or regulatory authority for the "conjunctive administration" as therein described.

**4. ADMINISTRATION OF GROUND WATER RIGHTS (DRP-I at page 10)**

The objectors deny the averments within this section.

**5. ADMINISTRATION OF BASIN 36 RELATIVE TO THE SNAKE RIVER (DRP-I at page 10)**

The objectors admit that the springs are hydrologically interconnected with the Snake River Aquifer, but deny all other averments based upon the objectors' lack of sufficient information or knowledge upon which to form a belief as to the averments herein. The objectors additionally deny any said averments expressed or implied because the averments are so indefinite and generalized as to prevent the objectors from fairly understanding what would be admitted or denied.

**6. ADMINISTRATION OF SMALL DOMESTIC AND STOCK WATER RIGHTS (DRP-I at page 11)**

The objectors admit that part of the first sentence of subparagraph a. to the effect that "small domestic and stock water rights from surface water are not subject to administration," but deny the balance of said sentence and said paragraph.

The objectors admit the first sentence of paragraph b., and deny the balance of that paragraph because the criteria set forth therein ("if the director determines that administration is necessary") is so ambiguous, indefinite and uncertain that it prevents the objectors from knowing what would be admitted or denied, and by further reason of the fact that no statutory or regulatory authority exists conferring such sweeping and unlimited authority upon the Director or the Department.

The objectors deny the averments in paragraph c. as the averments are inaccurate and because the objectors lack sufficient knowledge or information upon which to form a belief as to the truth of the matters averred.

**7. MEASURING DEVICES AND CONTROL WORKS (DRP-I at page 11)**

The objectors deny all averments contained herein as such averments are based upon an indeterminate subjective standards which are so ambiguous and indefinite as to prevent the objectors from fairly knowing what would be admitted or denied. Additionally, no statutory or regulatory authority exists conferring such sweeping and unlimited authority upon the Director or the Department as is alleged in this paragraph.

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**8. FIRE FIGHTING PURPOSES (DRP-I at page 11)**

The objectors admit that subparagraph a. and subparagraph b. are generally accurate statements of present law, but deny the averments are in any way relevant to defining the objectors' right.

**9. CONSUMPTIVE USE (DRP-I at page 12)**

The objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred and, therefore, deny the same.

**GENERAL PROVISION 10 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH DOMESTIC USE AS A PURPOSE OF USE (DRP-I at page 12)**

The objectors deny that "General Provision 10" applies to all water rights in Basin 36 shown with domestic use as a purpose of use as the statements are so broad and attenuated from any matter relevant to the objectors' water rights, that the objectors are unable to fairly understand what would be explicitly admitted or denied and, therefore, deny the same.

**10. DOMESTIC USE (DRP-I at page 12)**

The objectors deny that the definition of "domestic use" contained in paragraphs a., b., and c. is consistent or in conformity with the definition of such term for purposes of the Idaho Constitution, or statutory definition contained in I.C. Section 42-111 as now, or as heretofore in effect at relevant times. The objectors further deny that the limitations set forth therein exist, are in force, or apply or serve in any way to limit objectors' rights.

**GENERAL PROVISION 11 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH STOCK WATER USE AS A PURPOSE OF USE. (DRP-I at page 13)**

The objectors deny that "General Provision 11" applies to all water rights in Basin 36 shown with stock water use as a purpose of use as the statements are so broad and attenuated from any matter relevant to the objectors' water right, that the objectors are unable to fairly understand what would be admitted or denied and, therefore, deny the same.

**11. STOCK WATER USE (DRP-I at page 13)**

The objectors deny the averments herein as beyond the scope and applicability of the definition as provided by Idaho law as now, or as heretofore in effect at relevant times. The objectors further deny that the limitations set forth therein limit the objectors' right or are relevant to the right.

**GENERAL PROVISIONS 12 - 16 APPLY TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH IRRIGATION AS A PURPOSE OF USE (DRP-I at page 13)**

The objectors deny that "General Provisions 12 - 16" apply to all water rights in Basin 36 shown with irrigation as a purpose of use as the statements are so broad and attenuated from any matter relevant to the objectors' water right that the objectors are unable to fairly understand what would be admitted or denied.

**12. IRRIGATION USE. (DRP-I at pages 13 - 14)**

The objectors deny all averments based upon the objectors' lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments and because

prevent the objectors from fairly knowing what would be admitted or denied; because the standard utilized ("as determined by the director") is ambiguous, subjective and indefinite so as to prevent objectors from knowing what would be admitted or denied; and because it is both expressly and implicitly in excess of the power and authority conferred upon the State of Idaho, the Director or the Department by the Constitutions of the United States and State of Idaho, pertinent provisions of the Idaho Code or valid applicable regulations, if any, adopted by the Department in conformity with law. Therefore, the objectors deny the same.

**13. DIVERSION VOLUME FOR IRRIGATION.** (DRP-I at page 14)

The objectors admit that Figure 1 generally depicts certain lands in Basin 36; however, the objectors deny all other averments including that the amounts set forth are the maximum annual volume of water reasonably required at the field headgate for irrigation, either within Basin 36 in general, or upon objectors' real property in particular. The objectors additionally deny that the maximum annual volumes per acre set forth is that which is "reasonably required for irrigation unless a higher annual diversion volume is reasonably required due to conveyance losses, method of irrigation or field conditions;" because the standard utilized ("as determined by the director") is ambiguous, subjective and indefinite so as to prevent objectors from knowing what would be admitted or denied; and because it is both expressly and implicitly in excess of the power and authority conferred upon the State of Idaho, the Director or the Department

by the Constitutions of the United States and State of Idaho, pertinent provisions of the Idaho Code or valid applicable regulations, if any, adopted by the Department in conformity with law. Therefore, the objectors deny the same.

**14. CONSUMPTIVE USE FOR IRRIGATION.** (DRP-I at page 14 and 15)

The objectors admit that the recommended water rights contained within the Director's Report show only the irrigation use listed unless otherwise indicated in "Remarks." The objectors deny all other averments contained within this section, including the amount of maximum annual volume of consumptive use per acre in the northern and southern portions of the basin, all of which is beyond the scope of any power or authority vested in the Director or the Department, and contrary to fact; historical use; established, vested, decreed, licensed or permitted rights.

**15. AMOUNT OF COMBINED WATER RIGHTS FOR IRRIGATION.** (DRP-I at page 15)

The specific averments have no relationship to or basis in fact relating to the individual needs or rights of the objectors, and accordingly, objectors deny this section in its entirety. In addition, no statutory or regulatory authority exists conferring upon the Director, or the Department, the power to limit use and ownership of objectors' private property rights as alleged.

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**16. DIVERSION RATES IN EXCESS OF .02 CFS PER ACRE. (DRP-I at page 15 - 16)**

The objectors deny the averments contained in this section in its entirety.

**17. INSTRUCTIONS FOR USE OF LIST OF RECOMMENDED WATER RIGHTS. (DRP-I at page A-i, A-ii and A-iii)**

The objectors admit that each water right in the list of recommended water rights includes a description including right number, name and address, source, maximum quantity, consumptive use, priority date, point of diversion, purpose of use, period of use, place of use, basis of right and others. The objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred in said descriptions other than that the descriptions allegedly include the Director's or Department's version of the facts as they relate to the matters identified. Objectors deny the accuracy of the substantive allegations or information set forth with regard to the objectors' right.

**18. IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW. (DRP-I, pages A-1 - B-25)**

The objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred in said recommended water rights other than those specific admissions contained in Questions 1 - 12 of the attached individual objection, and therefore deny the same.

**DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36)**

**(DIRECTOR'S REPORT PART II)**

**I.**

Objectors do not understand the allegations, averments or contents of Part II of the Director's Report for Reporting Area 3 (Basin 36) to pertain or relate to objectors or their claims, and do not believe any response is required. To the extent a response is required, objectors deny the same in its entirety.

**DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36)**

**(DIRECTOR'S REPORT PART III)**

**I.**

No report denominated as Part III of the Director's Report for Reporting Area 3 (Basin 36) has been filed, and accordingly objectors are unable to admit, deny or otherwise response to the same. Objectors do not understand that the contemplated subject matter of such Part III will relate or pertain to objectors or their claims, and no response is required in any case. To the extent any response is required, objectors deny the same in its entirety.

**VIII.**

**AFFIRMATIVE DEFENSES**

Pursuant to I.R.C.P. 8(c), objectors herewith state the following matters of affirmative defense or avoidance:

**AFFIRMATIVE DEFENSE NO. 1**

The objectors' water right is an incorporeal form of real property (as defined by Idaho Code Sections 7-703, 73-114, 55-101,

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and like statutes) protected by Section 14, Article 1, of the Idaho Constitution, and the Fifth Amendment to the United States Constitution, and allege that the actions of the Director in recommending, limiting and/or regulating said rights is an unconstitutional infringement upon and a taking of private property, without just compensation and violation thereof.

**AFFIRMATIVE DEFENSE NO. 2**

The adjudication authorization legislation, I.C. Section 42-1401, et seq., on its face and as applied by the Director and the Department constitutes an improper delegation of constitutional power and authority conferred upon the executive, legislative and/or judicial branches of government and as such violate the provisions governing separation of powers set forth in Article 2, Section 1, Idaho Constitution.

**AFFIRMATIVE DEFENSE NO. 3**

The procedure set forth in the adjudication authorization legislation, statutes, I.C. Section 42-1401, et seq., and any rules, regulations, procedures, policies or standards promulgated by the Director and/or the Department, if any, are vague and so lacking in reasonable specificity so as to render them impossible of reasonable comprehension, or consistent and meaningful application.

**AFFIRMATIVE DEFENSE NO. 4**

The procedures, rules, regulations, policies or standards, if any, adopted, implemented and applied by the Department and/or the Director violate the equal protection and due

process clauses of the Fourteenth Amendment, United States Constitution, and Article 1, Sections 2 and 13, Idaho Constitution.

**AFFIRMATIVE DEFENSE NO. 5**

The adjudication authorization legislation, Idaho Code Section 42-1401, et seq., and the actions of the Director and Department in recommending, limiting and/or regulating the objectors' water right constitutes a violation of 42 U.S.C. Section 1983.

**AFFIRMATIVE DEFENSE NO. 6**

The water right owned by the objectors is the subject of valid existing decrees issued by the Director and Department, which decrees are binding upon the State of Idaho, the Department and the Director. As a result, the State of Idaho, the Department and the Director are precluded by the doctrines of res judicata, collateral estoppel, judicial estoppel and the like from relitigating or questioning the validity, existence or priority of such right, and/or from taking any position in the Director's Report, or otherwise, which is inconsistent with such decrees.

**AFFIRMATIVE DEFENSE NO. 7**

The Director's recommendations are contrary to decreed rights, historical use and extent licenses and permits issued by the Department. There has been no forfeiture nor abandonment of the objectors' water rights, nor have the objectors' water rights been prescriptively or adversely possessed, nor have such decrees been vacated or such licenses and permits revoked.

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**AFFIRMATIVE DEFENSE NO. 13**

The Director's Report is a pleading subject to the provisions of the Idaho Rules of Civil Procedure, including, but not limited to the requirement of I.R.C.P. 8(a)(1) that such pleadings contain a clear and plain statement of the facts, demonstrating an entitlement to relief. The Director's Report violates such provision.

**AFFIRMATIVE DEFENSE NO. 14**

The Director's Report fails to state a claim upon which relief may be granted.

**AFFIRMATIVE DEFENSE NO. 15**

The Director's Report is subject to, and must comply with, the requirements of Idaho Code Section 42-1411. The Director's Report does not comply with the requirements of the statute.

**AFFIRMATIVE DEFENSE NO. 16**

In conducting the investigation and compiling the Director's Report, the Department and the Director have not complied with the requirements of Idaho Code Section 42-1410.

**AFFIRMATIVE DEFENSE NO. 17**

In conducting the investigation and compiling the Director's Report, the Department and the Director have not complied with the requirements of Idaho Code Section 42-1416.

**AFFIRMATIVE DEFENSE NO. 18**

The procedures specified in the authorizing legislation and procedural rules promulgated in accordance therewith serve to

deny objectors due process of law in violation of Amendment Fourteen to the Constitution of the United States and Art. 1, Section 13, Idaho Constitution.

**AFFIRMATIVE DEFENSE NO. 19**

The "General Provisions" and "Other Statements" contained in the Director's Report, along with the Claims Investigation Manual, Adjudication Memoranda and other materials of a similar nature used or employed by the Department, the Director and/or their agents, servants and/or employees constitute rules and regulations which were required to be proposed, promulgated, adopted and approved in conformity with the Administrative Procedures Act and other applicable statutory provisions. The Department, Director and their agents, servants and employees have failed to comply with such requirements, and accordingly, the "General Provisions," "Other Statements", Claims Investigation Manual and the like are invalid, void and of no force or effect.

**AFFIRMATIVE DEFENSE NO. 20**

Neither the "General Conditions," the Claims Adjudication Manual, Adjudication Memoranda or other promulgations, adoptions, policies, or the like have been submitted to or approved by the Legislature as required by Idaho Code Section 67-5217.

**AFFIRMATIVE DEFENSE NO. 21**

The relief requested by the Department and the Director in the Director's Report are beyond and in excess of the subject matter jurisdiction of the Court.

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**AFFIRMATIVE DEFENSE NO. 22**

The actions of the Legislature, or the Department and the Director to enact, adopt, implement or enforce statutes, regulations, rules or policies subsequent to November 19, 1987, and to apply or enforce the same for the purpose of, or with the effect of recommending, diminishing or altering objectors' water rights, constitute a violation of Amendment Fourteen, United States Constitution; Art. 1, Section 13, Idaho Constitution; the SRBA authorization legislation; and Idaho Code Sections 73-101 and 73-106.

**AFFIRMATIVE DEFENSE NO. 23**

These proceedings are subject to the requirements and provisions of Idaho Code Sections 12-117, 12-121, 12-123 and I.R.C.P. 11, and the provisions of the private attorney general doctrine, and other related doctrines, and the Department, Director and State of Idaho are obligated to objectors for the payment and reimbursement of any and all reasonable costs or attorney fees incurred herein.

**AFFIRMATIVE DEFENSE NO. 24**

The Director's Report asserts what amounts to be a taking of private property by power of eminent domain as governed by Idaho Code Section 7-701 et seq., and as such, venue is therefore improper.

**AFFIRMATIVE DEFENSE NO. 25**

The Department and the Director are equitably estopped from seeking any reduction in the quantity, quality or priority of

objectors' water rights by virtue of prior statements, representations and actions of the Department, Director or their agents, servants and employees.

AFFIRMATIVE DEFENSE NO. 26

The Department and the Director are barred by laches and the applicable statutes of limitation, including, but not limited to, Idaho Code Sections 5-202, 5-203, 5-204, 5-206, 5-207, 5-208, 5-215, 5-218, 5-219(2), 5-224 and/or 5-241.

AFFIRMATIVE DEFENSE NO. 27

Objectors hereby reserve the right to assert any further affirmative defenses not expressly stated herein, but which subsequently become apparent.

WHEREFORE, the objectors pray for judgment as follows:

1. That the State of Idaho take nothing by reason of its Directors' Report, and that this action, and any claims asserted against objectors, be dismissed.
2. That a decree be entered adjudicating the existence, validity, amount and priority of objectors' water rights in accordance with objectors' claims.
3. That to the extent the acts of the Department or Director constitute a taking of objectors' property for public use, that objectors be allowed and awarded just compensation therefor.
4. That the objectors be allowed all costs of suit and reasonable attorney fees incurred herein.
5. For such further relief to which the Court finds objectors justly entitled.

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(WATER\21530ANS)

14. |X| Other: I respond to the objection concerning:

- (1) FISH PROPAGATION
- (2) ALL MATTERS RAISED IN THE CLAIMANTS' ANSWER, AFFIRMATIVE DEFENSES AND PRAYER FOR RELIEF.

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection items 3 and 3.a, and all allegations of the objection regarding those items, IDWR responds as follows: (1) it recommended the amount of water it determined was being beneficially used; (2) the claimant is not entitled to any amount greater than that which is beneficially used (Idaho Code Secs. 42-104 and 42-1402); (3) the recommendation of the director to the SRBA Court as to how the right should be decreed does not constitute a taking because it is simply a recommendation and not a final determination of the right; and (4) the eventual decree by the SRBA Court of the amount of water beneficially used, even if less than the amount previously decreed, will not constitute a taking because the right is limited to that amount beneficially used.

In response to Statement of the Objection item 3c., and all allegations of the objection regarding that item, IDWR responds as follows: Since this water right is not a federal reserved water right, this objection item is inapplicable and the claimant's assertion of it is in error. IDWR further responds that under Idaho law water cannot be reserved for future use, but must be appropriated and put to beneficial use before the user can acquire a water right.

In response to Statement of the Objection items 7 and 14(1), and all allegations of the objection regarding those items, IDWR responds that it recommended the right for irrigation and stockwater, two purposes of use that were identified on the notice of claim and that were found when the claim was investigated. By identifying in the objection wildlife preservation as an additional use that the claimant did not list on the notice of claim, the claimant improperly seeks to use the objection process to amend the claim. A claimant must obtain leave of the court to amend a claim after a director's report is filed, just as a party must obtain leave of the court to file a late claim after the director's report is filed. Once leave of

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the court is granted, IDWR can investigate the amended claim and make an appropriate recommendation to the court. IDWR further responds that it did not recommend fish propagation as a purpose of use because that use was found to constitute an expansion of use to which neither Idaho Code section 42-1416 nor 42-1416A apply.

In response to Statement of the Objection item 8, and all allegations of the objection regarding that item, IDWR responds as follows: (1) The decree asserted by the claimant does not contain a period of use decreed for this water right. (2) Idaho Code Sec. 42-1411(2)(g) requires the director to determine the period of use of each water right acquired under state law that is recommended in the director's report. (3) IDWR has developed irrigation season of use standards for various climatic areas throughout the state based on a 75% chance of a 24 degree fahrenheit frost. (4) The irrigation season of use cannot exceed the period in which water may be beneficially used. (5) The period of the year during which this water right may be used is consistent with the standard irrigation season of use for the area in which the place of use of this water right is located. (6) Water may be used for irrigation outside the standard season of use, subject to the conditions set forth in general provision 12b of the director's report. (7) The recommendation of the director to the SRBA Court as to how the right should be decreed does not constitute a taking because it is simply a recommendation and not a final determination of the right. (8) The eventual decree by the SRBA Court of the irrigation season of use will not constitute a taking because the right is limited to the period in which water may be beneficially used.

In further response to this objection item, IDWR responds that it recommended the season of use for stockwater as claimed and a longer irrigation season of use than was claimed. By now seeking a year round season for use for irrigation, the claimant improperly seeks to use the objection process to amend the claim. A claimant must obtain leave of the court to amend a claim after a director's report is filed, just as a party must obtain leave of the court to file a late claim after the director's report is filed. Once leave of the court is granted, IDWR can investigate the amended claim and make an appropriate recommendation to the court.

In response to Statement of the Objection item 10 and all allegations of the objection regarding that item, IDWR responds as follows: (1) The decree asserted by the claimant did not set an annual volume of consumptive use for this water right. (2)

Idaho Code Sec. 42-1411(2)(i) requires the director to determine the annual volume of consumptive use for each water right acquired under state law and recommended in the director's report. (3) Idaho Code Sec. 42-1401A(2) provides that the quantification of consumptive use "is included as a rebuttable presumption in a decree only for the purpose of transfers pursuant to section 42-222, Idaho Code"; therefore, the consumptive use recommended for this water right is included solely for use in future transfer proceedings. (4) The annual volume of consumptive use recommended for this right is 3 acre feet per acre. This is the maximum volume of water consumed by the most water consumptive crop (pasture) that can be grown in the area during the period of year when water is used for irrigation, as provided for by Idaho Code Sec. 42-1401A(2). (5) The recommendation of the director to the SRBA Court as to how the right should be decreed does not constitute a taking because it is simply a recommendation and not a final determination of the right. (6) The eventual decree by the SRBA Court of the amount of water beneficially used, even if less than the amount previously decreed, will not constitute a taking because the right is limited to that amount beneficially used.

In response to Statement of the Objection item 11, and all allegations of the objection regarding that item, IDWR responds that it has authority pursuant to Idaho Code Sec. 42-1411(2)(j) to include in its recommendations of water rights acquired under state law and recommended in the director's report "such other matters as are necessary to define the right." The remark or remarks objected to are necessary to adequately describe and define this water right.

In response to Statement of the Objection item 14, and all allegations of the objection regarding that item, see attached "IDWR's Response to Answer Affirmative Defenses and Prayer for Relief of Claimant".

In response to the sentence listed in Changes to the Director's Report, whereby the claimant attempts to "reserve the right to claim all purposes of use and quantities of use as shown by the evidence at trial," IDWR responds as follows: Insofar as this purported reservation of rights may constitute an attempt to reserve the right to amend at trial the claimant's notice of claim, the claimant improperly seeks to use the objection process to amend the claim. A claimant must obtain leave of the court to amend a claim just as a party must obtain leave of the court to file a late claim after the director's report is filed.

(Over)

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**OCT 11 1994**

CHANGES TO THE DIRECTOR'S REPORT

The director proposes no changes to the description of this claim in the Director's Report.

☒ Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary:

|                                                                                      | No. of<br>Pages |
|--------------------------------------------------------------------------------------|-----------------|
| Notice of Claim No. A36-00003B                                                       | 4               |
| IDWR's Response to Answer, Affirmative Defenses and Prayer<br>for Relief of Claimant | 4               |

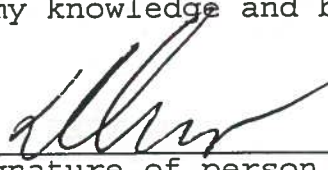
VERIFICATION (Must be Completed)

State of IDAHO

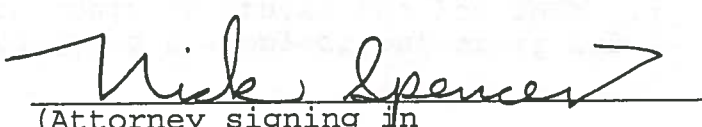
County of ADA

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

That R. Keith Higginson, in his official capacity as director of the Idaho Department of Water Resources, is a party to this proceeding, as defined by I.C. 42-1401A(1) and (7); that I am the Adjudication Bureau Chief for IDWR and am authorized by R. Keith Higginson, in his official capacity as director of IDWR, to verify this response; and that I have read the foregoing response, know its contents and that the statements contained therein are true to the best of my knowledge and belief.

  
Signature of person filing response

By:

  
(Attorney signing in  
representative capacity)

Subscribed and sworn to before me this 9<sup>th</sup> day of September,  
1993.

  
Notary Public for Idaho

Residing at:

My Commission expires: Public

Danni Smith, Notary  
Residing at Boise, Idaho  
My Commission Expires December 5, 1994

(Over)

OCT 11 1993  
RECEIVED

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of September, 1993, I mailed the original and copies of the foregoing response, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepared 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. One copy to the owner of the water right, and you must fill in the following information:

See No. 3

3. One copy to the party who filed the objection, or if represented by an attorney, to their attorney; and you must fill in the following information:

Name: HEPWORTH NUNGESTER & LEZAMIZ  
Address: PATRICK D BROWN  
& PENELOPE PARKER  
PO BOX 389  
TWIN FALLS ID 83303

4. One copy to:

United States Department of Justice  
Environment and Natural Resource Division  
550 West Fort Street, Box 33  
Boise, Idaho 83734



Signature of Respondent or attorney  
mailing on Respondent's behalf

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

IN RE THE GENERAL ADJUDICATION  
OF RIGHTS TO THE USE OF WATER FROM  
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A36-00003B  
Date Received: 8/18/1988  
Receipt No: 500/535  
Received By: *[Signature]*

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: ROBERT B. GARDNER - *claim owner* 208-837-4902  
Address: P. O. 41  
HAGERMAN, ID 83332

AND/OR

Name: BARBARA GARDNER - *filed for husband's portion* 208-837-4902  
Address: P. O. 41  
HAGERMAN, ID 83332

2. Date of Priority: SEP 10, 1884

3. Source: BILLINGSLEY CREEK Trib. to: SNAKE RIVER

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 of | Lot | County  |
|----------|-------|---------|--------|--------|--------|-----|---------|
| 07S      | 13E   | 11      | SE     | SE     | NE     |     | GOODING |
|          |       | 27      | NE     | SE     | NW     | R   | GOODING |
|          |       |         | NW     | SE     | NW     | R   | GOODING |
|          |       | 28      |        | SE     | NE     | R   | GOODING |

5. Description of diverting works:

HEADGATE & BUCKEYE DITCH, REDIVERIONS FROM DITCH

6. Water is used for the following purposes:

| Purpose          | From  | To    | C.F.S. | (or) | A.F.A. |
|------------------|-------|-------|--------|------|--------|
| IRRIGATION       | 03/15 | 11/01 | 7.160  |      |        |
| STOCKWATER       | 01/01 | 12/31 | 0.050  |      |        |
| FISH PROPAGATION | 08/01 | 04/01 | 7.160  |      |        |

7. Total Quantity Appropriated is:

7.160 C.F.S. (and/or) 442.70 A.F.A.

8. Total consumptive use is 332.7 Acre Feet Per Annum.

9. Non-irrigation uses:

LIVESTOCK/200 RANGE, COMMERCIAL FISH PROPAGATION

A36-00003B

Page

1

Date: 08/18/88

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OCT 11 1994

10. Place of Use:

| Township | Range | Section | 1/4 of 1/4    | Lot | Use  | Acres |
|----------|-------|---------|---------------|-----|------|-------|
| 07S      | 13E   | 27      |               |     | FISH |       |
|          |       |         | SW            | NW  | IRR  | 25.0  |
|          |       |         | NW            | SW  | FISH | 11.0  |
|          |       |         | Section Acres |     |      | 36.0  |
|          |       | 28      |               |     | FISH |       |
|          |       |         |               |     | FISH |       |
|          |       |         | SW            | NE  | IRR  | 11.0  |
|          |       |         | SE            | NE  | IRR  | 22.0  |
|          |       |         | NE            | SE  | FISH | 40.0  |
|          |       |         | NW            | SE  | IRR  | 20.0  |
|          |       |         | Section Acres |     |      | 93.0  |
|          |       |         | Total Acres   |     |      | 129.0 |

11. Place of use in counties: GOODING

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:  
NONE

14. Remarks:

UNDER THE 1932 DECREE, WE ARE CLAIMING FISH PROP. AS ANOTHER USE UNDER THE ORIGINAL PRIORITY DATE FOR IRRIGATION. PONDS WERE DEVELOPED IN THE 1920'S FOR RECREATION USE. COMMERCIAL TROUT PRODUCTION STARTED IN THE EARLY 1970'S. THERE ARE 12 PONDS 18' WIDE X 150' LONG X 3-4' DEEP.  
THE UPPER PONDS CAN GET WASTEWATER FROM THE PONDS CLAIMED UNDER A36-00003A IF BARBARA GARDNER SO ALLOWS.  
STOCK DRINK FROM DITCHES ANYWHERE ON THE PROPERTY.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: 3/22/1932

NEW INTERNATIONAL MORTGAGE BAN  
Decree Plaintiff

vs

IDAHO POWER COMPANY, ET. AL.  
Decree Defendant

MICROFILMED  
OCT 11 1994  
JAN 20 1993

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do \_\_\_\_\_ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: \_\_\_\_\_

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): Barbara Gardner Date: Aug. 18, 1988  
\_\_\_\_\_  
Date: \_\_\_\_\_

State of Idaho

County of Twin Falls )  
SS.

Subscribed and sworn (or affirmed) before me this 18th day

of August 19 88

Roxanne Storey  
Notary Public

Seal

Residing at Buhl, Id

My Commission Expires 6-30-94

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Buckeye Ditch

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POOR ORIGINAL

**NOTICE OF ERROR**



**RESPONSE**



**CORRECTED R PROOF**



**MICROFILMED**  
**JAN 20 1993**

Sep 11, 1992

Dept. of Water Resources  
Statehouse mail  
Boise, Id 83720-9000

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SEP 14 1992

Dear Sirs:

Department of Water Resources

Due to my husbands illness, I have not irrigated 20 acres in section 26 + 38 since 1987. The pump broke down and he was unable to fix it at that time. For past 3 or 4 yrs. he has been unable to cope with any problems mentally or physically so it did not get put back in production.

I have  $6\frac{1}{2}$  ac. which I'm still paying taxes on as irrigated pasture. I do irrigate part of it myself for garden, berries, + lawn.

I need to keep water rights for this land as it will be my means of a living after he is gone.

I have someone interested in buying 20 acres in section 26 + 38 but cannot sell without water rights.

We've been raising fish for past 13 yrs. He did not file on that water by the advise of his lawyer because they did not want to change the adjudication right date (1932)

Federal Decision which stated

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JAN 20 1993

water could be used for irrigation,  
Domestic, Power and Other Purposes.

I feel we should be able  
to keep rights for fish propagation.

We have bass ponds which  
were stocked 25 yrs or more yrs  
ago & used for duck & geese also.  
This water is used year around.

Sincerely,

Barbara Gardner.

I think the ditch users  
should be allowed to decide  
when to turn ditch of and on.

Some yrs we need to start  
irrigating in March & some  
years later in the fall.

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JAN 20 1993



State of Idaho

# DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS  
Governor

R. KEITH HIGGINSON  
Director

19-Oct-1992

BARBARA GARDNER  
829-A E 2830 S  
HAGERMAN ID 83332

RE: RESPONSE TO NOTICE OF ERROR FOR CLAIM 36-00003B AND  
36-00003J.

Dear Ms Gardner

After viewing the aerial photos taken in 1987 and talking to the field examiner that observed your system I am unable to recommend the 20 acres in the NWSE of sec 27. The aerial photo showed no crops in 1987.

Since March 25, 1963 for groundwater and May 20, 1971 for surface water the mandatory permit system has been the legally accepted method of perfecting a water right. Uses added to a system later in time require a water right unique to that use; they cannot just be added to an existing right. Therefore, I am unable to recommend fish propagation as a portion of 36-00003J.

Your NOE indicates that you would like the recommendation to show a longer season of use for irrigation. The Director has approved extending the period of use for the Hagerman valley to 3/15 to 11/15.

The proposed recommendation is based on irrigation season of use standards adopted by the Director for the various regions throughout the state. These standards are based on the period of the year in which there is less than a 75% chance of a 24 degree F. frost.

In addition, since there are some years in which water can be beneficially used for irrigation outside the irrigation season, the proposed Director's Report includes a general provision which provides for irrigation outside the irrigation season under certain conditions. The conditions

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**JAN 20 1993**

GARDNER  
PAGE 2  
19-Oct-1992

are that the water is beneficially used, as determined by the director; that all water rights with a period of use outside the irrigation season, regardless of priority, are satisfied; and that the use does not conflict with the public interest as determined by the director. This proposed general provision will be included in the Director's Report.

Your NOE also questions the basis for recommendation of an amount that is less than the amount shown in a previous decree.

Under Idaho law, a water right is limited to the amount of water beneficially used for the purposes for which the water right was established. The amount of water beneficially used is limited to the amount that is actually used and is reasonably required. For irrigation purposes, a reasonable amount is the amount required using irrigation methods that are reasonably efficient under current circumstances. If the amount of a water right shown in a decree is greater than the amount that is beneficially used, then the portion that is not beneficially used is forfeited.

The amount proposed to be recommended for your claim is based on the amount of water determined to be beneficially used for the recommended uses, based on available data and current methods of analysis. To support recommendation of a greater amount, you will need to submit evidence of beneficial use of a greater amount to IDWR.

If you still disagree with IDWR's recommendations, you will have an opportunity to file an objection to the Director's Report with the court. When the Director's Report is filed with the court, you will be mailed a notice that will contain more information about the objection process. As part of the objection process, IDWR will work with the claimants to resolve disputed issues, including efforts to obtain additional data which will be shared with the water users.

Sincerely

Kelly K Christensen  
Sr Water Resource Agent

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JAN 20 1993

**R PROOF**  
**CVR**  
**MAPS**  
**PHOTOS**  
**MISC**



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**JAN 2 1993**

Water Right Number - R36-000038

Prefix Translation: RESEARCH

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

\*\*\* C - CURRENT OWNER \*\*\*

GARDNER

ROBERT B

1 - PO BOX 41

2 -

3 -

City- HAGERMAN

State- ID Zip- 83332

Phone - 208-837-4902

GARDNER

BARBARA

1 - PO BOX 41

2 -

3 -

City- HAGERMAN

State- ID Zip- 83332

Phone - 208-837-4902

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +  
09/10/1884 ERROR IN REGION D - DECREED+ - - - - Source - - - - + + - - - - - Tributary - - - - - +  
BILLINGSLEY CREEK SNAKE RIVER+ - - - - Point of Diversion - - - - - +  
TwN Rng Sec Tract Lot RFlg County

07S 13E 11 SE SE NE (47) GOODING

+ - - - - Water Use - - - - - +  
Code Description Period From Period To Diversion Rate Diversion Volume  
01 - IRRIGATION 04/01 10/31 5.000  
04 - STOCKWATER 04/01 10/31 0.050  
04 - STOCKWATER 11/01 03/31 1.800+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +  
5.000 387.0+ - - - - Place of Use - - - - - +  
TwN Rng Sec Tract Lot Acres Code Description County  
07S 13E 27 SW NW 23.0 01 IRRIGATION (47) GOODING  
07S 13E 27 NW SW 9.0 01 IRRIGATION (47) GOODING  
07S 13E 28 SW NE 4 9.0 01 IRRIGATION (47) GOODING  
07S 13E 28 SE NE 25.0 01 IRRIGATION (47) GOODING  
07S 13E 28 NE SE 40.0 01 IRRIGATION (47) GOODING  
07S 13E 28 NW SE 5 23.0 01 IRRIGATION (47) GOODING

Total Acres: 129.0

+ - - Diversion Means - HEADGATE &amp; BUCKEYE DITCH, REDIVERSIONS FROM DITCH

+ - - Non-Irrigation Use - STOCKWATER, 200 RANGE CATTLE.

MICROFILMED  
JAN 20 1993

changed season of use for  
stockwater to agree with  
in season. KKC 10-21-92

Water right number - R36-00003B

Prefix Translation: RESEARCH

+ - - Other Rights for Same Use - NONE

+ - - - - - Remarks - - - - - +  
WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.  
A DIVERSION RATE OF 3.25 CFS AT THE FIELD HEADGATE IS  
RECOMMENDED FOR THE PLACE OF USE DESCRIBED ABOVE.  
1.75 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE  
LOSSES IN DELIVERY OF THIS RIGHT.

+ - - - - - Old Water Right Numbers - - - - - +  
3600003

+ - - - - - Conditions of Approval - - - - - +  
No Conditions of Approval found.

+ - - - Decree Plaintiff - - - +      + - - - Decree Defendant - - - +      + - Decree Date - +  
NEW INTERNATIONAL MORTGAGE BANK      IDAHO POWER COMPANY, ET. AL.      03/22/1932

+ - - - - - Comments - - - - - +  
Date: 08/05/1992 User Id: WORSTELL Subject: COPIED FROM REMARKS  
UNDER THE 1932 DECREE, WE ARE CLAIMING FISH PROP. AS ANOTHER USE UNDER THE ORIGINAL PRIORITY DATE FOR IRRIGATION. PONDS WERE DE-  
VELOPED IN THE 1920'S FOR RECREATION USE. COMMERCIAL TROUT PRODUCTION STARTED IN THE EARLY 1970'S. THERE ARE 12 PONDS 18' WIDE  
X 150' LONG X 3-4' DEEP. THE UPPER PONDS CAN GET WASTEWATER FROM THE PONDS CLAIMED UNDER  
A36-00003J IF BARBARA GARDNER SO ALLOWS. STOCK DRINK FROM DITCHES ANYWHERE ON THE PROPERTY.  
THIS CLAIM REPRESENTS ROBERT'S PORTION. A36-00003J REPRESENTS MY PORTION OF DECREE...FILED SEPERATELY.

+ - - Audit Fields - - +  
08/05/92 WORSTELL

+ - - - - - Adjudication Rights Dates and Flags Area - - - - - +

|                      |              |                       |              |                         |         |
|----------------------|--------------|-----------------------|--------------|-------------------------|---------|
| Court Report Filing  | - 00/00/0000 | Field Inspection Made | - 00/00/0000 | Civil Case Number       | - 39576 |
| Objection Filed Date | - 00/00/0000 | Field Inspection Flag | -            | Old Case Number         | -       |
| Response Filed Date  | - 00/00/0000 | Verified Date         | - 08/05/1992 | Old Judicial District   | -       |
| Claim Received Date  | - 08/18/1988 | Last Amended Date     | - 00/00/0000 | Temporary Right         | - P     |
|                      |              | Receipt Number        | - S001535    | Water District          | - 36A   |
|                      |              | POU Ownership Flag    | - Y          | Federal/State Indicator | - S     |
|                      |              | Name Connector        | - AND/OR     | Presumption Flag        | -       |
|                      |              |                       |              | Notice of Error Flag    | -       |

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STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIM VERIFICATION REPORT

14:36:22  
06/28/90

PAGE: 16  
QUICKLOOK INFORMATION

CLAIM NUMBER: A36-00003B

| WR ELEMENT                | FIELD EXAM<br>Y/N | CORRESPONDENCE<br>SENT/RECEIVED<br>BY WHOM/DATE | FIELD EXAM<br>BY WHOM/DATE | CHANGE<br>CLAIM<br>Y/N | VERIFIED BY<br>CODE | COMPLETED<br>REVIEW<br>WHOM/DATE | COMPLETED<br>DATA ENTRY<br>WHOM/DATE | VERIFIED<br>DATE<br>WHOM/DATE |
|---------------------------|-------------------|-------------------------------------------------|----------------------------|------------------------|---------------------|----------------------------------|--------------------------------------|-------------------------------|
| PRIORITY DATE             | Y                 |                                                 |                            | N                      |                     | HHT<br>8/5/92                    | QB                                   |                               |
| POINT OF DIV              | Y                 |                                                 |                            | Y                      | 1,5                 |                                  |                                      |                               |
| SOURCE                    | N                 |                                                 |                            | N                      |                     |                                  |                                      |                               |
| PLACE OF USE              | Y                 |                                                 | 8-16-90<br>Sec             | Y                      | 1,2,4,5             |                                  |                                      |                               |
| DIV. AMOUNT<br>CFS/VOLUME | Y                 |                                                 |                            | Y                      | 6. Deane            |                                  |                                      |                               |
| CONSUMPTIVE USE           | N                 |                                                 |                            | Y                      |                     |                                  |                                      |                               |
| PURPOSES                  | Y                 |                                                 | Sec<br>8-16-90             | Y                      | 6. Deane            |                                  |                                      |                               |
| PERIOD OF USE             | Y                 |                                                 |                            | Y                      |                     |                                  |                                      |                               |
| BASIS OF CLAIM            | Y                 |                                                 |                            | N                      |                     |                                  |                                      |                               |
| REMARKS                   | Y                 |                                                 |                            | N                      |                     |                                  |                                      |                               |

"VERIFIED BY" CODES

TOPO MAP/ORTHO-PQ = 1  
ASCS MAP = 2  
WATERMASTER RECORDS = 3  
NAPP PHOTOS = 4  
FIELD EXAM = 5  
OTHER (SEE REMARKS) = 6

THESE CODES ARE USED TO INDICATE HOW THE FIELD EXAMINER VERIFIED THE INFORMATION  
USED FOR THIS FIELD EXAMINATION. INDICATED ARE ALL CODES WHICH APPLY.

\* TWO RIGHTS ARE DESCRIBED BY THIS CLAIM. (Sec 10-5-90)

MICROFILMED

JAN 20 1993

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIM VERIFICATION REPORT

14:36:22  
06/28/90

PAGE: 1  
GENERAL INFORMATION

CLAIM NUMBER: A36-00003B

LAST: GARDNER  
ADDRESS: P.O. BOX 41  
CITY: HAGERMAN  
PHONE NUMBER: 208-837-4902

FIRST: ROBERT B.  
STATE: ID ZIP: 83332

OWNER CODE: C

LAST: GARDNER  
ADDRESS: P.O. BOX 41  
CITY: HAGERMAN  
PHONE NUMBER: 208-837-4902

FIRST: BARBARA  
STATE: ID ZIP: 83332

OWNER CODE: C

FIELD EXAM REQUIRED?

VERIFICATION REQUIRED DUE TO REMARKS?

DATABASE  
Y

FIELD  
EXAMINER

CLAIM REMARKS:

UNDER THE 1932 DECREE, WE ARE CLAIMING FISH PROP. AS ANOTHER USE  
UNDER THE ORIGINAL PRIORITY DATE FOR IRRIGATION. PONDS WERE DE-  
VELOPED IN THE 1920'S FOR RECREATION USE. COMMERCIAL TROUT PROD-  
UCTION STARTED IN THE EARLY 1970'S. THERE ARE 12 PONDS 18' WIDE  
X 150' LONG X 3-4' DEEP.  
THE UPPER PONDS CAN GET WASTEWATER FROM THE PONDS CLAIMED UNDER  
A36-00003J IF BARBARA GARDNER SO ALLOWS.  
STOCK DRINK FROM DITCHES ANYWHERE ON THE PROPERTY.  
THIS CLAIM REPRESENTS ROBERT'S PORTION. A36-00003J REPRESENTS  
MY PORTION OF DECREE...FILED SEPERATELY.

→ Separate Right!

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JAN 20 1993

AUG-24-1992

## NOTICE OF ERROR FORM

Please type or print clearly, fill out completely, and return to:

Idaho Department of Water Resources

Statehouse Mail

Boise, Idaho 83720-9000

RECEIVED

SEP 14 1992

Department of Water Resources

The notice of error must be received at IDWR by the **deadline date** printed below with your proposed recommendation.

**YOUR DEADLINE FOR FILING A NOTICE OF ERROR IS:** SEP-24-1992

1. Water right number:

36-00003B

2. Name: Robert Gardner or Barbara Gardner

Address: 829 AE 28305 (Box 41)  
Hagerman, Idaho  
83332

Weekday Telephone Number: 837-4902

MICROFILMED

JAN 20 1993

**TEAR AT PERFORATIONS AND COMPLETE FORM ON OTHER SIDE**

(Instead of filling in items 3 and 4 below you may include a copy of your proposed recommendation with the changes marked on the copy.)

3. Describe the portion of proposed recommendation with which you disagree:

Amount of water per acre  
fish propagation  
water for astetic purposes (fish, wildfowl)  
Dates for use

4. Describe the changes you wish to have made in the proposed recommendation:

We need 2 in per acres (258 in) from point where we  
take it from the ditch.  
Keep water for fish propagation  
Keep water for astetic purposes  
Set ditch use decide  
when to turn water on  
in spring + off in fall.

5. Describe why you disagree with the proposed recommendation:

Not enough water to irrigate properly. Fish propagation  
under 1932 decree for irrigation, domestic, power + other uses.  
Been raising fish 13 yrs. + payed state license. Was not  
contested during this time. after 5 yrs. you establish a right.

6. Date: Sept. 11, 1992

SIGNATURE

Robert Gardner  
Barbara Gardner

Barbara Hardner  
825 E 2830 S  
Pogonip, Ida  
83331

RECEIVED  
DEC 23 1992

Department of Water Resources  
Southern Region Office

Idaho Dept of Water Resources  
222 Shoshone St. East  
Twin Falls, Idaho  
83301



PLEASE MAIL  
EARLY FOR  
CHRISTMAS



MICROFILMED  
OCT 1 1992

B. Hardner  
825 E 2830 S  
Pogonip, Ida  
83331



ALWAYS  
USE ZIP CODE



MICROFILMED  
OCT 1 1992

Idaho Dept of Water Resources  
Southern Region  
222 Shoshone St. E.  
Twin Falls, Idaho  
83301

CONTACT PERSON: Bob GARDNER

PHONE NUMBER: ( ) - -

DATE OF FIELD EXAM: 8/16/90

APPOINTMENT MADE: Y ( ) N ( X )

TIME: 3:00 A ( ) P ( X )

ACCOMPANIED BY: (not Home)

PHONE NUMBER: ( ) - -

RELATIONSHIP TO CLAIMANT: \_\_\_\_\_

DIRECTIONS TO PROPERTY / REMARKS:

Confirmed by field Exam the acres irrigated, NAPP photo is accurate.

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JAN 20 1993

A. AJ CLAIM: # A36-00003B PRIORITY DATE: 09-10-1884 STAGE: D  
B. WR RECORD: # 36-00003 PRIORITY DATE: 09-10-1884 STAGE: D

C. FIELD EXAM REQUIRED?  
DUE TO PRIORITY DATE DISCREPANCY? (Y/N) DATABASE N FIELD EXAMINER XY

ARE THERE OBVIOUS REASONS TO QUESTION THE PRIORITY DATE CLAIMED? Y(X) N(~~X~~)  
IF YES EXPLAIN.

REMARKS: Priority for irrigation & stock ok -

Fish Prop priority is questioned based on remarks - claimant states priority for fish prop. is early 1970's.

===== RECOMMENDED PRIORITY DATE: 09-10-1884 =====

REVIEWED BY hnt DATE 7-13-90  
=====

(FISH USE)

2ND PRIORITY DATE:

12-31-1970

STAGE: J

*Needs more evidence  
& for permit filed  
(see 1-17-91)*

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JAN 20 1993

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

| RIGHT      | TWP. | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | CNTY       |
|------------|------|------|------|-----|-----|-----|-----|------------|
| A36-00003B | 07S  | 13E  | 27   | NE  | SE  | NW  |     | GOODING<R> |
| A36-00003B | 07S  | 13E  | 11   | SE  | SE  | NE  |     | GOODING    |
| A36-00003B | 07S  | 13E  | 27   | NW  | SE  | NW  |     | GOODING<R> |
| A36-00003B | 07S  | 13E  | 28   |     | SE  | NE  |     | GOODING<R> |

OTHER AJ CLAIMS WITH SAME AJ POD

| A PREFIX   | R PREFIX |
|------------|----------|
| A36-00003C | NONE     |
| A36-00003J |          |
| A36-10223  |          |
| A36-00103A |          |
| A36-00003E |          |
| A36-00003F |          |
| A36-00039G |          |

WR RECORDS IN SAME 40 ACRE TRACT

36-00005  
36-00019  
36-00021  
36-00024  
36-00025  
36-00026  
36-00027  
36-00034  
36-00035A  
36-00035B  
36-00039A  
36-00039B  
36-00040  
36-00051  
36-00052  
36-00064  
36-00065  
36-00067  
36-00071  
36-00076  
36-00077  
36-00082  
36-00083  
36-00085  
36-00087  
36-00088  
36-00089  
36-00090  
36-00091  
36-00094  
36-00095  
36-00096  
36-00103  
36-00108  
36-00112A  
36-00112B  
36-00113B  
36-00113C  
36-00113D  
36-00125  
36-04008  
36-04115  
36-04261

MICROFILMED  
JAN 20 1993

36-07271  
36-07658  
36-07739  
36-07834  
36-07840  
36-07853  
36-07875  
36-07957  
36-08058  
36-08319  
36-08335

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

B. WR POINT OF DIVERSION AND SOURCE:

| RIGHT    | TWP. | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | CNTY    |
|----------|------|------|------|-----|-----|-----|-----|---------|
| 36-00003 | 07S  | 13E  | 11   |     | SE  | NE  |     | GOODING |

OTHER WR RECORDS WITH SAME WR POD

AJ CLAIMS IN SAME 40 ACRE TRACT  
A PREFIX R PREFIX

|           |            |      |
|-----------|------------|------|
| 36-00005  | A36-00025  | NONE |
| 36-00019  | A36-00087  |      |
| 36-00021  | A36-07658  |      |
| 36-00024  | A36-10409  |      |
| 36-00025  | A36-00051D |      |
| 36-00026  | A36-10119  |      |
| 36-00027  | A36-10120  |      |
| 36-00034  | A36-10751  |      |
| 36-00035A | A36-10752  |      |
| 36-00035B | A36-10755  |      |
| 36-00039A | A36-10061  |      |
| 36-00039B | A36-00103B |      |
| 36-00040  | A36-00108A |      |
| 36-00051  | A36-00003G |      |
| 36-00052  | A36-00027  |      |
| 36-00064  | A36-00039C |      |
| 36-00065  | A36-00090E |      |
| 36-00067  | A36-00051B |      |
| 36-00071  | A36-00076A |      |
| 36-00076  | A36-00089B |      |
| 36-00077  | A36-00089D |      |
| 36-00082  | A36-10283  |      |
| 36-00083  | A36-10312  |      |
| 36-00085  | A36-00090A |      |
| 36-00087  | A36-00003D |      |
| 36-00088  | A36-00090B |      |
| 36-00089  | A36-00090C |      |
| 36-00090  | A36-00090D |      |
| 36-00091  | A36-00090F |      |
| 36-00094  | A36-00108F |      |
| 36-00095  | A36-00125A |      |
| 36-00096  | A36-00026  |      |
| 36-00103  | A36-00051C |      |
| 36-00108  | A36-00071A |      |
| 36-00112A | A36-00089A |      |

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JAN 20 1993

36-00112B  
36-00113B  
36-00113C  
36-00113D  
36-00125  
36-04008  
36-04115  
36-04261  
36-07271  
36-07658  
36-07739  
36-07834  
36-07840  
36-07853  
36-07875  
36-07957  
36-08058  
36-08319  
36-08335

A36-00108C  
A36-00108D  
A36-00108E  
A36-00108H  
A36-04008  
A36-04115  
A36-04261  
A36-00113B  
A36-10316  
A36-10588  
A36-00039J  
A36-00096A  
A36-00113F  
A36-00113G  
A36-10559  
A36-00048B  
A36-00048C  
A36-10223  
A36-00103A  
A36-00003C  
A36-00003E  
A36-00003F  
A36-00003J  
A36-00039G

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JAN 20 1993

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

C. FIELD EXAM REQUIRED?

|                                  | DATABASE | FIELD EXAMINER |
|----------------------------------|----------|----------------|
| DUE TO POD DISCREPANCY? (Y/N)    | Y        | <u>Y</u>       |
| DUE TO SOURCE DISCREPANCY? (Y/N) | N        | <u>N</u>       |

REMARKS:

Field exam to determine POD - are there several, or just one? ONE

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

| TWP.       | RGE.        | SEC.      | 1/4       | 1/4       | 1/4       | LOT        | COUNTY    |
|------------|-------------|-----------|-----------|-----------|-----------|------------|-----------|
| <u>7S.</u> | <u>13E.</u> | <u>11</u> | <u>SE</u> | <u>SE</u> | <u>NE</u> | <u>---</u> | <u>47</u> |

change

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

REVIEWED BY:

scu

DATE:

1-17-91

VIA BUCKEYE DITCH

2ND RIGHT (FISH USE)

— SAME POD —

VIA BUCKEYE DITCH

MICROFILMED

JAN 20 1993

A. ROOT WATER RIGHT NUMBERS:

A36-00003A  
A36-00003B  
A36-00003C  
A36-00003D  
A36-00003E  
A36-00003F  
A36-00003G  
A36-00003H  
A36-00003J

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JAN 20 1993

B. POU LISTING

| TWP | RNG | SEC | 1/4 | 1/4 | LOT | NAME                           | AJ<br>#/ACRES      | WR<br>#/ACRES | LANDSAT<br>DATA | FIELD<br>EXAM. | RECOMM.<br>ACRES |
|-----|-----|-----|-----|-----|-----|--------------------------------|--------------------|---------------|-----------------|----------------|------------------|
| 07S | 13E | 28  | NW  | SE  | (5) | GARDNER , ROBERT B.            | A36-00003B /20.0 - | -             | /               | 23.0           | 23               |
| 07S | 13E | 28  | NE  | SE  |     | GARDNER , ROBERT B.            | A36-00003B /40.0 - | -             | /               | 43.0           |                  |
|     |     |     |     |     |     | NEW INTERNATIONAL MORTGAGE BAN |                    | 36-00001      | /               | 40.0           | 40.0             |
|     |     |     |     |     |     | NEW INTERNATIONAL MORTGAGE BAN |                    | 36-00002      | /               |                |                  |
|     |     |     |     |     |     | NEW INTERNATIONAL MORTGAGE BAN |                    | 36-00003      | /               |                |                  |
| 07S | 13E | 28  | SW  | NE  |     | GARDNER , ROBERT B.            | A36-00003B /11.0 - | -             | /               | 9.0            | 9                |
| 07S | 13E | 28  |     |     |     | GARDNER , ROBERT B.            | A36-00003B /       | -             | /               |                |                  |
|     |     |     |     |     |     | NORTH SIDE CANAL CO.           |                    | 01-00212      | /               |                |                  |
|     |     |     |     |     |     | NORTH SIDE CANAL CO.           |                    | 01-00213      | /               |                |                  |
|     |     |     |     |     |     | NORTH SIDE CANAL CO.           |                    | 01-00215      | /               |                |                  |
|     |     |     |     |     |     | NORTH SIDE CANAL CO.           |                    | 01-00220      | /               |                |                  |
| 07S | 13E | 27  |     |     |     | GARDNER , ROBERT B.            | A36-00003B /       | -             | /               |                |                  |
|     |     |     |     |     |     | STURTEVANT , JOYCE             | A36-07252 /        | -             | /               |                |                  |
|     |     |     |     |     |     | GARDNER , BARBARA              | A36-00003J /       | -             | /               |                |                  |
|     |     |     |     |     |     | NORTH SIDE CANAL CO.           |                    | 01-00212      | /               |                |                  |
|     |     |     |     |     |     | NORTH SIDE CANAL CO.           |                    | 01-00213      | /               |                |                  |
|     |     |     |     |     |     | NORTH SIDE CANAL CO.           |                    | 01-00215      | /               |                |                  |
|     |     |     |     |     |     | NORTH SIDE CANAL CO.           |                    | 01-00220      | /               |                |                  |
| 07S | 13E | 27  | NW  | SW  |     | GARDNER , ROBERT B.            | A36-00003B /11.0 - | -             | /               | 37.0           | 9.0              |
|     |     |     |     |     |     | GARDNER , MARY                 | A36-10540 /        | -             | /               |                | 9                |
|     |     |     |     |     |     | GARDNER , MARY                 | A36-00003D /10.0   | -             | /               |                |                  |
|     |     |     |     |     |     | GARDNER , BARBARA              | A36-00003J /18.5   | -             | /               |                |                  |
|     |     |     |     |     |     | NEW INTERNATIONAL MORTGAGE BAN |                    | 36-00001      | /               |                |                  |
|     |     |     |     |     |     | NEW INTERNATIONAL MORTGAGE BAN |                    | 36-00002      | /               |                |                  |
|     |     |     |     |     |     | NEW INTERNATIONAL MORTGAGE BAN |                    | 36-00003      | /               |                |                  |
|     |     |     |     |     |     | BELL , HARLAN                  |                    | 36-00019      | /               |                |                  |
|     |     |     |     |     |     | BELL , HARLAN                  |                    | 36-00020      | /               |                |                  |
|     |     |     |     |     |     | BIG BEND IRRIGATION & MINING C |                    | 36-00133      | /               |                |                  |

*Delete fishuse*

*Delete Fishuse*

BIG BEND IRRIGATION & MINING C  
BIG BEND IRRIGATION & MINING C

36-00192 /  
36-02007 /

| TRACT            | OWNER                          | ACRES              | IRRI | WATER | FEES | REMARKS |
|------------------|--------------------------------|--------------------|------|-------|------|---------|
| 07S 13E 28 SE NE | GARDNER, ROBERT B.             | A36-00003B /22.0 - | -    | 36.0  | 25.0 | 25.0    |
|                  | NEW INTERNATIONAL MORTGAGE BAN | 36-00001           | /    |       |      |         |
|                  | NEW INTERNATIONAL MORTGAGE BAN | 36-00002           | /    |       |      |         |
|                  | NEW INTERNATIONAL MORTGAGE BAN | 36-00003           | /    |       |      |         |
| 07S 13E 28       | GARDNER, ROBERT B.             | A36-00003B /       | -    |       |      |         |
|                  | NORTH SIDE CANAL CO.           | 01-00212           | /    |       |      |         |
|                  | NORTH SIDE CANAL CO.           | 01-00213           | /    |       |      |         |
|                  | NORTH SIDE CANAL CO.           | 01-00215           | /    |       |      |         |
|                  | NORTH SIDE CANAL CO.           | 01-00220           | /    |       |      |         |
| 07S 13E 27 SW NW | GARDNER, ROBERT B.             | A36-00003B /25.0 - | -    | 39.0  | 23.0 | 23.0    |
|                  | GARDNER, BARBARA               | A36-10513          | /    |       |      |         |
|                  | GARDNER, BARBARA               | A36-00003J         | /    |       |      |         |
|                  | NEW INTERNATIONAL MORTGAGE BAN | 36-00001           | /    |       |      |         |
|                  | NEW INTERNATIONAL MORTGAGE BAN | 36-00002           | /    |       |      |         |
|                  | NEW INTERNATIONAL MORTGAGE BAN | 36-00003           | /    |       |      |         |
|                  | BELL, HARLAN                   | 36-00019           | /    |       |      |         |
|                  | BELL, HARLAN                   | 36-00020           | /    |       |      |         |

TOTAL ACRES A36-00003B 129.00 155.00

ARE IRRIGATED ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, Y( ) N(X)  
IF YES SEE ATTACHED SHEET:

129.0

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE  
Y

FIELD  
EXAMINER  
Y

PRESUMPTION FLAG:

REMARKS:

~~2ND RIGHT: FISH USE 7S. 13E. S. 27 SWNW~~  
~~S. 28 SE NE, SWNE~~

RECOMMENDATIONS:

TOTAL ACRES: 129.0

REVIEWED BY: SCC

DATE: 10-5-90

add stock water to same tracts as irrigation listed  
delete all fish uses

A. AJ CLAIMED USES:

| PURPOSES                            | MONTH/DAY           | DIVERSION QUANTITY    |
|-------------------------------------|---------------------|-----------------------|
| A36-00003B IRRIGATION               | FROM 03-15 TO 11-01 | 7.160 CFS             |
| A36-00003B STOCKWATER               | FROM 01-01 TO 12-31 | .050 CFS              |
| A36-00003B FISH PROPAGATION         | FROM 08-01 TO 04-01 | 7.160 CFS             |
| TOTAL DIVERSION RATE/VOLUME CLAIMED |                     | 7.160 CFS 442.70 AF/A |

2ND  
RIGHT:

B. WR RECORDED USES:

| PURPOSES                            | MONTH/DAY | DIVERSION QUANTITY |
|-------------------------------------|-----------|--------------------|
| 36-00003 IRRIGATION                 | FROM TO   | 20.000 CFS         |
| TOTAL DIVERSION RATE/VOLUME CLAIMED |           | 20.000 CFS         |

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

|                                          | DATABASE | FIELD EXAMINER |
|------------------------------------------|----------|----------------|
| DUE TO WATER-USE DISCREPANCY? (Y/N)      | Y        | Y              |
| DUE TO DIVERSION RATE DISCREPANCY? (Y/N) | Y        | Y              |
| DUE TO PERIOD FROM/TO DISCREPANCY? (Y/N) | Y        | Y              |

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y( ) N(X)

RECOMMEND TO WR STANDARDS OR OTHER?

DECREE

Y(X) N( )

Explain in remarks, below.

REMARKS:

Need policy determination on stockwater - incidental or yr-ld.  
I Spoke to Mike Engler RE: Fish Ponds, said use was during non-irrigation season roughly August to June 1st. (8-16-90 sec)

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A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

Y( ) N(☒)

AJ TOTAL CLAIMED DIVERSION RATE: 7.160 CFS  
WR ROOT RIGHT TOTAL DIVERSION RATE: 20.000 CFS

\*\*\* IF NO or IF STATUTORY CLAIM or BENEFICIAL USE then flow measurement required. \*\*\*  
\*\* If an amount smaller than the original diversion rate is \*\*  
\*\* claimed and an exam is NOT required, explain in remarks. \*\*

FLOW MEASUREMENT REQUIRED?

DUE TO STAGE OR DIVERSION RATE DISCREPANCY? (Y/N)

FIELD  
DATABASE EXAMINER  
Y

B.

FLOW MEASUREMENT

MEASUREMENT METHOD \_\_\_\_\_, SEE ATTACHED CALCULATIONS.

C. ARE OTHER WATER RIGHTS USED? Y( ) N(☒) IF YES COMPLETE OVERLAP REVIEW.

OTHER RIGHTS LISTED IN CLAIM: NONE

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

| CLAIM      | SOURCE            | NAME                | DIV. RATE | DIV. RATE/ACRE | DIV. VOL. | DIV. VOL./ACRE |
|------------|-------------------|---------------------|-----------|----------------|-----------|----------------|
| A36-00003B | BILLINGSLEY CREEK | GARDNER , ROBERT B. | 7.160     | 0.055          | 442.70    | 3.43           |
| A36-00003J | BILLINGSLEY CREEK | GARDNER , BARBARA   | 4.000     | 0.071          |           |                |

LIST ALL RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION.

| CLAIM NO.  | PURPOSES         | NAME                | MONTH/DAY           | RATE      | VOLUME   |
|------------|------------------|---------------------|---------------------|-----------|----------|
| A36-00003B | STOCKWATER       | GARDNER , ROBERT B. | FROM 01-01 TO 12-31 | .050 CFS  |          |
| A36-00003B | FISH PROPAGATION | GARDNER , ROBERT B. | FROM 08-01 TO 04-01 | 7.160 CFS |          |
| A36-07252  | STOCKWATER       | STURTEVANT , JOYCE  | FROM 01-01 TO 12-31 | .002 CFS  | .70 AF/A |
| A36-07252  | DOMESTIC         | STURTEVANT , JOYCE  | FROM 01-01 TO 12-31 | .030 CFS  | .60 AF/A |
| A36-00003J | STOCKWATER       | GARDNER , BARBARA   | FROM 01-01 TO 12-31 | .040 CFS  |          |
| A36-00003J | FISH PROPAGATION | GARDNER , BARBARA   | FROM 08-01 TO 04-01 | 4.000 CFS |          |
| A36-10540  | DOMESTIC         | GARDNER , MARY      | FROM 01-01 TO 12-31 | .040 CFS  |          |
| A36-10513  | DOMESTIC         | GARDNER , BARBARA   | FROM 01-01 TO 12-31 | .040 CFS  |          |

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D.

RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE

ACRES 129 x 0.02 CFS/ACRE = 2.58 CFS  
(Taken from p/u review)

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y(X) N(  )

\*\*\* IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y(  ) N(X) \*\*\*

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = 332.7 AF/A

ACRES 129 x CONSUMPTIVE VOL. AF/A FOR AREA 3.0 =

TOTAL CONSUMPTIVE USE 387 AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = 442.70 AF/A

ACRES 129 x DIVERSION VOL. AF/A FOR AREA 4.0 =

TOTAL DIVERSION VOLUME 516 AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y(  ) N(  )

REMARKS: (Include limitations on CONSUMPTIVE USE for combined rights.)

See attached conveyance loss sheet.

1b. CALCULATIONS

*See attached Irrigation  
analysis sheet for  
Basis of div. rate  
recommendation*

*Recommended: 3.25  
Conveyance loss: 1.75*

*Total 5.0 cfs.*

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RECOMMENDATIONS:

| REC.<br>PURPOSES     | REC. PERIOD |              | REC. DIV            |                 | REC. DIV   |          | REC. CONS. |          |
|----------------------|-------------|--------------|---------------------|-----------------|------------|----------|------------|----------|
|                      | FROM        | TO           | RATE                | CFS             | VOL.       | AF/A     | USE        |          |
|                      |             |              | DATABASE            | EXAMINER        | DATABASE   | EXAMINER | DATABASE   | EXAMINER |
| <u>IRRIGATION</u>    | <u>3-15</u> | <u>11-1</u>  | <u>4-1 to 10-31</u> | <u>1.81</u> 5.0 | <u>516</u> |          | <u>387</u> |          |
| <u>STOCKWATER</u>    | <u>1-1</u>  | <u>12-31</u> | <u>4-1 to 10-31</u> | <u>0.05</u>     | <u>-</u>   |          | <u>-</u>   |          |
| <u>Stockwater</u>    | <u>11-1</u> | <u>3/31</u>  |                     | <u>-1.8</u>     | <u>-</u>   |          | <u>-</u>   |          |
| TOTAL FOR THIS RIGHT |             |              |                     | <u>1.81</u> 5.0 | <u>516</u> |          | <u>387</u> |          |

REVIEWED BY: SCC

DATE: 1-17-91

~~WR/ proportional rate = 0.014 cfs/Ac~~  
~~(\* allow 0.014 cfs/Acre) since all 1446 acres are not claimed~~

2ND RIGHT:

Needs More proof of Evidence.

FISH PROPAGATION 8-1 to 4/1

stock water listed twice in order to allow for conveyance loss during non-irrigation season

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A. CHECK ONLY THE FOLLOWING THAT APPLY:

OWNERSHIP \_\_\_\_\_  
FORFEIT/ABANDON \_\_\_\_\_  
ADDITIONAL DIV. AMOUNT \_\_\_\_\_

ACCEPTED  
AS CLAIMED  
( )  
( )  
( )

NEEDS  
REVIEW  
(☒)  
(☒)  
(☒)

LEGAL REVIEW

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 36-00003

TOTAL DIVERSION RATE OF WR SPLITS

DATABASE  
20.000

EXAMINER

CFS

SPLITS:

| OLD RIGHT<br>NUMBERS | CURRENT<br>CLAIM NUMBERS | DIVERSION<br>RATE | CURRENT "R"<br>CLAIM NUM. | "R" DIV.<br>RATE | WR RIGHT<br>NUMBERS | DIVERSION<br>RATE |
|----------------------|--------------------------|-------------------|---------------------------|------------------|---------------------|-------------------|
| A36-00003            | A36-00003A               | 1.600             | -                         |                  | 36-00003            | 20.000            |
| A36-00003            | A36-00003B               | 7.160             | -                         |                  | 36-00003            | 20.000            |
| A36-00003            | A36-00003C               | 0.300             | -                         |                  | 36-00003            | 20.000            |
| A36-00003            | A36-00003D               | 0.240             | -                         |                  | 36-00003            | 20.000            |
| A36-00003            | A36-00003E               | 0.200             | -                         |                  | 36-00003            | 20.000            |
| A36-00003            | A36-00003F               | 0.800             | -                         |                  | 36-00003            | 20.000            |
| A36-00003            | A36-00003G               | 0.400             | -                         |                  | 36-00003            | 20.000            |
| A36-00003            | A36-00003H               | 12.000            | -                         |                  | 36-00003            | 20.000            |
| A36-00003            | A36-00003J               | 4.000             | -                         |                  | 36-00003            | 20.000            |
| TOTAL CFS            |                          | 26.700            |                           |                  |                     | 20.000            |

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)  
IF NO, is the written review sheet attached? (Y/N)

DATABASE  
N

FIELD  
EXAMINER  
N

REMARKS:

attached sheet  
See ~~A36-00003~~ for Split Review

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JAN 20 1993

AUTHENTICATION:

SIGNATURE:

*Stan Ollie*

DATE:

*1-17-91*

NAME OF FIELD EXAMINER:

TITLE:

MICROFILMED

JAN 20 1991

3431  
20

21

22

DITCH

Substation

Pumping Station

Bell Rapids

V A L L E Y

Field Exam Acres = 129

3013

Back of Rapids

2882

32

34

380

Dolman Rapids

Do ma

BM 3185

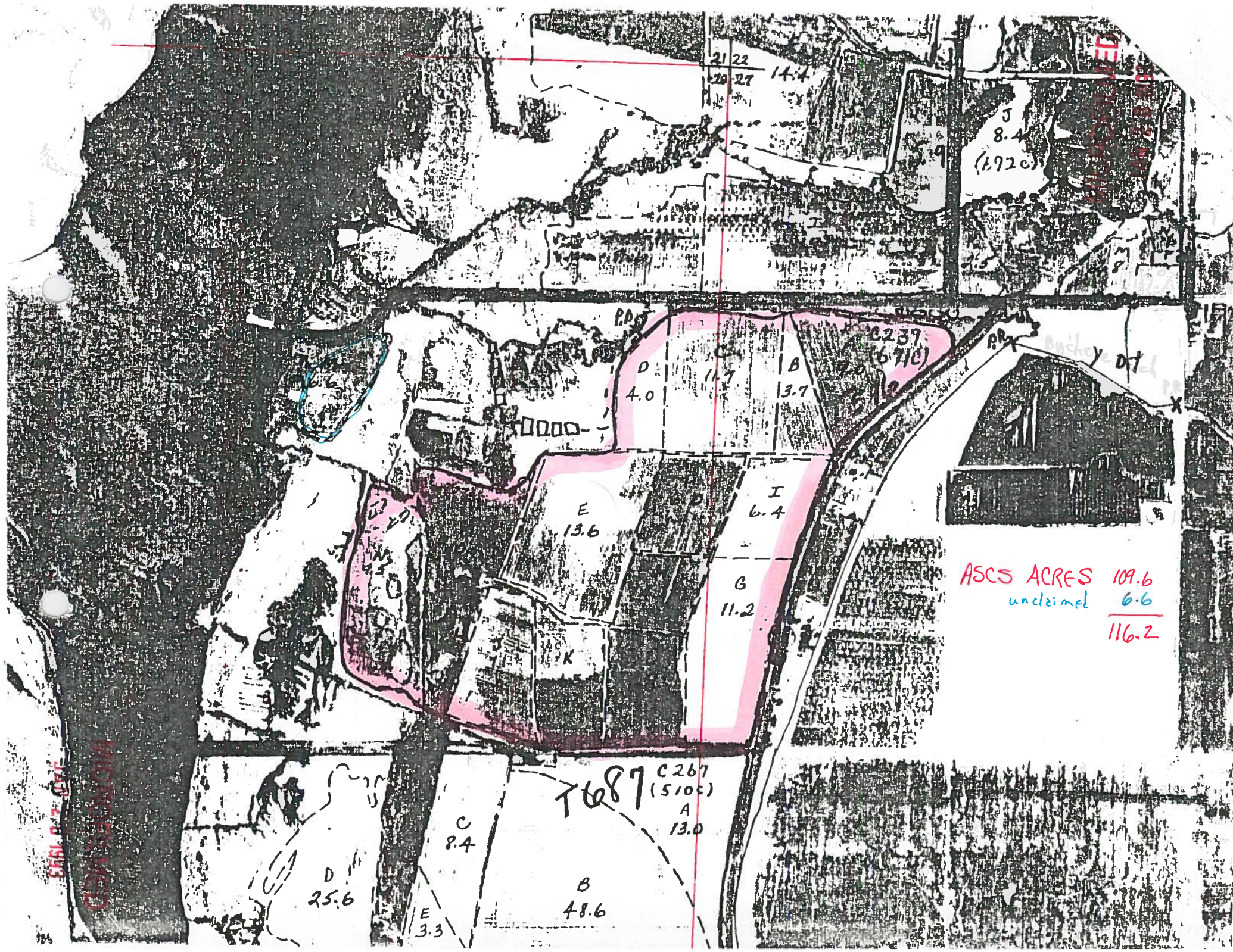
Power Pump

Power Plant

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10



ASCS ACRES 109.6  
unclaimed 6.6  

---

116.2

## REMARK AND CONDITION CODE WORKSHEET

**SYSTEM CLAIM NUMBERS**

R36    00003B

**AGENT****INITIALS**

HHT

**DATE**

8 | 5 | 9 | 2

**CLAIM NO.**

**OR ENTRY**

## ORDER

**REMARK****CODE**

## ENTRY DATA

## CONDITION

**CODE**

## STAGE

**OR**

**STATUS**

## PRESUMPTION

**CODE**

FOI

Buckeye Ditch

DO 2

1.75 Hz.

SHR

3.25

Add Water District 36A

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JAN 20 1993

8-3-92

CONVEYANCE LOSS - WORSTELL

| REACH  | LENGTH<br>(FT) | AVE<br>WIDTH<br>(FT) | SEEPAGE<br>(FT/DAY) | WORSTELL<br>LOSS<br>(CFS) | DELIVERY<br>(CFS) | DELIVERY<br>LEFT<br>(CFS) | LOSS<br>FACTOR | DELIVERY<br>LOSS<br>(CFS) | FLOW<br>(CFS) |
|--------|----------------|----------------------|---------------------|---------------------------|-------------------|---------------------------|----------------|---------------------------|---------------|
| 1      | 800            | 10.0                 | 2.00                | 0.20                      | 0.06              | 18.83                     | 0.0107         | 0.00                      | 26.81         |
| 2      | 600            | 10.0                 | 2.00                | 0.15                      | 1.02              | 18.77                     | 0.0081         | 0.02                      | 26.55         |
| 3      | 1400           | 10.0                 | 2.00                | 0.35                      | 0.24              | 17.75                     | 0.0199         | 0.01                      | 25.38         |
| 4      | 800            | 10.0                 | 2.00                | 0.20                      | 0.44              | 17.51                     | 0.0115         | 0.02                      | 24.79         |
| 5      | 1100           | 10.0                 | 2.00                | 0.28                      | 0.17              | 17.07                     | 0.0163         | 0.01                      | 24.14         |
| 6      | 1200           | 10.0                 | 2.00                | 0.30                      | 0.10              | 16.90                     | 0.0179         | 0.01                      | 23.70         |
| 7      | 300            | 10.0                 | 2.00                | 0.08                      | 1.22              | 16.80                     | 0.0045         | 0.11                      | 23.29         |
| 8      | 1000           | 10.0                 | 2.00                | 0.25                      | 0.16              | 15.58                     | 0.0162         | 0.02                      | 22.00         |
| 9      | 500            | 10.0                 | 2.00                | 0.13                      | 0.50              | 15.42                     | 0.0082         | 0.06                      | 21.58         |
| 10     | 2200           | 10.0                 | 2.00                | 0.56                      | 4.13              | 14.92                     | 0.0373         | 0.62                      | 20.96         |
| 11     | 5500           | 10.0                 | 2.00                | 1.39                      | 0.20              | 10.79                     | 0.1288         | 0.06                      | 16.27         |
| 12     | 1700           | 10.0                 | 2.00                | 0.43                      | 0.09              | 10.59                     | 0.0406         | 0.03                      | 14.68         |
| 13     | 3900           | 10.0                 | 2.00                | 0.99                      | 0.34              | 10.50                     | 0.0938         | 0.14                      | 14.16         |
| 14     | 600            | 10.0                 | 2.00                | 0.15                      | 0.27              | 10.16                     | 0.0149         | 0.12                      | 12.84         |
| 15     | 1500           | 10.0                 | 2.00                | 0.38                      | 0.62              | 9.89                      | 0.0383         | 0.29                      | 12.42         |
| 16     | 1600           | 10.0                 | 2.00                | 0.40                      | 1.00              | 9.27                      | 0.0436         | 0.51                      | 11.42         |
| 17     | 600            | 10.0                 | 2.00                | 0.15                      | 0.30              | 8.27                      | 0.0183         | 0.16                      | 10.01         |
| 18     | 300            | 10.0                 | 2.00                | 0.08                      | 3.25              | 7.97                      | 0.0095         | 1.75                      | 9.56          |
| 19     | 3000           | 10.0                 | 2.00                | 0.76                      | 0.24              | 4.72                      | 0.1606         | 0.17                      | 6.24          |
| 20     | 3000           | 10.0                 | 2.00                | 0.76                      | 4.48              | 4.48                      | 0.1692         | 3.89                      | 5.24          |
| TOTALS | 31600          |                      |                     | 7.98                      | 18.83             |                           |                | 7.98                      |               |

BUCKEYE DITCH

A36-0003B

REACH = SECTION OF CHANNEL  
 LENGTH = LENGTH OF REACH, THE CHANNEL CAN BE DIVIDED INTO EQUAL LENGTH REACHES  
 OR ACTUAL LENGTHS BETWEEN DELIVERY POINTS  
 AVE WIDTH = AVERAGE TOP WIDTH OF REACH  
 SEEPAGE = SOIL SEEPAGE RATE OF REACH  
 WORSTELL LOSS = CONVEYANCE LOSS IN REACH BASED ON WORSTELL METHOD  
 DELIVERY = TOTAL DELIVERIES IN REACH  
 DELIVERY LEFT = SUM(DELIVERIES OF CURRENT AND REMAINING REACHES)  
 LOSS FACTOR = WORSTELL LOSS/DELIVERY LEFT  
 DELIVERY LOSS = SUM(LOSS FACTORS OF CURRENT AND PREVIOUS REACHES) X DELIVERY,  
 REPRESENTS THE LOSSES ASSIGNED TO THE DELIVERIES IN THE REACH  
 FLOW = TOTAL FLOW AT BEGINNING OF EACH REACH

## DECREED RIGHT SPLIT ANALYSIS

PARENT RIGHT NO. 36-00003 TOTAL DIVERSION RATE 20.0 PREPARATION DATE 7-29-92 HHT

| CLAIM<br>PORTION | CLAIMED<br>RATE | RECOMMENDED<br>RATE | IS CLAIMED<br>RATE EXCEEDED<br>BY ANALYSIS | CONVEYANCE<br>LOSS | DOES DIV RATE +<br>CALC. C.L. EXCEED<br>CLAIMED RATE | TOTAL<br>RECOMMENDED<br>DIV. RATE |
|------------------|-----------------|---------------------|--------------------------------------------|--------------------|------------------------------------------------------|-----------------------------------|
| A                | 1.6             | 0.26 13ac.          | N                                          | 0.10               | N                                                    | 0.36                              |
| B                | 7.16            | 3.25 129ac          | N                                          | 1.75               | N                                                    | 5.00                              |
| C                | 0.30            | 0.20 10ac.          | N                                          | 0.26               | Y                                                    | 0.30                              |
| D                | 0.24            | 0.24 2ac.           | Y                                          | 0 (0.17)           | NA                                                   | 0.24                              |
| E                | 6.20            | 6.20 5ac.           | Y                                          | 0 (0.06)           | NA                                                   | 0.20                              |
| F                | 0.80            | 0.80 40ac.          | N                                          | (0.26)             | Y                                                    | 0.80                              |
| G                | 0.40            | 0.09 3ac.           | N                                          | 0.03               | N                                                    | 0.12                              |
| H                | 20.0            | 4.48 224ac          | N                                          | 3.89               | N                                                    | 8.69                              |
| J                | 4.0             | 0.30 15ac.          | N                                          | 0.16               | N                                                    | 0.46                              |
|                  |                 |                     |                                            |                    |                                                      |                                   |
|                  |                 |                     |                                            |                    |                                                      |                                   |
|                  |                 |                     |                                            |                    |                                                      |                                   |
|                  |                 |                     |                                            |                    |                                                      |                                   |
| Total            | 34.7            | 9.82                |                                            |                    |                                                      | 16.17                             |

Recommended rates do not exceed decreed diversion rate  
HHT

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JAN 20 1993

# CONVERSATION MEMORANDUM

NAME OF PARTY Mrs. Barbara Gardner  
 EMPLOYEE: R. V. Worstell

DATE 7/13/1992  
 FILE 36-00003B + 36-00003J

RE: Information - Excess Water Claimed

Mrs. Gardner said irrigation water is applied continuously all season long. The flow rate varies since they are on the tail end of the ditch and are subject to water withdrawals by the upstream water diversions. They seldom receive their full flow except in the spring of the year. Any water in excess to their uses flows on down the ditch to the users below them.

She could not estimate how long it takes to cover the farm with an irrigation in July due to the variability of the water supply rate.

When the alfalfa hay is cut, water is used on other crops as much as possible. There are usually 3 cuttings per season with some pasture growth following. Some years they get a short 4th cutting. The hay ground cannot be irrigated for 10 to 14 days during each hay harvest period.

7/20 Called again - Phone conversation

Mrs. Gardner said set time was usually 24 hrs - sometimes less in order to cover the area. The total inflow is split up into 3 to 5 "heads" for use on different fields <sup>where</sup> needed. Each head supplies about 80 corrugates on the average.

The corrugate spacings are 32" or 36" - she thought.

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R+B Gardner Alfalfa

## IRRIGATION ANALYSIS WORKSHEET

CLAIM NO. A36-0003B  
 DATE 7/7/92  
 AGENT HHT

CLAIMANT/SYSTEM DESCRIPTION Gardner, Robert or Barbara  
 IRRIGATION SYSTEM ----- Gravity  
 ANALYSIS METHOD ----- BORDER / FURROW  
 TYPE OF CROP ----- Alfalfa  
 MAXIMUM PROFILE DEPTH ----- 60" INCHES  
 INTAKE FAMILY ----- 0.55

\*\*\*\*\*

| SOIL TYPE                    | 75% <u>DEB</u> | <u>KOB</u>  | 25% | SYSTEM TOTAL     |
|------------------------------|----------------|-------------|-----|------------------|
| ACRES PER TYPE               | <u>99</u>      | <u>32</u>   |     | <u>129</u> ACRES |
| SOIL PROFILE WHC             | <u>8.61</u>    | <u>5.78</u> |     |                  |
| DESIGN IRR $\frac{1}{2}$ WHC | <u>4.30</u>    | <u>2.89</u> |     |                  |

Weighted Avg = 3.95"

\*\*\*\*\*

## CROP REQUIREMENT:

REPORT AREA & FIGURE NO. ----- Bliss 10-8DAILY CROP REQUIREMENT: (Alfalfa)6.79 (MM/DAY) / 25.4 (FACTOR IN MM/IN) ----- 0.27 IN/DAY

ACTUAL ROTATION PRACTICED ----- DAYS

DRY DAY ROTATION ----- IRR DAY ROTATION -----

## THEORETICAL ROTATION:

3.95 DESIGN IRR 1.27 CROP REQ = 14.6 DAYS

\*\*\*\*\*

## DESCRIPTION OF FIELD:

AVERAGE LENGTH RUN ----- 592TOTAL WIDTH OF FIELD ----- 9500CHECK 592 L \* 9500 W / 43,560 = 129 ACRES% SLOPE ----- 1070

BORDER WIDTH -----

----- WIDTH OF FIELD / ----- DAYS OF ROTATION

FURROW / CORRUGATION WIDTH ----- 3'SET TIME ----- 24 hrs

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JAN 20 1993

INTAKE FAMILY <If> = 0.55  
 DESIGN APPLICATION <Fn> = 3.95 INCHES  
 FURROW SLOPE <S> = 0.010 FEET/FOOT  
 FURROW SPACING <W> = 2.50 FEET  
 FURROW LENGTH <L> = 473 FEET ✓  
 INFLOW RATE <Q> = 9 GPM/FURROW  
 APPLICATION TIME <Ti> = 12 HOURS — recommended set time

Alfalfa

\*\*\*\*\*  
 ADVANCE TIME <TT> = 35.7 MINUTES; OR 0.6 HOURS  
 GROSS APPLICATION <FG> = 8.79 INCHES  
 NET APPLICATION <Fx> = 4.01 INCHES  
 RUNOFF <RO> = 4.69 INCHES  
 DEEP PERCOLATION <DP> = 0.15 INCHES  
 EFFICIENCY <E> = 44.94 %

TO CHANGE: PRESS (EXISTING)  
 Design Application <1> 3.95 in  
 Furrow Slope <2> 0.010 ft/ft  
 Furrow Spacing <3> 2.50 ft  
 Furrow Length <4> 473 ft  
 Furrow Intake Family <5> 0.55  
 Inflow Rate <6> 9 gpm/furrow  
 Inflow Time <7> 12 hours <ANALYSIS MODE>

TO PRINT: DATA/WITH HEADING PRESS: <8/9>

NEW DESIGN PRESS <10>, NEW ANALYSIS PRESS <11>, QUIT PRESS <12>?

$$F.I.R. = 4.2 \frac{0.27 \text{ in/day}}{45} = 0.025 \frac{\text{cfs/acre}}{\text{day}}$$

$$0.025 \frac{\text{cfs}}{\text{ac}} \times 129 \text{ ac} = 3.25 \text{ cfs} \leftarrow \text{Recommend}$$

$$\frac{60 \times 3 \times 592'}{43560} = 2.45 \text{ ac/set}$$

$$\textcircled{a} 2 \text{ sets/day} = 4.89 \text{ ac/day} \quad 26.4 \text{ day rotation}$$

$$\frac{100 \times 3 \times 592'}{43560} = 8.15 \text{ ac/day}$$

15.8 days. " OK for Alfalfa

$$150 \text{ Corr} \times \frac{3 \times 592'}{43560} \times 2 = 12.23 \text{ ac/day}$$

10.54 days

**MICROFILMED**

JAN 20 1993

## IRRIGATION ANALYSIS WORKSHEET

CLAIM NO. A36-0003B  
 DATE 7-7-92  
 AGENT HHT

CLAIMANT/SYSTEM DESCRIPTION Gardner, Robert or Barbara  
 IRRIGATION SYSTEM Corrugateds  
 ANALYSIS METHOD BORDER / FURROW  
 TYPE OF CROP Corn, field  
 MAXIMUM PROFILE DEPTH 48" INCHES  
 INTAKE FAMILY 0.55

\*\*\*\*\*  
 SOIL TYPE 75% DEB KOB 25% SYSTEM TOTAL  
 ACRES PER TYPE 197 32 129 ACRES  
 SOIL PROFILE WHC 7.35 4.88  
 DESIGN IRR  $\frac{1}{2}$  WHC 3.68 2.44

$$\text{Weighted Avg. } (1.75)(3.68) + (1.25)(2.44) = 3.37$$

## CROP REQUIREMENT:

REPORT AREA & FIGURE NO. Bliss 10-8  
 DAILY CROP REQUIREMENT: Corn  
7.53 (MM/DAY) / 25.4 (FACTOR IN MM/IN) 0.30 IN/DAY

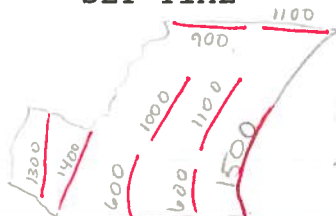
ACTUAL ROTATION PRACTICED Estimated 14 DAYS  
 DRY DAY ROTATION \_\_\_\_\_ IRR DAY ROTATION \_\_\_\_\_

## THEORETICAL ROTATION:

3.37 DESIGN IRR / .30 CROP REQ = 11.23 DAYS

## DESCRIPTION OF FIELD:

AVERAGE LENGTH RUN 750592  
 TOTAL WIDTH OF FIELD 9500  
 CHECK 592 L \* 9500 W / 43,560 = 129 ACRES  
 % SLOPE 1.00  
 BORDER WIDTH \_\_\_\_\_  
 \_\_\_\_\_ WIDTH OF FIELD / \_\_\_\_\_ DAYS OF ROTATION  
 FURROW / CORRUGATION WIDTH 3' .0408 ac/cor.  
 SET TIME 24 hrs



See map in file -  
 separate fields. Illustration shows  
 figures used to calculate total width of field

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INTAKE FAMILY <If> = 0.55  
 DESIGN APPLICATION <Fn> = 3.37 INCHES — Corn.  
 FURROW SLOPE <S> = 0.010 FEET/FOOT  
 FURROW SPACING <W> = 3.00 FEET  
 FURROW LENGTH <L> = 592 FEET  
 INFLOW RATE <Q> = 10 GPM/FURROW  
 APPLICATION TIME <Ti> = 12 HOURS — Recommend Set time

\*\*\*\*\*

ADVANCE TIME <TT> = 48.7 MINUTES; OR 0.8 HOURS  
 GROSS APPLICATION <FG> = 6.50 INCHES  
 NET APPLICATION <Fx> = 3.37 INCHES  
 RUNOFF <RO> = 3.03 INCHES  
 DEEP PERCOLATION <DP> = 0.11 INCHES  
 EFFICIENCY <E> = 51.82 %

TO CHANGE:

|                      | PRESS | (EXISTING)               |
|----------------------|-------|--------------------------|
| Design Application   | <1>   | 3.37 in                  |
| Furrow Slope         | <2>   | 0.010 ft/ft              |
| Furrow Spacing       | <3>   | 3.00 ft                  |
| Furrow Length        | <4>   | 592 ft                   |
| Furrow Intake Family | <5>   | 0.55                     |
| Inflow Rate          | <6>   | 10 gpm/furrow            |
| Inflow Time          | <7>   | 12 hours <ANALYSIS MODE> |

TO PRINT: DATA/WITH HEADING PRESS:<8/9>

NEW DESIGN PRESS <10>, NEW ANALYSIS PRESS <11>, QUIT PRESS <12>?

$$FIR = \frac{0.3 \text{ in/day}(4.2)}{52}$$

$$= 0.0242 \text{ cfs/ac}$$

$$129 \text{ ac} \left( \frac{0.0242 \text{ cfs/ac}}{\text{cfs/ac}} \right) = 3.13 \text{ cfs}$$

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INTAKE FAMILY <If> = 0.55  
 DESIGN APPLICATION <Fn> = 3.95 INCHES — *11/41/1a*  
 FURROW SLOPE <S> = 0.010 FEET/FOOT  
 FURROW SPACING <W> = 3.00 FEET  
 FURROW LENGTH <L> = 592 FEET  
 INFLOW RATE <Q> = 8 GPM/FURROW  
 APPLICATION TIME <Ti> = 24 HOURS — *Present Practice*  
 \*\*\*\*\*

ADVANCE TIME <TT> = 59.2 MINUTES; OR 1.0 HOURS  
 GROSS APPLICATION <FG> = 10.40 INCHES  
 NET APPLICATION <Fx> = 5.45 INCHES  
 RUNOFF <RO> = 4.85 INCHES  
 DEEP PERCOLATION <DP> = 1.61 INCHES  
 EFFICIENCY <E> = 37.96 %

| TO CHANGE:           | PRESS | (EXISTING)               |
|----------------------|-------|--------------------------|
| Design Application   | <1>   | 3.95 in                  |
| Furrow Slope         | <2>   | 0.010 ft/ft              |
| Furrow Spacing       | <3>   | 3.00 ft                  |
| Furrow Length        | <4>   | 592 ft                   |
| Furrow Intake Family | <5>   | 0.55                     |
| Inflow Rate          | <6>   | 8 gpm/furrow             |
| Inflow Time          | <7>   | 24 hours <ANALYSIS MODE> |

TO PRINT: DATA/WITH HEADING PRESS:<8/9>

NEW DESIGN PRESS <10>, NEW ANALYSIS PRESS <11>, QUIT PRESS <12>?

INTAKE FAMILY <If> = 0.55  
 DESIGN APPLICATION <Fn> = 3.37 INCHES ← Corn  
 FURROW SLOPE <S> = 0.010 FEET/FOOT  
 FURROW SPACING <W> = 3.00 FEET  
 FURROW LENGTH <L> = 592 FEET  
 INFLOW RATE <Q> = 8 GPM/FURROW  
 APPLICATION TIME <Ti> = 24 HOURS ← present Practice

\*\*\*\*\*

ADVANCE TIME <TT> = 59.2 MINUTES; OR 1.0 HOURS  
 GROSS APPLICATION <FG> = 10.40 INCHES  
 NET APPLICATION <Fx> = 5.45 INCHES  
 RUNOFF <RO> = 4.85 INCHES  
 DEEP PERCOLATION <DP> = 2.19 INCHES  
 EFFICIENCY <E> = 32.39 %

TO CHANGE:

|                      | PRESS | (EXISTING)               |
|----------------------|-------|--------------------------|
| Design Application   | <1>   | 3.37 in                  |
| Furrow Slope         | <2>   | 0.010 ft/ft              |
| Furrow Spacing       | <3>   | 3.00 ft                  |
| Furrow Length        | <4>   | 592 ft                   |
| Furrow Intake Family | <5>   | 0.55                     |
| Inflow Rate          | <6>   | 8 gpm/furrow             |
| Inflow Time          | <7>   | 24 hours <ANALYSIS MODE> |

TO PRINT: DATA/WITH HEADING PRESS:<8/9>

NEW DESIGN PRESS <10>, NEW ANALYSIS PRESS <11>, QUIT PRESS <12>?

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JAN 20 1993

CONVERSATION MEMORANDUM

NAME OF PARTY CLEAVE LLOYD, President, Ditch DATE 10-17-90  
EMPLOYEE: STEVE CLELLAND Buckeye FILE A36-00003B

RE: FISH USE (Historically)

He stated that after the irrigation season ended the tail water in the Buckeye Ditch was Drained off into the gullies along side the Bell Rapids road (to Boat Rock area). Some ponds existed and contained fish for Recreational Users.  
No commercial fish uses.

Re: BUCKEYE DITCH BEHIND GARDNERS TO BUCKEYE RANCH.

Originally was a small ditch (1 Foot) wide and has only been recently Expanded and Developed into the size of today.  
It is now maintained by the Buckeye Ditch Company.

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JAN 20 1993

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER  
Chartered

ATTORNEYS AT LAW

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GARY D. SLETTE  
F. BRUCE COVINGTON  
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CAROLYN M. MINDER  
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TELEPHONE (208) 336-0700  
FAX (208) 344-6034

RECEIVED

OCT 10 1989

Department of Water Resources  
Southern Region Office

October 5, 1989

Cleve Lloyd, Watermaster  
Buckeye Ditch Association  
Rt. #1 Box 14  
Hagerman ID 83332

RE: Bob Gardner -- Fish Propagation

Dear Cleve:

The Buckeye Farms principals thank you for your good efforts in 1989 to get their Buckeye Ditch water to their ranch. The improved conditions were noted.

The Board of Directors still has a major concern over the use of the water for fish propagation. Buckeye Farms, Inc. holds Permit No. 36-7739 for fish propagation with Buckeye water with a priority date of August 1, 1977. While we can find no decreed or permitted use for fish propagation filed in Bob Gardner's name, we do note that he filed an Adjudication Claim **A36-00003B** alleging a 9/10/1884 priority for fish propagation. We know that Gardner's fish propagation use is junior to Buckeye Farms' priority date for fish propagation insofar as Buckeye Ditch water is concerned.

While this wouldn't be a problem since fish uses are non-consumptive if Gardner's discharges were back into the Buckeye Ditch, unfortunately most of the water used for fish by Gardner doesn't come back to the ditch and consequently is lost to Buckeye Farms' prior right.

The solution is to devise a way of putting Gardner's water back in the ditch unless the water is used for irrigation during the irrigation season, so it can be used by Buckeye Farms. Otherwise Buckeye Farms will have to contest the junior Gardner fish use when the sub-basin report comes out in the adjudication.

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JAN 20 1993

Cleve Lloyd, Watermaster  
Buckeye Ditch Association  
October 5, 1989  
Page - 2

Can this matter be physically corrected so to avoid a  
problem in the adjudication?

Respectfully submitted,

*John A. Rosholt*  
JOHN A. ROSHOLT

JAR:dcb  
34791

cc: Bob Gardner  
✓ Lorin Holmes  
John A. Burke

MICROFILMED  
JAN 20 1993