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 67-4103
Date Received: 10/2/2003
Receipt No:
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

ANTHONY J FINCHEN Phone: (208) 253-4680

2205 JACKSON CREEK RD
COUNCIL ID USA 83612-5244

2. Date of Priority: 06/01/1896

3. Source: COTTONWOOD CREEK Trib. to: WEISER RIVER
LESTER CREEK WEISER RIVER

4. Point of Diversion:

Township	Range	Section	1/4	1/4	1/4	Lot	County	Type
16N	01W	28		NW	SE		ADAMS	
16N	01W	36		NW	NW		ADAMS	
16N	01W	27		NW	SW		ADAMS	
16N	01W	27		NE	SW		ADAMS	

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	4/01	7/30	1.98	

7. Total Quantity Appropriated is:
1.98 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
16N	01W	27	SW	NW		IRRIGATION	37
			NW	SW		IRRIGATION	7
						Section Acres	44
						Total Acres	44

11. Place of use in counties: ADAMS

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

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: Statutory Claim

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 _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

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 67-4103
Date Received: 10/2/2003
Receipt No: W030971
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

ANTHONY J FINCHEN
5718 E AIRPORT RD
NAMPA ID USA 83687

Phone: (208) 442-8917

2. Date of Priority: 06/01/1896

3. Source: COTTONWOOD CREEK Trib. to: WEISER RIVER
LESTER CREEK WEISER RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 Lot	County	Type
16N	01W	28	NW	SE		ADAMS	
16N	01W	36	NW	NW		ADAMS	
16N	01W	27	NW	SW		ADAMS	
16N	01W	27	NE	SW		ADAMS	

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	4/01	7/30	1.98	

7. Total Quantity Appropriated is:
1.98 C.F.S.

8. Total consumptive use:

SCANNED
APR 0 8 2004

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
16N	01W	27	SW	NW		IRRIGATION	37
			NW	SW		IRRIGATION	7
						Section Acres	44
						Total Acres	44

11. Place of use in counties: ADAMS

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

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: Statutory Claim

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 67-4103
Date Received: 9/15/2003
Receipt No: W030971
Received By:

RECEIVED
OCT 0 2 2003
WATER RESOURCES
WESTERN REGION

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

ANTHONY J FINCHEN
5718 E AIRPORT RD
NAMPA ID USA 83687

Phone: (208) 442-8917

2. Date of Priority: 06/01/1896

3. Source: COTTONWOOD CREEK Trib. to: WEISER RIVER
LESTER CREEK WEISER RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 Lot	County	Type
16N	01W	28		NW	SE	ADAMS	
16N	01W	36		NW	NW	ADAMS	
16N	01W	27		NW	SW	ADAMS	
16N	01W	27		NE	SW	ADAMS	

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	4/01	7/30	1.98	

7. Total Quantity Appropriated is:
1.98 C.F.S.

ALL OVER ON HOUSE CREEK'S
GRT ALL TO ME & TRY'S TO CHARGE

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
16N	01W	27	SW	NW		IRRIGATION	37
			NW	SW		IRRIGATION	7
						Section Acres	44
						Total Acres	44

11. Place of use in counties: ADAMS

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

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: Statutory Claim

16. Signature(s) Anthony Stuenkel

(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 __Y__ 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): _____ Date: _____

_____ Date: _____

State of Idaho)
) SS.
County of Ada)

Subscribed and sworn (or affirmed) before me this 2nd day of Oct 2003

LORI GRAVES NOTARY PUBLIC STATE OF IDAHO

_____
Notary Public

Residing at Boise

My commission Expires 6/18/04

Form 42-248/42-1409(b) July, 2000

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

RECEIVED
SEP 15 2003
WATER RESOURCES
WESTERN REGION

Please print or type. Attach pages with additional information. Instructions are included at the end of this form. Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
67-4103		Yes			

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

   A. The appropriate **FILING FEE.** See instructions for fee amounts.

   B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION.**

   C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
   PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

   OR

   If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The AERIAL PHOTO should be submitted in place of the PLAT OF PROPERTY or SURVEY MAP.

3. Name and Address of Former Owner/Claimant(s): June Derie & Larry Derie
   Star Rt, Council, ID 83612

4. New Owner/Claimant(s): Anthony J. Finchen
   Name Connector (Check one): [ ] and, [ ] or, [ ] and/or

   New Mailing Address: 5718 E Airport Road

   City, State and ZIP Code: Nampa, ID 83687

   New Telephone Number: (208) 442-8917

5. Date you acquired the property: 9/02/03

6. **If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7.** If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT
(If the right(s) will not be split, skip this area and proceed to item 7)

Water Right and/or Adjudication Claim Number 67-4107

Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	.42 cfs	20.9 acres
Stock		
Domestic		
Other _____		
Total		

DESCRIPTION OF YOUR PORTION OF WATER RIGHT
(If the right(s) will not be split, skip this area and proceed to item 7)

Water Right and/or Adjudication Claim Number _____

Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation		
Stock		
Domestic		
Other _____		
Total		

7. Signature of New Owner(s) or Claimant(s) Anthony J Fenchin
(include title if applicable)

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only
Received by DH Date 9-15-03 Fee _____
Receipted by _____ Date _____ Receipt No. _____
Processed by _____ AJ Date _____ WR _____ Date _____

INSTRUMENT NO. 104153
PAGE 1 OF 2

WARRANTY DEED

For Value Received, LARRY DUANE DERIE and JUNE ILENE DERIE, husband and wife

the grantors, do hereby grant, bargain, sell and convey unto
ANTHONY J. FINCHEN, a single man

the grantee, whose current address is 5718 E. Airport Rd., Nampa, ID 83687

the following described premises, in Adams County, Idaho, to-wit:

SEE ATTACHED EXHIBIT 'A' MADE A PART HEREOF

TO HAVE AND TO HOLD THE said premises, with their appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that they are free from all encumbrances excepting for all easements of record, rights of way, matters visible, and all matters of record and title and that they will warrant and defend the same from all lawful claims whatsoever.

Date: September 2, 2003

Larry Duane Derie
LARRY DUANE DERIE

June Ilene Derie
JUNE ILENE DERIE

Instrument # 104453
COUNCIL, ADAMS, IDAHO
2003-09-03 10:50:39 No. of Pages: 2
Recorded for : TIMBERLINE TITLE & ESCROW
MICHAEL FISK Fee: 8.00
Ex-Officio Recorder Deputy Peggy Finkel
Index to: DEED

STATE OF Idaho)
: ss
COUNTY OF Adams)

On this 2nd day of September, in the year of 2003, before me, a Notary Public in and for said State, personally appeared

LARRY DUANE DERIE & JUNE ILENE DERIE
known or identified to me to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged to me that they executed the same.

KAREN L. AMUSON NOTARY PUBLIC STATE OF IDAHO

Karen L Amidon
Notary Public
Residing at: Cambridge, ID
Commission expires: 6/26/2009

#03-624

EXHIBIT 'A'

INSTRUMENT NO. 104453
PAGE 2 OF 2

Township 16 North, Range 1 West, Boise Meridian, Adams County, Idaho:
All that part of the E1/2NE1/4 and N1/2SE1/4 of Section 28 and the SW1/4NW1/4 and NW1/4SW1/4 of Section 27 lying South of the County Road known as Jackson Creek Road.

EXCEPTING THEREFROM the right-of-way of the former Pacific & Idaho Northern Railway now known as Friends of the Weiser River Trail and the County Road.

ALSO EXCEPTING THEREFROM the two parcels of land located in the NW1/4SW1/4 of Section 27 T16NR1WBM previously conveyed to James A. Renwick and Margaret Renwick, husband and wife, as referenced in Book 27 of Deeds page 491 and Book 32M page 38, records of Adams County, Idaho.

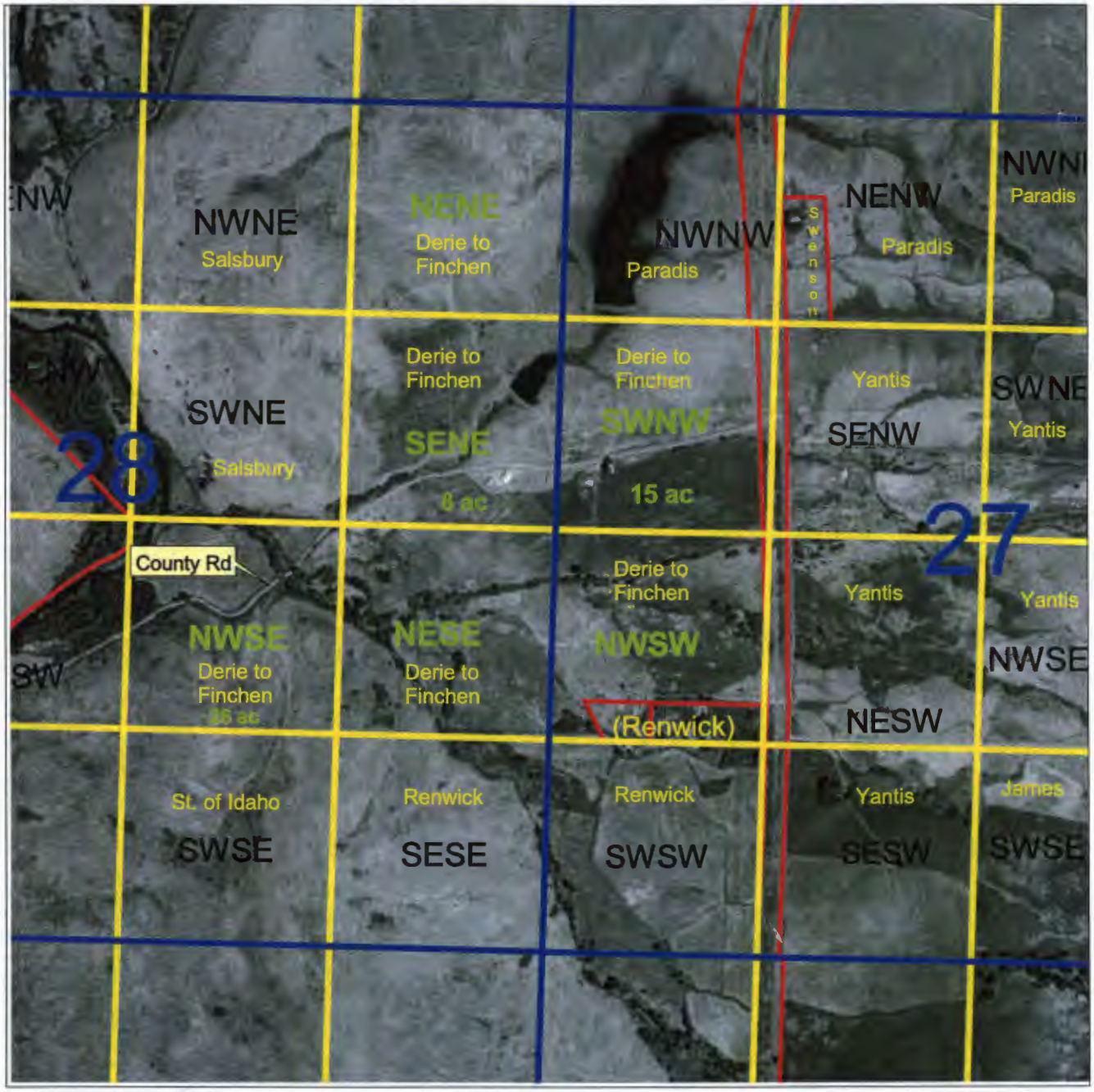
Finchen

67-4103

16N 1W

- Finchen Property
- Section Line
- QQ Line
- Tax Lot Data

Note: Finchen purchased land South of County Road



N
W
E
S

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 67-4103

WATER RIGHT NUMBER: 67-4103

Owner Type	Name and Address
Current Owner	JUNE DERIE STAR RT COUNCIL, ID 83612
Current Owner	LARRY DERIE STAR RT COUNCIL, ID 83612

Priority Date: 06/01/1896

Basis: Statutory Claim

Status: Active

Source	Tributary
COTTONWOOD CREEK	WEISER RIVER
LESTER CREEK	WEISER RIVER

Beneficial Use	From	To	Diversion Rate	Annual Volume
IRRIGATION	4/01	7/30	1.980 CFS	
		Total Diversion:	1.980 CFS	

Location of Point(s) of Diversion

COTTONWOOD CREEK ADAMS County	NW1/4SE1/4	Sec. 28,	Twp 16N,	Rge 01W, B.M.
COTTONWOOD CREEK ADAMS County	NW1/4NW1/4	Sec. 36,	Twp 16N,	Rge 01W, B.M.
COTTONWOOD CREEK ADAMS County	NW1/4SW1/4	Sec. 27,	Twp 16N,	Rge 01W, B.M.
LESTER CREEK ADAMS County	NE1/4SW1/4	Sec. 27,	Twp 16N,	Rge 01W, B.M.

Place of Use

IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16N 01W 27							37.0			7.0							44.0

Total Acres: 44

Conditions of Approval:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 67-4103

Remarks:

1. General PRIORITIES ARE 6-1-1896 OF 1.5 CFS & 6-1-1952 OF .48 CFS. SOURCES ARE LESTER CK. & COTTON WOOD CK. TRIB. WEISER R. WASTE WATER IRR. 7-15 TO 10-1.

Comments:

Dates and Other Information:

Licensed Date:
Decreed Date:
Water Supply Bank Enrollment Accepted:
Water Supply Bank Enrollment Removed:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal:
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Decree Defendant:
Decree Plaintiff:
Civil Case Number:
Judicial District:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

67-310 Cottoncreek → Weiser River
1884-09-06

~~Sec 26 T16N R1~~
~~NENE SE¼SW NENW~~

Peebles Ditch constructed 1896
off of Lester Creek

Combined for 117 acres

Transf. #880

67-322	Decreed (Adj)	1896-04-01	irr.	Cottonwood
67-2208	License (Adj)	1951-10-12	irr. grd	H_2O
67-11025	BU (Adj)	1953-08-31	irr.	Cottonwood
67-11026	BU (Adj)	1957-05-21	irr.	Cottonwood
67-12330	BU (Adj)	1963-02-51	irr. grd.	H_2O
67-4038	decreed WR	1945-06-15	dom. grd.	H_2O
67-4103	Statutory (Adj)	1896-06-01	irr.	Cottonwood
67-500	WR/decreed	———		Lester Crk.
67-2053	disallowed			Lost Crk
67-310	Decreed (Adj)	1884-09-06		Cottonwood
67-4103	BU (Adj)	1896-06-01	irr.	Cottonwood

→ disallowed

Combined w/ 67-11025

Adj/Decreed

Lester Creek / same as North Cottonwood to Cottonwood Crk

(P.42 to 98)

67-321 AW Peebles SWSE + E½NW

See 28 16N 1W

priority 4/1/1896

~~(Query Updated. Connection Failure)~~

Now owned by Bob Mapke

Summary of Conversation

Date: 8-6-07
To: File 67-4130
From: Craig L. Saxton

Subject: Disallow of 67-4103

Over the past couple of day's I have been in numerous telephone conversations with Anthony Finchen regarding primarily the disallowal of 67-4103.

Basically, Mr. Finchen feels that 67-4103 should not have been disallowed because he needs the late priority date or he doesn't have any water.

I have researched several documents per our discussions to see if I could find a water right or evidence of a water right that dated back into the Muir v. Allison, but was not recognized by Muir v. Allison. As of this date, I can not find another water right that would support the priority date claimed under 67-4103.

Mr. Finchen originally contacted Vicky Music regarding this matter. She e-mailed Mr. Finchen copies of his recommendations along with a copy of **Conclusions of Law in the Peebles v Lay lawsuit of 1954.** I reviewed this to see if there was a water right mentioned that was not part of Muir v. Allison. I could not find anything. This conclusion of law seemed to be over use of a ditch. The mention of water rights did speak of a spring that was later drilled and turned into a well. I assume this is 67-2208 however I have not looked into that fully.

On 7-27-07 I discussed the above conclusion of law with Mr. Finchen as well as discussing how no other water right was identified applicable to his property in Muir v. Allison other than 67-322. Mr. Finchen pointed out that he did not agree to the priority date recommended, place of use recommended, and the diversion rates recommended. We discussed the difference between a a claim and verified water right as well. At the end of the conversation it was my understanding that Mr. Finchen was going to try to find some additional evidence for me to review, but no matter what we found, he was going to need to file and objection if any changes were going to be made.

On 8-6-07 Mr Finchen called again to tell me that the Affidavit of Completion of works in the back file for water right license 67-2215 contained statements that the water was used to the extent permitted back to the late 1800's. I reviewed the affidavits and that is correct. I did contact who I think to be Ms. Finchen that same day after reviewing the information and told her that I agreed what they found did appear to be affidavits supporting use of water to the extent permitted dating back into Muir v. Allison. I did make it clear to Ms. Finchen that they are still going to have to somehow explain to the judge that if there was a water right there, why it wasn't described in Muir v. Allison. I also told her that I would send copies of the maps showing the recommended POU for their water rights.

Finchen

Conversation Memorandum

Date: December 11, 2006

To: File 67-322, 67-2208, 67-4103, 67-11026, 12330

Re: NOE

I spoke with Anthony Finchen today and we went over why 67-4103 was disallowed. The reason being that is was a duplicate of 67-11026

The main concern with Anthony is that someone had filed on his water. I told him that I didn't know of any competing claims and if I found some, I would let him know.

I need to make the changes on them regarding the NOE.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 67-11026 V1

WATER RIGHT NUMBER: 67-11026 V1

Owner Type	Name and Address
Original Owner	LARRY D DERIE 920 JONATHAN RD WEISER, ID 83672-5122
Current Owner	ANTHONY J FINCHEN 2205 JACKSON CREEK RD COUNCIL, ID 83612-5244 (208) 253-4680

Priority Date: 05/21/1957

Basis: Beneficial Use

Status: Active

Source	Tributary
COTTONWOOD CREEK	WEISER RIVER
LESTER CREEK	COTTONWOOD CREEK

Beneficial Use	From	To	Diversion Rate	Annual Volume
IRRIGATION	03/15	11/15	1.920 CFS	
		Total Diversion:	1.920 CFS	

Location of Point(s) of Diversion

LESTER CREEK ADAMS County	SE1/4NW1/4	Sec. 27,	Twp 16N,	Rge 01W, B.M.
LESTER CREEK ADAMS County	NE1/4SE1/4	Sec. 28,	Twp 16N,	Rge 01W, B.M.
COTTONWOOD CREEK ADAMS County	NE1/4NE1/4	Sec. 35,	Twp 16N,	Rge 01W, B.M.
LESTER CREEK ADAMS County	NW1/4SW1/4	Sec. 27,	Twp 16N,	Rge 01W, B.M.
COTTONWOOD CREEK ADAMS County	NW1/4SE1/4	Sec. 28,	Twp 16N,	Rge 01W, B.M.

Place of Use

IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16N 01W 27							32.0			7.2							39.2
16N 01W 28	12.0			26.0									17.0		2.0		57.0

Total Acres: 96.2

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 67-11026 V1

Conditions of Approval:

1. The rights listed below are limited to the irrigation of a combined total of 96.2 acres in a single irrigation season. Combined Right Nos.: 67-2208, 67-11026 and 67-12330
2. C18 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.
3. E52 The rights listed below are limited to a total combined diversion rate of 2.34 cfs. Combined Right Nos.: 67-322, 67-2208, 67-11025, 67-11026, and 67-12330
4. E56 The rights listed below are limited to the irrigation of a combined total of 117.0 acres in a single irrigation season. Combined Right Nos.: 67-322, 67-2208, 67-11025, 67-11026, and 67-12330
5. The rights listed below are limited to a total combined diversion rate of 1.92 cfs. Combined Right Nos.: 67-2208, 67-11026, and 67-12330

Remarks:

Comments:

1. csaxton 3/7/2006 Priority Evidence
Comment: This claim is claimed as B-use where there is a license 67-2215 already licensed to the claimed POU. The b-use claim, claims the same priority date as 67-2215, but claims greater diversion rate and acreage than what was licensed. I cannot recommend a priority date of the license for greater acres as the licensing filed exam did not find additional acres. With the affidavit, I have recommended a priority of one day after license 67-2215 as that is the best I can do.

2. csaxton 3/7/2006 Source
Comment: All 4 PODs claim Lester Creek as source. Cottonwood Creek is source for one of the claimed PODs.

3. csaxton 3/7/2006 Diversion Rate
Comment: Theoretical measurement taken from licensing FE for 67-2215 found capacity of just one of the Points of Diversion to have the capacity of 3.03 cfs.

4. csaxton 3/7/2006 Copied From Claim (1)
Comment: Claim 67-14436 and 67-14437 has been re-combine into 67-11026 per common ownership (csaxton 3-6-06)

5. csaxton 3/7/2006 Copied From Claim (2)
Comment: This claim has been split. See nos. 67-14436 & 67-14437. DH 9/23/2003

6. csaxton 3/7/2006 PPU
Comment: 67-2208, 67-11026, and 67-12330 recommended as PPU as they share a common system. Water is pumped from wells or diverted from Lester and Cotten wood creek to flood irrigation or to a pond where sources co-mingle.

7. csaxton 12/19/2006 NOE
Comment: Recommendation amended per NOE

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 67-11026 V1

Dates and Other Information:

Decreed Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Defendant:
Plaintiff:
Civil Case Number:
Judicial District:
Notice of Error Flag:
State or Federal: S
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:

Rate	Volume	Acres
2.34		117

Combined Water Rights: 67-322 , 67-11025 , 67-11026 , 67-12330 , 67-2208

Element Reviewed/Verified Dates:

Element	Last Reviewed Date	Reviewer	Last Verified Date	Verifier	Status
Contacts	3/7/2006 1:06:49 PM	csaxton			Active
Priority Date	3/7/2006 1:18:04 PM	csaxton			Active
POD	3/7/2006 1:22:24 PM	csaxton			Active
Source	3/7/2006 1:27:32 PM	csaxton			Active
POU	3/7/2006 1:28:48 PM	csaxton			Active
Use	3/7/2006 1:30:14 PM	csaxton			Active
Season	3/7/2006 1:30:34 PM	csaxton			Active
Quantity	3/7/2006 1:33:04 PM	csaxton			Active
Summary			03/07/2006	csaxton	Active

Verification Log:

Element	Date Time Stamp	Reviewer	Log text
POD	12/19/2006 4:12:02 PM	csaxton	Updated PLS
POD	12/19/2006 4:11:53 PM	csaxton	Updated shape
POU	12/19/2006 4:18:56 PM	csaxton	Updated shape for Active POU
POU	12/19/2006 4:19:07 PM	csaxton	Updated PLS for Active POU

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 67-11026 V1

POD	3/7/2006 1:22:28 PM	csaxton	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (No) 6. Is there evidence that there has been a change in the POD? (Yes) 9. Does the file contain all the necessary information to verify the POD? (No) 10. Is a POD remark and/or condition required?
POD	3/7/2006 1:24:35 PM	csaxton	Updated PLS
POU	3/7/2006 1:29:47 PM	csaxton	Updated PLS for Active POU
POD	3/7/2006 1:25:26 PM	csaxton	Updated shape
General	3/7/2006 1:18:08 PM	csaxton	(No) 1. Should this water use have been included in a later court decree of the water rights from this source? (No) 4. Is the basis of claim decree or license? (No) 7. Is the basis of claim a Application or Permit? (No) 8. Is the basis of claim a posted notice? (No) 9. Is the Priority Date of this water use after the date a permit is required for the source and the water use? (Yes) 12. Does the claim file contain sufficient evidence of Priority Date? (Yes) 15. Is the basis of claim coded correctly? (No) 16. Is a Priority Date remark and/or condition required? Description for Question 12/13 - See quick look.
POD	3/7/2006 1:24:25 PM	csaxton	Updated shape
POD	3/7/2006 1:25:38 PM	csaxton	Updated PLS
Contacts	3/7/2006 1:06:52 PM	csaxton	(No) 1. Do you want to schedule an appointment? Comment for 1: FE by Bosco Bosler on 9-8-05.
POD	3/7/2006 1:23:27 PM	csaxton	Updated shape
POD	3/7/2006 1:23:58 PM	csaxton	Updated shape
Source	3/7/2006 1:27:36 PM	csaxton	(No) 1. Is the basis of claim Decree or License? (No) 2. Is the basis of claim an Application or Permit? (No) 6. Is the basis of claim a Posted Notice? (No) 7. Is there evidence that there has been a change in the source? (Yes) 10. Does the file contain all the necessary information to verify the source? (No) 11. Is a Source remark and/or condition required? Description for Question 10 - FE by Bosco Bosler on 9-8-05.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 67-11026 V1

POU	3/7/2006 1:28:52 PM	csaxton	(No) 1. Is the basis of this claim a Decree or License? (Yes) 2b. Is the POU required? (No) 3. Is the basis of claim a Application or Permit? (No) 7. Is there evidence that there has been a change in the POU? (Yes) 13. Does the file contain all the necessary information to verify the POU? (Yes) 14. Is a POU remark and/or condition required? Description for Question 13 - FE by Bosco Bosler on 9-8-05.
Use	3/7/2006 1:30:18 PM	csaxton	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (No) 6. Is there evidence that there has been a change in the Purpose of Use? (Yes) 11. Does the file contain all the necessary information to verify the Water Use? (No) 13. Is a Purpose of Use remark and/or condition required? Description for Question 10,11,12 - FE by Bosco Bosler on 9-8-05.
Season	3/7/2006 1:30:38 PM	csaxton	(No) 1. Is the basis of claim Decree or License? (No) 2. Is the basis of claim a Application or Permit? (No) 6. Is there evidence that there has been a change in the Period of Use? (Yes) 12. Does the file contain all the necessary information to verify the Period of Use? (No) 13. Is the basis of claim a decree, license, or a transferred beneficial use right that has had the Period of Use administrativly determined? (Yes) 15. Is irrigation claimed as a Purpose of Use? (No) 18. Is a Period of Use remark and/or condition required?
POU	3/7/2006 1:29:29 PM	csaxton	Updated shape for Active POU
Quantity	3/7/2006 1:33:08 PM	csaxton	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (No) 6. Is the basis of claim a posted notice? (Yes) 7. Is a flow measurement required? (No) 9. Is the source Groundwater and does the purpose of use require a diversion volume limit? (No) 11. Has a diversion volume limit been established by a decree, license or transfer for this water use? (Yes) 12. Is a Quantity remark or condition required? Description for Question 7 - Theoretical measurement taken from licensing FE for 67-2215 found capacity of just one of the Points of Diversion to have the capacity of 3.03 cfs.
POU	3/7/2006 5:02:27 PM	csaxton	Updated shape for Active POU

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 67-11026 V1

POU	3/7/2006 5:02:35 PM	csaxton	Updated PLS for Active POU
Summary	3/7/2006 4:46:21 PM	csaxton	(No) 1. Is the basis of this claim a Decree, License, Permit, Application or Posted Notice? (Yes) 3. Is the water being used for all of the purposes claimed and to the extent claimed? (Yes) 5. Does this right have any combined use limits with other rights? (Yes) 6. Is an additional remark and/or condition required? (Yes) 7. Would you like to view the recommended right? (No) 8. Is this a split or combined right? (No) 9. Do you have documents you would like to attach or link to the file? (Yes) 10. Would you like to set the verification date?

Water Supply Bank:

State of Idaho
License and Certificate of Water Right

Water License No. 22634 Amount .48 c.f.s.

Water District No. Priority February 25, 1952

THIS IS TO CERTIFY that ANDY R. LAY of Council, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated February 25, 19 52; that Permit No. 22634 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 0.48 second feet, was issued thereunder on January 24, 19 57, showing that said works were completed on the 21st day of January, 19 57; and that on the 5th day of March, 19 57, ANDY R. LAY of Council, State of Idaho, made proof to the satisfaction of the State Reclamation Engineer of Idaho, of the right to use the waters of Lester Creek, a tributary of Cottonwood Creek, for the purpose of Irrigation, under Use Permit No. 22634 of the Department of Reclamation and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume 10 of Licenses at page 5997, on the 20th day of May, 19 57;

The right hereby confirmed dates from February 25, 19 52;

The Point of Diversion is located

in the SW ¼ NE ¼, Sec. 27, Tp. 16 N, R. 1 W., B. M. Adams County

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed .48 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
16 N.	1 W.	27	SW¼ NW¼	10	17
			NW¼ SW¼	2	3
		28	SE¼ NE¼	6	6
			NE¼ SE¼	6	10
			Total number of acres irrigated -----		36

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this 20th day of May, 19 57.

/s/ MARK R. KULP
State Reclamation Engineer.

(SEAL)

67 2215

FORM 6

Permit No. 22634

STATE OF IDAHO
Department of Reclamation

RECEIVED
JAN 3 1957
Department of Reclamation

Proof of Completion of Works

AFFIDAVIT OF HOLDER

STATE OF IDAHO
County of Adams } ss.

Andy R. Lay, being first duly sworn, upon his oath deposes and says:

First: That he is the holder and owner of Permit to Appropriate the Public Waters of the State of Idaho, No. 22634, and that his postoffice address is Council State of Idaho.

Second: That the name of the stream from which said water is to be diverted is Lester Creek

Third: That the point of diversion of said water is SW¼ NE¼ Section 27 T16N R1W. BM

Fourth: That under the terms and conditions of said permit, construction thereunder was required to be completed by March 5, 19 57.

Fifth: That the use for which said water is intended is Irrigation

Sixth: That on the date above mentioned, the works constructed under said permit were (or were not) fully completed and consisted of the following:

I. **Kind of Works:** headgate and ditch
(RESERVOIR, DAM, DITCH, FLUME, PIPE OR OTHERWISE)

II. **Dimensions of work:**

(a) Height of dam ____ feet, length of dam at top ____ feet, length of dam at bottom ____ feet. Material used in construction ____
(STATE WHETHER WOOD, EARTH STONE OR CONCRETE)

(b) Capacity of reservoir ____ acre feet.

(c) Size of headgate: Width 1 feet, height 1 feet.

(d) Conduit ditch width at bottom 2 feet, width at water line 2 to 3 feet, depth of water ½ feet; diameter of pipe ____ inches, average grade per mile is 75 feet. Length of conduit is ½ miles.
(STATE WHETHER DITCH, FLUME OR PIPE)

Seventh: That said works are capable of conducting to the place of intended use 1 second feet of water.

Eighth: That water appropriated under said permit is available for 24 acres of land described as follows: SW¼ NE¼ and NW¼ SW¼ of Section 27 and SE¼ NE¼ and NE¼ SE¼ of Section 28 TWP 16N, R1W, BM

Ninth: Remarks: That Water has been used from same point of diversion through ancient creek channel, on same land since 1884 to date, but creek goes dry about August 5th.

X Andy R. Lay
(SIGN HERE)

Subscribed and sworn to before me this 21 day of January, 1957

George Johnson
(NOTARY PUBLIC)

My commission expires Mar. 22, 1959

22634

Form No. 11

RECEIVED
JAN 23 1957
Department of Reclamation

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) January 21, 1957

(P. O.) Council, Idaho

TO THE STATE RECLAMATION ENGINEER:

Boise, Idaho

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the Adams County Leader of Council, Idaho published in the county in which the works are situated.

Cindy B Fay

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well-known and competent engineer.)

I hereby certify that the facts set forth in the attached notice are true.

Engineer.

22634

Form 10

NOTICE FOR PUBLICATION

NOTICE OF PROOF APPLICATION OF WATER TO BENEFICIAL USE

Department of Reclamation

Notice is hereby given that at 10 A. M. on the 5 th day of March, 19 57, at Council, County of Adams, State of Idaho, before George F. Johnson, Notary Public, proof will be submitted of the application to beneficial use of .48 cubic feet per second of the waters of Lester Creek in accordance with the terms and conditions of Permit No. 22634 heretofore issued by the State Reclamation Engineer of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Andy R. Lay Council, Idaho

The use to which said water has been applied is irrigation

The amount applied to beneficial use is .48

The place where said water is used (if for irrigation, give full and accurate description of the lands irrigated)

SW¼ NW¼ & NW¼ SW¼ of Section 27 and SE¼ NE¼ & NE¼ SE¼ of Section 28 TWP. 16N R1W, BM

The name of the canal or ditch or other works by which said water is conducted to such place of use is Ditch

The right to take water from such works is based upon Permit No. 22634

The source of supply from which such water is diverted is Lester Creek

The date of priority which said user is prepared to establish is February 25, 1952 Right

22634

MARK R. KULP

State Reclamation Engineer.

Form No. 5-A

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE

January 2, 1957

Mr. Andy R. Lay, Council, Idaho

Dear Sir:

Under the terms of your permit No. 22634 you are required to complete your diversion works and make proof of beneficial use on or before 3-5-57.

We enclose herewith a blank affidavit to be filled out, sworn to by you before a Notary Public or Justice of the Peace, and returned to this office on or before the above date, or within ten days thereafter, for the purpose of making proof of completion under the permit. Upon receipt of this affidavit in this office, provided the same satisfactorily shows the Completion of the Works substantially in accordance with the terms of the permit, together with a fee of $5.00, a Certificate of Completion of Works will be issued to you.

We also enclose blank notice for proof of application of water to Beneficial Use under this permit, which should be filled out and returned to this office at least forty (40) days before the date upon which you wish to make proof, The proof must be submitted before a Notary Public or other officer authorized by law to administer oaths. The date for proof as set out in your permit, is 3-5-57, and if proof is submitted subsequent to said date, your priority will be brought down a length of time equal to the time elapsing between the date proof should have been made and the date proof is actually made.

Very truly yours,

MARK R. KULP

State Reclamation Engineer

22634

RECEIVED
MAR 3 1957
Department of Reclamation

Council, Idaho
March 5, 1957

Reclamation Engineer.
Dept of Reclamation
Boise, Idaho.

Inclosed find proof of completion of work and witness of beneficial use of permit no 22634, which I believe will establish priority of 1952 by your records.

At the time of filling this works was in permanent use, and there was no record of any prior valid rights on Lester Creek in your office upon search by Roy Thompson.

You will probably note that the witness both indicate use long before this filling, however that is only for the use in the event of further litigation.

This water was settled in court as belonging to Harvey Houston, my previous owner, years ago when this was all Washington County, but the record of such must have burned in Washington County court house fire along with other records.

Hoping this will explain the matter and not cause undue concern.

Yours truly
Andy Day

PS. I am inclosing copy of deed showing proof of use of same ditch in 1900.

22634

Form 16.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

RECEIVED
MAR 3 1957
Department of Reclamation

Permit No. 22634

Proof of Application of Water to Beneficial Use

Deposition of Holder

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. Andy R. Lay Council Farmer Council, Idaho

Ques. 2. If acting in behalf of corporation, state its name, principal place of business (if a foreign corporation, give name of postoffice of statutory agent), your position with reference to same, and your authority for appearing in its behalf.

Ans.

Ques. 3. State number and date of permit, and date of priority you propose to establish under the permit.

Ans. 22634 March 5, 1952 permit right, use right 1884

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. Lester Creek SW¼ NE¼ Section 27 TWP 16 N R1W BM

Ques. 5. Describe your works of diversion, and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use. If a well, state depth of well, depth and size of casing and depth to water. If pump is used, state discharge of pump and tell how it was measured or determined. If sprinkler irrigation, give number and size of nozzles and operating pressure.

Ans. concrete headgate . 1 second Ft. old creek channel used as ditch at time of permit, changed location of part of ditch 1955 by agreement to conserve water.

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have actually been irrigated with said water.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. irrigation 10 Acres in SW¼ NW¼, 2 acres NW¼ SW¼ Section 27 6 acres SE¼ NE¼, 6 acres NE¼ SE¼ Section 28 all in TWP 16 N, R1 W BM 24 acres, cultivated meadow land, leveled and maintain field ditches.

22634

Ques. 7. If for other than irrigation purposes; state how applied, amount of horse power generated, etc.

Ans. .....

Ques. 8. What is the minimum amount of water required for the purpose specified above?

Ans. 1 inch per acre

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans. .....

Ques. 10. State when, how, in what amount and to what extent the water diverted under above mentioned permit has been used.

Ans. Every year since 1945 to 1957 I have applied water by flood method. I use about 50 inched of water to speed up irrigation, when there is ample water, then shut off water till needed again.

Ques. 11. State when, how, in what amount and to what extent waters other than those diverted under the above mentioned permit have been diverted and applied to beneficial use upon the lands herein described. Give full particulars regarding such other appropriations and rights claimed thereunder.

Ans. In tracing use right back to 1884 I find water was used same way, by previous owners of same land.

We are very short of water in late season so I use water now from well in sprinkler to supplemant this water.

(Sign) Cindy R. Fay

I hereby certify that the foregoing testimony was read to the above subscribed before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Council, County of Adams, State of Idaho, on this Fifth (5) day of March, A. D. 1957.

Lucy E. Johnson

My commission expires Dec. 22 1958

22634

Form 17

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

RECEIVED
MAR 5
Department of Reclamation

PERMIT NO. 22634

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Raymond Duree Council, Idaho
Sawmill Worker

Ques. 2. Are you acquainted with Andy R. Lay, the holder of Permit No. 22634? How long have you known him and where does he reside?

Ans. 10 years Council, Idaho

Ques. 3. Have you read or heard read said Permit No. 22634, and are you familiar with its provisions and conditions?

Ans. Yes Yes

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Lester Creek SW¼ NE¼ Section 27 TWP 16 N, R1W, BM.
Ditch

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. 1 Second Ft. 1 Second Ft.

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. irrigation SW¼ NW¼, NW¼ of SW¼ of Section 27
SE¼ NE¼, NE¼ SE¼ Section 28 All in TWP 16N, R1W BM.
24 Acres cultivated meadow land, with field ditches

22634

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. NONE

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. Good Farm land 1 inch per acre

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. none

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. Worked part time on place in last 8 years, visiting and saw Sam Warner divert water at railroad in 1930, same place.

(Signed) Raymond L. Morse

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Council, County of Adams, State of Idaho, on this 5 day of March, A. D. 1957.

Notary Public.

My commission expires Dec. 27, 1959.

22634

Form 17

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

RECEIVED
MAR 8 1957
Department of Reclamation

PERMIT NO. 22634

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Bill Houston - 81 - Payette, Idaho - farmer - Route #2, Payette, Idaho.

Ques. 2. Are you acquainted with Andy R. Lay, the holder of Permit No. 22634? How long have you known him and where does he reside?

Ans. Yes 6 years Council, Idaho.

Ques. 3. Have you read or heard read said Permit No. 22634, and are you familiar with its provisions and conditions?

Ans. Yes Yes

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Lester Creek SW¼ of NE¼ Section 27, Twp. 16 N. R. 1 W.B.M.
An old creek channel used as ditch, and headgate.

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. 1 second foot. 1 second foot

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. irrigation - SW¼ of NW¼, NW¼ of SW¼ of Section 27, NE¼ of SE¼ and SE¼ of NE¼, all in Section 28, Twp. 16 N. Range 1 W.B.M. natural meadow land.

22634

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. None.

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. good - 1 inch per acre.

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. No.

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. 1953 - I used to live there and saw S. D. Warner irrigating same land same way from 1912 to 1945.
Also, Harvey Houston irrigated same way in 1889 on 24 acres.

(Signed) Bill Houston

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Payette, County of Payette, State of Idaho, on this 22nd day of February, A. D. 19 57.

Notary Public.

My commission expires Nov. 1, 1958.

22634

RECEIVED
AUG 16 2007
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)
)

A. Subcase 67-4103
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: FINCHEN, ANTHONY J
Address: 2205 JACKSON CR RD
COUNCIL ID 83612
Daytime Phone: (208) 253-4680

Name & Address of Attorney, if any:

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

Name: FINCHEN, ANTHONY J
Address: 2205 JACKSON CR RD
COUNCIL ID 83612

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 AUG-9, 2007, 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

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

   Name: ANTHONY J FINCHEN
   Address: 2205 JACKSON CR RD
   COUNCIL ID 83612

3. Copies to:

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

   United States Department of Justice
   Environment & Nat'l Resources Div
   550 W Fort Street, MSC 033
   Boise, ID 83724

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

Signature of objector or attorney
mailing on Objector's behalf

F. **VERIFICATION** (must be completed)

State of IDAHO)
)ss.
County of ADAMS)

ANTHONY J FINCHEN, 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.

Anthony J Finchen
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: August 9th, 2007

BONNIE A. FISK
Notary Public
State of Idaho

Bonnie A Fisk
Notary Public for Council Idaho
Residing at: Council, Idaho
My Commission Expires: 11/21/09

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: ANTHONY J FINCHEN 2205 JACKSON GR RD COUNCIL ID. 83612

2. ☐ **Source**
   Should be: _____

3. ☐ **Quantity**
   Should be: _____

4. ☒ **Priority Date**
   Should be: 1889

5. ☐ **Point of Diversion**
   Should be: _____

6. ☐ **Instream Flow Beginning and Ending Point**
   Should be: _____

7. ☐ **Purpose(s) of Use**
   Should be: _____

8. ☐ **Period of Year**
   Should be: _____

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 OBJECTIONS(S): WATER RIGHT # 67-4103 AND WATER RIGHT # 67-11026 ARE COMBINED, TAKING 3" OF WATER AWAY. UNDER WATER RIGHTS # 22634 WITH NOTARY PUBLIC PRIORITY DATE OF 1889 & 1912 TO 1945 C-STATE OF IDAHO DEPT OF RECLAMATION PERMIT #22634 C-ATTACH.

Idaho Department of Water Resources Receipt

Receipt ID W030971

Payment Amount $94.00 **Date Received** 10/2/2003 10:04:32 AM **Region** Western **Status**

Payment Type Check **Check Number** 6004

Payer FINCHEN, ANTHONY J

Comment NOTICE OF CLAIM TO A WATER RIGHT 67-4103

Fee Detail

Amount	Description	Fund	FD	PCA	SO
$94.00	ADJUDICATION FILING FEE	0337		42503	1155

D Hatfield

Signature Line (Dept. Representative)

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 67-4103 V1

WATER RIGHT NUMBER: 67-4103 V1

Owner Type	Name and Address
Original Owner	JUNE I DERIE 920 JONATHAN RD WEISER, ID 83672-5122 (208)741-0343
Current Owner	ANTHONY J FINCHEN 2205 JACKSON CREEK RD COUNCIL, ID 83612-5244 (208) 253-4680
Original Owner	LARRY D DERIE 920 JONATHAN RD WEISER, ID 83672-5122

Priority Date: 06/01/1896

Basis: Beneficial Use

Status: Disallowed

Source	Tributary
COTTONWOOD CREEK	WEISER RIVER
LESTER CREEK	WEISER RIVER

Beneficial Use	From	To	Diversion Rate	Annual Volume
IRRIGATION	4/01	7/30	1.980 CFS	
		Total Diversion:	1.980 CFS	

Location of Point(s) of Diversion

LESTER CREEK	NE1/4SW1/4	Sec. 27,	Twp 16N,	Rge 01W, B.M.
ADAMS County				
COTTONWOOD CREEK	NW1/4SW1/4	Sec. 27,	Twp 16N,	Rge 01W, B.M.
ADAMS County				
COTTONWOOD CREEK	NW1/4SE1/4	Sec. 28,	Twp 16N,	Rge 01W, B.M.
ADAMS County				
COTTONWOOD CREEK	NW1/4NW1/4	Sec. 36,	Twp 16N,	Rge 01W, B.M.
ADAMS County				

Place of Use

IRRIGATION Within ADAMS County

T16N R01W S27	SWNW	37.0	T16N R01W S27	NWSW	7.0

Total Acres: 44

Conditions of Approval:

1. P08 Recommended as Right No. 67-11026.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 67-4103 V1

2. P16 Recommended as Right No. 67-11026: This is included for a claim that is proposed to be disallowed because the right claimed is recommended pursuant to another right. The remark indicates the water right number of the other right that is proposed to be recommended. If you are not mailed a notice of the recommendation of the other right, then the other right is recommended in another claimants name.

Remarks:

Comments:

1. csaxton 3/7/2006 Disallow
Comment: Recommended as right 67-11026

2. csaxton 3/7/2006 Priority date
Comment: The claimed priority date dates back into the Muir vs. Allison decree. Our records do not show that there is any water decreed to the claimed POU other than spring water which was not claimed. Thus, cannot recommend a decreed priority date, and cannot recommend a priority with one day after decree. That being the case, the elements of this claim are recommended under claim 67-11026. Recommending this claim would be redundant.

Water Supply Bank:

Form 42-248 (4-07/10) July, 2000

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

RECEIVED
SEP 15 2003
WATER RESOURCES
WESTERN REGION

Please print or type. Attach pages with additional information. Instructions are included at the end of this form. Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
67-4103		Yes			

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

   A. The appropriate **FILING FEE**. See instructions for fee amounts.

   B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.

   C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
   PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

   OR

   If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The AERIAL PHOTO should be submitted in place of the PLAT OF PROPERTY or SURVEY MAP.

3. Name and Address of Former Owner/Claimant(s): June Dorie & Larry Dorie
   Star Rt, Council, ID 83612

4. New Owner/Claimant(s): Anthony J. Fincher
   Name Connector (Check one): [ ] and, [ ] or, [ ] and/or

   New Mailing Address: 5719 E. Airport Road

   City, State and ZIP Code: Nampa, ID 83687

   New Telephone Number: (208) 442-8917

5. Date you acquired the property: 9/02/03

6. **If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7.** If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT
(If the right(s) will not be split, skip this area and proceed to item 7)

Water Right and/or Adjudication Claim Number 67-4107

Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	.42 cfs	20.9 acres
Stock		
Domestic		
Other		
Total		

DESCRIPTION OF YOUR PORTION OF WATER RIGHT
(If the right(s) will not be split, skip this area and proceed to item 7)

Water Right and/or Adjudication Claim Number

Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation		
Stock		
Domestic		
Other		
Total		

7. Signature of New Owner(s) or Claimant(s) (include title if applicable) Anthony J Franchini

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only
Received by DH Date 9-15-03 Fee
Receipted by Date Receipt No.
Processed by AJ Date WR Date

INSTRUMENT NO. 104153
PAGE 1 OF 2

WARRANTY DEED

For Value Received, LARRY DUANE DERIE and JUNE ILENE DERIE, husband and wife

the grantors, do hereby grant, bargain, sell and convey unto
ANTHONY J. FINCHEN, a single man

the grantee, whose current address is 5718 E. Airport Rd., Nampa, ID 83687

the following described premises, in Adams County, Idaho, to-wit:

SEE ATTACHED EXHIBIT 'A' MADE A PART HEREOF

TO HAVE AND TO HOLD THE said premises, with their appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that they are free from all encumbrances excepting for all easements of record, rights of way, matters visible, and all matters of record and title and that they will warrant and defend the same from all lawful claims whatsoever.

Date: September 2, 2003

Larry Duane Derie
LARRY DUANE DERIE

June Ilene Derie
JUNE ILENE DERIE

Instrument # 104453
COUNCIL, ADAMS, IDAHO
2003-09-03 10:50:39 No. of Pages: 2
Recorded for : TIMBERLINE TITLE & ESCROW
MICHAEL FISK Fee: 6.00
Ex-Officio Recorder Deputy
Index to: DEED

STATE OF Idaho)
: ss
COUNTY OF Adams)

On this 2nd day of September, in the year of 2003, before me, a Notary Public in and for said State, personally appeared

LARRY DUANE DERIE & JUNE ILENE DERIE
known or identified to me to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged to me that they executed the same.

KAREN L. SIMMONS NOTARY PUBLIC STATE OF IDAHO

Notary Public
Residing at: Cambridge, ID
Commission expires: 6/26/2009

#03-624

EXHIBIT 'A'

INSTRUMENT NO. 104453
PAGE 2 OF 2

Township 16 North, Range 1 West, Boise Meridian, Adams County, Idaho:
All that part of the E1/2NE1/4 and N1/2SE1/4 of Section 28 and the SW1/4NW1/4 and NW1/4SW1/4 of Section 27 lying South of the County Road known as Jackson Creek Road.

EXCEPTING THEREFROM the right-of-way of the former Pacific & Idaho Northern Railway now known as Friends of the Weiser River Trail and the County Road.

ALSO EXCEPTING THEREFROM the two parcels of land located in the NW1/4SW1/4 of Section 27 T16NR1WBM previously conveyed to James A. Renwick and Margaret Renwick, husband and wife, as referenced in Book 27 of Deeds page 491 and Book 32M page 38, records of Adams County, Idaho.

NAME OF APPLICANT ANDERSON

Form No. 0

4

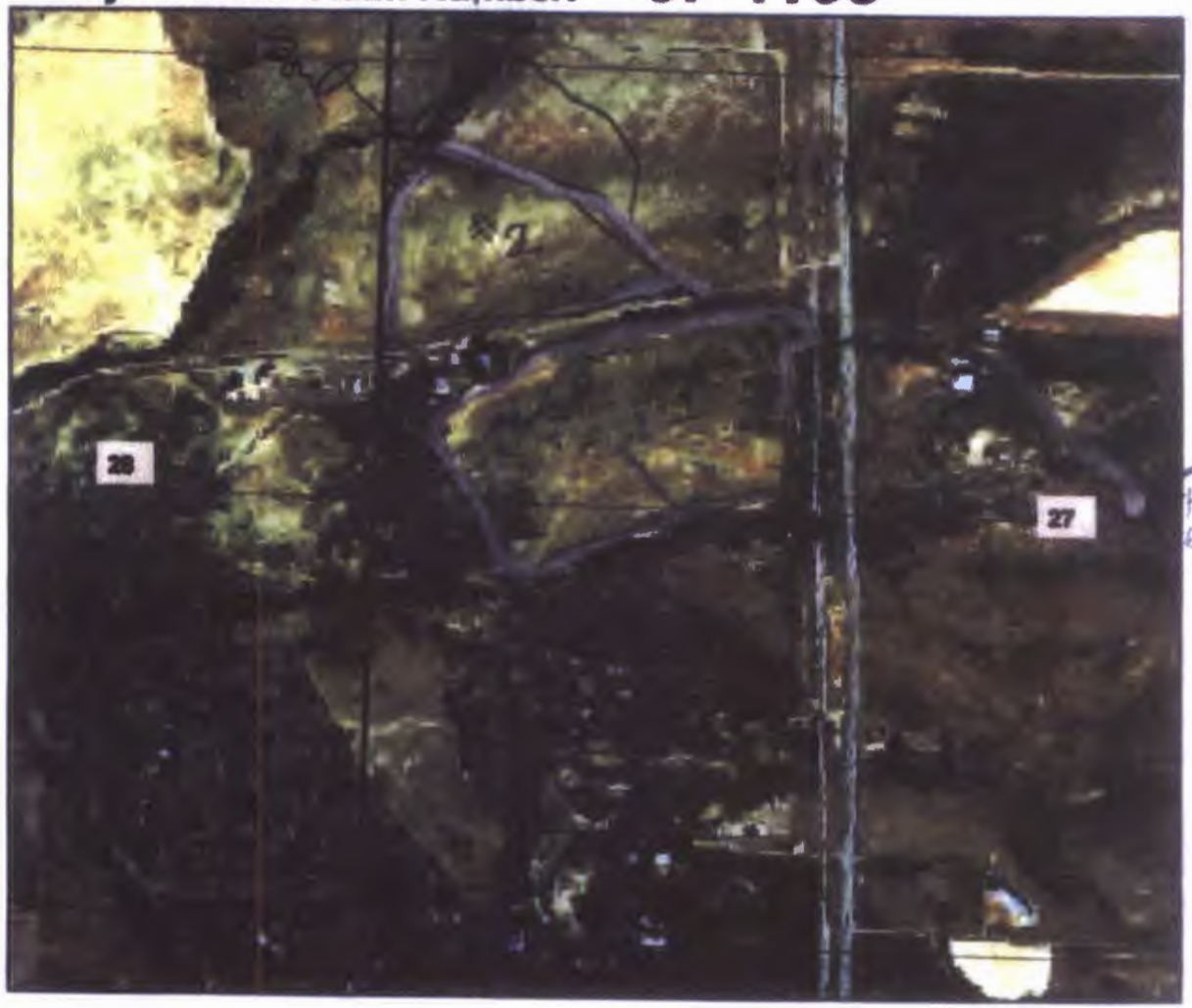
SCALE: 2 Inches Equal 1 Mile. Draw Plan in Ink.

Idaho Department of Water Resources

Black Ink Ditch

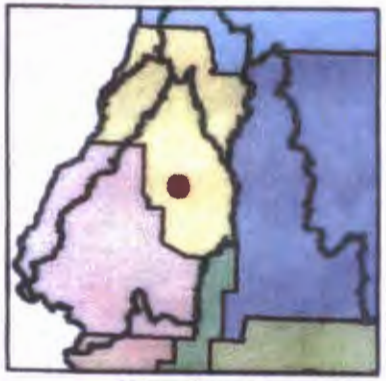
Adjudication Claim Number: 67-4103

T16N R01W



Legend

PLS Sections
GCDBQuarter Quarters

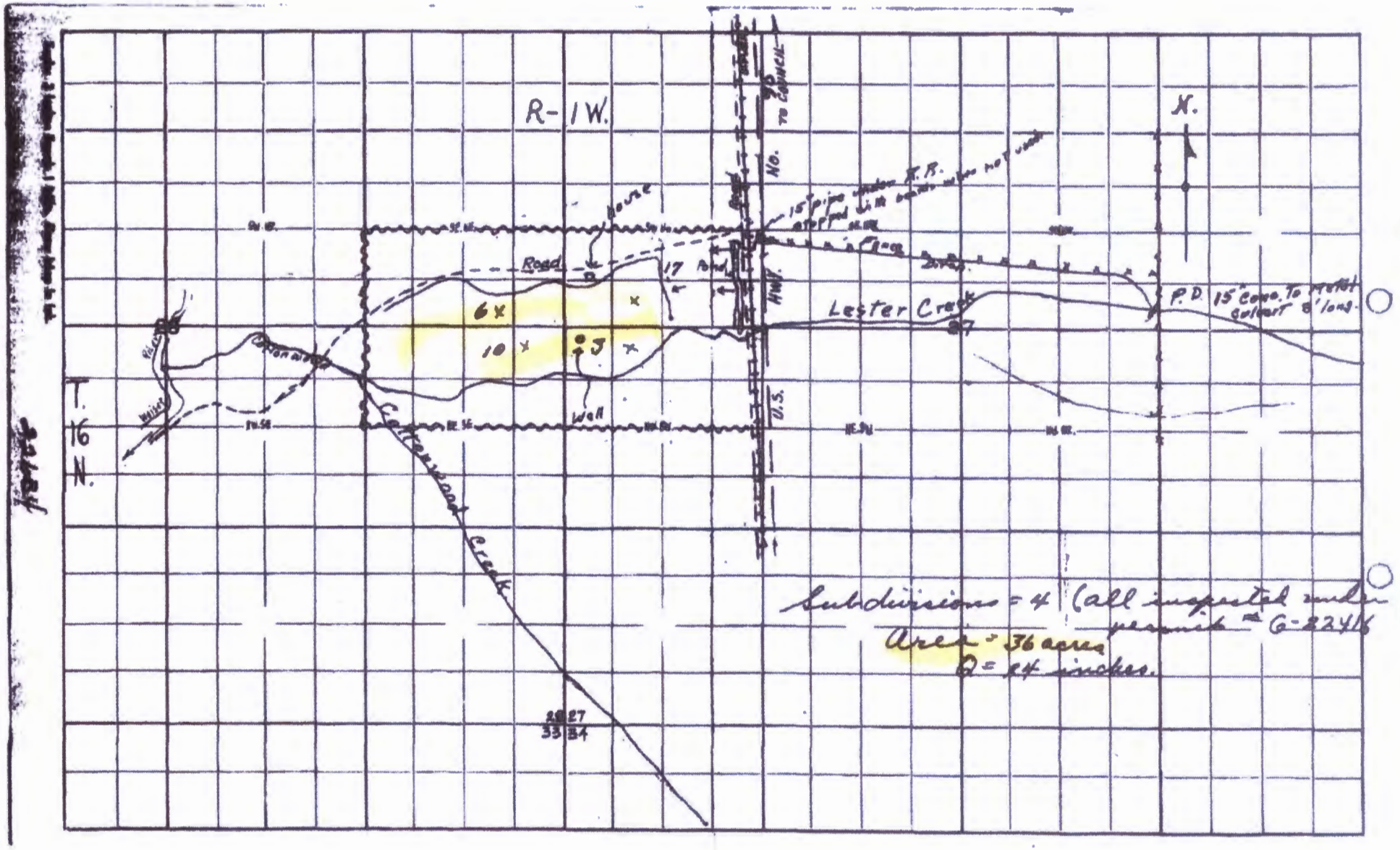


Adams County
IDWR Basin 67

N

0 0.2 0.4 Miles

Prepared by M. Van Buasum
On Wednesday, August 31, 2005
1967 Aerial Photography


R-1W.
N.
T. 16 N.
Road
House
17 Acres
6 X
10 X
J
Well
Lester Creek
P.D. 15" conc. To protect culvert 8' long.
15" pipe under R.R. at present time not used
R.R.
Hwy.
No. to Council
U.S.
Cottonwood creek
Subdivision = 4 (all inspected under permit = G-22416
Area = 36 acres
D = 24 inches.

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 67-4103
Date Received: 9/15/2003
Receipt No: W030971
Received By:

RECEIVED
OCT 0 2 2003
WATER RESOURCES
WESTERN REGION

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

ANTHONY J FINCHEN
5718 E AIRPORT RD
NAMPA ID USA 83687

Phone: (208) 442-8917

2. Date of Priority: 06/01/1896

3. Source: COTTONWOOD CREEK Trib. to: WEISER RIVER
LESTER CREEK WEISER RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 Lot	County	Type
16N	01W	28		NW	SE	ADAMS	
16N	01W	36		NW	NW	ADAMS	
16N	01W	27		NW	SW	ADAMS	
16N	01W	27		NE	SW	ADAMS	

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	4/01	7/30	1.98	

7. Total Quantity Appropriated is:
1.98 C.F.S.

ALL OVER ON HOUSE CREEK'S
GRT ALL TO ME & TRY'S TO CHARGE

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
16N	01W	27	SW	NW		IRRIGATION	37
			NW	SW		IRRIGATION	7
						Section Acres	44
						Total Acres	44

11. Place of use in counties: ADAMS

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

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: Statutory Claim

16. Signature(s) Anthony Stevens

(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 _Y_ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

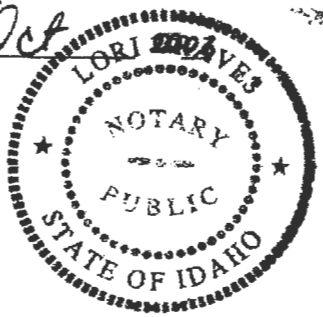
I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____

_____ Date: _____

State of Idaho)
) SS.
County of Ada)

Subscribed and sworn (or affirmed) before me this 2nd day of Oct



_____
Notary Public

Residing at Boise

My commission Expires 6/18/04

Form 17

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

RECEIVED
MAR 8 1957
Department of Reclamation

35

PERMIT NO. 22634

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Bill Houston - 81 - Payette, Idaho - farmer - Route #2, Payette, Idaho.

Ques. 2. Are you acquainted with Andy R. Ley, the holder of Permit No. 22634? How long have you known him and where does he reside?

Ans. Yes 6 years Council, Idaho.

Ques. 3. Have you read or heard read said Permit No. 22634, and are you familiar with its provisions and conditions?

Ans. Yes Yes

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Lester Creek SW¼ of NE¼ Section 27, Twp. 16 N. R. 1 W.B.M.
An old creek channel used as ditch, and headgate.

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. 1 second foot. 1 second foot

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. irrigation - SW¼ of NW¼, NW¼ of SW¼ of Section 27,
NE¼ of SW¼ and SE¼ of NE¼, all in Section 28, Twp. 16 N. Range 1 W.B.M.
natural meadow land.

22634

36

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. None.

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. good - 1 inch per acre.

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. No.

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. 1953 - I used to live there and saw S. D. Warner irrigating same land same way from 1912 to 1945.
Also, Harvey Houston irrigated same way in 1889 on 2½ acres.

(Signed) Bill Houston

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Paynite, County of Paynite, State of Idaho, on this 22nd day of February, A. D. 19 57.

Notary Public.

My commission expires Nov. 1, 1958.

22634

Permit No. 22634

(41)

STATE OF IDAHO
Department of Reclamation

RECEIVED
JAN 23 1957
Department of Reclamation

Proof of Completion of Works

AFFIDAVIT OF HOLDER

STATE OF IDAHO }
County of Adams } ss.

Andy R. Lay, being first duly sworn, upon his oath deposes and says:

First: That he is the holder and owner of Permit to Appropriate the Public Waters of the State of Idaho, No. 22634, and that his postoffice address is Council State of Idaho.

Second: That the name of the stream from which said water is to be diverted is Lester Creek

Third: That the point of diversion of said water is SW¼ NE¼ Section 27 T16N R3W, BM

Fourth: That under the terms and conditions of said permit, construction thereunder was required to be completed by March 5, 1957.

Fifth: That the use for which said water is intended is Irrigation

Sixth: That on the date above mentioned, the works constructed under said permit were (or were not) fully completed and consisted of the following:

I. Kind of Works: headgate and ditch
(DESCRIPTION, DAM, DITCH, FLUME, PIPE OR DITCHWORK)

II. Dimensions of work:

(a) Height of dam ____ feet, length of dam at top ____ feet, length of dam at bottom ____ feet. Material used in construction ____
(STATE WHETHER WOOD, EARTH STONE OR CONCRETE)

(b) Capacity of reservoir ____ acre feet.

(c) Size of headgate: Width 1 feet, height 1 feet.

(d) Conduit ditch width at bottom 2 feet, width at water line 2 to 3 feet, depth of water 2 feet; diameter of pipe ____ inches, average grade per mile is 75 feet. Length of conduit is ½ miles.
(STATE WHETHER DITCH, FLUME OR PIPE)

Seventh: That said works are capable of conducting to the place of intended use 1 second feet of water.

Eighth: That water appropriated under said permit is available for 24 acres of land described as follows: SW¼ NW¼ and NE¼ SW¼ of Section 27 and SE¼ NE¼ and NE¼ SE¼ of Section 28 TWP 16N, R3W, BM

Ninth: Remarks:—That Water has been used from same point of diversion through ancient creek channel, on same land since 1884 to date, but creek goes dry about August 5th.

Andy R. Lay
(SIGNATURE OF HOLDER)

Subscribed and sworn to before me this 21 day of January, 1957

G. [illegible]
NOTARY PUBLIC

My commission expires Mar. 29, 1957

22634

42

Form No. 11

RECEIVED
JAN 23 1957
Department of Reclamation

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DU[illegible]

(Date) January 21, 1957

(P. O.) Council, Idaho

TO THE STATE RECLAMATION ENGINEER:

Boise, Idaho

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the Adams County Leader of Council, Idaho published in the county in which the works are situated.

Cindy R Lay

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well-known and competent engineer.)

I hereby certify that the facts set forth in the attached notice are true.

Engineer.

22634

43

Form 10

NOTICE FOR PUBLICATION

NOTICE OF PROOF APPLICATION OF WATER TO BENEFICIAL USE

Department of Reclamation

Notice is hereby given that at 10 A. M. on the 5 th day of March, 19 57, at Council, County of Adams, State of Idaho, before George F. Johnson, Notary Public, proof will be submitted of the application to beneficial use of .48 cubic feet per second of the waters of Lester Creek in accordance with the terms and conditions of Permit No. 22634 heretofore issued by the State Reclamation Engineer of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Andy R. Lay, Council, Idaho

The use to which said water has been applied is irrigation

The amount applied to beneficial use is .48

The place where said water is used (if for irrigation, give full and accurate description of the lands irrigated)

SW¼ NW¼ & NW¼ SW¼ of Section 27 and SE¼ NE¼ & NE¼ SE¼ of Section 28 TWP. 16N R1W, BM

The name of the canal or ditch or other works by which said water is conducted to such place of use is Ditch

The right to take water from such works is based upon Permit No. 22634

The source of supply from which such water is diverted is Lester Creek

The date of priority which said user is prepared to establish is February 25, 1953 right

22634

MARK R. KULP
State Reclamation Engineer.

11/14/2006

NOTICE OF ERROR
REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: December 8, 2006

Water right number: 67-4103

ANTHONY J FINCHEN
2205 JACKSON CREEK RD
COUNCIL ID 83612-5244
Telephone Number: (208) 253-4680

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

Check on Stock Pond and if this Relates
Al Densel - His Area is East of TJ

2. Describe the changes you wish to make in the proposed recommendation:

OK
Done
C Smith
12-19-06

3. Give a brief explanation as to why you disagree with these portions:

____ **I AGREE with this proposed recommendation: no changes need to be made.**

DATE: _____ **SIGNATURE:** Anthony Finchen

Please print your name: _____

IDWR Regional Office, 322 E Front St
PO Box 83720, Boise, ID 83720-0098, 2082874800

SCANNED
DEC 08 2006

11/14/2006

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

RIGHT NUMBER: 67-4103

NAME AND ADDRESS: ANTHONY J FINCHEN
2205 JACKSON CREEK RD
COUNCIL ID 83612-5244

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

Recommended as Right No. 67-11026.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Recommended as Right No. 67-11026: This is included for a claim that is proposed to be disallowed because the right claimed is recommended pursuant to another right. The remark indicates the water right number of the other right that is proposed to be recommended. If you are not mailed a notice of the recommendation of the other right, then the other right is recommended in another claimants name.

SCANNED
DEC 0 8 2006

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 67-4103 V1

WATER RIGHT NUMBER: 67-4103 V1

Owner Type	Name and Address
Original Owner	JUNE I DERIE 920 JONATHAN RD WEISER, ID 83672-5122 (208)741-0343
Current Owner	ANTHONY J FINCHEN 2205 JACKSON CREEK RD COUNCIL, ID 83612-5244 (208) 253-4680
Original Owner	LARRY D DERIE 920 JONATHAN RD WEISER, ID 83672-5122

Priority Date: 06/01/1896

Basis: Beneficial Use

Status: **Disallowed**

Source	Tributary
COTTONWOOD CREEK	WEISER RIVER
LESTER CREEK	WEISER RIVER

Beneficial Use	From To	Diversion Rate	Annual Volume
IRRIGATION	4/01 to 7/30	1.980 CFS	
	Total Diversion:	1.980 CFS	

Location of Point(s) of Diversion

LESTER CREEK	NE1/4SW1/4	Sec. 27,	Twp 16N,	Rge 01W, B.M.
ADAMS County				
COTTONWOOD CREEK	NW1/4SW1/4	Sec. 27,	Twp 16N,	Rge 01W, B.M.
ADAMS County				
COTTONWOOD CREEK	NW1/4SE1/4	Sec. 28,	Twp 16N,	Rge 01W, B.M.
ADAMS County				
COTTONWOOD CREEK	NW1/4NW1/4	Sec. 36,	Twp 16N,	Rge 01W, B.M.
ADAMS County				

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16N	01W	27							37.0			7.0							44.0

Total Acres: 44

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 67-4103 V1

Conditions of Approval:

1. P06 Recommended as Right No. 67-11026.
2. P16 Recommended as Right No. 67-11026: This is included for a claim that is proposed to be disallowed because the right claimed is recommended pursuant to another right. The remark indicates the water right number of the other right that is proposed to be recommended. If you are not mailed a notice of the recommendation of the other right, then the other right is recommended in another claimants name.

Remarks:

Comments:

1. csaxton 3/7/2006 Disallow
Comment: Recommended as right 67-11026

2. csaxton 3/7/2006 Priority date
Comment: The claimed priority date dates back into the Muir vs. Allison decree. Our records do not show that there is any water decreed to the claimed POU other than spring water which was not claimed. Thus, cannot recommend a decreed priority date, and cannot recommend a priority with one day after decree. That being the case, the elements of this claim are recommended under claim 67-11026. Recommending this claim would be redundant.

Dates and Other Information:

Decreed Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Defendant:
Plaintiff:
Civil Case Number:
Judicial District:
Notice of Error Flag:
State or Federal:
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:

Element Reviewed/Verified Dates:

Element	Last Reviewed Date	Reviewer	Last Verified Date	Verifier	Status
Contacts	3/7/2006 12:26:41 PM	csaxton			Disallowed
Priority Date	3/7/2006 12:52:02 PM	csaxton			Disallowed
Summary			03/07/2006	csaxton	Disallowed

Verification Log:

Element	Date Time Stamp	Reviewer	Log text

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 67-4103 V1

Summary	3/7/2006 12:57:52 PM	csaxton	(No) 1. Is the basis of this claim a Decree, License, Permit, Application or Posted Notice? (No) 3. Is the water being used for all of the purposes claimed and to the extent claimed? (No) 4. Is any portion of the claim be recommended? (Yes) 6. Is an additional remark and/or condition required? (Yes) 7. Would you like to view the recommended right? (No) 8. Is this a split or combined right? (No) 9. Do you have documents you would like to attach or link to the file? (Yes) 10. Would you like to set the verification date?
Contacts	3/7/2006 12:26:44 PM	csaxton	(No) 1. Do you want to schedule an appointment? Comment for 1: Desktop Review
General	3/7/2006 12:52:05 PM	csaxton	(Yes) 1. Should this water use have been included in a later court decree of the water rights from this source? (Yes) 2. Was the owner or the owners predecessor in interest of the place of use joined in the later decree? (No) 3a. Is the date the decree was entered after the date a permit is required for the source and the water use? (No) 4. Is the basis of claim decree or license? (No) 7. Is the basis of claim a Application or Permit? (No) 8. Is the basis of claim a posted notice? (No) 9. Is the Priority Date of this water use after the date a permit is required for the source and the water use? (No) 12. Does the claim file contain sufficient evidence of Priority Date? (No) 13. Has additional evidence of priority date been submitted? (No) 14. Can any portion of the claim be recommended as a valid water right? Description for Question 12/13 - Recommended as 67-11026.

Water Supply Bank:

Claim

Basin	Sequence	Suffix	Basis	Status	Priority Dat	Rate(cfs)	Volume(af	Acres	Source	Water Use(s)	Owner(s)	Source Table
67	322		Decreed	Active	1896-04-01	0.08		10	COTTONV	IRRIGATION	FINCHEN,	Claim
67	2208		License	Active	10/12/1951	0.8		98	GROUND '	IRRIGATION	FINCHEN,	Claim
67	4103		Statutory C	Active	1896-06-01	1.98		44	COTTONV	IRRIGATION	FINCHEN,	Claim
67	11025		Beneficial I	Active	8/31/1953	1.24		62	COTTONV	IRRIGATION	FINCHEN,	Claim
67	11026		Beneficial I	Active	2/25/1952	2		100	LESTER C	IRRIGATION	FINCHEN,	Claim
67	12330		Beneficial I	Active	2/15/1963	0.86		43	GROUND '	IRRIGATION	FINCHEN,	Claim

Recommendation

Basin	Sequence	Suffix	Basis	Status	Priority Dat	Rate(cfs)	Volume(af	Acres	Source	Water Use(s)	Owner(s)	Source Table
67	322		Decreed		1896-04-01	0.08		6.4	COTTONV	IRRIGATION	FINCHEN,	Recommendation
	2235		*License*		*8/31/1953*	*0.8*		*56*	*COTTONV*	*IRRIGATION*		
67	11025		B-use		8/31/1953	0.59		33.4	COTTONV	IRRIGATION	FINCHEN,	Recommendation
					Total =	0.67		33.4				
					Cottonwood extra CFS =	*0.21*						

67	4103				1896-06-01	1.98			COTTONV	IRRIGATION	FINCHEN,	Recommendation
	2215					*0.48*		*36*	*LESTER CREEK*			
67	11026		Beneficial I	Active	5/21/1957	1.62		98.2	LESTER C	IRRIGATION	FINCHEN,	Recommendation
67	2208		License	Active	10/12/1951	0.8	392	98	GROUND '	IRRIGATION	FINCHEN,	Recommendation
67	12330		Beneficial I	Active	2/15/1963	0.43	142	35.5	GROUND '	IRRIGATION	FINCHEN,	Recommendation
					Total =	2.18	386	109				

Split Analysis

Water Right Number: Finchen
Diversion Rate: CFS
Reviewer Name: Craig L. Saxton
Date: 3/6/2006

Acreage Analysis

					Parent	Children Acres									
					Source	Cotton	Cotton	Total		C&L	GW	GW	Total		Lester
Twp	Rng	Sec	Q-Q	Lot	Finchen	322	11025			11026	2208	12330			4103
16N	1W	27	SWNW		32					32	32	32	32		23
			NWSW		20		16	16		7.2	20	2.5	20		5.5
		28	NENE		12					12	1.5		12		
			SENE		26					26	26	1	26		
			NESE		17	5.3	9	9		17	17		17		
			NWSE		10	1.1	8.4	8.4		2			2		
					117	6.4	33.4	33.4		96.2	96.5	35.5	109		28.5

Total CFS @ 1 inch per acre = 2.34

3-6-06 : There is no decreed Water on this Ground other than a spring. Cannot Date into the Decree

CAMPAD 22-139 100 sheets

Basin	Sequence	Basis	Status	Right ID	Priority Date	Rate(cfs)	Source	Water Use(s)	Owner(s)	Source Table
67	322	Decreed	Active	287429	1896-04-01	0.08	COTTONWOOD CREEK	IRRIGATION	FINCHEN, ANTHONY J (Current)	wrAdjudicationClaim
67	4103	Statutory C	Active	571435	1896-06-01	1.98	COTTONWOOD CREEK , LESTER CREEK	IRRIGATION	FINCHEN, ANTHONY J (Current)	wrAdjudicationClaim
67	11025	Beneficial I	Active	287458	8/31/1953	1.24	COTTONWOOD CREEK	IRRIGATION	FINCHEN, ANTHONY J (Current)	wrAdjudicationClaim
67	14435	License	Active	571501	10/12/1951	0.42	GROUND WATER	IRRIGATION	FINCHEN, ANTHONY J (Current)	wrAdjudicationClaim
67	14437	Beneficial I	Active	571503	2/25/1952	1.14	LESTER CREEK	IRRIGATION	FINCHEN, ANTHONY J (Current)	wrAdjudicationClaim
67	14439	Beneficial I	Active	571506	2/15/1963	0.62	GROUND WATER RR Tracks	IRRIGATION	FINCHEN, ANTHONY J (Current)	wrAdjudicationClaim

Old well

New

14434 + 35 Old well

14436 + 37 Lester Creek

14438 + 39 RR Track well

Craig All this water except 322 is used on some land as water recedes wells pick up slack. Hope you can understand

Bosco

IDWR Field Exam Form 08/09/2005

Priority Date Data Entry Form

Claim Number 67-4103

Claimed Priority Date: 6/1/1896 Claimed Basis: Statutory Claim

__ **Use Claimed Priority Date and Basis as Recommended Priority Date and Basis**

Water Right Priority Date: Water Right Basis:

Recommended Priority Date 1/4/1952 Recommended Basis _____

Document the evidence submitted/reviewed for the priority date claimed, include your analysis of the evidence:

See Affidavit from June Davis

Reviewer: Bosco Date: 9/20/05

IN THE MATTER OF)
NOTICE OF CLAIM TO)
A WATER RIGHT NO.(S)) AFFIDAVIT
67-4103)
)
)
State of Idaho)
County of)

I, June (Lay) Derie being first duly sworn, deposes and says: I lived at 2205 Jackson Cr. Rd. Council, Idaho. I remember my father using the water to irrigate these fields as early as 1952. (I was born in 1945.)

June Derie
(Signature)

Subscribed and sworn to before me this day 14th of September, ~~19~~2005.

DEBORAH J. MOXLEY
NOTARY PUBLIC
SEAL
STATE OF IDAHO

Deborah J. Moxley
(Notary Public)

Residing at Weiser, ID.

My Commission Expires 2/11/2010.

IDWR Field Exam Form 08/09/2005

Point of Diversion and Source Data Entry Form

Claim Number 67-4103

Claimed Point of Diversion and Source

T16N R01W S27 NESW Within ADAMS County Source: LESTER CREEK WEISER RIVER

T16N R01W S27 NWSW Within ADAMS County Source: COTTONWOOD CREEK WEISER RIVER

T16N R01W S28 NWSE Within ADAMS County Source: COTTONWOOD CREEK WEISER RIVER

T16N R01W S36 NWNW Within ADAMS County Source: COTTONWOOD CREEK WEISER RIVER

✓ **Use Claimed POD and Source as Recommended POD and Source**

Water Right Point of Diversion and Source

Recommended Point of Diversion and Source

Source Information

Source	Tributary To

Twp	Rge	Sec	Gov Lot	QQQ of QQ of Q	County	Source

Other rights from this POD? _____

Document how the POD and Source were verified:

Tag # A0016615, A0016614, A0016687
A0014030

Reviewer: Bosco

Date: 9/20/05

Tag # A0014030

WR#67-4103, 14436, 14437

GPS

2309030

1501130

Tag # 0016689
WR# 67-4103, 14436, 14437
Finchen Upper Lester Ck. POD

GPS
2306303
1502196

Tag # A0016614
WR # 67-4103, 14436, 14437
Fincher Middle Lester Ca. POD

GPS
2305 799
1502 130

Tag # A0016615
WR# 67-4103, 14436, 14437
Fenchen Lower Lester Cr POD

GPS
2305-349
1502062

IDWR Field Exam Form 08/09/2005

Place Of Use Data Entry Form

Claim Number 67-4103

Claimed Place Of Use

T16N R01W S27 SWNW 37.0 T16N R01W S27 NWSW 7.0

Total Acres 44

☑ **Use Claimed POU as Recommended POU**

Water Right Place Of Use

Recommended Place of Use _____ See corrections to claimed POU above

Twp	Rge	Sec	QQ	Q	County	Lot Num	Acres	Purpose of Use

Total Acres ____

Document how the POU was verified:

_____

_____

Reviewer: Boise Basin

Date: 9/20/05

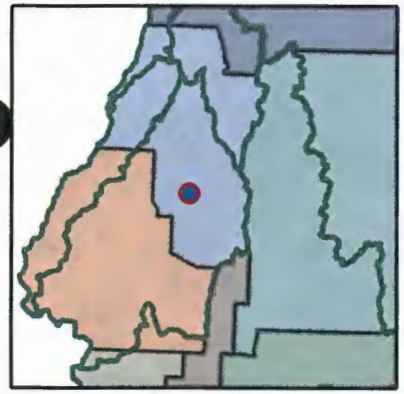
Idaho Department of Water Resources

Adjudication Claim Number: ***67-4103***

T16N R01W

Legend

PLS Sections
GCDBQuarter Quarters



Adams County
IDWR Basin 67

N

0 0.2 0.4 Miles

Prepared by M. Van Bussum
On Wednesday, August 10, 2005
1987 Aerial Photography

Purpose of Use Data Entry Form

Claim Number 67-4103

Claimed Purpose of Use

Water Use	Number of Homes	Number of Stock	Acre Limit
IRRIGATION			

✓ **Use Claimed Purpose of Use as Recommended Purpose of Use**

Water Right Purpose of Use

Water Use	Number of Homes	Number of Stock	Acre Limit

Recommended Purpose of Use

Water Use	Number of Homes	Number of Stock	Acre Limit	Number of Other

Document how the Purpose of Use was verified:

Reviewer: Bosco

Date: 9/20/05

IDWR Field Exam Form 08/09/2005

Period of Use and Quantity Data Entry Form

Claim Number 67-4103

Claimed Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
IRRIGATION	4/01	7/30	1.98	

Overall Diversion Rate 1.98 Overall Diversion Volume

__ **Use Claimed Period of Use and Quantity as Recommended Period of Use and Quantity**

Water Right Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume

Overall Diversion Rate Overall Diversion Volume

Recommended Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume

Overall Diversion Rate _____ Overall Diversion Volume _____

Document how the Period of Use and/or Diversion Rate were verified:

Needs flow rate as creek is dry

Reviewer: Bosco Date: 9/20/05

IDWR Field Exam Form 08/09/2005

Contacts Data Entry Form

Claim Number: 67-4103

Owner Type	Full Name	Address	City	State	Zip	Phone
Original Owner	JUNE I DERIE	920 JONATHAN RD	WEISER	ID	83672-5122	(208)741-0343
Current Owner	ANTHONY J FINCHEN	2205 JACKSON CREEK RD	COUNCIL	ID	83612-5244	(208) 253-4680
Original Owner	LARRY D DERIE	920 JONATHAN RD	WEISER	ID	83672-5122	

Date of Field Exam: 9/8/05 Time: 9:00

Accompanied By: Claimant Phone Number: 2534680

Relationship to Claimant: _____

Directions to Property (if different from above) and/or update owner information:

_____

_____

_____

_____

Reviewer: Bosco Date: 9/8/05

Adams County

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

September 19, 2003

ANTHONY J FINCHEN
5718 E AIRPORT RD
NAMPA ID 83687

RE: Notice of Claim to a Water Right No. 67-4103

Dear Property Owner(s):

Enclosed you will find a Notice of Claim to a Water Right form, along with the Notice of Change in Water Right Ownership you recently submitted. Department records show that this right has not been previously filed on. In order to complete the process of filing this claim in your name, please review the claim attached, sign in front of a notary, and initial any changes that were made.

The appropriate filing fee for this claim is $50, plus $1 per acre claimed. Please submit the completed claim and $94 at your earliest convenience.

Thank you again for your patience and cooperation. If you have any questions concerning this matter, please feel free to contact this office at any time.

Sincerely,

Adjudication Section
Western Region

DH:dh

Enclosures

Claim filed 10-2-03. DH

SCANNED
APR 0 8 2004

Idaho Department of Water Resources Receipt

Receipt ID W030971

Payment Amount	$94.00	**Date Received**	10/2/2003 10:04:32 AM	**Region**	Western	**Status**	
Payment Type	Check	**Check Number**	6004				

Payer FINCHEN, ANTHONY J

Comment NOTICE OF CLAIM TO A WATER RIGHT 67-4103

Fee Detail

Amount	Description	Fund	FD	PCA	SO
$94.00	ADJUDICATION FILING FEE	0337		42503	1155

Signature Line (Dept. Representative)

Claim No. 67-4103

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Section 42-225a, Idaho Code

Flood water use right

CLAIM TO A WATER RIGHT

Under the provisions of Section 42-225a, Idaho Code, a person may file a claim to a right to use water which has been established by diversion and application to beneficial use. **The filing of this claim does not confirm the water right but will serve for information purposes only.** It may, however, become the basis for future adjudication of the water right by the Court.

Notice is hereby given that Larry or June Derie (name of claimant)

of Star Rt. Council Idaho 83612 (mailing address) claims a right to the diversion and beneficial use of the public water of the State of Idaho

The extent and nature of said claim is as follows:

(1) Describe source of water: (name of stream, lake, spring, etc., or ground water) Lester Creek and Cottonwood Creek, tributary to, Weiser River

(2) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Amount 1.5 CFS (cfs, gpm or a/f) Use irrigation (dom., irri., stock, etc.) Period of Use: From April 1 To July 15-30

Amount .48 CFS Use irrigation Period of Use: From April 1 To July 15-30

Amount waste water Use irrigation Period of Use: From July 15 To Oct 1 (both dates inclusive)

(3) Total quantity of water claimed: 1.98 cubic feet per second, or _____ acre feet per annum, and/or _____ gallons per minute.

(4) Priority claimed: (the date water was first applied to beneficial use) (1.5 CFS) 1896 and (.48 CFS) 1952

A claim is not acceptable on a ground-water source with a priority later than March 25, 1963 or on a surface-water source with a priority later than May 20, 1971. An exception to this rule is that a claim may be filed on domestic use from a ground-water source.

(5) A) Point of diversion: (give location of point where water is diverted from its source)

NE ¼ SW ¼, Sec. 27 Twp. 16N Rge. 1W B. M. County of Adams

Additional points of diversion: NW¼ SW¼ SEC. 27 and NE¼ SE¼ SEC. 28 T16N R1W and NW¼ NW¼ SEC. 36 T 16N R1W and NW¼ SE¼ SEC 28 T16N R1W

B) Describe means of diversion of water: (pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. 2 and 3 CFS headgates and diversion, ditches and sometimes sprinkler system to conserve water.

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
16N	1W	27							37			7							44
16N	1W	28			5	18									18	4			45

Total No. of acres 89

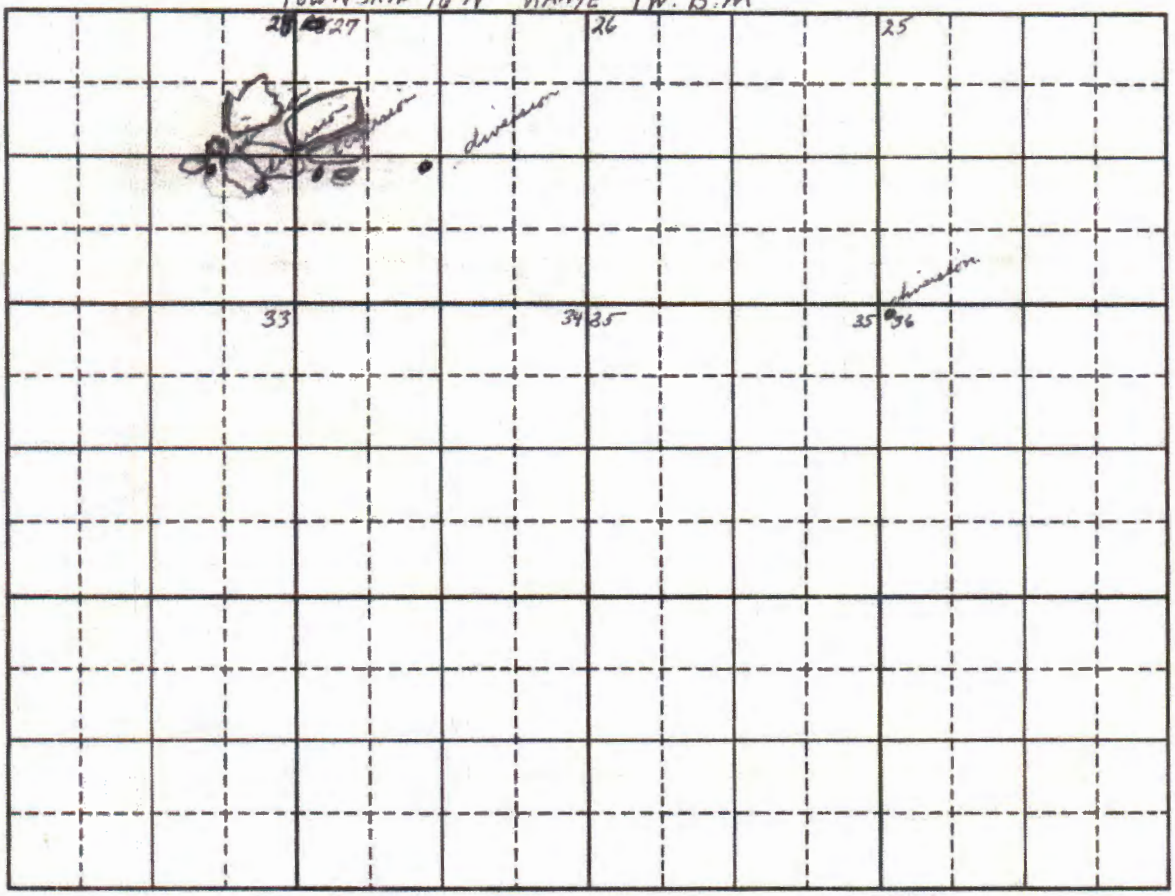
B) If the water is used for other than irrigation, fully describe that use, being as specific as possible: Stock water

(7) If you are claiming water as a member of an organization, list name of organization: Dist 67

MICROFILMED

(8) Remarks Several people divert water from Cottonwood Creek at ne¼ nw¼ SEC 36 through a channel to Lester Creek for ample flood water rotation and decreed rights.

TOWNSHIP 16 N RANGE 1W. B.M



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
) ss.
County of Adams)

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiants knowledge.

June Derie
(Claimant)

Sworn to before me this 6 day of January, 1975.

Edwin D. Lester
Notary Public
Residing at Council, Idaho

My commission expires life

For Department Use Only

Received by CL	Date 1/15/75	Exception filed by:	Forwarded to claimant by:	Date
Prelim. check by CL	Date 1/15/75			
$10.00 fee received by CL	Date 1/15/75 #15367			
Approved for publication by 1-16-75	19 OK 2-3-75			
Published in Adams County Leader				
Dates Jan 23 & Jan 30				

4th & main St. ave N

Larry Derie
Star Rt
Cascade

RECEIVED

Dept. of Water Resources
Statehouse, Boise, Idaho 83720

JAN 15

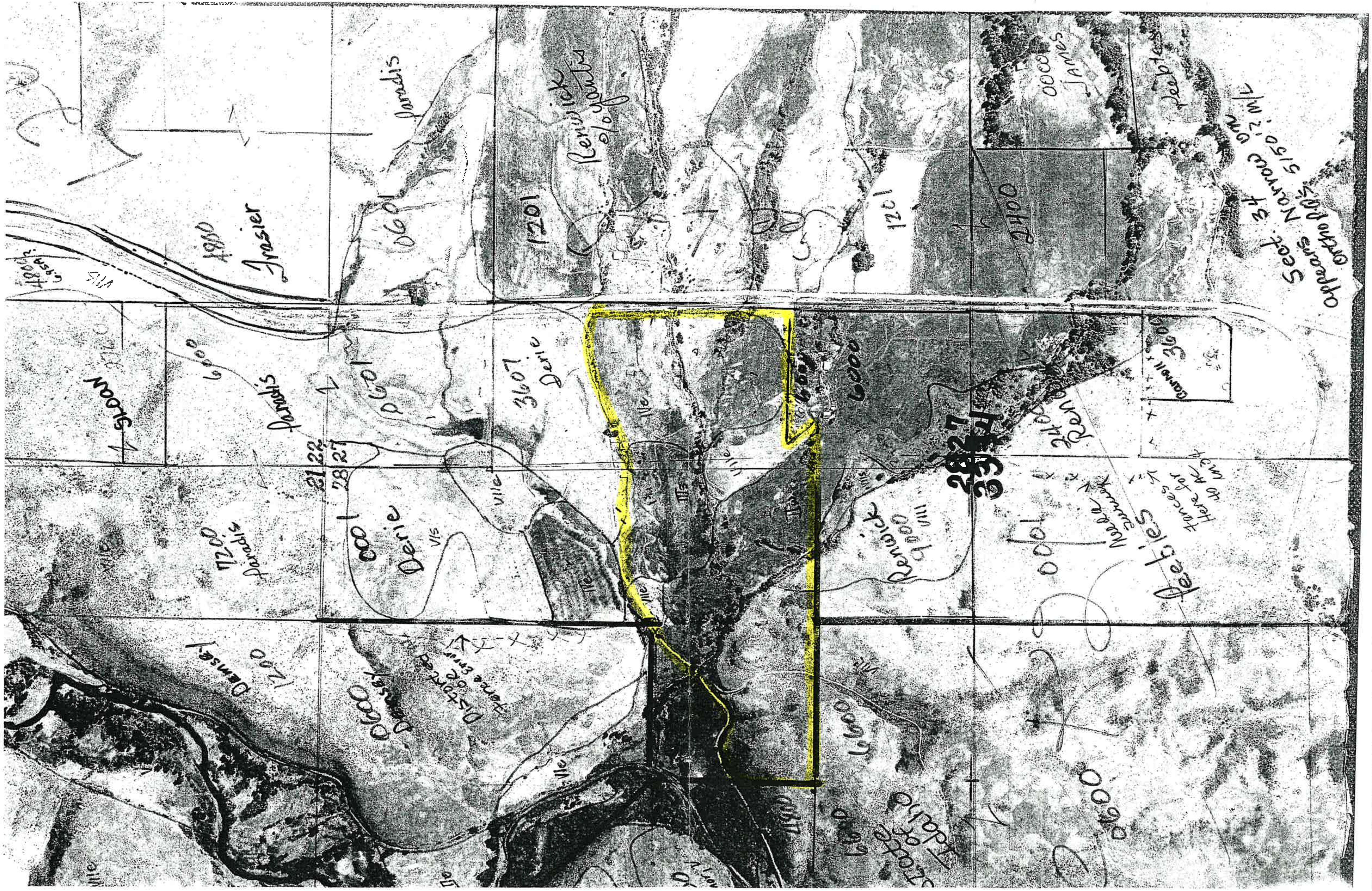
Department of Water Resources

Dear Sir,

The Deputy Water Master, Clell Williamson, advised us to file for a flood water use right. This is what I am filing for (a flood water use right). I am not draining from two separate rights. I refer you to the remarks on item (8). During flood water time, water naturally runs and is diverted from Cottonwood Creek to Lester Creek. In 1896, 1.5 CFS of flood water was used and through the same points of diversion more water was used in 1952 (.48 CFS). This shows more flood water was used in 1952 through the same diversions because of land development.

Sincerely,
Larry Derie

MICROFILMED



Frasier
1980
Paradis
1201
Renwick
Sloan
Paradis
3607
Derie
6000
1200
Derie
Demsey
Distorted fence error
Renwick
9000
Peebles
1000
2400
James
Carroll 3600
Seat 34 Narvood pm
5150'2 m/L