

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: **A36-00003F**
Date Received: 9/ 8/1988
Receipt No: S002116
Received By: See

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: DOYT H SIMCOE 208-733-5037
Address: 562 SUNRISE BLVD N
TWIN FALLS ID 83301

AND

Name: ROXIE J SIMCOE 208-733-5037
Address: 562 SUNRISE BLVD N
TWIN FALLS ID 83301

2. Date of Priority: SEP 10, 1884

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
07S	13E	11	SE	SE	NE		GOODING

5. Description of diverting works:
VIA BUCKEYE DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.800		

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

8. Total consumptive use is 120.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	13E	27	NE	SW		IRR	40.0

JAN 20 1993
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10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	40.0
					Total Acres	40.0

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:
NONE

14. Remarks:
CHANGE OF OWNERSHIP 11-13-91 SCC.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: 3/22/1932

NEW INTERNATIONAL MORGAGE BAN
Decree Plaintiff

IDAHO POWER COMPANY
vs Decree Defendant

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: _____

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: _____

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JAN 20 1993

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

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JAN 20 1993



NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

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

DATE OF CLOSING: 10-10-91

LEGAL DESCRIPTION OF PROPERTY: Township 7 South Range 13 EBM
Section 27 & 40 1/4 of 1/4 of 1/4 Govt. Lot , BM.
Lot 24, 25, 39, Block , Subdivision/Townsite Buckeye Ranch Subdivision.
If you have additional legal descriptions, please attach separate sheet.

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

☒ Water Right Number(s)
Assigned by IDWR: A36-00003F

☒ Name and Address of Former Owner/Claimant(s)(Seller): Kenneth W. and Helen L. Marshall

185 Blair Drive

Twin Falls, ID 83301

☒ New Owner/Claimant (Purchaser): Doyt H. and Roxie J. Simcoe

☐ New Mailing Address: 562 Sunrise Blvd. North

Twin Falls, ID 83301

☐ New Telephone Number: (208) 733 - 5037

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

☐ Attach proof of ownership, describe proof attached: Copy of Warranty Deed

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

☐ Signature of New Owner/Claimant(s) Doyt H. Simcoe Date 10-10-91

Roxie J. Simcoe Date 10/10/91

☒ Signature of Former Owner/Claimant(s): Kenneth W. Marshall Date 10-10-91

Date

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

FOR IDWR USE ONLY:

Initial Review and Data-Entry

Date: 11-13-91 By: SEC

Further Action Needed:

NONE

Further Action Taken

Date: By:

Final Review and Data-Entry

Date: By:

Claim Numbers of Split, if any:

MICROFILMED

JAN 20 1993

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



WARRANTY DEED

For Value Received

Kenneth W. Marshall and Helen Marshall, husband and wife,
 hereinafter referred to as Grantor, does hereby grant, bargain, sell, and convey unto
 Doyt H. Simcoe and Roxie J. Simcoe, husband and wife,
 hereinafter referred to as Grantee, whose current address is
 562 Sunrise Blvd. North,
 XXXXXXXXXXXXX, Twin Falls, ID 83301

the following described premises, to-wit:

Lots 24, 25, 39 and 40 of BUCKEYE RANCH SUBDIVISION, located in
 Section 27, Township 7 South, Range 13, East of the Boise Meridian,
 Gooding County, Idaho, according to the plat thereof, recorded
 October 10, 1918 in the Office of the County Recorder of said County.

TOGETHER with 40 shares of Buckeye Ditch Company Water.

146417

STATE OF IDAHO, COUNTY OF GOODING

Filed for record at the request of FIRST AMERICAN TITLE

4 min. past 10 o'clock A.M. this 11

of Oct, 1991 pub. vs

JOHN A. MYERS, Recorder

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said
 Grantee, his heirs and assigns forever. And the said Grantor does hereby covenant
 to and with the said Grantee, that Grantor is the owner in fee simple of said
 premises; that said premises are free from all encumbrances except current years
 taxes, levies, and assessments, and except U. S. Patent reservations, restrictions,
 easements of record, and easements visible upon the premises, and that Grantor will
 warrant and defend the same from all claims whatsoever.

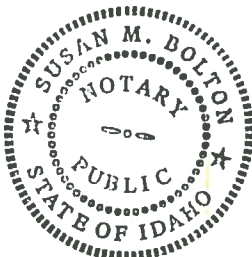
Dated: October 10, 1991.

Kenneth W. Marshall
 Kenneth W. Marshall

Helen Marshall
 Helen Marshall
 by Kenneth W. Marshall
 P.O.A.

STATE OF IDAHO)
) : SS
 COUNTY OF Gooding Twin Falls)

On This 10th day of October, in the year 1991, before me, a
 Notary Public in and for said State, personally appeared Kenneth W. Marshall and
 Helen Marshall, known or identified to me to be the persons whose names are
 subscribed to the within Instrument, and acknowledged to me that they executed the
 same.



Susan M. Bolton
 Notary Public for Idaho
 Residing at Gooding, Idaho
 Commission Expires: 10/16/92

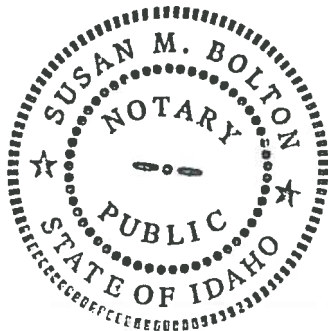
MICROFILMED

JAN 20 1993

FIRST AMERICAN

STATE OF IDAHO)
 : ss
COUNTY OF TWIN FALLS)

On This 10th day of October , in the year 1991, before me, a Notary Public in and for said State, personally appeared Kenneth W. Marshall, known or identified to me to be the person whose name is subscribed to the within Instrument as the attorney-in-fact of Helen L. Marshall, and acknowledged to me that he subscribed the name of Helen L. Marshall thereto as principal and his own name as attorney-in-fact.



Susan M. Bolton
Notary Public of Idaho
Residing at: Gooding, ID
Commission Expires: 10-16-92

MICROFILMED
JAN 20 1993

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A36-00003F
Date Received: 9/08/1988
Receipt No: S002116
Received By: SC

COPY
FOR YOUR FILES
DO NOT RETURN

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

1. Name: KENNETH W. MARSHALL 208-733-3983
Address: 185 BLAIR DR.
TWIN FALLS, ID 83301

OR

Name: HELEN L. MARSHALL 208-733-3983
Address: 185 BLAIR DR.
TWIN FALLS, ID 83301

2. Date of Priority: SEP 10, 1884

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
07S	13E	11	SE	SE	NE		GOODING

5. Description of diverting works:
VIA BUCKEYE DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.800		

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

8. Total consumptive use is 120.0 Acre Feet Per Annum.

9. Non-irrigation uses:

MICROFILMED
OCT 11 1988
JAN 10 1989

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	13E	27	NE	SW		IRR	40.0
Section Acres							40.0
Total Acres							40.0

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:
NONE

14. Remarks:
PORTION OF THE WR 36-0003 OF 20.0 CFS

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date: 3/22/1932

NEW INTERNATIONAL MORGAGE BANK
Decree Plaintiff

vs

IDAHO POWER COMPANY
Decree Defendant

MICROFILMED
OCT 11 1994

16. Signature(s)

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

Number of attachments: 1

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): Kenneth W. Marshall Date: 9/8/88
Date: _____

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 8th day
of September 19 88

Roxanne Storey
Notary Public

Seal

Residing at Buhl, Id
My Commission Expires 6-30-94

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

TOTAL RECORDS IN SELECTION FILE: 116

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OCT 11 1994

RECEIVED
FEB 10 1993
Department of Water Resources

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

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

* * * * *

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

Case No. 39576

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

NOTICE OF APPEARANCE

19 Petitioner,)

20 vs.)

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

Respondents.)

* * * * *

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

NOTICE OF APPEARANCE - 1

MICROFILMED
OCT 11 1994

1 Users, Inc. and its individual members:

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

A36-00100

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OCT 11 1994

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

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OCT 11 1994

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

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

12 DATED This 9 day of February, 1993.

13 HEPWORTH, NUNGESTER & LEZAMIZ

14
 15 By Patrick D. Brown
 16 PATRICK D. BROWN
 Attorneys for Respondents

17 18 CERTIFICATE OF MAILING

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

1 February, 1993, to:

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

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

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

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

21 
22 Patrick D. Brown



Hepworth,
Nungester,
& Lezamiz

MICROFILMED
OCT 11 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 1, 1993

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

Re: Notice of Appearance

Dear Mr. Brown:

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

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

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

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OCT 11 1994

Mr. Patrick D. Brown

March 1, 1993

Page 2

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

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

MICROFILMED

OCT 11 1994

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

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

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

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

MICROFILMED

OCT 11 1994

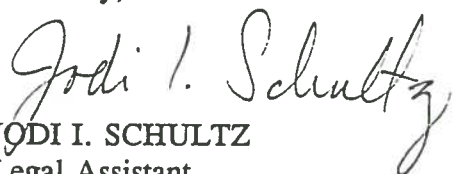
Mr. Patrick D. Brown
March 1, 1993
Page 4

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

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

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

Sincerely,


JODI I. SCHULTZ
Legal Assistant
Idaho Department of Water Resources

cc: IDWR Southern Region

MICROFILMED
OCT 11 1994

JUL 27 2001

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AUG 07 2001

Department of Water Resources
Southern Region

In Re SRBA	)	A. Subcase 36-00003F
)	)	
Case No. 39576	)	STANDARD FORM 2
	)	RESPONSE TO OBJECTION
	)	
	)	
	)	

Name: Roxie J. Simcoe
Doyt H. Simcoe
Address: 562 Sunrise Boulevard North
Twin Falls, ID 83301

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

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

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

11. **Recommendation**

This water right should not exist.

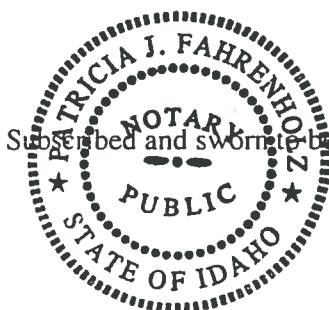
This water right was not recommended, but should be recommended with the elements described above.

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

State of Idaho)
 ss:
County of Jerome)

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

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



(Signature of person filing response)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: 7-26-01

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

INSTRUCTIONS FOR MAILING

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

F. CERTIFICATE OF MAILING

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

1. Original to:

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

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

Name: Roxie J. Simcoe
Doyt H. Simcoe
Address: 562 Sunrise Boulevard North
Twin Falls, ID 83301

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

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

4. Copies to:

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

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

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

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

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



JUL - 2 2001

RECEIVED

AUG 07 2001

Page 1

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

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: Less than 1.54 cfs.
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____

11. I object because:

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

E. **REASONS SUPPORTING OBJECTION(S):** Contrary to the SRBA district court's ruling in the subcases involving this right, the sum of the rights recommended under the various 36-00003 splits exceeds the amount originally allocated to 36-00003 in the New International Decree. Further, the recommended quantity exceeds one inch/acre yet gives no indication if a portion of the quantity is allocated to conveyance loss. Further, the recommended quantity was determined without regard for the means of irrigation actually employed. The recommended quantity exceeds the amount actually beneficially used and the amount necessary.

VERIFICATION

State of Idaho)
) ss.
County of Ada)

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

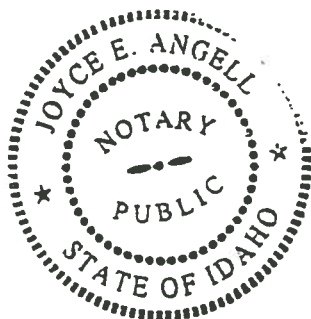
That I am the attorney for the party filing this objection, as defined by I.C. §§ 42-1401A(i) and (6), and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

Deborah E. Nelson

(Attorney signing in representative capacity)

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



Joyce E. Angell

Notary Public for the State of Idaho

Residing at: Boise, Idaho

My Commission Expires: 07-24-02

CERTIFICATE OF MAILING

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

1. Original to (via hand delivery):

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

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

Name:	Roxie J. Simcoe	Patrick D. Brown (Attorney for Claimant)
	Doyt H. Simcoe	109 S. Adams Street
Address:	562 Sunrise Blvd. N.	Jerome, ID 83338
	Twin Falls, ID 83301	(Via Certified Mail)

3. Copies to:

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

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

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

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



Signature of attorney mailing on Objector's behalf

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

05/17/2001

RIGHT NUMBER: 36-00003F

NAME AND ADDRESS: DOYT H SIMCOE
ROXIE J SIMCOE
562 SUNRISE BLVD N
TWIN FALLS, ID 83301

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 1.54 CFS

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

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

PRIORITY DATE: 09/10/1884

POINT OF DIVERSION: T07S R13E S11 SESENE Within GOODING County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	02-15 11-30	1.54 CFS
STOCKWATER	01-01 12-31	0.02 CFS

PLACE OF USE:

IRRIGATION Within GOODING County				
T07S R13E S27	NESW	40	T07S R13E S27	NWSW 18
STOCKWATER Within GOODING County				
T07S R13E S27	NESW		T07S R13E S27	NWSW

58 ACRES TOTAL

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

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.

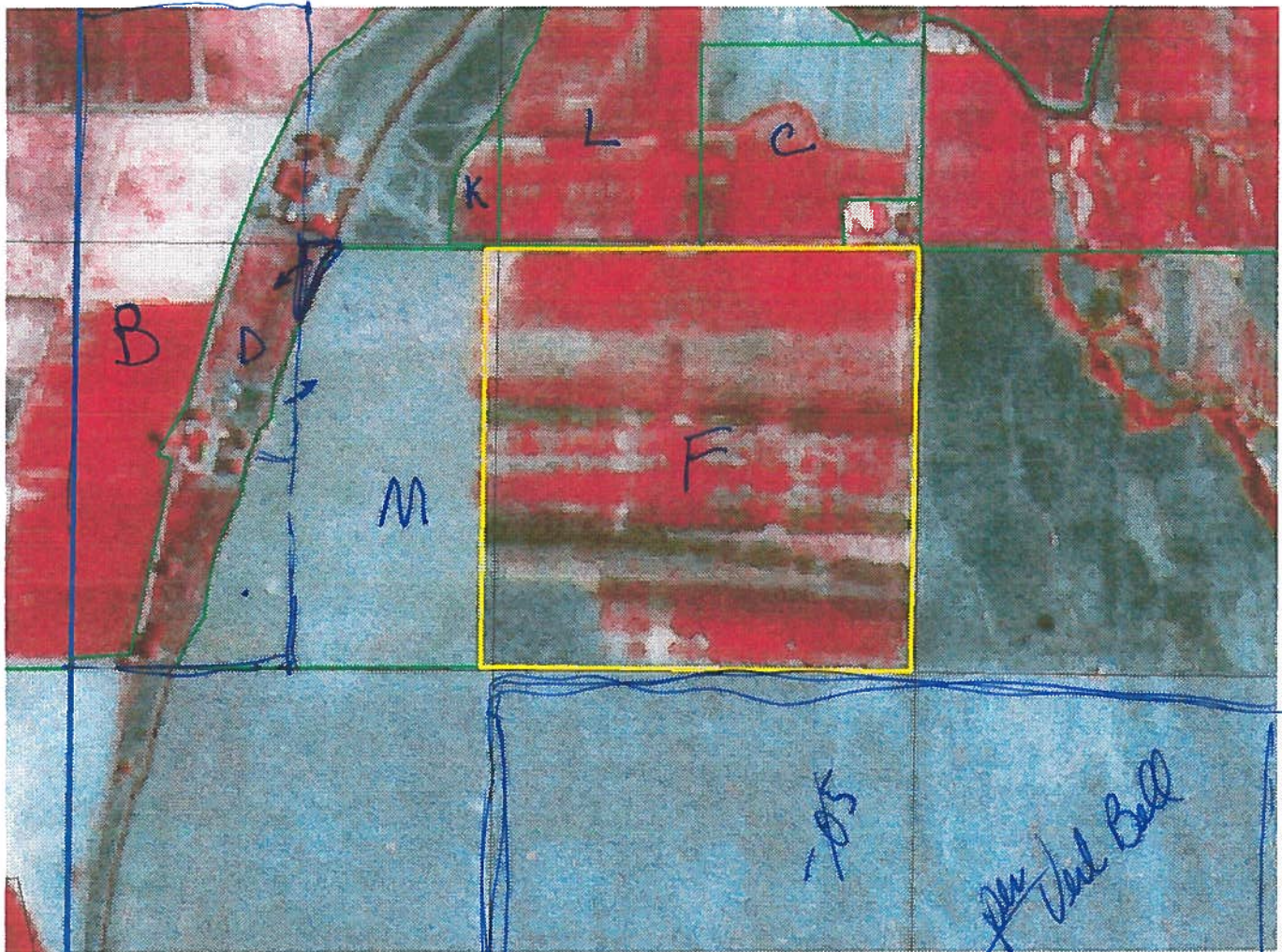
THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.

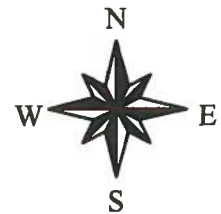
IDAHO DEPARTMENT OF WATER RESOURCES

36-00003F
SIMCOE



660 0 660 Feet

TNS 7S, RNG 13E, SEC 27 NESW



● RECOMMENDED POINT OF DIVERSION

RECOMMENDED PLACE OF USE

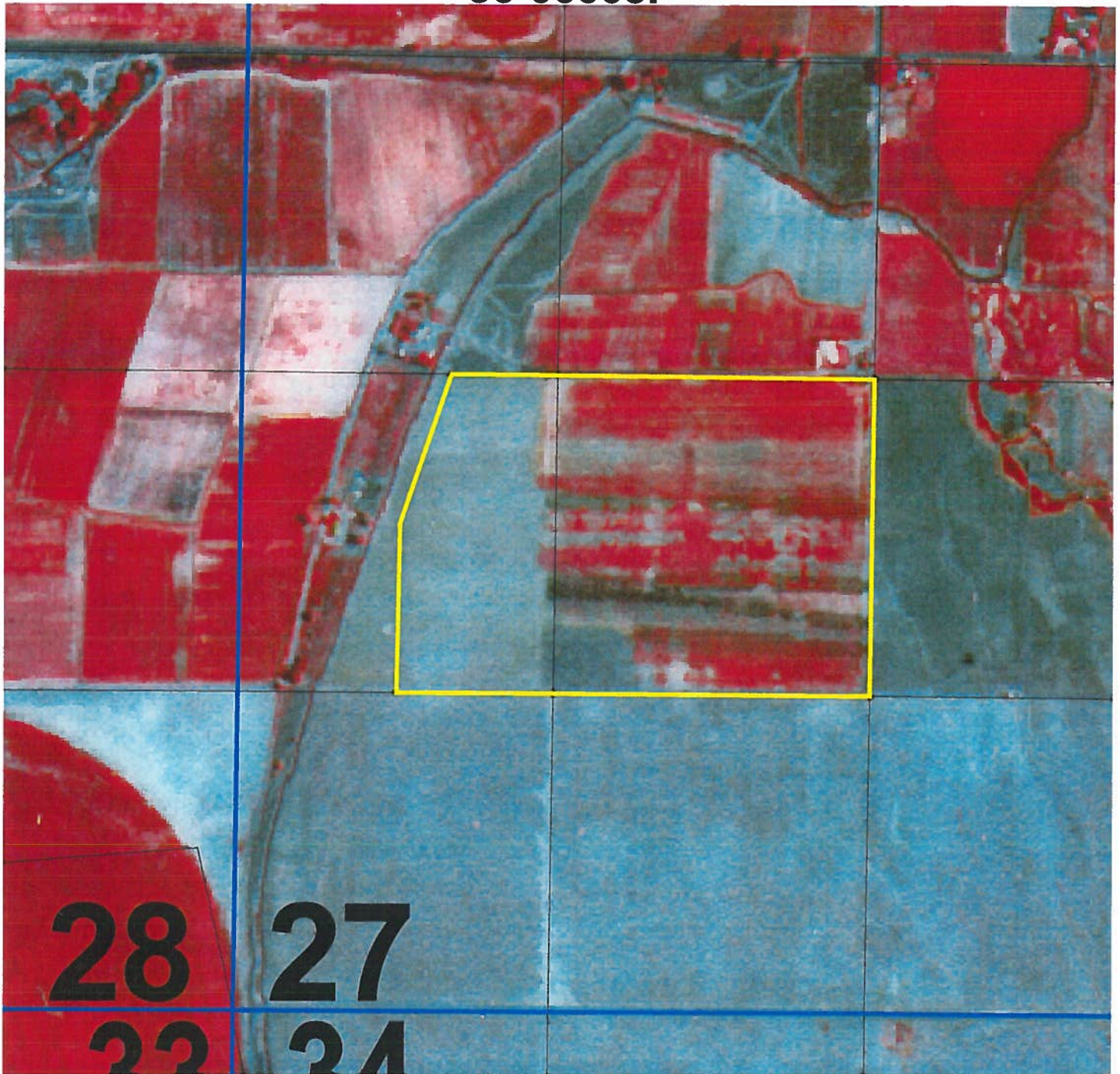
SECTION LINES &/OR TRACT LINES

QUARTER/QUARTER LINES

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

IDAHO DEPT OF WATER RESOURCES

36-00003F



660 0 660 1320 Feet

T07S R13E
SEC. 27, NWSW, NESW



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

DATA ENTRY BY: STEVE CLELLAND
DATE: MAY 17, 2001

*****REVISED*****

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

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

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

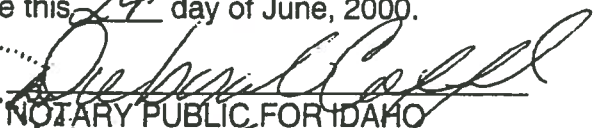
IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

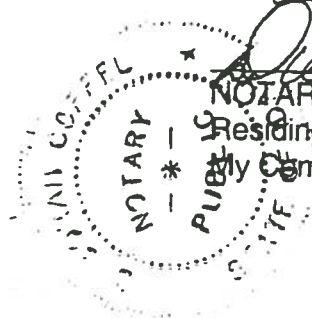
4. On June 2, 2000 I mailed a corrected page 2 of the 36-00003C Motion to the parties listed in paragraph 3 above.
5. Before June 28 none of the parties listed in paragraph 3 called indicating they had received the corrected page 2 of 36-0003C but that they had not received the original motion.
6. On June 28, 2000 Vicki Kelly from IDWR contacted me indicating that IDWR did have the corrected page 2 of 36-00003C. She further indicated they could not find the Motions to File Late Notice of Claim in the three subcases listed above.
7. On Wednesday, June 28, 2000 I faxed the three Motions to IDWR, Beeman & Hofstetter, and Peter Ampe. Attached is a printout of the office fax log for June 28 indicating documents were sent. Also, I mailed a second copy of each motion to the IDWR Document Depository and the U.S. Department of Justice Environmental and Natural Resources Division.
8. Further Affiant sayeth naught.

Dated this 29 day of June, 2000.


TRICIA J. FAHRENHOLZ

SUBSCRIBED and SWORN to before me this 29th day of June, 2000.


NOTARY PUBLIC FOR IDAHO
Residing at Leanne
My Commission Expires 3-9-01



CERTIFICATE OF MAILING

I certify that on June 29, 2000, I Faxed this Affidavit, including the attachment, to the following:

1. Clerk of the District Court (208) 736-2121
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
2. Peter Ampe (2208) 334-2690
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

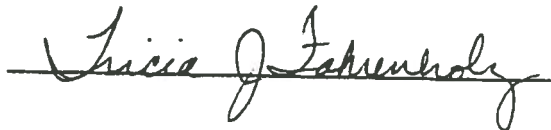
Nick Spencer (208) 327-5400
Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83705

Dana Hofstetter (208) 388-8400
Beeman & Hofstetter
608 W. Franklin St.
P. O. Box 1427
Boise, ID 83701-1427

3. In addition, I mailed a copy to the following via U.S. Mail, postage pre-paid:

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

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



HP OfficeJet
Personal Printer/Fax/Copier/Scanner

Fax History Report for
PATRICK D. BROWN
208-644-1970
Jun 28 2000 6:53pm

Last 30 Faxes

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Jun 28	10:28am	Received	208 726 7313	0:29	1	OK
Jun 28	5:04pm	Sent	12083275400	1:17	2	OK
Jun 28	5:06pm	Sent	12083275400	0:59	3	Jammed
Jun 28	5:12pm	Sent	12083275400	5:36	11	OK
Jun 28	5:17pm	Sent	12083275400	4:24	8	OK
Jun 28	5:26pm	Sent	12083888400	5:51	11	OK
Jun 28	5:40pm	Sent	12083888400	11:00	23	OK
Jun 28	6:31pm	Sent	12083342690	4:02	5	OK
				14:55	28	OK

Result:

OK - black and white fax
OK color - color fax

PATRICK D. BROWN, P.C.
LAW OFFICES

Fax

To: Nick Spencer @ IDWR **From:** Tricia
Fax: 327-5400 **Date:** June 29, 2000
Phone: 327-7928 **Pages:** __ (including this one)
Re: 36-00003 -C, F, K **CC:**
☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

•Comments

Affidavit of Service attached.

The information contained in this facsimile communication is attorney/client privileged and/or confidential information intended only for the use of the individual or entity named above. If the reader of this cover page is not the intended recipient or the agent or employee of the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication or the information contained herein is strictly prohibited. If you have received this communication in error, please immediately call our office at (208) 644-1967. Thank you for your cooperation.

MAY 31 PM 4:26

SRBA
TWIN FALLS CO., IDAHO

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Subcase 36-00003F

Case 39576

STANDARD FORM 4

MOTION TO FILE AMENDED
NOTICE OF CLAIM

INSTRUCTIONS

This form is used to file a late Notice of Claim or an amendment to a Notice of Claim in a reporting area where the Director's Report has been filed. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even number pages upside down.

The water right number for your late or amended claim must be indicated above in the blank space following "Subcase". You must use a **separate form** for each late or amended Notice of Claim.

By filing a *Motion to File Late Notice of Claim* or a *Motion to File an Amended Notice of Claim*, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

____ I have read SRBA Administrative Order 1, Rules of Procedure (amended Sept. 30, 1996).

My name is: Roxie J. and Doyt H. Simcoe
My address is: 562 Sunrise Blvd. N., Twin Falls, ID 83301
My phone number is: Work: (208) Home: (208) 733-5037

I am an attorney representing: Roxie J. and Doyt H. Simcoe

My name is: Patrick D. Brown
My address is: Patrick D. Brown, P.C.
Law Offices
109 South Adams Street
Jerome, ID 83338

My phone number is: (208) 644-1967

MOTION TO FILE AMENDED LATE NOTICE OF CLAIM

A Motion to File Late Notice of Claim will require a hearing before the Presiding Judge.

X I need to amend the Notice of Claim to the use of water in the SRBA because:

X The Motions for Late/Amended Claims for Water Right Nos. 36-00003, 36-00005, along with 36-00019 are made in order to conform the pleadings to the proof previously given at trial in the 36-00003 subcases and to conform to the Memorandum Decision and Order on Challenge, issued by Presiding Judge Wood, November 23, 1999.

Those three rights are described with the same point of diversion, priority date, have contiguous places of use on adjacent properties, and have been used together on the properties known as the "Buckeye Ranch." The purpose of the Motions for Late Claims and Motions to Amend Claims is in order to accurately reflect the nature and extent of use as set forth in the 1932 New International Mortgage Bank Decree, and the subsequent history wherein changes in place of use and commingling of the rights have occurred. The changes also reflect the deeded history and actual use of the rights, as described as controlling by Judge Wood's Memorandum Decision. The amended claims and late claims, read as a whole, do not enlarge the amount of water previously claimed under the 36-00003 claims and subcases.

____ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of Claim for domestic or stockwatering use.

____ I am providing legal and factual documentation for my claimed use of water. You must describe these documents and attach a readable copy. (You do not need to fill this out

if you are reinstating a Notice of Claim for domestic or stockwatering use, but you must attach a copy of your Notice of Claim.)

1. Amended Notice of Claim to a Water Right
2. Map
- 3.

I have attached:

— A fully completed Notice of Claim (available from IDWR).

— A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I.C. § 42-1414. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$25.00.

— A claim filing fee and a late claim fee for those claims other than a domestic or stock watering use for which a notice of claim was not filed. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$_____.

Follow these instructions regarding the hearing on this motion.

1. Contact the Clerk of the SRBA Court (208-736-3011) to request a hearing date and time.
2. Fill in the following information:

This Motion will be heard on _____

(Insert date and time)

at the SRBA Courthouse, 253 Third Avenue North, Twin Falls, Idaho.

VERIFICATION (Must be completed)

State of Idaho
County of Jerome :ss

Patrick D. Brown, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

Signature of person filing motion

Attorney signing in representative capacity

Subscribed and sworn to before me on May 31, 2000
(Insert date)



Notary Public for Idaho

Residing at: Twin Falls

My commission expires: 12-09-2004

INSTRUCTIONS FOR MAILING

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

CERTIFICATE OF MAILING

I certify that on May 31, 2000, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postabe prepaid and addressed as follows:

1. Original to:

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

2. Copies to:

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

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

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

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or Special Master, you may serve a copy on all parties to that subcase.

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

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


(Signature of person or attorney mailing the form.)

Form No. 42-1409 (2) a 1/88. (Intern.)

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 31a-0000.3F

Date Received _____

Receipt Number _____

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

Please type or print clearly

1. Name of Claimant (s) Roxie J. and Doug H. Simcoe Phone (208) 733-5037

Mailing Address 562 Sunrise Blvd. N. Twin Falls Id Zip 83301

2. Date of Priority (Only one (1) per claim) 09-10-1884

3. Source of water supply (a) Billingsley Creek
which is tributary to (b) Snake River

4. a. Location of existing point of diversion is: Township 07 S Range 13 E Section 11.

SE 1/4 of SE 1/4 of NE 1/4, Govt. Lot, _____ B.M., County of Gooding

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4.

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____

1/4, Govt. Lot B.M., County of

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc). Including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well.

Water is delivered through the Buckeye Ditch and pumped from pond adjacent to ditch.

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from 2-15 to 11-30 amount 1.54 or _____For Stock water purposes from 1-01 to 12-31 amount .02 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 1.54 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Stockwater

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
7S	13E	27									40								40
7S	13E	27										18							18
7S	13E	27									I								
7S	13E	27										I							

Total number of acres irrigated 5811. In which county (ies) are lands listed above as place of use located? Gooding12. Do you own the property listed above as place of use? Yes A No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.13. Describe any other water rights used at the same place and for the same purposes as described above.
36-00005, 36-00019 or None ()

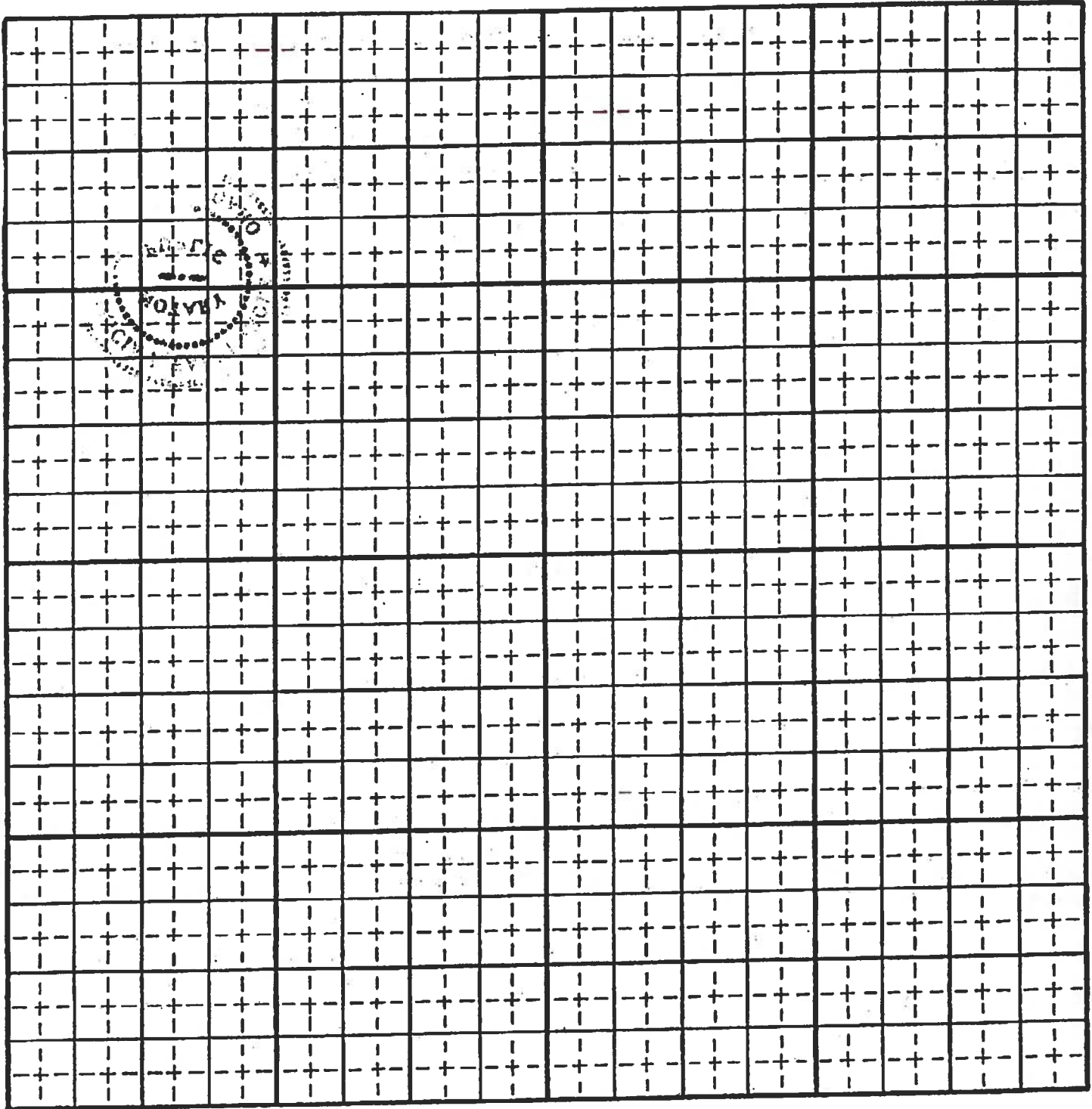
14. Remarks:

Last Name Simcoe Ident No. 36-00003F

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

See attached map.



Last Name Simcoe Ident No. 36-0003F

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License _____ Permit _____
Decree ☒
If applicable provide IDWR Water Right Number 36-0003 F
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

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 _____

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true
and correct.

Signature of Claimant (s) Patrick D Brown

Date 5-31-00

Attorney for Claimant

Date _____

For Organizations: I do solemnly swear or affirm that I am _____

Title _____

of _____ that I have signed the foregoing
Organization

document in the space below as _____ of _____
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____

Date _____

State of Idaho or _____)
County of Jerome) SS.

Subscribed and sworn (or affirmed) before me this 31st day of May, 2000

Notary Public Patricia J. Fahrenholz

Residing at Twin Falls

My Commission Expires 11-9-2004

Please Print Name

17. Notice of Appearance
Notice is hereby given that, Patrick D. Brown, P.C. will be acting as attorney at law on behalf
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above
should be mailed to me at the address listed below.

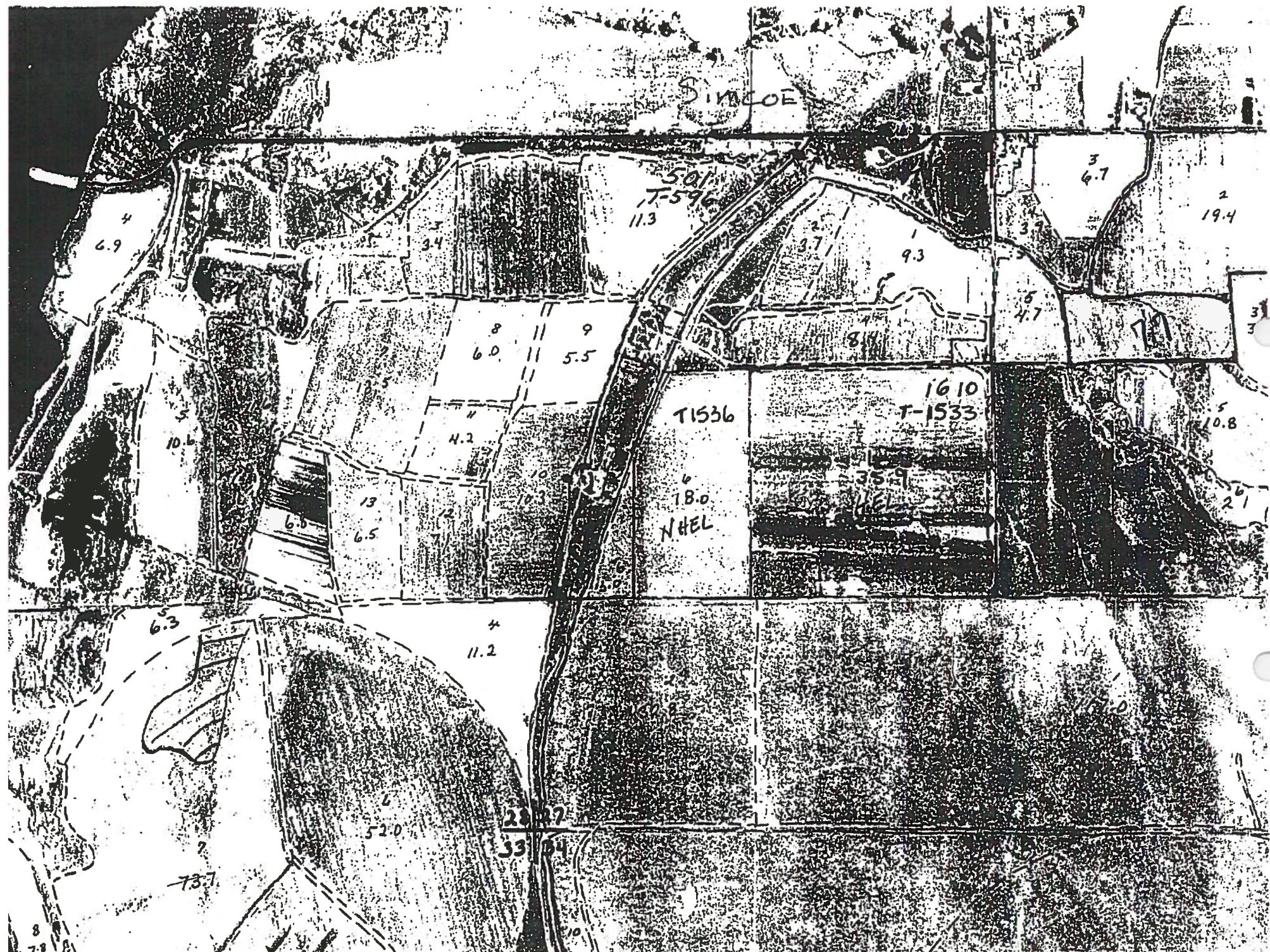
Signature Patrick D Brown

Address Patrick D Brown, P.C. 109 So. Adams St. Jerome ID 83338

Date 5-31-04

Last Name Simcoe

Ident. Number 36-0003 F



RECEIVED

APR 19 1999

Department of Water Resources
Southern Region

1999 FEB -8 AM 11:13

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA	)	SPECIAL MASTER'S REPORT
	)	
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHT 36-00003F
	)	

I. FINDINGS OF FACT

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

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

II. CONCLUSIONS OF LAW

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

DATED: FEB - 8 1999


FRITZ X. HAEMMERLE
Special Master

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

In Re SRBA)
Case No. 39576)
_____)

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

Water Right 36-00003F

1999 FEB -8 AM 11:13

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

NAME AND ADDRESS: DOYT H. SIMCOE
ROXIE J SIMCOE
562 SUNRISE BLVD N.
TWIN FALLS, ID 83301

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 2.56 CFS

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

PRIORITY DATE: 09/10/1884

POINT OF DIVERSION: T07S R13E S11 SESENE Within Gooding County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	02-15 TO 11-30	2.56 CFS
	Stockwater	01-01 TO 12-31	0.02 CFS

PLACE OF USE:	Irrigation		Within Gooding County
	T07S R13E S27	NESW 40.0	NWSW 18.0
	58.0 Acres Total		
	Stockwater		Within Gooding County
	T07S R13E S27	NESW	NWSW

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

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

RULE 54(b) CERTIFICATE

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

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

RECOMMENDATION

FEB - 8 1999

[Signature]
SPECIAL MASTER

1999 FEB -8 AM 11:13

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO

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

In Re SRBA)

Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 36-00003F

CERTIFICATE OF MAILING

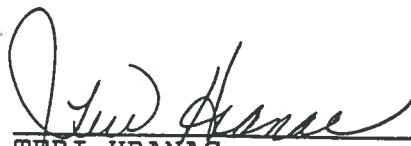
I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on February 08, 1999, with sufficient first-class postage prepaid to the following:

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

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

DOYT H. SIMCOE
ROXIE J SIMCOE
Represented by:
PATRICK D. BROWN
812 SHOSHONE ST E
TWIN FALLS, ID 83301
Phone: 208-735-8812

CERTIFICATE OF MAILING


TERI HRANAC
Deputy Clerk

PAGE 1
02/08/99

1999 FEB -8 AM 11:13

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO

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

In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 36-00003F

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

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

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

DATED February 08, 1999.



TERI HRANAC
Deputy Clerk

COPY
RECEIVED

JUN 30 1998

Department of Water Resources
Southern Region

PARKER, WARR & BROWN, LLP
Patrick D. Brown
812 Shoshone St. East
Twin Falls, ID 83301
Telephone: (208)7358812

RECEIVED

JUN 11 1998

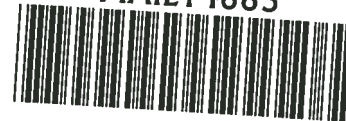
Department of Water Resources
Adjudication Bureau

36-00003F
RECEIVED

JUN 10 1998

OFFICE OF THE
ATTORNEY GENERAL

MAIL 14883



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

)
)
)
)
)

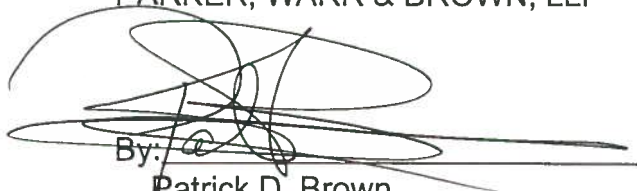
Subcase No. 36-00003F ^{oBS}

NOTICE OF APPEARANCE

COMES NOW the firm of Parker, Warr & Brown, LLP, and appears on behalf
of claimant for the water right number listed above.

Dated this 6 day of June, 1998.

PARKER, WARR & BROWN, LLP

By: 

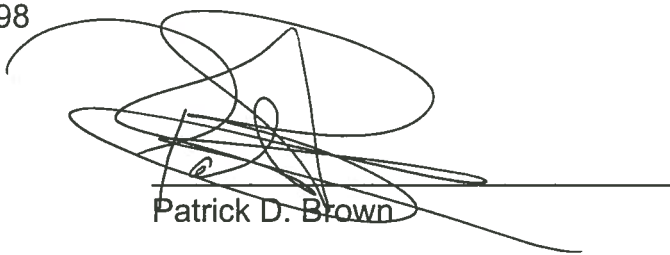
Patrick D. Brown

CERTIFICATE OF MAILING

The undersigned, a resident attorney of the State of Idaho, with offices at 812 Shoshone St. East, Twin Falls, Idaho 83301, and one of the attorneys for the claimant in this matter, certifies that he caused to be mailed a copy of the above and foregoing NOTICE OF APPEARANCE on the 6 day of June, 1998, to:

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

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



Patrick D. Brown

MAPS & INFORMATION

RELATED TO

36-00003 SPLITS

	3	5	19	Total
Babington	$\checkmark$ ecvr ~~3C~~ $\times$ (1.97) $\checkmark$ ecvr 0.87 cfs ~~0.70 cfs~~ (.96) (24 AC)	$\checkmark$ ecvr ~~5A~~ + .09 cfs	$\checkmark$ ecvr ~~19A~~ $\times$ $\emptyset$ cfs	$(2\frac{1}{4} \text{ AC})$.04 0.87 + .09 0.96 cfs
Simcoe	$\checkmark$ ecvr ~~3F~~ $\times$ (1.32) $\checkmark$ ecvr 1.54 cfs ~~1.67 cfs~~ (1.54) (58 AC)	$\checkmark$ ecvr ~~5C~~ $\times$	$\checkmark$ ecvr ~~19C~~ $\times$	$(1.3\frac{1}{4} \text{ AC})$.0266
Kington	$\checkmark$ ecvr ~~3B~~ (7.16) $\rightarrow$ 4.69 cfs ~~3.71 cfs~~ 129 $\checkmark$ ecvr 0.04 cfs ~~3K~~ 136 AC 1.37 cfs (?)	$\checkmark$ ecvr ~~5B~~ + .55 cfs (2.16 cfs) (136 AC)	$\checkmark$ ecvr ~~19B~~ + 1.92 cfs	4.69 cfs + .55 + 1.92 7.16 cfs (.056 cfs/AC)
Gardner	$\checkmark$ ecvr 0.04 cfs ~~3K~~ 136 AC 1.37 cfs (?)	$\otimes$ Rec'd is for 1 acre as found by aerial & field exams. Not combined into the same system with 3B until recently (c.1996). Use found was part of the sprinkler system used by Babington above Buckeye Ditch.		
McClure	$\checkmark$ ecvr ~~3D~~ $\times$ (DISALLOW) $\rightarrow$ see 19D $\rightarrow$	$\otimes$ NO CLAIM	$\checkmark$ ecvr ~~19D~~ (No Hubhole) .24 cfs	$\checkmark$ ecvr .24 cfs 8.5 AC.

V. Bell

- 3A

✓cvr

(1.6 lbs)
(13 Ac)

NO CLAIM



NO CLAIM



57

~~Temp.~~
~~Allow~~

10WR:
42 cfs
- 15 CL

57 cfs

Revised Hubble

Split Right Review
5/17/01
SCC

Balance: 03

Ø3

7.71 cfs

~~7.60~~ (bill)~~6.11~~

05

3.0

- .09

2.91

19

2.16

- .24 (19D)

1.92

-1.92 (3BW/19B)

Ø ~~19A~~ 19D & 19B
split all of 19 right

< See page 2 >

5/17/01
SCC

Ø3 SPLIT REVIEW:

Balance: 7.71 cfs

$$\begin{array}{r} - .57 \\ \hline 7.14 \text{ cfs} \end{array} \quad (-3A \text{ Bell}) \quad \left(\begin{array}{l} \text{didn't claim 05-02-19.} \\ \text{even tho' claimant states 03/5/19} \\ \text{are used together \& commingled.} \end{array} \right)$$

1ST PRO RATA:

129	(3B)	129/212	X	7.14	=	4.34 cfs
24	(3C)	24/212	X		=	0.81
* 58	(3F)	58/212	X		=	1.95 (> claim 1.54)
1	(3K)	1/212	X		=	0.03
<u>212</u>		Ac.				

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

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

2ND PRO RATA:

129	(3B)	129/154	X	5.60	=	4.69 cfs
24	(3C)	24/154	"		=	0.87
1	(3K)	1/154	"		=	0.04
<u>154</u>		Ac.				

* full rec'd based on same system as Babington's claim of 0.04 cfs/Ac Common sprinkler system is used.

PORTIONS OF Ø3 SPLIT:

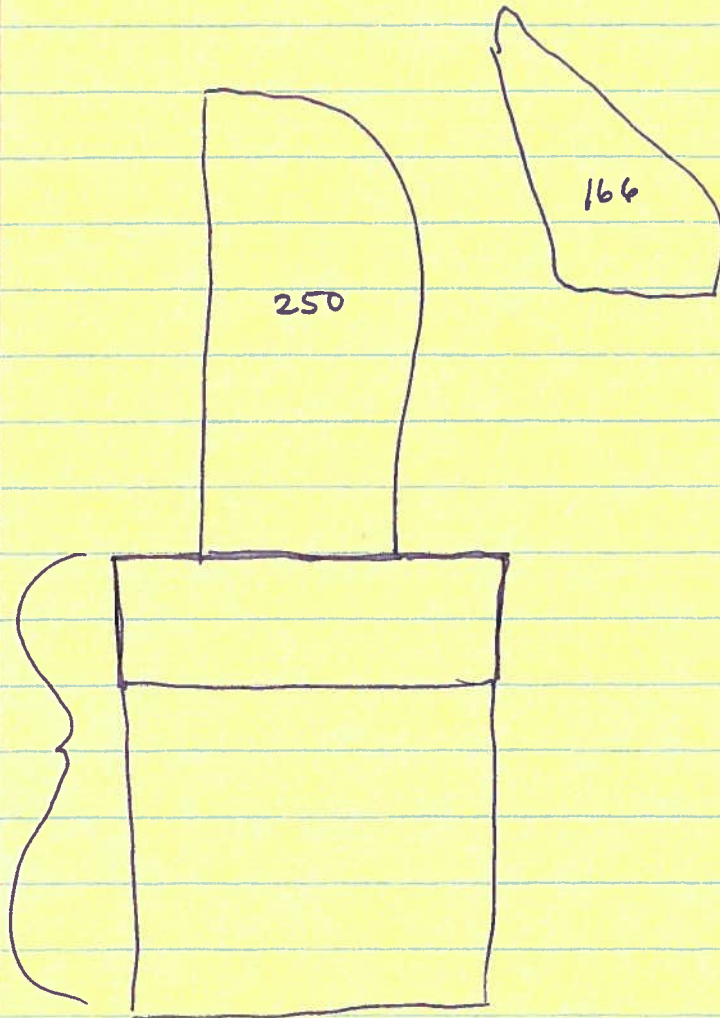
- 3B 129 Ac. 0.04 /Ac - 3K 4.69 cfs	- 3C 24 Ac. 0.87 cfs	- 3A 13 Ac. 0.57 cfs
	- 3F 58 Ac. 1.54 cfs	

Total = 7.71 cfs

Buckeye TRANSFER

4/25/00

Duty of water - 004
 $= 0.036 \text{ cfs/Ac}$



36-00004
~~416~~ 4c
 15cfs

P. Decree: 36-00018

20 cfs / 264 Ac (South)
 $= (0.076 \text{ cfs/Ac})$
~~/ 219 Ac (North)~~
483 Ac

$= 0.041 \text{ cfs/Ac}$

BUCKEYE TRANS.
36-03 splits

W

Clelland, Steve

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

Nick,

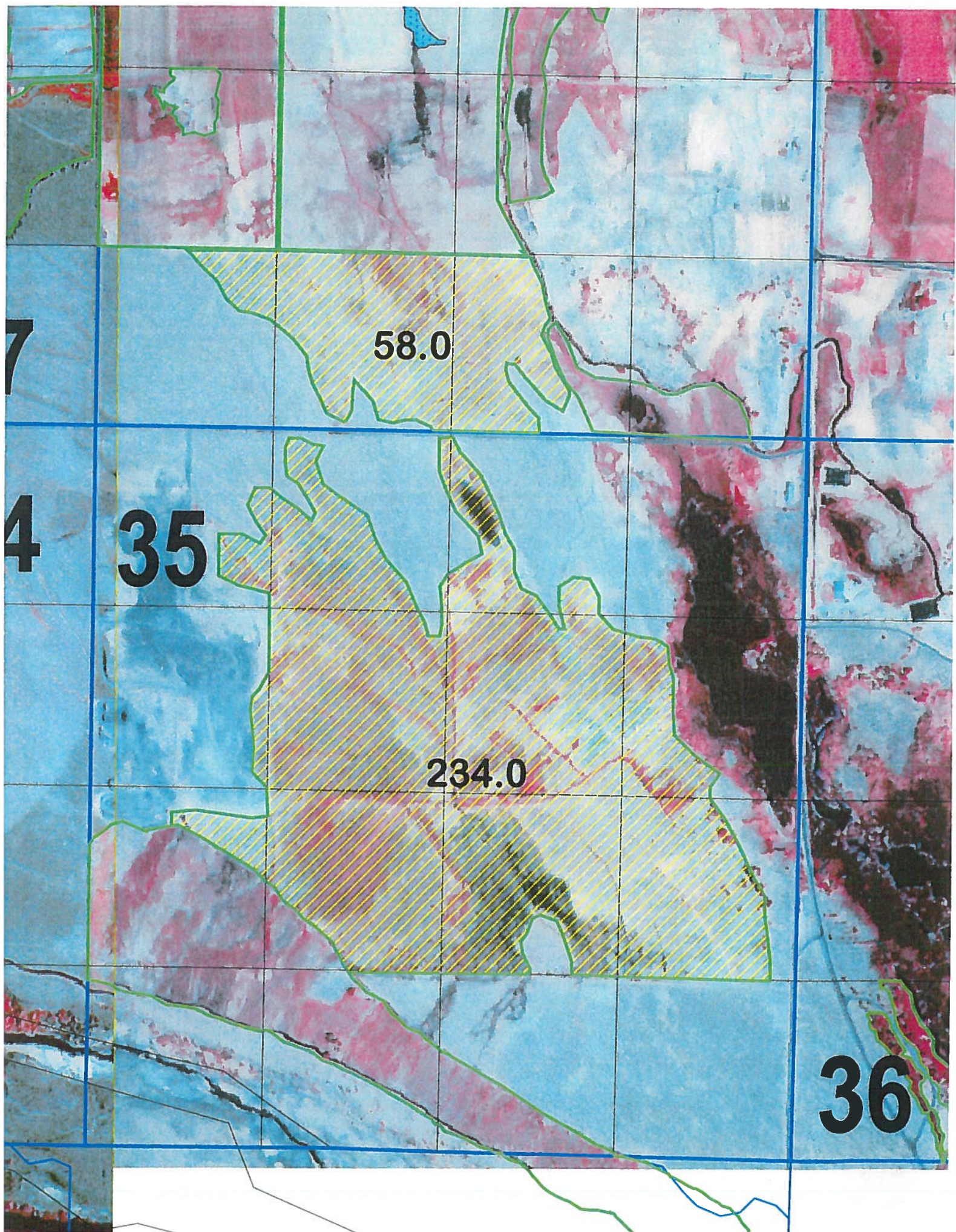
I Just spoke with John Simpson about the acres and issues... He seemed to agree the acres were close to a resolution (320-350 ac.) and I told him my latest GIS edits show about 320 acres. He thought we were trying to come to an agreeable acreage PLUS a duty of water for the full 20 cfs. I told him you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

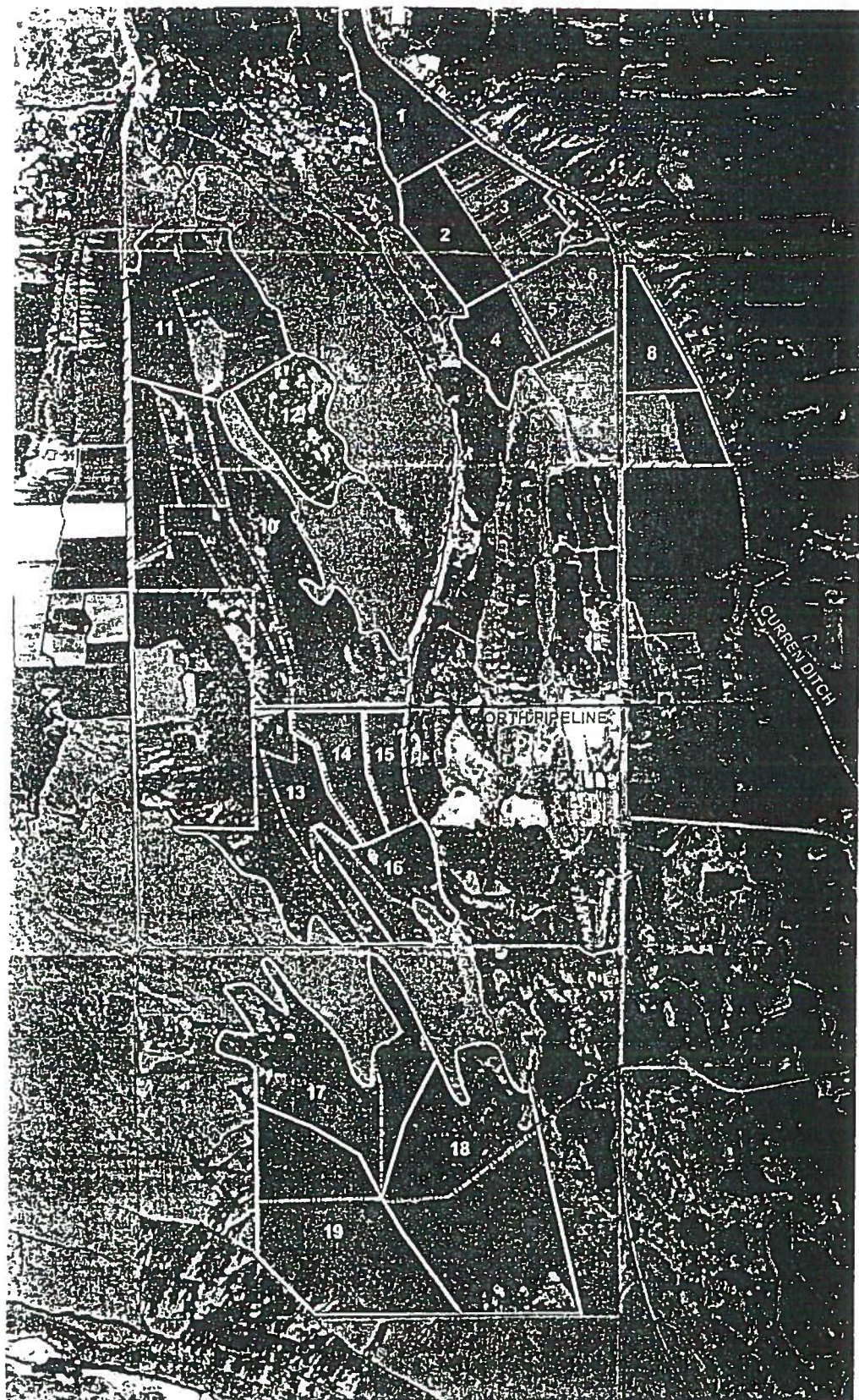
If you get a chance maybe you can give John S. a call...

Steve

.036 cfs/Ac

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





27

35

40

58

40

30

34

30

35

37

40

17

40

234

40

25

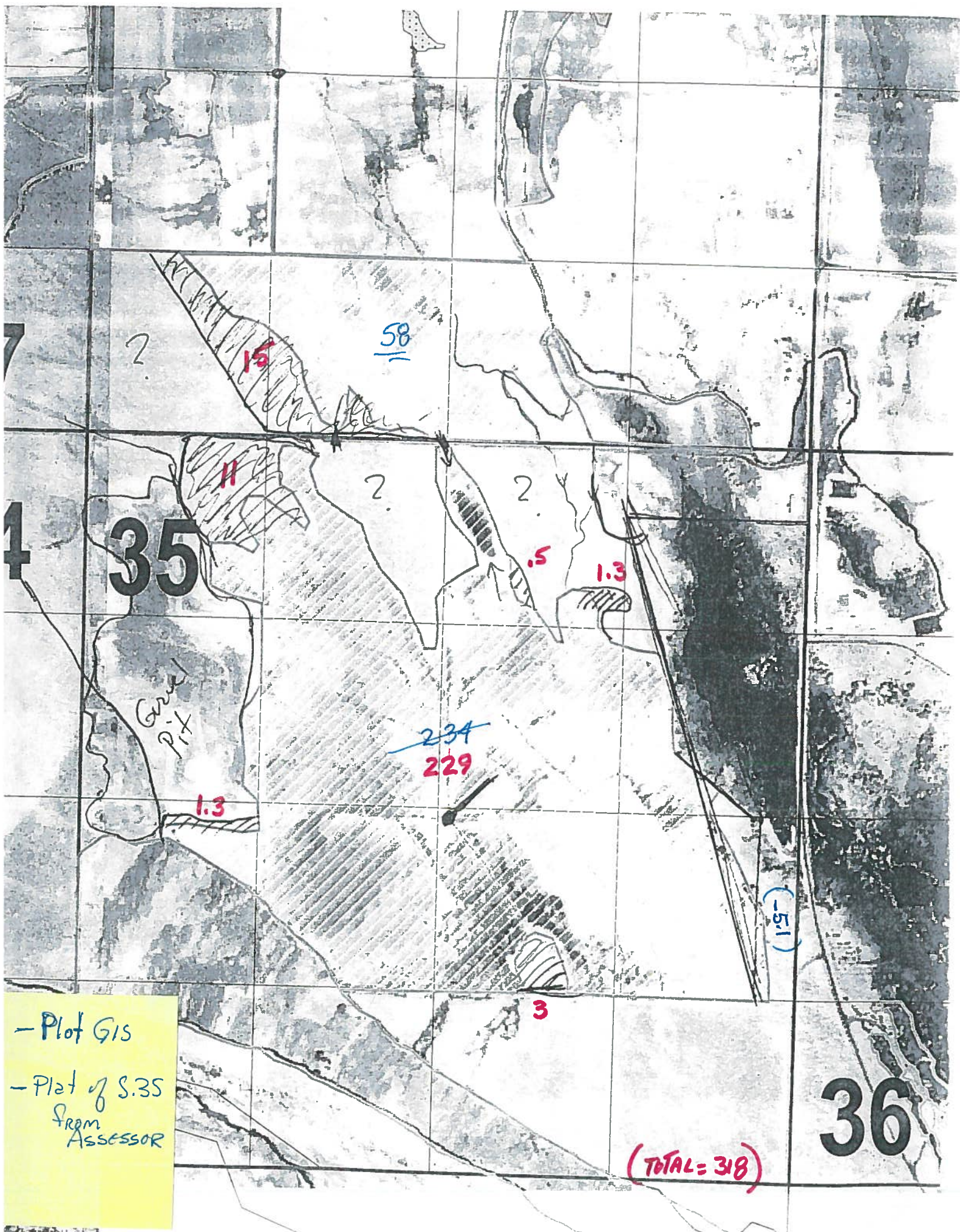
36

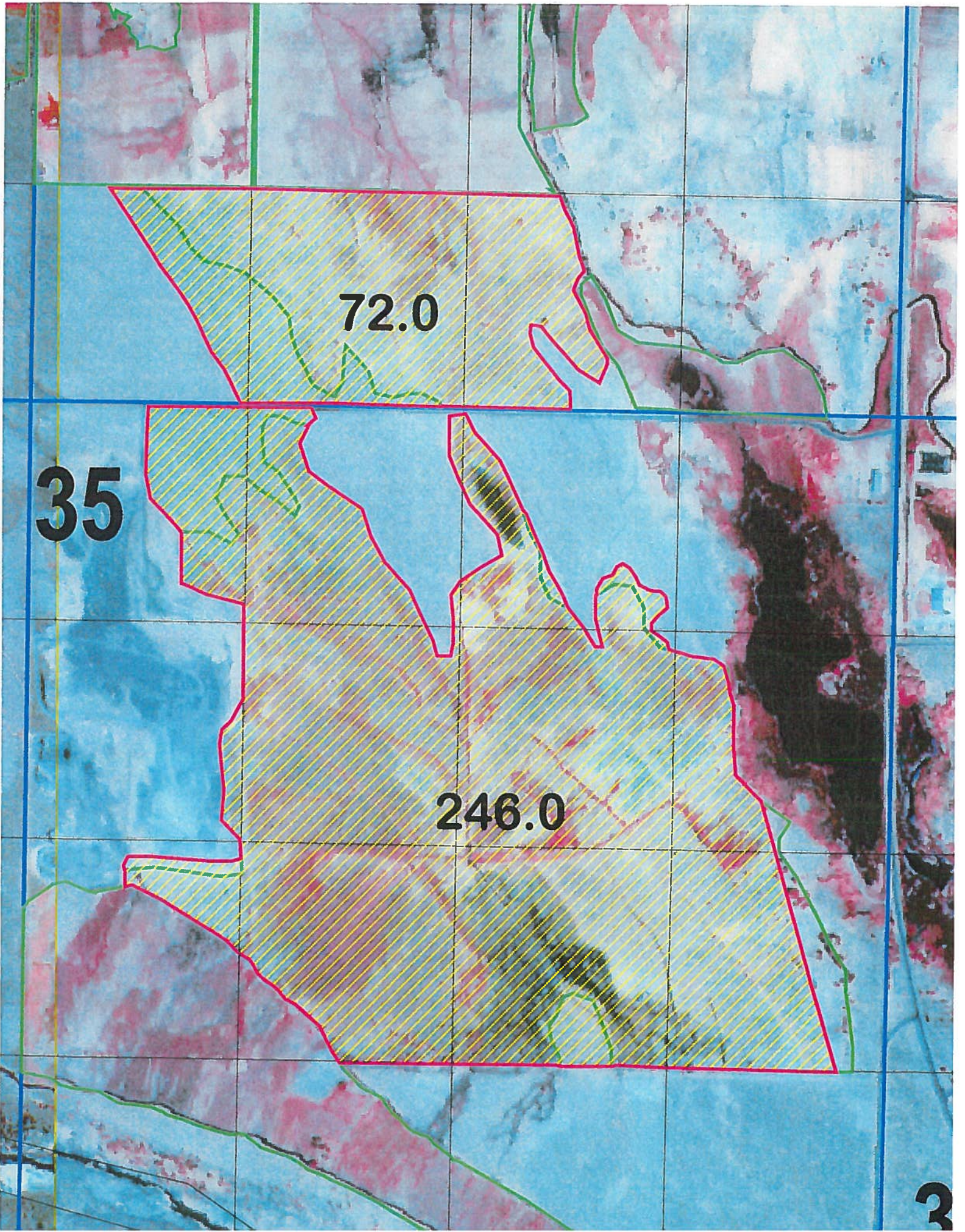
40

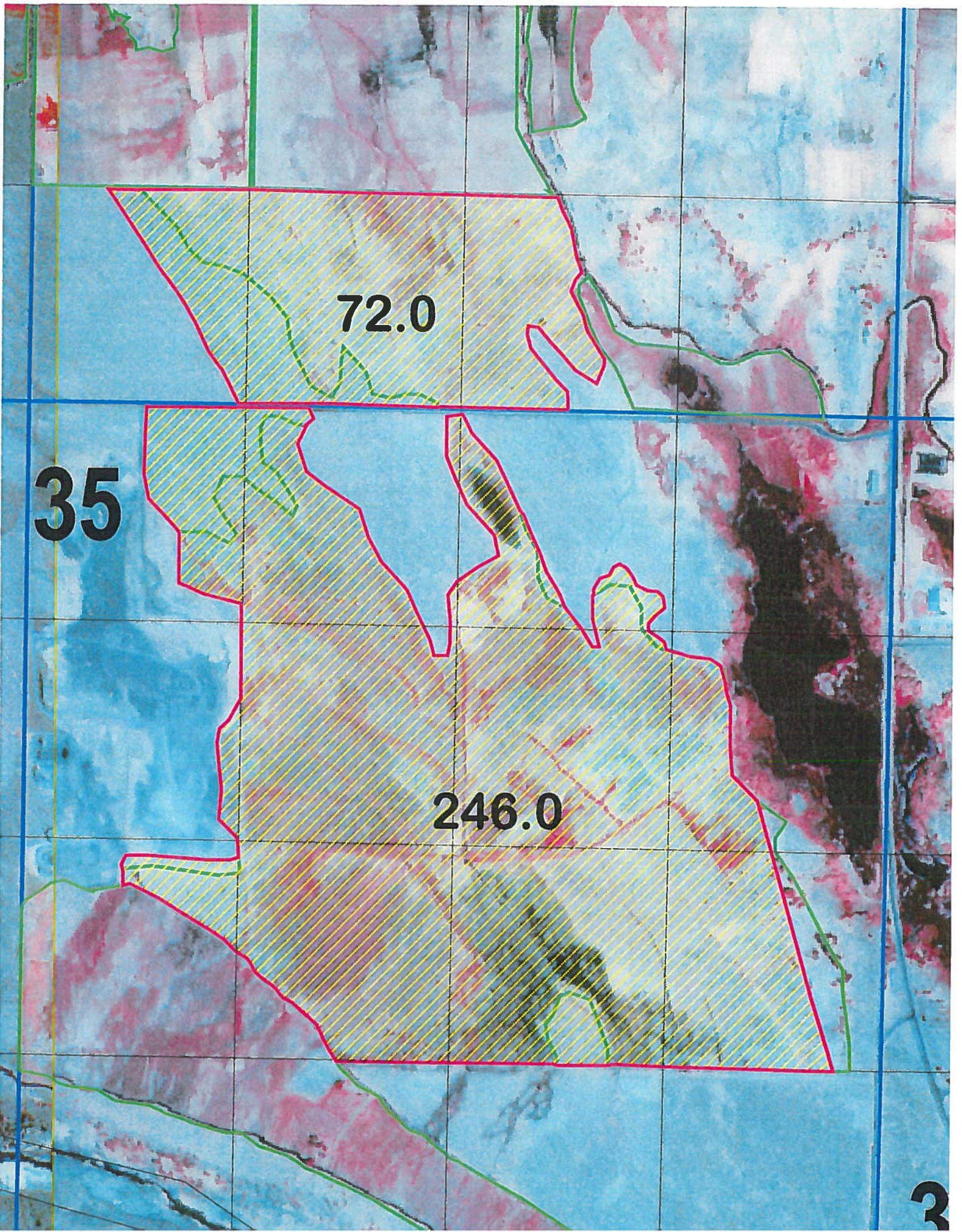
33

36

483 claimed







72.0

35

246.0

3

14

13

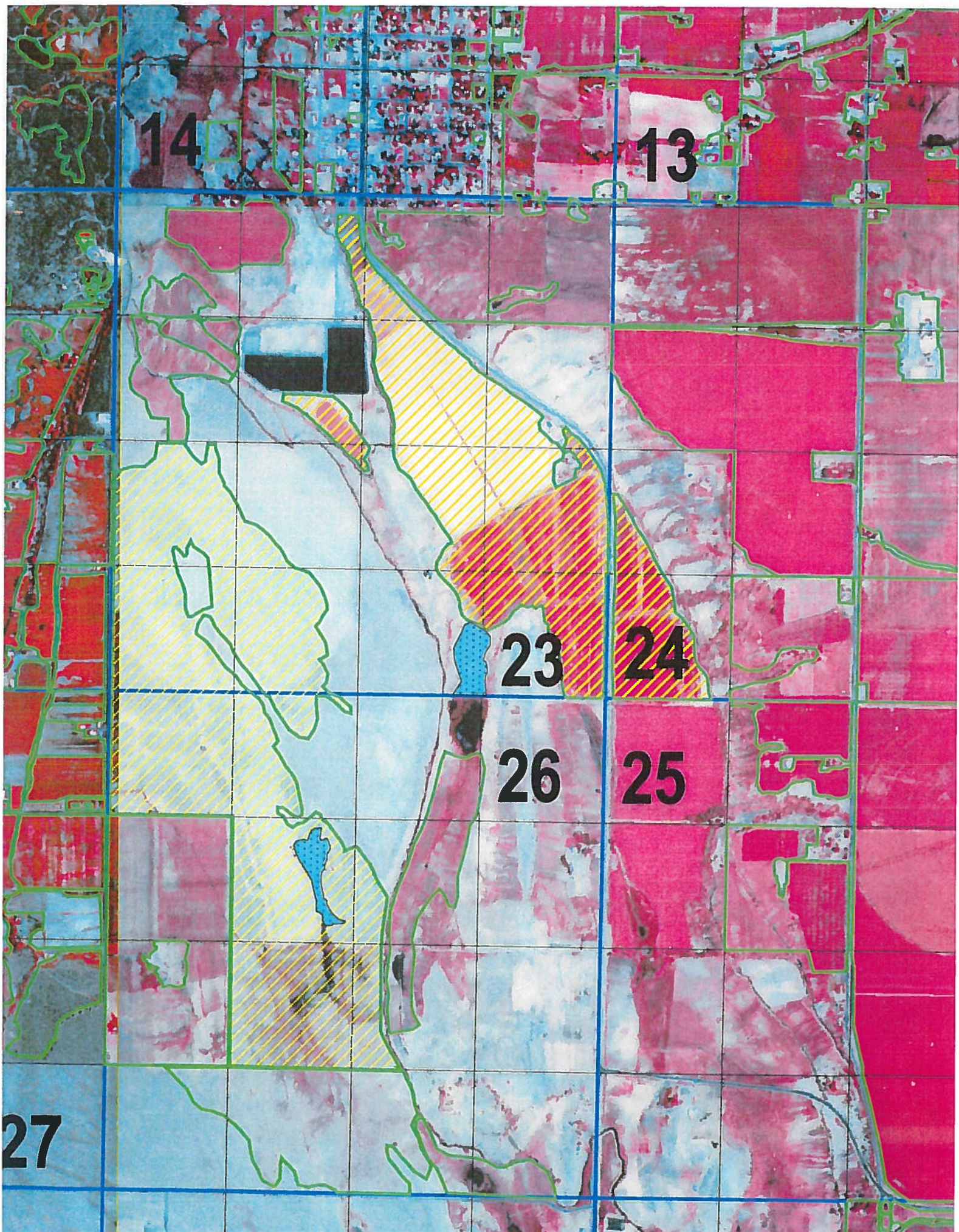
23

24

26

25

27



36-00004, 36-00018, 36-00015

Place of Use

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

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

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

Place of Use is further supported by the following documents:

Agreement for Sale
Transfer Deed
Pasture Lease Agreement

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

18/15

04

Historic
Water
Use

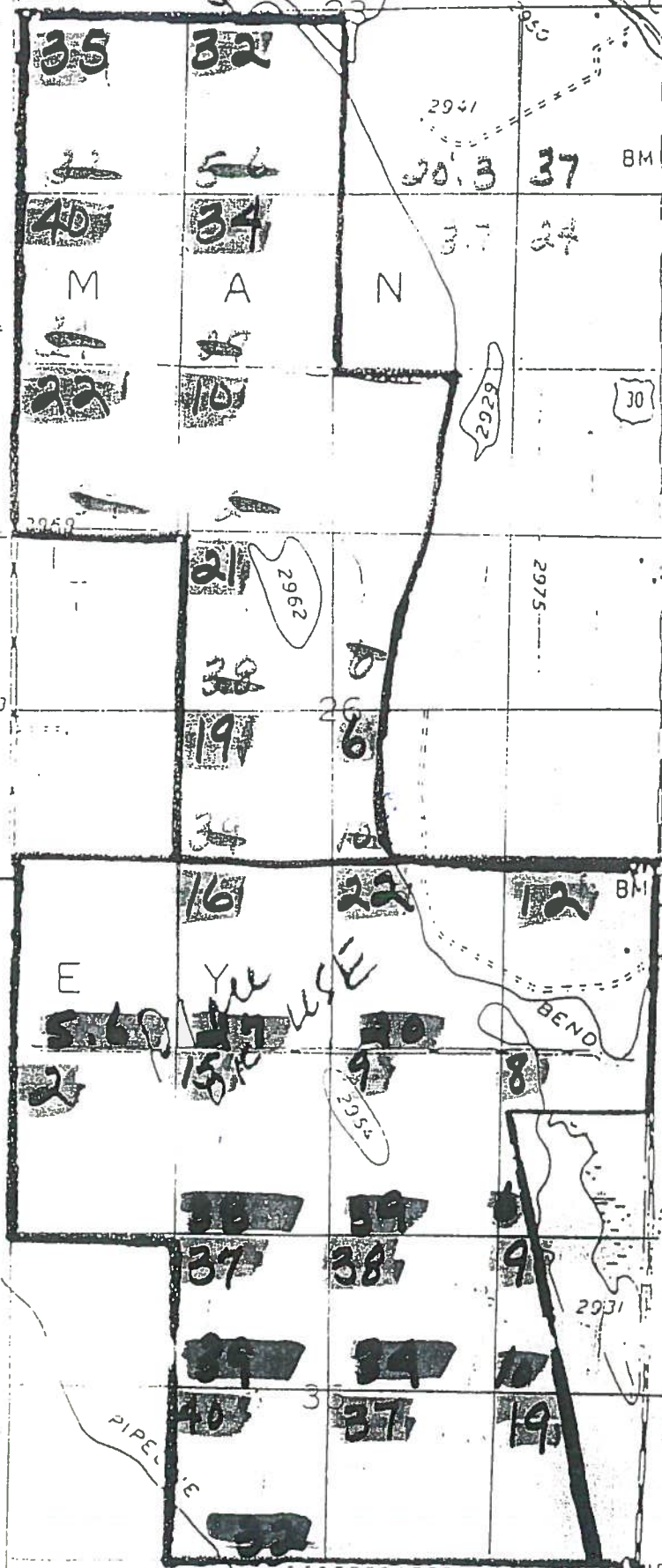
36-00004
when
36-00018/15
not available

36-00004
→
leased land

partially
Decreed
North Bars
219 acres

Total
Decreed
483 acres
36-00018
36-00015

Partially
Decreed
South Bars
264 acres



Place of use

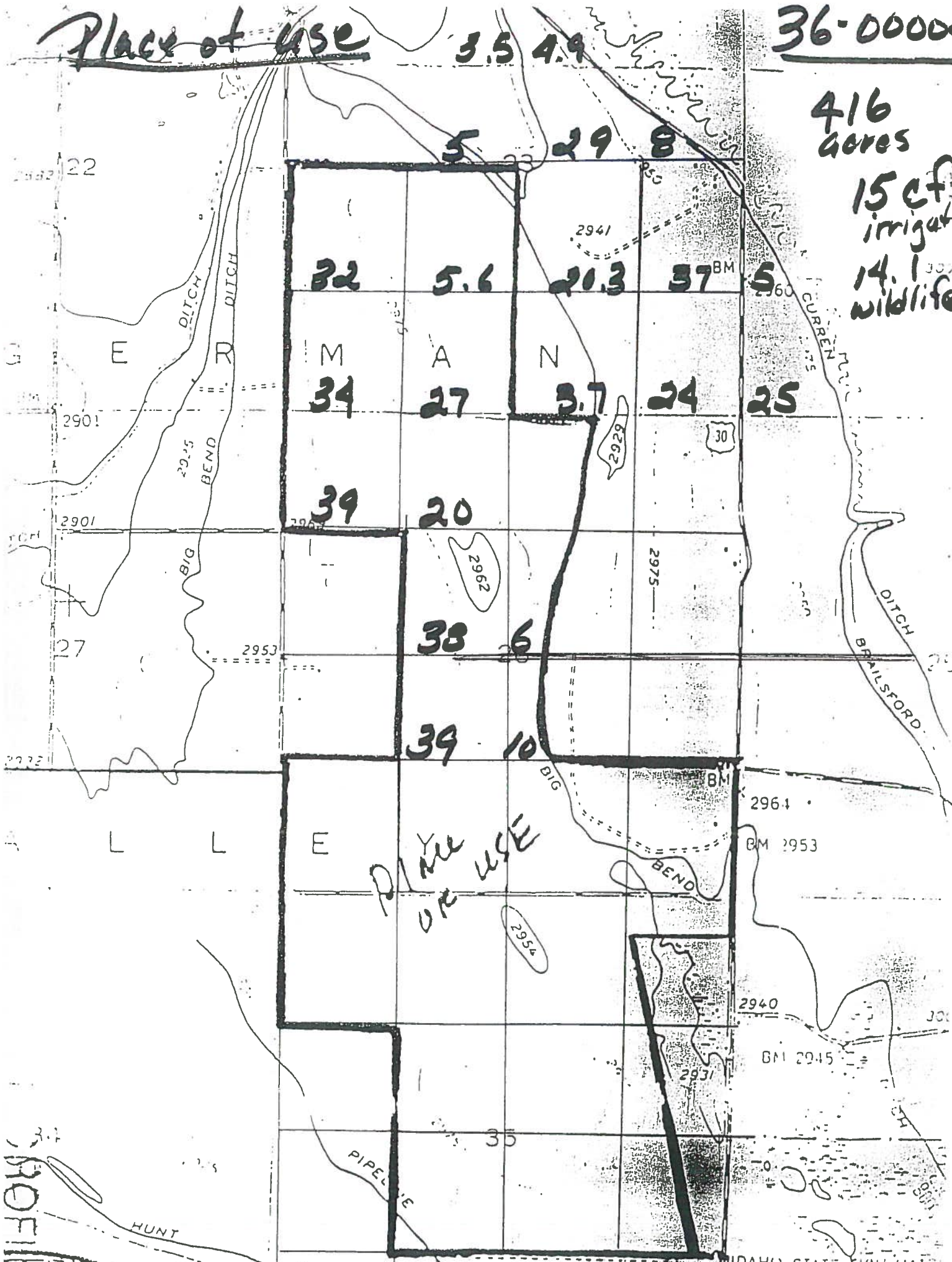
3.5 4.9

36-00004

416
acres

15 cfs
irrigation

14.1
wildlife



Place
of use

Profile

483
acres
2005
irrigation
36-00018
6.5
irrigation
36-00015

Points of use

36-08335

36-00003H

8, 9, 10 cfs

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

Sept 15 -
May 15 -

BM

2960

CURRENTS

30

2929

2975

2963

26

North Pipeline

36-00004
7, 6, 5 cfs

36-00015
2 cfs

36-00004
8, 9, 10 cfs

20 cfs
36-00018
(9/15 - 2/15)

36-00018
5 cfs
(2/15 - 6-1)

(2/15 - 6-1)
15 cfs
remains in
Billingsley

Place of use

South Pipeline

35

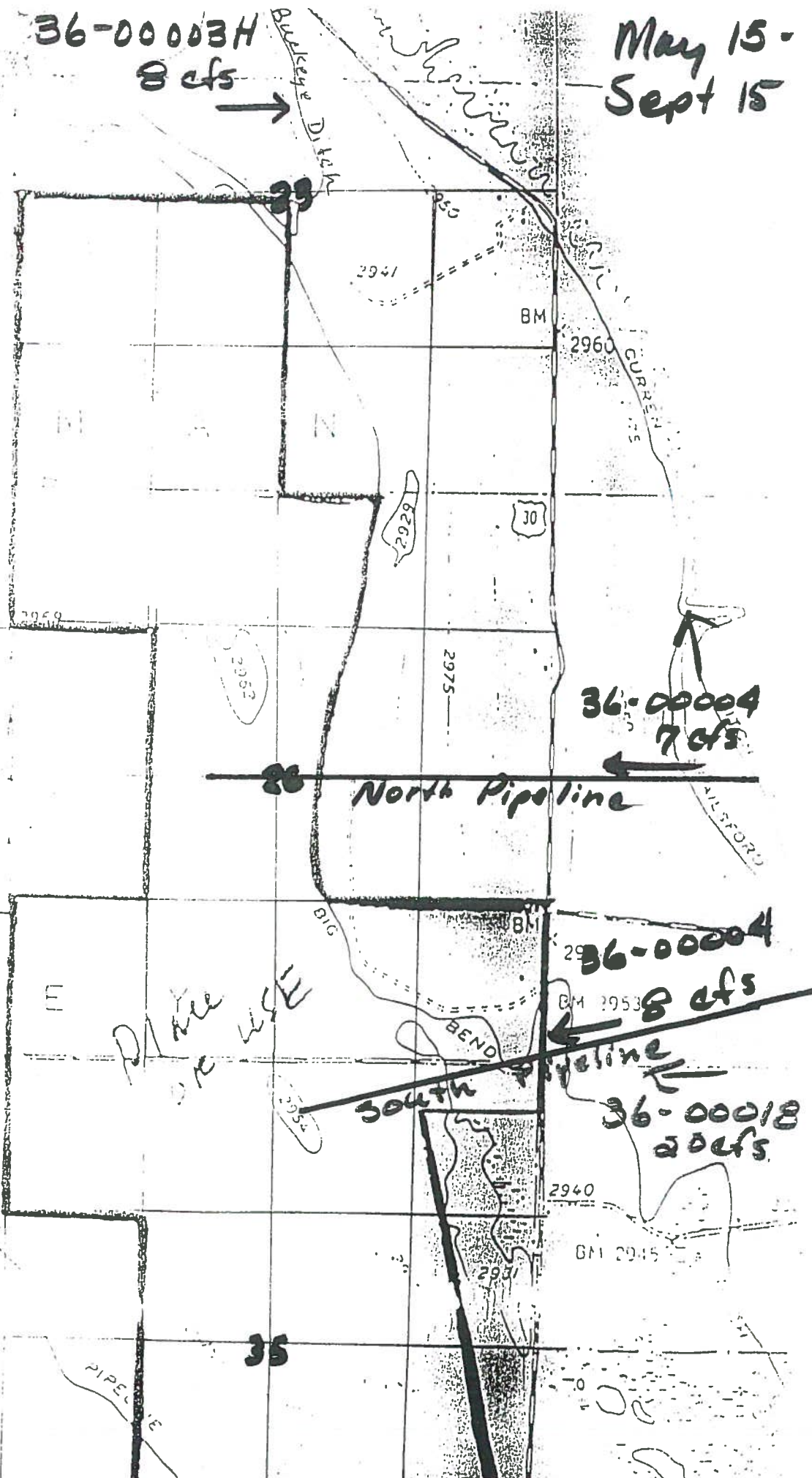
PIPELINE

HUNT

Points
of use

36-00003H
8 cfs

May 15 -
Sept 15



MEMORANDUM

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

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

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

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

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

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

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

DATE: April 12, 1999

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT BOARD NO. 1

1. Certificate of Completion of Works (Curran water) dated October 31, 1918, which identifies 520 acres in Section 35 as being the section for place of use of this water.

2. Engineer's Map (1918) showing Section 35 being owned by F. D. Brown showing the portion of Section 35 historically irrigated with the Curran water.

3. Certificate of Completion of Works dated October 31, 1918 issued by Fred A. Wilkie, State Engineer of the State of Idaho showing this Section as being the land to which this water is applied.

4. Deposition of Holder, F. D. Brown, dated March 21, 1918, testifying that the water has been turned into the works and is "running full of water". (Curran water on the 560 acres).

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

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

EXHIBIT BOARD NO. 2

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

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

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

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

EXHIBIT BOARD NO. 3

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

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

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

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

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

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

EXHIBIT BOARD NO. 4

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

EXHIBIT BOARD NO. 5

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

EXHIBIT BOARD NO. 6

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

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

Idaho Code 42-222 further states:

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

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

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

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

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

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

This transfer does not negatively affect the agricultural base.

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

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

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

CONCLUSION

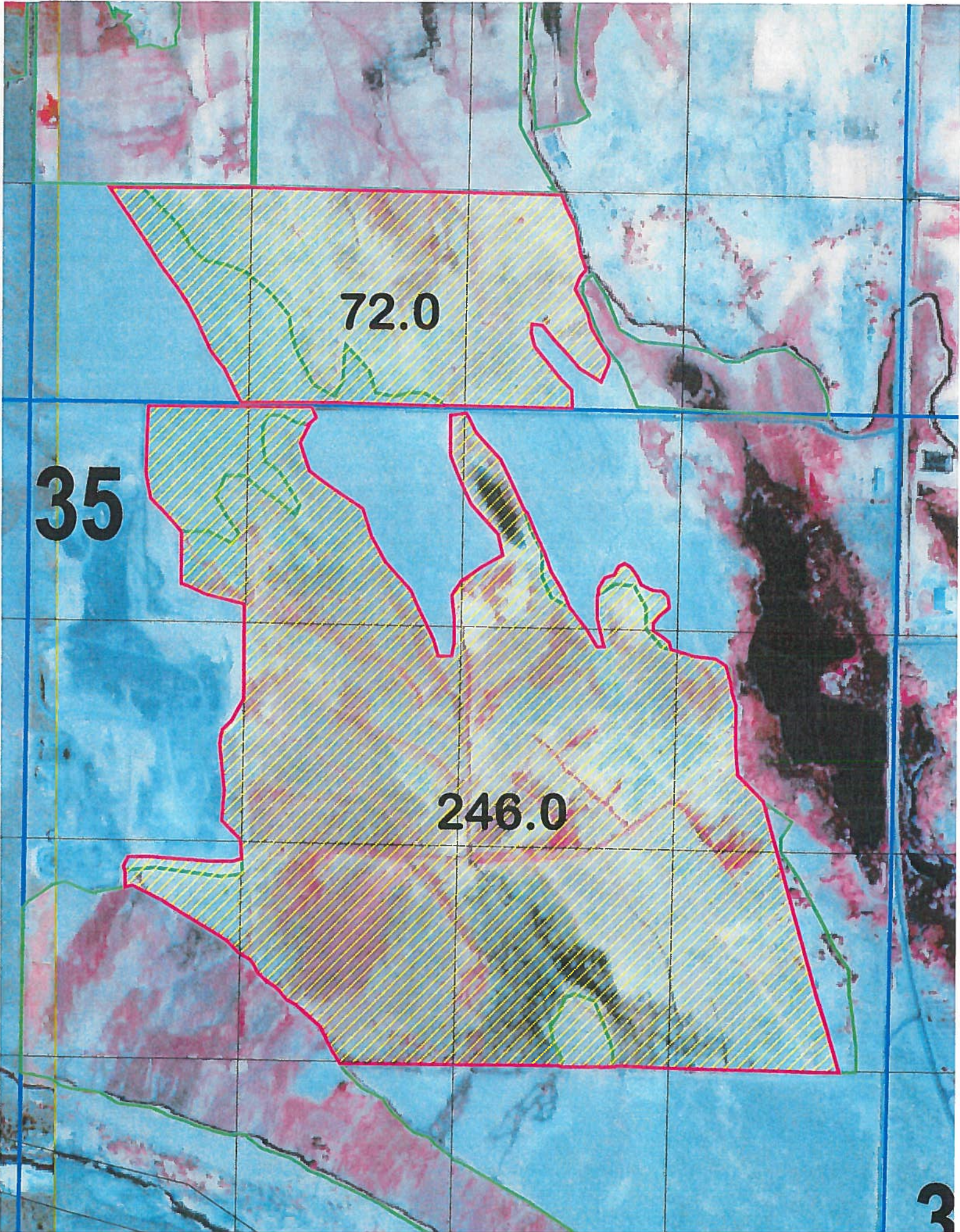
In our prior meeting in Twin Falls with Dave Tuthill, Nick Spencer, et al, the transfer was initially discussed, as well as historical irrigation practices. Issues of the protestants were also discussed. The issues of the protestants have been addressed. Buckeye Farms, Inc. and Western Legends LC (who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

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

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

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

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



8-3-92

CONVEYANCE LOSS - WORSTELL

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

REACH = SECTION OF CHANNEL

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

AVE WIDTH = AVERAGE TOP WIDTH OF REACH

SEEPAGE = SOIL SEEPAGE RATE OF REACH

WORSTELL LOSS = CONVEYANCE LOSS IN REACH BASED ON WORSTELL METHOD

DELIVERY = TOTAL DELIVERIES IN REACH

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

LOSS FACTOR = WORSTELL LOSS/DELIVERY LEFT

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

FLOW = TOTAL FLOW AT BEGINNING OF EACH REACH

* THESE RIGHTS SHARE THIS PORTION:

36-00015

36-00011B

36-00189A

36-00011C

36-11142

36-00011D

36-00198A

36-00033B

36-15157

36-00033C

36-00033D

36-00033E

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

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

COPY

SPLIT REVIEW ANALYSIS - 36-00003

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

November 14, 1997 by Steve Clelland

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

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

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

² Partial Decree issued for this right on March 6, 1997.

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

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

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

SUBCASE NO. 36-00003F

	CLAIM (9/8/88)	AMENDED CLAIM	RECOMMENDATION	OBJECTION
NAME	Kenneth & Helen Marshall *	N/A	Doyt & Roxie Simcoe	#1 - Doyt & Roxie Simcoe #2 - U.S. +
BASIS OF CLAIM	Decree		Decree	
SOURCE	Billingsley Creek		Billingsley Creek	
QUANTITY	0.80 cfs		0.80 cfs	#1 - XX - requests the amount decreed and/or beneficially used. #2 - objection states that quantity should be 0.74 cfs.
PRIORITY DATE	9/10/1884		9/10/1884	#2 - XX -objection states that any water right with an 1884 priority date has been forfeited.
PURPOSE OF USE	Irrigation		Irrigation	MSJ requests irrigation, stockwater, wildlife, recreation, aesthetics and "diversion system maintenance"
PERIOD OF USE	3/15 - 11/115		3/15 - 11/15 Reformatted 6/27/96: Irrigation Season	#1 - XX - objection states that use "begins before 3/15 and beyond 11/15". MSJ requests Irrigation season for irrigation and year round for other uses.
POINT OF DIVERSION	T07S R13E S11		T07S R13E S11	
PLACE OF USE	T07S R13E S27 40.0 acres		T07S R13E S27 40.0 acres	#2 - objection states that the acres should not exceed 37 acres.

remarks	"Portion of the water right 36-00003 of 20.0 cfs."		"Water is delivered through the Buckeye Ditch."	#2 - XX - water right being recommended at all; states water right was forfeited since no irrigation occurred between 1953 and 1964. MSJ requests to delete remark.
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* Change of Ownership filed on 10/10/91 to Doyt & Roxie Simcoe.

+ U.S. dismissed as a party on 6/12/96

CLAIM NUMBERS 36-00003FDATE 10/7/97

TRANSFER NUMBER _____

OBJECTION FILED YesAGENT DJTOTAL ACRES FROM RECOMMENDATION 40GEOGRAPHIC INFO SYSTEM 40

RIGHT NO	TNS	RNG	SEC	NE				NW				SW				SE			
				NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
RECOM	<u>75</u>	<u>13E</u>	<u>27</u>									<u>40</u>							<u>40</u>
GIS												<u>39.96</u>							<u>40</u>
RECOM																			
GIS																			
RECOM																			
GIS																			
RECOM																			
GIS																			

UPDATED

POLYGON #

UPDATED

B36-DBPOU.DBF

B36-DBPOD.DBF

POLYGON CREATED ON 604

ATTRIBUTES OF B36-POU.SHP

ATTRIBUTES OF B36-POD.SHP

P/U CONFLICT yes () no ()P/D CONFLICT yes () no ()READY FOR DECREE yes () no ()SENT FOR DECREE yes () no ()

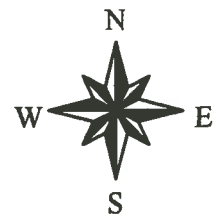
IDAHO DEPARTMENT OF WATER RESOURCES

**36-00003F
SIMCOE**



660 0 660 Feet

TNS 7S, RNG 13E, SEC 27 NESW



● RECOMMENDED POINT OF DIVERSION

RECOMMENDED PLACE OF USE

SECTION LINES &/OR TRACT LINES

QUARTER/QUARTER LINES

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

1996 JUL -1 PM 3:16

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

REPORT REGARDING CLAIM TO WATER RIGHT NO. 36-00003F

In Re SRBA

Twin Falls County Civil Case No. 39576

Sub-Case No. 36-00003F

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources

Karl J. Dreher, Director

David B. Shaw, Adjudication Bureau Chief

David R. Tuthill Jr., Acting Adjudication Bureau Chief

July 1, 1996

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MICROFILMED

DEC 04 1996

REPORT REGARDING CLAIM TO WATER RIGHT NO. 36-00003F

The Director of the Idaho Department of Water Resources (IDWR) submits this report regarding claim to water right no. 36-00003F in response to the request of Special Master Haemmerle, pursuant to Idaho Code §42-1412(4) and the court's Order Re: Contested Claims for Amounts Claimed in Excess of .02 CFS. This report was prepared under the supervision of Karl J. Dreher, Director, David B. Shaw, Adjudication Bureau Chief, and David R. Tuthill Jr., Acting Adjudication Bureau Chief for IDWR. The following persons assisted in the preparation of the following portions of this report:

David B. Shaw, Adjudication Bureau Chief, reviewed and verified this Report Regarding Claim to Water Right No. 36-00003F. The Affidavit of David B. Shaw describes Mr. Shaw's education and work experience, and is incorporated by reference herein. Mr. Shaw also reviewed IDWR's Report Regarding Evaluation of Irrigation Diversion Rates, described below.

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

David R. Tuthill Jr., Acting Adjudication Bureau Chief, prepared IDWR's Report Regarding Consumptive Use for Irrigation in the Hagerman Area, which is incorporated by reference herein. Mr. Tuthill also reviewed this Report Regarding Claim To Water Right No. 36-00003F. The Affidavit of David R. Tuthill Jr. describes Mr. Tuthill's education and work experience, and is incorporated by reference herein.

Steven C. Clelland, Senior Water Resource Agent, investigated and prepared the preliminary recommendation for claim no. 36-00003F. The Affidavit of Steven C. Clelland describes Mr. Clelland's education and work experience, and is incorporated by reference herein. The affidavit also includes a general description of his investigation of claims in the Hagerman area.

I. INVESTIGATION AND RECOMMENDATION OF CLAIMS GENERALLY

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

II. WATER RIGHT NO. 36-00003F

A. Basis of Claim

Claim no. A36-00003F was filed with IDWR by Kenneth W. and Helen L. Marshall on September 8, 1988.¹ A notice of change in ownership signed October 10, 1991 was filed with IDWR, informing IDWR of a change in ownership to Doyt H. and Roxie J. Simcoe. The claim is to a portion of one of three rights decreed to the New International Mortgage Bank in the *New International Mortgage* decree, entered in 1932.² The water rights decreed to the bank are numbered in IDWR's files as water right nos. 36-00001, 36-00002, and 36-00003. The first two rights are to water from Riley Creek, the third is to water from Billingsley Creek. All were decreed for use on the same lands, and all were decreed for irrigation "and for domestic and other purposes thereon." Water right nos. 36-00001 and 36-00002 were claimed by and recommended to Buckeye Farms, Inc.³ Portions of right no. 36-00003 were claimed by and recommended to various claimants.

B. Name and Address of Claimant

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

C. Source of Water

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

The director's report includes the body of water to which the source of the right is tributary for each water right in the director's report, except for rights to ground water. IDWR adopted this standard for the description of the source of water

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

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

³ Objections were filed to both 36-00001 and 36-00002; SF5s have been filed and the special master has issued preliminary special master's reports in both subcases.

rights because there are so many instances, sometimes in the same administrative basin, where different surface water sources bear the same name.⁴

D. Date of Priority

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

E. Point of Diversion

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

F. Purpose of Use

The purpose of use claimed in the notice of claim and recommended in the director's report is irrigation. The objection did not contest the description of the purpose of use. The claimant's motion for summary judgment now seeks to add stockwater, wildlife, recreation, aesthetics, and "diversion system maintenance."⁵

The description of the purposes of use of this right in the decree is ambiguous in that it describes the purposes of use for the three New International Mortgage Bank rights as irrigation "and domestic and other purposes," rather than specifically identifying each purpose of use for each right.⁶ IDWR's investigation confirmed the use of water for irrigation. Neither the claimant nor IDWR's investigation has yielded information that would confirm the beneficial use of water for the other purposes listed in the motion, either pursuant to the right as originally appropriated or as

⁴ IDWR relied upon the following in reaching its conclusion: Idaho Code §42-1411(2) (which provides that the director shall determine the source of the right to the extent the director deems appropriate and proper to define and administer water rights acquired under state law.)

⁵ The filing fee for claims other than small domestic and stockwater claims consists of a \$50.00 flat fee, plus a variable fee of \$1.00 per acre for any claimed irrigation use, plus a per cfs variable fee for other claimed purposes of use. The filing fee paid for this claim was limited to the purposes of use claimed in the notice of claim. Filing fees are set forth in Idaho Code §42-1414 and IDWR's Adjudication Rules, IDAPA 37.03.01 *et seq.*

⁶ IDWR relied upon the following in reaching its conclusion: *Morgan v. Udy*, 58 Idaho 670, 79 P.2d 295 (1938) (a water right decree that omitted the description of the point of diversion necessarily determined the point of diversion but was ambiguous as to its location).

currently used.⁷ Such information is necessary not only to confirm the use but to quantify the amount of water beneficially used for that purpose.

G. Quantity of Water Used

The quantity claimed in the notice of claim and recommended in the director's report is 0.80 cfs. The objection contests the quantity element, but does not state the quantity claimed. The claimant's motion for summary judgment states a quantity of 0.80 cfs, the same as recommended. Any further information as to the basis for IDWR's recommendation as to quantity therefore appears to be unnecessary.

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

Both the notice of claim and director's report state a period of use of 3/15 to 11/15 for irrigation. The claimant's objection states a period of use of 1/1 to 12/31. The claimant's motion for summary judgment states the period of use as "the irrigation season." The *New International Mortgage* decree does not state a period of use for irrigation.

The recommended season of use is consistent with season of use standards for irrigation developed by IDWR for various climatic regions throughout the state, which are based on a 75% chance of a 24 degree Fahrenheit frost. In addition, the director's report included general provision 12b, which allowed use of water for irrigation outside the season of use stated in the description of the individual right subject to certain conditions. In the Memorandum Decision and Order Re: Basin-Wide Issue 5, the Presiding Judge concluded that this general provision was not necessary and would not be decreed. This decision further provided that "all decrees for irrigation in the SRBA shall set the period of use as the "irrigation season." Order, pp. 15-16. The district court denied a subsequent motion for permission to appeal the decision. Pending any further proceedings on the decision, any further statement of the basis for IDWR's recommendation as to the season of use for irrigation appears to be unnecessary.

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

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

I. Legal Description of the Place of Use

The legal description under item 8 in the claimant's motion for summary judgment is the same as the legal description of the place of use for irrigation recommended in the director's report. The motion omits the number of irrigated acres; both the notice of claim and the director's report state 40 acres. The claimant did not object to the recommended place of use for irrigation.

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

J. Annual Volume of Consumptive Use

The notice of claim states an annual volume of consumptive use of 120 AFY, or 3.0 AFY per irrigated acre. The annual volume of consumptive use recommended in the director's report is the same. The claimant's objection contests the recommended consumptive use, but does not state an amount. The claimant's motion for summary judgment states an amount of 180 AFY, or 4.5 AFY per acre. The Affidavit of Charles E. Brockway, submitted by the claimant in support of the motion for summary judgment, states "that 3.75 acre feet per acre per annum is the amount of consumptive use that is reasonable [in the Hagerman area] based upon a yield of ten tons [of alfalfa] per acre." Applying this standard, the total annual consumptive use volume would be 150 AFY.

IDWR developed standards for annual volume of consumptive use for the various climatic areas throughout the state. The standard for the area in which the claimant's place of use is located is 3.0 AFY. IDWR's recommendation is based on this standard. The development of IDWR's standards for annual volume of consumptive use is described in IDWR's Report Regarding Evaluation of Irrigation Diversion Rates. IDWR has conducted further analysis of the annual volume of consumptive use based on further information IDWR received subsequent to its original analysis. The further analysis is described in IDWR's Report Regarding

Consumptive Use for Irrigation in the Hagerman Area. Based on this further analysis, IDWR recommends an annual volume of consumptive use of 3.5 AFY per acre, for a total of 140 AFY for this right.

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

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

WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.

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

In response to the request of the Presiding Judge, IDWR submitted IDWR's Report for September 19, 1995 Status Conference. In this report, IDWR indicated that it had reviewed its use of remarks in the description of the individual water right, both to address concerns identified by the court, and to separate explanatory material from material the Director recommends be included in the decree of water rights pursuant to the 1994 amendments to the adjudication statute.⁸ The remark identifying the common name of the ditch through which the water right is delivered is explanatory material.

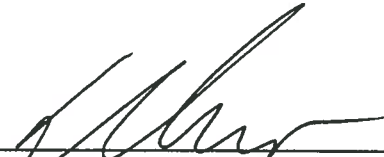
⁸ See Idaho Code §42-1411 (which addresses the form and content of director's reports).

REPORT REGARDING CLAIM TO WATER RIGHT NO. 36-00003F

State of Idaho)
) ss.
County of Ada)

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

That I am the Adjudication Bureau Chief for IDWR, that I have read the foregoing report, know its contents, and that the statements contained therein are true to the best of my knowledge and belief.



David B. Shaw

Subscribed and sworn to before me this 15th day of July, 1996.



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

Certificate of Service

I certify that on the 15th day of July, 1996, I hand-delivered copies of the foregoing document, including all attachments, to the following:

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



Person mailing document(s)

APPENDIX A

A. INVESTIGATION AND RECOMMENDATION OF CLAIMS GENERALLY

To promote the accuracy and consistency of water right decrees, and to minimize the burden on the court and the claimants in a water right adjudication, the state has made the specialized expertise of IDWR available through IDWR's investigation and reporting function.¹

The resources the state has made available for this function, however, are limited. IDWR has the duty to conduct a reasonable investigation within the spending authority granted by legislative appropriation. Those resources are not sufficient for IDWR to exhaustively investigate each and every potentially relevant fact regarding each and every claim and to make a conclusive determination of the water right. Rather, IDWR reviews the claim and the information already available to IDWR, and conducts such further investigation as is reasonable to determine whether there is sufficient information to support recommendation of the water right to be decreed.

To make the most efficient use of the available resources, IDWR must make determinations as to what is a reasonable level of investigation for various classes of claims prior to making a recommendation to the court regarding any particular claim. IDWR has employed two primary mechanisms to identify a reasonable level of investigation. First, the statutes set criteria and IDWR has developed standards for various types of uses, requiring less information to support a claim to water within those standards and more information to support a claim outside those standards. Second, IDWR has adopted a "tier" approach, identifying classes of claims which for various reasons merit further investigation.

Generally, with claims based on beneficial use², IDWR conducts a "licensing type" field exam, which includes confirmation of the source, point(s) of diversion, purpose(s) of use, place(s) of use, and an examination of the water delivery system and the quantity of water beneficially used. IDWR also contacts the claimant to obtain information supporting the priority date claimed. This level of examination is conducted because there has been no prior administrative or judicial

¹ Idaho Code §§ 42-1410 and 42-1411.

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

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

Generally, for water rights that have been previously confirmed by license or decree, IDWR begins its examination by comparing the claim to information already available to IDWR. Other information includes, for example, IDWR's decree files; license, permit and transfer files; remotely sensed data, including Landsat imagery of irrigated acres and aerial photography; watermaster reports; applicable laws and IDWR's interpretation of those laws in light of the water resource policies of the state; etc. If there are discrepancies between the claim and information already available to IDWR, IDWR conducts further investigation to resolve the discrepancy, which generally includes a field exam and/or contacting the claimant for further information. Thus, where there has been a prior judicial or administrative confirmation of the existence and extent of a water right, IDWR uses information already available to IDWR to limit its review to issues identified by its discrepancy analysis.

Finally, IDWR uses both the court-ordered notice of error process⁴ and the statutory objection process to identify claims which merit further review. If this further review yields new information that supports a different description of the water right, then IDWR will revise its recommendation (in the case of a notice of error) or submit a supplemental director's report or offer a standard form 5 (in the case of an objection), consistent with the new information.⁵

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

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

⁴ The notice of error process, as originally conceived and implemented, was limited to disagreements between the claimant and IDWR as to fairly straight-forward "errors", such as clerical errors or other readily verifiable matters. Based on its experience in the test basins, IDWR has subsequently recommended that the notice of error process be expanded to address any type of perceived error, as well as to address disagreements between claimants.

⁵ This "tiered" approach to determining a reasonable level of investigation is embodied in the statutory framework for water right adjudications. See §42-1410 (which provides for the discretion of the director in determining the level of IDWR's investigation, and allows but does not require the agency to conduct hearings), and §42-1412 (which authorizes IDWR to submit supplemental reports, and authorizes the court or the parties to request further investigation by IDWR in contested subcases). The tiered approach embodied in the statutory framework promotes efficiency and minimizes the burden on the court and the claimants by providing a report/objection process to identify disputed matters, and reserving the highest level of investigation for disputed matters.

B. METHODOLOGY TO DETERMINE IRRIGATED ACREAGE

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

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

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

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

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

aerial photos¹⁰.

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

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

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

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

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

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

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

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

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

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

MEMORANDUM

TO: Claim Files, see below
FROM: Douglas Jones, Water Rights Supervisor, Adjudication Bureau
DATE: July 12, 1996
RE: "706" reports submitted to court

In response to an order from the court, resulting from the Motions for Summary Judgement filed on the subcases, IDWR has prepared the following documents:

- 1) DIRECTOR'S SUPPLEMENTAL REPORT
- 2) REPORT REGARDING QUANTIFICATION OF SMALL DOMESTIC AND STOCKWATER USES
- 3) REPORT REGARDING CONSUMPTIVE USE IN THE HAGERMAN AREA
- 4) REPORT REGARDING EVALUATION OF IRRIGATION DIVERSION RATES
- 5) HAZEN, W; GIBSON, G; NEIBLING, H; CROP WATER REQUIREMENTS IN THE HAGERMAN VALLEY; IN A REPORT TO HAGERMAN WATER RIGHT OWNERS ASSOCIATION
- 6) GUIDELINES FOR THE EVALUATION OF IRRIGATION DIVERSION RATES ("HUBBLE REPORT") IN A REPORT TO IDWR
- 7) EVALUATION WORKBOOK FOR IRRIGATION DIVERSION RATES
- 8) AFFIDAVITS FROM:
 - a. David B. Shaw
 - b. Steve Clelland: As to investigation of claims in the Hagerman area
 - c. Helen Harrington-Thornton: Regarding investigation of claims in the Hagerman area
 - d. Marci Sterling
 - e. Jeff Peppersack
 - f. David R. Tuthill, Jr
 - g. Carter Fritschle: Regarding planimeter measurements of claims 36-00064B and 36-00079
- 9) REPORTS REGARDING ... (each specific claim, 24 in all)

Submittals 1-8 can be referenced in the file cabinet section titled "SPECIAL REPORTS" which follows the irrigation claims within Basin 36. The reports regarding specific rights can found in the file jacket for that right.

CLAIMS

36-00003A	36-00003C	36-00003E	36-00003F	36-100034B
36-00035J	36-00039C	36-00039E	36-00039J	36-00039N
36-00047	36-00061	36-00062	36-00063	36-00064B
36-00079	36-00085A	36-00086C	36-00092	36-00103F
36-00106	36-00108B	36-10283B	36-10409	

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MAPS

PHOTOS

MISC

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

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

Case No. 36-00003F -0001

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

RESPONSE TO OBJECTION

Petitioner,)

vs.)

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

Respondents.)
_____)

I. GENERAL INFORMATION

1. Person responding to objection:

Name: R. KEITH HIGGINSON, DIRECTOR

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

Briefly describe your interest in this water right:

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

(Over)

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2. Person who filed objection:

Name: DOYT H & ROXIE J SIMCOE
Address: 562 SUNRISE BLVD N
TWIN FALLS ID 83301

3. If this response is filed by an attorney:

Attorney Name(s): NICHOLAS B. SPENCER

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

Attorney Phone No.: (208) 327-7900

II. STATEMENT OF THE RESPONSE

3. ☒ Quantity: I respond to the objection concerning:
- 3a. ☒ The total quantity of water used in cubic feet per second.
8. ☒ Period of Year: I respond to the objection concerning the period of year when water is used or is necessary for the purpose stated.
10. ☒ Consumptive Use: I respond to the objection concerning the annual volume of consumptive use.
14. ☒ Other: I respond to the objection concerning:

ALL MATTERS RAISED IN THE CLAIMANT'S ANSWER,
AFFIRMATIVE DEFENSES, AND PRAYER FOR RELIEF.

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REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection items 3 and 3.a, and all allegations of the objection regarding those items, IDWR responds as follows: (1) it recommended the amount of water it determined was being beneficially used; (2) the claimant is not entitled to any amount greater than that which is beneficially used (Idaho Code Secs. 42-104 and 42-1402).

In further response to this objection item, IDWR responds that it recommended this element of the water right as claimed, and no different amount is stated in the objection. This portion of the objection should therefore be stricken.

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

In further response to this objection item, IDWR responds that it recommended the season of use as claimed, and no longer season of use is stated on the objection. This portion of the objection should therefore be stricken.

In response to Statement of the Objection item 10 and all allegations of the objection regarding that item, IDWR responds as follows: (1) The decree asserted by the claimant did not set

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

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

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

CHANGES TO THE DIRECTOR'S REPORT

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

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

No. of
Pages

Notice of Claim No. A36-00003F

3

IDWR's Response to Answer, Affirmative Defenses and Prayer
for Relief of Claimant

4

(Over)

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VERIFICATION (Must be Completed)

State of IDAHO

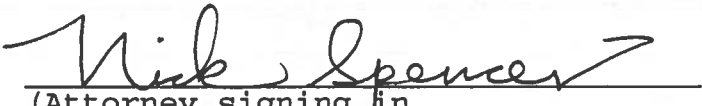
County of ADA

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

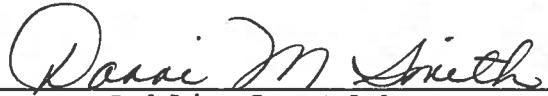
That R. Keith Higginson, in his official capacity as director of the Idaho Department of Water Resources, is a party to this proceeding, as defined by I.C. 42-1401A(1) and (7); that I am the Adjudication Bureau Chief for IDWR and am authorized by R. Keith Higginson, in his official capacity as director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


Signature of person filing response

By:


(Attorney signing in representative capacity)

Subscribed and sworn to before me this 10th day of September, 1993.


Notary Public for Idaho

Residing at: _____

My Commission expires: _____

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

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of September, 1993, I mailed the original and copies of the foregoing response, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepared and addressed as follows:

1. Original to:

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

2. One copy to the owner of the water right, and you must fill in the following information:

See No. 3

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

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

4. One copy to:

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



Signature of Respondent or attorney
mailing on Respondent's behalf

County of Twin Falls State of Idaho

 Deputy Clerk

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

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

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

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

OBJECTION

Petitioner,

vs.

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

Respondents.

INSTRUCTIONS

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

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

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

I. GENERAL INFORMATION

Please fill in the following information:

1. Person objecting:

Name: Doyt H. and Roxie J. Simcoe

Address: 562 Sunrise Blvd N.

Twin Falls, Idaho 83301

Briefly describe your interest in this water right:

Decreed water right pursuant to March 22,

1932 decision in New International Mortgage

Bank vs. Idaho Power Company with a priority

date of September 10, 1884.

2. Owner of the water right:

Name: Doyt H. and Roxie J. Simcoe

Address: 562 Sunrise Blvd N.

Twin Falls, Idaho 83301

3. If this objection is filed by an attorney:

Attorney Name: Hepworth, Nungester & Lezamiz

Attorney Address: P. Parker & Patrick D. Brown

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

Attorney Phone No.: (208)734-7510; Fax: (208)734-4115

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

II. STATEMENT OF THE OBJECTION

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

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

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12. ☐ Water Right Recommendation: I object to:
- a. ☐ this water right being recommended at all; or
- b. ☐ this water right not being recommended.
13. ☐ Description of Reservation: I object to the legal description of the reservation.
14. ☒ Other: I object to: See Attached
- _____
- _____
- _____
- _____

REASONS SUPPORTING EACH BOX CHECKED

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

Box 3 - the quantity recommended is less than the amount

decreed and beneficially used; Box 8 - the period of use

begins before 3-15 and beyond 11-15; Box 10 - see response to

Box 3.

CHANGES TO THE DIRECTOR'S REPORT

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

The report should be amended to increase the quantity of

water to that amount decreed and beneficially used; to expand

the period of use; and to increase the corresponding

consumptive use.

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

REASONS SUPPORTING EACH BOX CHECKED

Box 3 and 3a. Quantity. Claimants admit the Director's Report recommends a quantity of .08 cfs and that the Director's recommendation may be based upon an assumption of 40 acres at .02 cfs per acre. Claimants deny that the Director's recommendations are accurate, either in number of acres or in quantity required or actually used. Claimants lack sufficient knowledge or information to know what the NAPP photography shows. Claimants deny all other averments regarding total quantity of use.

Diversion volume at water sources. Claimants admit the Director's Report failed to limit the total acre feet of annual diversion from the water source but deny that the Director's Report should do so. Claimants admit that the "General Provisions" specify that the maximum acre feet of water allowed annually at the headgate is 4.0 acre feet but deny that the "General Provisions" apply to the Claimants right or that the "General Provisions" are valid and lawful. Claimants lack sufficient knowledge and information on which to form a belief as to the truth of what the Director intends and therefore deny the same. Claimants deny all other averments concerning the diversion volume at the water source.

Conveyance losses. Claimants admit the conveyance loss quantified by IDWR is inaccurate and inappropriate. Claimants further admit that IDWR could have used computerized analysis to calculate conveyance loss values and could have used variable seepage rates and widths. However, claimants deny that the conveyance loss calculations are relevant to or could be lawfully applied to claimant's right and therefore deny the same. The claimants deny all other averments concerning conveyance losses.

4. Priority date. Claimants admit the Director's Report recommends a priority date of September 10, 1884, and deny that the priority date is not substantiated for the right. Claimants lack sufficient knowledge and information upon which to form a belief as to the truthfulness of what the aerial photos or other photoquads show and therefore deny the same. The claimants deny that the right has ever been forfeited or abandoned. Claimants deny all other averments regarding priority date.

9. Place of Use. Claimants lack sufficient information or knowledge to know whether the 1987 aerial photography shows only 37 irrigated acres and therefore deny the same. Claimants admit that ten acres were brought under irrigation prior to 1974 and deny that other acres were brought under irrigation at a later date. Claimants deny that there should be two water rights. Claimants lack sufficient knowledge or information to presently form a belief as to whether the 37 acres is the appropriate acreage and therefore deny the same. Claimants deny all other averments concerning place of use.

10. **Consumptive Use.** Claimants presently lack sufficient knowledge and information to know whether only 37 acres are irrigated and therefore deny the same. Claimants deny all other averments concerning consumptive use.

12. **Water Right Recommendation.** Claimants deny all averments made concerning the water right being recommended or not being recommended at all.

14. **Other.** The United States Department of Justice makes various averments concerning the applicability of "General Provisions" to the United States apparently on the grounds that they are beyond the scope of the McCarran Amendment. Claimants deny that any such averments are relevant to or related to the specific water right involved in this subcase and therefore deny the same and submit that such averments should be stricken from the objection of the United States Department of Justice.

Claimants have set out their position with respect to "General Provisions" in their objection filed to this water right. Claimants are attaching a true and accurate copy of Claimant's Objection to this Response and incorporate it by reference as Exhibit "A". The Claimants' position regarding "General Provisions" is set out in that Objection.

VERIFICATION (Must be Completed)

State of Idaho

County of Twine Falls.

Patrick D. Brown

(Name of person filing objection)
sworn, upon oath, deposes and says:

That I am the person or entity filing this response (as listed on Page 2, Section 1, "Person responding to objection"), as defined by I.C. Sec 42-1401A(1) and (7), and I have read this response, know its contents and that the statements are true to the best of my knowledge and belief.

Signature of party/claimant
filing response

By: PA

(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 15th day of September,
1993.

Notary Public for Idaho

Residing at: Twine Falls

My Commission Expires: 9-20-94

INSTRUCTIONS FOR MAILING

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

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

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CERTIFICATE OF MAILING

I hereby certify that on the 1st day of September, 1993, I mailed the original and copies of the foregoing response, including all attachments, to the following persons, by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

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

2. One copy to the owner of the water right, and you must fill in the following information:

Name: Doyt H. & Roxie J. Simcoe
Address: 562 Sunrise Blvd. North
Twin Falls, Idaho 83301

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

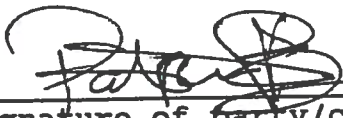
Name: U.S. Dept. of Justice
Address: 550 West Fort Street, Box 33
Boise, Idaho 83734

4 One copy to:

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

5 One copy to:

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



Signature of party/claimant
or attorney

II. STATEMENT OF THE RESPONSE

Please check each "box" which identifies your response.

1. ☐ **Name and Address:** I respond to the objection concerning the name and/or address of the owner of the water right.
2. ☐ **Source:** I respond to the objection concerning the source of water.
3. ☒ **Quantity:** I respond to the objection concerning:
 - a. ☒ the total quantity of water used in cubic feet per second; or
 - b. ☐ the total quantity of water stored in acre-feet per year; or
 - c. ☐ the total quantity of water reserved for each and every purpose, including all present and future uses.
4. ☒ **Priority Date:** I respond to the objection concerning the priority date.
5. ☐ **Points of Diversion:** I respond to the objection concerning the legal description of the point(s) of diversion.
6. ☐ **Instream Flow:** I respond to the objection concerning the legal description of the beginning and ending points of the instream flow.
7. ☐ **Purpose(s) of Use:** I respond to the objection concerning the purpose(s) of use.
8. ☐ **Period of Year:** I respond to the objection concerning the period of year when water is used or is necessary for the purpose stated.
9. ☒ **Place of Use:** I respond to the objection concerning:
 - a. ☒ the legal description of the place of use; or
 - b. ☐ the number of irrigated acres within each forty (40) acre subdivision.
10. ☒ **Consumptive Use:** I respond to the objection concerning the annual volume of consumptive use.
11. ☐ **Remarks:** I respond to the objection concerning the "remarks" listed with the water right.
12. ☒ **Water Right Recommendation:** I respond to the objection concerning:
 - a. ☒ this water right being recommended at all; or
 - b. ☐ this water right not being recommended.

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13. ☐ **Description of Reservation:** I respond to the objection concerning the legal description of the reservation.

14. ☒ **Other:** I respond to the objection concerning: _____

(See Page 7-8)

REASONS SUPPORTING EACH BOX CHECKED

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

(See Page 7-8)

CHANGES TO THE DIRECTOR'S REPORT

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

See Objection filed by claimant

Please note that you should attach copies of documents which support your response. Note on each document the "box number" it supports.

☒ Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary. Exhibit "A",
Objection filed by Claimant (15 pages)

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Department of Water Resources
Adjudication Bureau

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

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

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

Petitioner,

vs.

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

Respondents.

Case No. 36-00003F
(The water right number
you are responding to
must be inserted)

STANDARD FORM 2

RESPONSE TO OBJECTION

INSTRUCTIONS

This form must be used to file a response to any objection filed against a water right recommended in a Director's Report. You may respond to all objections filed against one water right, using one response form. If you choose this option, your response should cover every issue raised in the objections. To respond to objections filed against more than one water right, you must file a separate response form for each water right. Forms may be obtained from the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you do, the text must be on the front and back of each page exactly as it appears here. The response must be received by the court on or before the deadline specified in the Notice of Filing the Director's Report that IDWR mailed to you. Follow the Instructions for Mailing this response (Page 5), or the court will not accept it for filing.

This form has been adopted by the court in SRBA Administrative Order 1 (amended June 21, 1993), Section 4, which may be consulted for further information.

Any party filing 25 (twenty-five) or more responses must make an appointment with the Clerk of the SRBA Court.

(Over)

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

I. GENERAL INFORMATION

Please fill in the following information:

1. Party/Claimant responding to objection:

Name: Doyt H. Simcoe and Roxie J. Simcoe
Address: 562 Sunrise Blvd. North
Twin Falls, Idaho 83301

Phone: Work: _____ Home: (208) 733-5037

Briefly describe your interest in this water right:

Owner/Claimant of water right

If this response is filed by an attorney:

Attorney Name: Patrick D. Brown
Attorney Address: Hepworth, Nungester & Lezamiz
P.O. Box 389, Twin Falls, ID 83303
Attorney Phone No.: (208) 734-7510; Fax#: (208) 734-4115

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

2. Party/Claimant who filed objection:

Name: U.S. Dept. of Justice/Env. & Nat. Resources Div.
Address: 550 West Fort Street, Box 33
Boise, Idaho 83734

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

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

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

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

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

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

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

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

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

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

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

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



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

Right Owners, Inc.'s compendium "A".

VERIFICATION (Must be Completed)

State of Idaho

County of Shoshone

Doug H. Simcoe, being first duly
(Name of person filing objection)
sworn, upon oath, deposes and says:

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

Doug H. Simcoe
Signature of person filing objection

By: [Signature]
(Attorney signing in representative capacity)

Subscribed and sworn to before me this 20 day of April,
1993.



LINDA M. ROUSSEAU

Linda M. Rousseau
Notary Public for Idaho

Residing at: Shoshone

My Commission Expires: 9-11-93

(Over)

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INSTRUCTIONS FOR MAILING

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

CERTIFICATE OF MAILING

I hereby certify that on the 28 day of April, 1993, I mailed the original and copies of the foregoing objection, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepaid and addressed as follows:

1. Original to:

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

2. One copy to the owner of the water right, and you must fill in the following information:

Owner name: Doyt H. and Roxie J. Simcoe
Owner's address: 562 Sunrise Blvd North
Twin Falls, Idaho 83301

3. One copy to:

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

4. One copy to:

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



Signature of Objector or attorney
mailing on Objector's behalf

CHANGES TO DIRECTOR'S REPORT, page 4

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

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Question 14., page 4, Other

I.

GENERAL RESPONSE

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

II.

DESCRIPTIVE SUMMARY

(DIRECTOR'S REPORT PART I)

(hereinafter DRP-I)

(DRP-I at first unnumbered page)

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

III.

TABLE OF CONTENTS

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

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

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

IV.

INTRODUCTION

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

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

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

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

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

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

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

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

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

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V.

DESCRIPTION OF THE WATER SYSTEM: BASIN 36

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

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

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

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

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

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

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

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

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

VI.

GENERAL PROVISIONS

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

(DRP-I at page 9)

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

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

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

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

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

The objectors admit paragraphs a. and b.

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

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

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

The objectors deny the averments within this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(DIRECTOR'S REPORT PART II)

I.

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

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

(DIRECTOR'S REPORT PART III)

I.

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

VIII.

AFFIRMATIVE DEFENSES

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

AFFIRMATIVE DEFENSE NO. 1

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

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

AFFIRMATIVE DEFENSE NO. 2

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

AFFIRMATIVE DEFENSE NO. 3

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

AFFIRMATIVE DEFENSE NO. 4

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

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

AFFIRMATIVE DEFENSE NO. 5

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

AFFIRMATIVE DEFENSE NO. 6

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

AFFIRMATIVE DEFENSE NO. 7

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

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AFFIRMATIVE DEFENSE NO. 8

The Directors' Report fails to state a claim to the extent the same asserts a forfeiture, abandonment, prescriptive or adverse acquisition or loss, or loss resulting from estoppel, of the objectors' water right in the absence of any fact upon which forfeiture, abandonment, prescriptive or adverse acquisition for loss, or loss resulting from estoppel, may be based or asserted.

AFFIRMATIVE DEFENSE NO. 9

The objectors' water right is an incorporeal form of real property, as defined by Idaho Code Sections 7-703, 73-114, 55-101, and like statutes, and, as such, pursuant to Idaho Code Section 7-904, et. seq., the actions of the Director in attempting to limit, reduce and/or regulate such rights, and the assertion of some inconsistent proprietary ownership or right to use or control by the State of Idaho, constitutes an unauthorized and invalid taking of private property without the payment of just compensation, or compliance with statutory requirements, all in violation of Title 7, Chapter 7, Idaho Code.

AFFIRMATIVE DEFENSE NO. 10

The actions of the Director, the Department and their agents, servants and employees in recommending, limiting, reducing and/or regulating objector's water rights, either as alleged in the Director's Report or as in fact applied, violates objectors' rights as secured by Art. 1, Section 1; Art. 15, Sections 3, 4 and/or 5; and/or as otherwise provided in the Constitution of the State of Idaho.

AFFIRMATIVE DEFENSE NO. 11

The various allegations, statements and assertions contained in the Director's Report concerning the Department and/or the Director's position or intentions with regard to the adjudication, as well as the implementation of statutes and/or regulations, as well as the administration of water or management of water rights or claims to the beneficial uses of water, if implemented, constitute a violation of various provisions the United States and Idaho constitutions, and/or a violation of the letter, spirit and/or intent of various statutes enacted by the legislature, and/or constitute an exercise of purported authority or powers either in excess of those conferred by law, or in a manner inconsistent with those conferred by law, or both.

AFFIRMATIVE DEFENSE NO. 12

The individual recommendations relating to the specific water right of the objectors as set forth in the Director's Report are (1) not based upon substantial evidence and/or are not, in fact, the product of any reasonable, complete or accurate investigation as required by law; (2) are the product of arbitrary and capricious action on the part of the Department or the Director; (3) have been made in excess of the constitutional and statutory authority of the Department and the Director; (4) have been made upon an unlawful and invalid procedure; (5) are affected by various and sundry errors of law; and/or (6) are clearly erroneous in view of the reliable, probative and substantial evidence.

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AFFIRMATIVE DEFENSE NO. 13

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

AFFIRMATIVE DEFENSE NO. 14

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

AFFIRMATIVE DEFENSE NO. 15

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

AFFIRMATIVE DEFENSE NO. 16

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

AFFIRMATIVE DEFENSE NO. 17

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

AFFIRMATIVE DEFENSE NO. 18

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

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

AFFIRMATIVE DEFENSE NO. 19

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

AFFIRMATIVE DEFENSE NO. 20

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

AFFIRMATIVE DEFENSE NO. 21

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

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AFFIRMATIVE DEFENSE NO. 22

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

AFFIRMATIVE DEFENSE NO. 23

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

AFFIRMATIVE DEFENSE NO. 24

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

AFFIRMATIVE DEFENSE NO. 25

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

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

AFFIRMATIVE DEFENSE NO. 26

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

AFFIRMATIVE DEFENSE NO. 27

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

WHEREFORE, the objectors pray for judgment as follows:

1. That the State of Idaho take nothing by reason of its Directors' Report, and that this action, and any claims asserted against objectors, be dismissed.

2. That a decree be entered adjudicating the existence, validity, amount and priority of objectors' water rights in accordance with objectors' claims.

3. That to the extent the acts of the Department or Director constitute a taking of objectors' property for public use, that objectors be allowed and awarded just compensation therefor.

4. That the objectors be allowed all costs of suit and reasonable attorney fees incurred herein.

5. For such further relief to which the Court finds objectors justly entitled.

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(WATER\21530ANS)

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A36-00003F
Date Received: 9/08/1988
Receipt No: S002116
Received By: SCC

COPY

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: KENNETH W. MARSHALL 208-733-3983
Address: 185 BLAIR DR.
TWIN FALLS, ID 83301

OR

Name: HELEN L. MARSHALL 208-733-3983
Address: 185 BLAIR DR.
TWIN FALLS, ID 83301

2. Date of Priority: SEP 10, 1884

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
07S	13E	11	SE	SE	NE		GOODING

5. Description of diverting works:
VIA BUCKEYE DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.800		

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

8. Total consumptive use is 120.0 Acre Feet Per Annum.

9. Non-irrigation uses:

A36-00003F

Page 1

Date: 09/08/88

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JAN 20 1993

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10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	13E	27	NE	SW		IRR	40.0
Section Acres							40.0
Total Acres							40.0

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:
NONE

14. Remarks:
PORTION OF THE WR 36-0003 OF 20.0 CFS

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date: 3/22/1932

NEW INTERNATIONAL MORGAGE BANK
Decree Plaintiff

vs

IDAHO POWER COMPANY
Decree Defendant

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JAN 20 1993

COPY

16. Signature(s)

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

Number of attachments: 1

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): Kenneth W. Marshall Date: 9/8/88
Date: _____

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 8th day

of September 19 88

Roxanne Storey
Notary Public

Seal

Residing at Buhl, Id

My Commission Expires 6-30-94

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JAN 20 1993

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

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

Case No. 36-00003F -0002

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

RESPONSE TO OBJECTION

Petitioner,)

vs.)

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

Respondents.)
_____)

I. GENERAL INFORMATION

1. Person responding to objection:

Name: R. KEITH HIGGINSON, DIRECTOR

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

Briefly describe your interest in this water right:

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

(Over)

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2. Person who filed objection:

Name: US DEPT OF JUSTICE
Address: ENVT & NAT RESOURCES DIV
550 W FORT ST BOX 33
BOISE ID 83734

3. If this response is filed by an attorney:

Attorney Name(s): NICHOLAS B. SPENCER

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

Attorney Phone No.: (208) 327-7900

II. STATEMENT OF THE RESPONSE

3. ☒ Quantity: I respond to the objection concerning:
- 3a. ☒ The total quantity of water used in cubic feet per second.
4. ☒ Priority Date: I respond to the objection concerning the priority date.
9. ☒ Place of Use: I respond to the objection concerning:
- 9a. ☒ The legal description of the place of use.
10. ☒ Consumptive Use: I respond to the objection concerning the annual volume of consumptive use.
12. ☒ Water Right Recommendation: I respond to the objection concerning:
- 12a. ☒ This water right being recommended at all.
14. ☒ Other: I respond to the objection concerning:

GENERAL PROVISIONS

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection items 3, 3.a, 9, 9.a, and 10, and all allegations of the objection regarding those items, IDWR responds as follows: (1) the recommended water right accurately describes the place of use of the right; (2) it recommended the correct volume of consumptive use for the right; (3) it recommended the correct volume of consumptive use for the right. In further response to these objection items IDWR admits that the USGS Hagerman 7.5 minute orthophoto quadrangle shows approximately 10 acres of irrigation in the NESW of Section 27, T07S, R13E, on August 4, 1974. IDWR denies that this is sufficient information from which to conclude that the balance of land in the NESW of Section 27 was not irrigated prior to the 1974 irrigation season.

In response to that portion of objection item 3.a addressing diversion volume, IDWR admits that:

1. The recommendation of this right states a maximum annual consumptive use volume for this right and other rights used in combination with this right at a rate of 3.0 AFY per acre.
2. The recommendation of this right does not state a maximum annual diversion volume.
3. General Provision 13 provides that the maximum annual volume of diversion required at the field headgate for irrigation of lands in Basin 36 is 4 acre feet per year (AFY) per acre.
4. General Provision 13 further provides that where diversion volume is not stated for water rights or portions of water rights for irrigation purposes, 4 AFY is the diversion volume measured at the point of diversion that is reasonably required for irrigation unless a higher annual diversion volume is reasonably required under currently existing conditions due to conveyance losses, method of irrigation, or field conditions, as determined by the director.
5. It is the intent of this general provision that: a) where maximum annual diversion volume is not stated for a right, and b) if determination of diversion volume becomes necessary at some later date for the administration of water rights, and c) the water right has a diversion rate in excess of .02 cfs per acre, then d) the maximum annual diversion volume will be proportionately in excess of 4.0 AFY per acres.

(Over)

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IDWR denies that determination of annual diversion volume of each surface water right is currently necessary for the administration of water rights, and further denies that administration of all surface water rights based on annual diversion volume is currently necessary or reasonable.

In response to that portion of objection item 3.a regarding conveyance loss methodology, IDWR responds that the conveyance loss remark identifies the portion of the total diversion rate that is in excess of .02 cfs per acre, and which was found to be beneficially used based on actual, reasonably conveyance losses. The conveyance loss limitation does not define the amount of water that is lost in conveyance between the point of diversion and place of use. IDWR's conveyance loss methodology is a reasonably accurate method to estimate conveyance losses based on typical values for the components of the methodology.

In response to Statement of the Objection item 4, and all allegations of the objection regarding that item, IDWR responds as follows: The right was decreed in the New International Mortgage v. Idaho Power Company decree (U.S.D.C., Idaho, Equity Case No. 1602, decree entered March 23, 1932). IDWR recommended the priority date decreed for this water right. IDWR lacks sufficient information to form a belief as to the truth of the objector's assertions regarding the priority date in the attachment to the objection and therefore denies the same. IDWR denies that the matters asserted provide sufficient information to conclude that the priority date recommended for this right is in error.

In response to Statement of the Objection items 12 and 12.a, and all allegations of the objection regarding those items, IDWR responds as follows: IDWR denies these portions of the objection.

In response to Statement of the Objection item 14 and all allegations of the objection regarding this item, IDWR responds as follows.

The matters raised in this portion of the objection are totally irrelevant to the water right being objected to. It is inappropriate for an objector to assert in an objection to another claimant's water right objections regarding the application of general provision upon the objector's own water rights. The objector should raise those matters in objections to its own water rights. This portion of the objection should therefore be stricken.

In further response to this objection item, IDWR responds as follows: IDWR denies this portion of the objection.

IDWR denies all portions of the objection not admitted herein.

CHANGES TO THE DIRECTOR'S REPORT

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

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

No. of
Pages

The notice of claim is attached to IDWR's response to Objection No. 36-00003F-0001

(Over)

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401-1-132V
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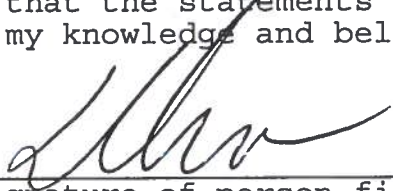
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

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

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



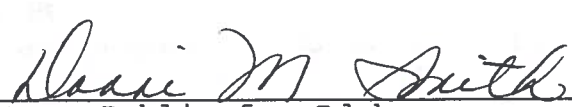
Signature of person filing response

By:



(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 10th day of September, 1993.



Notary Public for Idaho

Residing at: _____

My Commission expires: _____

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

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of September, 1993, I mailed the original and copies of the foregoing response, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepared and addressed as follows:

1. Original to:

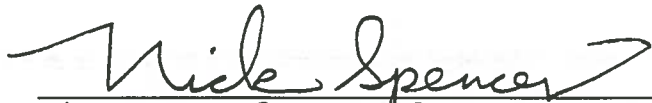
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

2. One copy to the owner of the water right, and you must fill in the following information:

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

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

Name: US DEPT OF JUSTICE
Address: ENVT & NAT RESOURCES DIV
550 W FORT ST BOX 33
BOISE ID 83734



Signature of Respondent or attorney
mailing on Respondent's behalf

RECEIVED

SEP 11 1993

Department of Water Resources
Adjudication Bureau

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

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

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

Petitioner,

vs.

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

Respondents.

Case No. 36-00003F
(The water right number
you are responding to
must be inserted)

STANDARD FORM 2

RESPONSE TO OBJECTION

INSTRUCTIONS

This form must be used to file a response to any objection filed against a water right recommended in a Director's Report. You may respond to all objections filed against one water right, using one response form. If you choose this option, your response should cover every issue raised in the objections. To respond to objections filed against more than one water right, you must file a separate response form for each water right. Forms may be obtained from the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you do, the text must be on the front and back of each page exactly as it appears here. The response must be received by the court on or before the deadline specified in the Notice of Filing the Director's Report that IDWR mailed to you. Follow the Instructions for Mailing this response (Page 5), or the court will not accept it for filing.

This form has been adopted by the court in SRBA Administrative Order 1 (amended June 21, 1993), Section 4, which may be consulted for further information.

Any party filing 25 (twenty-five) or more responses must make an appointment with the Clerk of the SRBA Court.

(Over)

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

I. GENERAL INFORMATION

Please fill in the following information:

1. Party/Claimant responding to objection:

Name: Doyt H. Simcoe and Roxie J. Simcoe

Address: 562 Sunrise Blvd. North
Twin Falls, Idaho 83301

Phone: Work: _____ Home: (208) 733-5037

Briefly describe your interest in this water right:

Owner/Claimant of water right

If this response is filed by an attorney:

Attorney Name: Patrick D. Brown

Attorney Address: Hepworth, Nungester & Lezamiz
P.O. Box 389, Twin Falls, ID 83303

Attorney Phone No.: (208) 734-7510; Fax#: (208) 734-4115

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

2. Party/Claimant who filed objection:

Name: U.S. Dept. of Justice/Env. & Nat. Resources Div.

Address: 550 West Fort Street, Box 33
Boise, Idaho 83734

II. STATEMENT OF THE RESPONSE

Please check each "box" which identifies your response.

1. ☐ **Name and Address:** I respond to the objection concerning the name and/or address of the owner of the water right.
2. ☐ **Source:** I respond to the objection concerning the source of water.
3. ☒ **Quantity:** I respond to the objection concerning:
 - a. ☒ the total quantity of water used in cubic feet per second; or
 - b. ☐ the total quantity of water stored in acre-feet per year; or
 - c. ☐ the total quantity of water reserved for each and every purpose, including all present and future uses.
4. ☒ **Priority Date:** I respond to the objection concerning the priority date.
5. ☐ **Points of Diversion:** I respond to the objection concerning the legal description of the point(s) of diversion.
6. ☐ **Instream Flow:** I respond to the objection concerning the legal description of the beginning and ending points of the instream flow.
7. ☐ **Purpose(s) of Use:** I respond to the objection concerning the purpose(s) of use.
8. ☐ **Period of Year:** I respond to the objection concerning the period of year when water is used or is necessary for the purpose stated.
9. ☒ **Place of Use:** I respond to the objection concerning:
 - a. ☒ the legal description of the place of use; or
 - b. ☐ the number of irrigated acres within each forty (40) acre subdivision.
10. ☒ **Consumptive Use:** I respond to the objection concerning the annual volume of consumptive use.
11. ☐ **Remarks:** I respond to the objection concerning the "remarks" listed with the water right.
12. ☒ **Water Right Recommendation:** I respond to the objection concerning:
 - a. ☒ this water right being recommended at all; or
 - b. ☐ this water right not being recommended.

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13. ☐ **Description of Reservation:** I respond to the objection concerning the legal description of the reservation.

14. ☒ **Other:** I respond to the objection concerning: _____

(See Page 7-8)

REASONS SUPPORTING EACH BOX CHECKED

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

(See Page 7-8)

CHANGES TO THE DIRECTOR'S REPORT

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

See Objection filed by claimant

Please note that you should attach copies of documents which support your response. Note on each document the "box number" it supports.

☒ Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary. Exhibit "A",
Objection filed by Claimant (15 pages)

VERIFICATION (Must be Completed)

State of Idaho

County of Twin Falls.

Patrick D. Brown, being first duly
(Name of person filing objection)
sworn, upon oath, deposes and says:

That I am the person or entity filing this response (as listed on Page 2, Section 1, "Person responding to objection"), as defined by I.C. Sec 42-1401A(1) and (7), and I have read this response, know its contents and that the statements are true to the best of my knowledge and belief.

Signature of party/claimant
filing response

By: [Signature]

(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 15th day of September,
1993.

[Signature]

Notary Public for Idaho

Residing at: Amelia

My Commission Expires: 9-20-94

INSTRUCTIONS FOR MAILING

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

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

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Page 5

CERTIFICATE OF MAILING

I hereby certify that on the 1st day of September, 1993, I mailed the original and copies of the foregoing response, including all attachments, to the following persons, by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

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

2. One copy to the owner of the water right, and you must fill in the following information:

Name: Doyt H. & Roxie J. Simcoe
Address: 562 Sunrise Blvd. North
Twin Falls, Idaho 83301

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

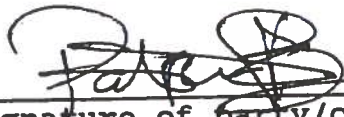
Name: U.S. Dept. of Justice
Address: 550 West Fort Street, Box 33
Boise, Idaho 83734

4 One copy to:

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

5 One copy to:

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



Signature of party/claimant
or attorney

REASONS SUPPORTING EACH BOX CHECKED

Box 3 and 3a. Quantity. Claimants admit the Director's Report recommends a quantity of .08 cfs and that the Director's recommendation may be based upon an assumption of 40 acres at .02 cfs per acre. Claimants deny that the Director's recommendations are accurate, either in number of acres or in quantity required or actually used. Claimants lack sufficient knowledge or information to know what the NAPP photography shows. Claimants deny all other averments regarding total quantity of use.

Diversion volume at water sources. Claimants admit the Director's Report failed to limit the total acre feet of annual diversion from the water source but deny that the Director's Report should do so. Claimants admit that the "General Provisions" specify that the maximum acre feet of water allowed annually at the headgate is 4.0 acre feet but deny that the "General Provisions" apply to the Claimants right or that the "General Provisions" are valid and lawful. Claimants lack sufficient knowledge and information on which to form a belief as to the truth of what the Director intends and therefore deny the same. Claimants deny all other averments concerning the diversion volume at the water source.

Conveyance losses. Claimants admit the conveyance loss quantified by IDWR is inaccurate and inappropriate. Claimants further admit that IDWR could have used computerized analysis to calculate conveyance loss values and could have used variable seepage rates and widths. However, claimants deny that the conveyance loss calculations are relevant to or could be lawfully applied to claimant's right and therefore deny the same. The claimants deny all other averments concerning conveyance losses.

4. Priority date. Claimants admit the Director's Report recommends a priority date of September 10, 1984, and deny that the priority date is not substantiated for the right. Claimants lack sufficient knowledge and information upon which to form a belief as the truthfulness of what the aerial photos or other photoquads show and therefore deny the same. The claimants deny that the right has ever been forfeited or abandoned. Claimants deny all other averments regarding priority date.

9. Place of Use. Claimants lack sufficient information or knowledge to know whether the 1987 aerial photography shows only 37 irrigated acres and therefore deny the same. Claimants admit that ten acres were brought under irrigation prior to 1974 and deny that other acres were brought under irrigation at a later date. Claimants deny that there should be two water rights. Claimants lack sufficient knowledge or information to presently form a belief as to whether the 37 acres is the appropriate acreage and therefore deny the same. Claimants deny all other averments concerning place of use.

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10. **Consumptive Use.** Claimants presently lack sufficient knowledge and information to know whether only 37 acres are irrigated and therefore deny the same. Claimants deny all other averments concerning consumptive use.

12. **Water Right Recommendation.** Claimants deny all averments made concerning the water right being recommended or not being recommended at all.

14. **Other.** The United States Department of Justice makes various averments concerning the applicability of "General Provisions" to the United States apparently on the grounds that they are beyond the scope of the McCarran Amendment. Claimants deny that any such averments are relevant to or related to the specific water right involved in this subcase and therefore deny the same and submit that such averments should be stricken from the objection of the United States Department of Justice.

Claimants have set out their position with respect to "General Provisions" in their objection filed to this water right. Claimants are attaching a true and accurate copy of Claimant's Objection to this Response and incorporate it by reference as Exhibit "A". The Claimants' position regarding "General Provisions" is set out in that Objection.

County of Twin Falls State of Idaho

 Clerk

 Deputy Clerk

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

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

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

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

OBJECTION

Petitioner,

vs.

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

Respondents.

INSTRUCTIONS

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

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

(Over)

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

I. GENERAL INFORMATION

Please fill in the following information:

1. Person objecting:

Name: Doyt H. and Roxie J. Simcoe

Address: 562 Sunrise Blvd N.

Twin Falls, Idaho 83301

Briefly describe your interest in this water right:

Decreed water right pursuant to March 22,

1932 decision in New International Mortgage

Bank vs. Idaho Power Company with a priority

date of September 10, 1884.

2. Owner of the water right:

Name: Doyt H. and Roxie J. Simcoe

Address: 562 Sunrise Blvd N.

Twin Falls, Idaho 83301

3. If this objection is filed by an attorney:

Attorney Name: Hepworth, Nungester & Lezamiz

Attorney Address: P. Parker & Patrick D. Brown

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

Attorney Phone No.: (208)734-7510; Fax: (208)734-4115

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

II. STATEMENT OF THE OBJECTION

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

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

(Over)

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12. ☐ Water Right Recommendation: I object to:
- a. ☐ this water right being recommended at all; or
- b. ☐ this water right not being recommended.
13. ☐ Description of Reservation: I object to the legal description of the reservation.
14. ☒ Other: I object to: See Attached
- _____
- _____
- _____
- _____

REASONS SUPPORTING EACH BOX CHECKED

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

Box 3 - the quantity recommended is less than the amount

decreed and beneficially used; Box 8 - the period of use

begins before 3-15 and beyond 11-15; Box 10 - see response to

Box 3.

CHANGES TO THE DIRECTOR'S REPORT

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

The report should be amended to increase the quantity of

water to that amount decreed and beneficially used; to expand

the period of use; and to increase the corresponding

consumptive use.

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

☒

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

Right Owners, Inc.'s compendium "A".

VERIFICATION (Must be Completed)

State of Idaho

County of Sun Falls

Doug H. Simcoe, being first duly
(Name of person filing objection)
sworn, upon oath, deposes and says:

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

Doug H. Simcoe
Signature of person filing objection

By: [Signature]
(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 20 day of April,
1993.

LINDA M. ROUSSEAU

Linda M. Rousseau
Notary Public for Idaho

Residing at: Sun Falls

My Commission Expires: 9-11-93

(Over)

INSTRUCTIONS FOR MAILING

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

CERTIFICATE OF MAILING

I hereby certify that on the 28 day of April, 1993, I mailed the original and copies of the foregoing objection, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepaid and addressed as follows:

1. Original to:

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

2. One copy to the owner of the water right, and you must fill in the following information:

Owner name: Doyt H. and Roxie J. Simcoe

Owner's address: 562 Sunrise Blvd North

Twin Falls, Idaho 83301

3. One copy to:

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

4. One copy to:

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



Signature of Objector or attorney
mailing on Objector's behalf

CHANGES TO DIRECTOR'S REPORT, page 4

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

Question 14., page 4, Other

I.

GENERAL RESPONSE

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

II.

DESCRIPTIVE SUMMARY

(DIRECTOR'S REPORT PART I)

(hereinafter DRP-I)

(DRP-I at first unnumbered page)

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

III.

TABLE OF CONTENTS

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

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

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

IV.

INTRODUCTION

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

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

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

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

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

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

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

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

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

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V.

DESCRIPTION OF THE WATER SYSTEM: BASIN 36

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

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

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

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

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

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

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

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

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

VI.

GENERAL PROVISIONS

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

(DRP-I at page 9)

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

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

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

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

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

The objectors admit paragraphs a. and b.

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

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

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

The objectors deny the averments within this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(DIRECTOR'S REPORT PART II)

I.

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

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

(DIRECTOR'S REPORT PART III)

I.

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

VIII.

AFFIRMATIVE DEFENSES

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

AFFIRMATIVE DEFENSE NO. 1

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

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

AFFIRMATIVE DEFENSE NO. 2

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

AFFIRMATIVE DEFENSE NO. 3

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

AFFIRMATIVE DEFENSE NO. 4

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

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

AFFIRMATIVE DEFENSE NO. 5

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

AFFIRMATIVE DEFENSE NO. 6

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

AFFIRMATIVE DEFENSE NO. 7

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

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AFFIRMATIVE DEFENSE NO. 8

The Directors' Report fails to state a claim to the extent the same asserts a forfeiture, abandonment, prescriptive or adverse acquisition or loss, or loss resulting from estoppel, of the objectors' water right in the absence of any fact upon which forfeiture, abandonment, prescriptive or adverse acquisition for loss, or loss resulting from estoppel, may be based or asserted.

AFFIRMATIVE DEFENSE NO. 9

The objectors' water right is an incorporeal form of real property, as defined by Idaho Code Sections 7-703, 73-114, 55-101, and like statutes, and, as such, pursuant to Idaho Code Section 7-904, et. seq., the actions of the Director in attempting to limit, reduce and/or regulate such rights, and the assertion of some inconsistent proprietary ownership or right to use or control by the State of Idaho, constitutes an unauthorized and invalid taking of private property without the payment of just compensation, or compliance with statutory requirements, all in violation of Title 7, Chapter 7, Idaho Code.

AFFIRMATIVE DEFENSE NO. 10

The actions of the Director, the Department and their agents, servants and employees in recommending, limiting, reducing and/or regulating objector's water rights, either as alleged in the Director's Report or as in fact applied, violates objectors' rights as secured by Art. 1, Section 1; Art. 15, Sections 3, 4 and/or 5; and/or as otherwise provided in the Constitution of the State of Idaho.

AFFIRMATIVE DEFENSE NO. 11

The various allegations, statements and assertions contained in the Director's Report concerning the Department and/or the Director's position or intentions with regard to the adjudication, as well as the implementation of statutes and/or regulations, as well as the administration of water or management of water rights or claims to the beneficial uses of water, if implemented, constitute a violation of various provisions the United States and Idaho constitutions, and/or a violation of the letter, spirit and/or intent of various statutes enacted by the legislature, and/or constitute an exercise of purported authority or powers either in excess of those conferred by law, or in a manner inconsistent with those conferred by law, or both.

AFFIRMATIVE DEFENSE NO. 12

The individual recommendations relating to the specific water right of the objectors as set forth in the Director's Report are (1) not based upon substantial evidence and/or are not, in fact, the product of any reasonable, complete or accurate investigation as required by law; (2) are the product of arbitrary and capricious action on the part of the Department or the Director; (3) have been made in excess of the constitutional and statutory authority of the Department and the Director; (4) have been made upon an unlawful and invalid procedure; (5) are affected by various and sundry errors of law; and/or (6) are clearly erroneous in view of the reliable, probative and substantial evidence.

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AFFIRMATIVE DEFENSE NO. 13

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

AFFIRMATIVE DEFENSE NO. 14

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

AFFIRMATIVE DEFENSE NO. 15

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

AFFIRMATIVE DEFENSE NO. 16

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

AFFIRMATIVE DEFENSE NO. 17

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

AFFIRMATIVE DEFENSE NO. 18

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

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

AFFIRMATIVE DEFENSE NO. 19

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

AFFIRMATIVE DEFENSE NO. 20

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

AFFIRMATIVE DEFENSE NO. 21

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

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AFFIRMATIVE DEFENSE NO. 22

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

AFFIRMATIVE DEFENSE NO. 23

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

AFFIRMATIVE DEFENSE NO. 24

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

AFFIRMATIVE DEFENSE NO. 25

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

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

AFFIRMATIVE DEFENSE NO. 26

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

AFFIRMATIVE DEFENSE NO. 27

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

WHEREFORE, the objectors pray for judgment as follows:

1. That the State of Idaho take nothing by reason of its Directors' Report, and that this action, and any claims asserted against objectors, be dismissed.

2. That a decree be entered adjudicating the existence, validity, amount and priority of objectors' water rights in accordance with objectors' claims.

3. That to the extent the acts of the Department or Director constitute a taking of objectors' property for public use, that objectors be allowed and awarded just compensation therefor.

4. That the objectors be allowed all costs of suit and reasonable attorney fees incurred herein.

5. For such further relief to which the Court finds objectors justly entitled.

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Department of Water Resources
Adjudication Bureau

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

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

Case No. 36-00003F
(The water right number
you are responding to
must be inserted)

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

STANDARD FORM 2

RESPONSE TO OBJECTION

Petitioner,

vs.

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

Respondents.

INSTRUCTIONS

This form must be used to file a response to any objection filed against a water right recommended in a Director's Report. You may respond to all objections filed against one water right, using one response form. If you choose this option, your response should cover every issue raised in the objections. To respond to objections filed against more than one water right, you must file a separate response form for each water right. Forms may be obtained from the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you do, the text must be on the front and back of each page exactly as it appears here. The response must be received by the court on or before the deadline specified in the Notice of Filing the Director's Report that IDWR mailed to you. Follow the Instructions for Mailing this response (Page 5), or the court will not accept it for filing.

This form has been adopted by the court in SRBA Administrative Order 1 (amended June 21, 1993), Section 4, which may be consulted for further information.

Any party filing 25 (twenty-five) or more responses must make an appointment with the Clerk of the SRBA Court.

(Over)

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

I. GENERAL INFORMATION

Please fill in the following information:

1. Party/Claimant responding to objection:

Name: Doyt H. Simcoe and Roxie J. Simcoe

Address: 562 Sunrise Blvd. North
Twin Falls, Idaho 83301

Phone: Work: _____ Home: (208) 733-5037

Briefly describe your interest in this water right:

Owner/Claimant of water right

If this response is filed by an attorney:

Attorney Name: Patrick D. Brown

Attorney Address: Hepworth, Nungester & Lezamiz
P.O. Box 389, Twin Falls, ID 83303

Attorney Phone No.: (208) 734-7510; Fax#: (208) 734-4115

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

2. Party/Claimant who filed objection:

Name: U.S. Dept. of Justice/Env. & Nat. Resources Div.

Address: 550 West Fort Street, Box 33
Boise, Idaho 83734

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II. STATEMENT OF THE RESPONSE

Please check each "box" which identifies your response.

1. ☐ **Name and Address:** I respond to the objection concerning the name and/or address of the owner of the water right.
2. ☐ **Source:** I respond to the objection concerning the source of water.
3. ☒ **Quantity:** I respond to the objection concerning:
 - a. ☒ the total quantity of water used in cubic feet per second; or
 - b. ☐ the total quantity of water stored in acre-feet per year; or
 - c. ☐ the total quantity of water reserved for each and every purpose, including all present and future uses.
4. ☒ **Priority Date:** I respond to the objection concerning the priority date.
5. ☐ **Points of Diversion:** I respond to the objection concerning the legal description of the point(s) of diversion.
6. ☐ **Instream Flow:** I respond to the objection concerning the legal description of the beginning and ending points of the instream flow.
7. ☐ **Purpose(s) of Use:** I respond to the objection concerning the purpose(s) of use.
8. ☐ **Period of Year:** I respond to the objection concerning the period of year when water is used or is necessary for the purpose stated.
9. ☒ **Place of Use:** I respond to the objection concerning:
 - a. ☒ the legal description of the place of use; or
 - b. ☐ the number of irrigated acres within each forty (40) acre subdivision.
10. ☒ **Consumptive Use:** I respond to the objection concerning the annual volume of consumptive use.
11. ☐ **Remarks:** I respond to the objection concerning the "remarks" listed with the water right.
12. ☒ **Water Right Recommendation:** I respond to the objection concerning:
 - a. ☒ this water right being recommended at all; or
 - b. ☐ this water right not being recommended.

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13. ☐ **Description of Reservation:** I respond to the objection concerning the legal description of the reservation.

14. ☒ **Other:** I respond to the objection concerning: _____

(See Page 7-8)

REASONS SUPPORTING EACH BOX CHECKED

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

(See Page 7-8)

CHANGES TO THE DIRECTOR'S REPORT

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

See Objection filed by claimant

Please note that you should attach copies of documents which support your response. Note on each document the "box number" it supports.

☒ Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary. Exhibit "A",
Objection filed by Claimant (15 pages)

VERIFICATION (Must be Completed)

State of Idaho

County of Twine Falls.

Patrick D. Brown, being first duly
sworn, upon oath, ^(Name of person filing objection) deposes and says:

That I am the person or entity filing this response (as listed on Page 2, Section 1, "Person responding to objection"), as defined by I.C. Sec 42-1401A(1) and (7), and I have read this response, know its contents and that the statements are true to the best of my knowledge and belief.

Signature of party/claimant
filing response

By: [Signature]
(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 1st day of September,
1993.

[Signature]
Notary Public for Idaho
Residing at: Lincoln
My Commission Expires: 9-20-94

INSTRUCTIONS FOR MAILING

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

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

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CERTIFICATE OF MAILING

I hereby certify that on the 1ST day of September, 1993, I mailed the original and copies of the foregoing response, including all attachments, to the following persons, by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

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

2. One copy to the owner of the water right, and you must fill in the following information:

Name: Doyt H. & Roxie J. Simcoe
Address: 562 Sunrise Blvd. North
Twin Falls, Idaho 83301

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

Name: U.S. Dept. of Justice
Address: 550 West Fort Street, Box 33
Boise, Idaho 83734

4 One copy to:

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

5 One copy to:

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



Signature of party/claimant
or attorney

REASONS SUPPORTING EACH BOX CHECKED

Box 3 and 3a. Quantity. Claimants admit the Director's Report recommends a quantity of .08 cfs and that the Director's recommendation may be based upon an assumption of 40 acres at .02 cfs per acre. Claimants deny that the Director's recommendations are accurate, either in number of acres or in quantity required or actually used. Claimants lack sufficient knowledge or information to know what the NAPP photography shows. Claimants deny all other averments regarding total quantity of use.

Diversion volume at water sources. Claimants admit the Director's Report failed to limit the total acre feet of annual diversion from the water source but deny that the Director's Report should do so. Claimants admit that the "General Provisions" specify that the maximum acre feet of water allowed annually at the headgate is 4.0 acre feet but deny that the "General Provisions" apply to the Claimants right or that the "General Provisions" are valid and lawful. Claimants lack sufficient knowledge and information on which to form a belief as to the truth of what the Director intends and therefore deny the same. Claimants deny all other averments concerning the diversion volume at the water source.

Conveyance losses. Claimants admit the conveyance loss quantified by IDWR is inaccurate and inappropriate. Claimants further admit that IDWR could have used computerized analysis to calculate conveyance loss values and could have used variable seepage rates and widths. However, claimants deny that the conveyance loss calculations are relevant to or could be lawfully applied to claimant's right and therefore deny the same. The claimants deny all other averments concerning conveyance losses.

4. Priority date. Claimants admit the Director's Report recommends a priority date of September 10, 1884, and deny that the priority date is not substantiated for the right. Claimants lack sufficient knowledge and information upon which to form a belief as the truthfulness of what the aerial photos or other photoquads show and therefore deny the same. The claimants deny that the right has ever been forfeited or abandoned. Claimants deny all other averments regarding priority date.

9. Place of Use. Claimants lack sufficient information or knowledge to know whether the 1987 aerial photography shows only 37 irrigated acres and therefore deny the same. Claimants admit that ten acres were brought under irrigation prior to 1974 and deny that other acres were brought under irrigation at a later date. Claimants deny that there should be two water rights. Claimants lack sufficient knowledge or information to presently form a belief as to whether the 37 acres is the appropriate acreage and therefore deny the same. Claimants deny all other averments concerning place of use.

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10. **Consumptive Use.** Claimants presently lack sufficient knowledge and information to know whether only 37 acres are irrigated and therefore deny the same. Claimants deny all other averments concerning consumptive use.

12. **Water Right Recommendation.** Claimants deny all averments made concerning the water right being recommended or not being recommended at all.

14. **Other.** The United States Department of Justice makes various averments concerning the applicability of "General Provisions" to the United States apparently on the grounds that they are beyond the scope of the McCarran Amendment. Claimants deny that any such averments are relevant to or related to the specific water right involved in this subcase and therefore deny the same and submit that such averments should be stricken from the objection of the United States Department of Justice.

Claimants have set out their position with respect to "General Provisions" in their objection filed to this water right. Claimants are attaching a true and accurate copy of Claimant's Objection to this Response and incorporate it by reference as Exhibit "A". The Claimants' position regarding "General Provisions" is set out in that Objection.

County of Twin Falls State of Idaho

By _____

Deputy Clerk

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

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

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

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

OBJECTION

Petitioner,

vs.

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

Respondents.

INSTRUCTIONS

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

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

(Over)

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

I. GENERAL INFORMATION

Please fill in the following information:

1. Person objecting:

Name: Doyt H. and Roxie J. Simcoe

Address: 562 Sunrise Blvd N.

Twin Falls, Idaho 83301

Briefly describe your interest in this water right:

Decreed water right pursuant to March 22,

1932 decision in New International Mortgage

Bank vs. Idaho Power Company with a priority

date of September 10, 1884.

2. Owner of the water right:

Name: Doyt H. and Roxie J. Simcoe

Address: 562 Sunrise Blvd N.

Twin Falls, Idaho 83301

3. If this objection is filed by an attorney:

Attorney Name: Hepworth, Nungerster & Lezamiz

Attorney Address: P. Parker & Patrick D. Brown

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

Attorney Phone No.: (208)734-7510; Fax: (208)734-4115

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

II. STATEMENT OF THE OBJECTION

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

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

(Over)

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12. ☐ Water Right Recommendation: I object to:

a. ☐ this water right being recommended at all; or

b. ☐ this water right not being recommended.

13. ☐ Description of Reservation: I object to the legal description of the reservation.

14. ☒ Other: I object to: See Attached

REASONS SUPPORTING EACH BOX CHECKED

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

Box 3 - the quantity recommended is less than the amount
decreed and beneficially used; Box 8 - the period of use
begins before 3-15 and beyond 11-15; Box 10 - see response to
Box 3.

CHANGES TO THE DIRECTOR'S REPORT

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

The report should be amended to increase the quantity of
water to that amount decreed and beneficially used; to expand
the period of use; and to increase the corresponding
consumptive use.

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



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

Right Owners, Inc.'s compendium "A".

VERIFICATION (Must be Completed)

State of Idaho

County of Jim Falls

Doyt H. Simcoe, being first duly
(Name of person filing objection)

sworn, upon oath, deposes and says:

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

Doyt H. Simcoe
Signature of person filing objection

By: [Signature]
(Attorney signing in representative capacity)

Subscribed and sworn to before me this 20 day of April,
1993.

Linda M. Rousseau
Notary Public for Idaho
Residing at: Jim Falls
My Commission Expires: 9-11-93



(Over)

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INSTRUCTIONS FOR MAILING

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

CERTIFICATE OF MAILING

I hereby certify that on the 28 day of April, 1993, I mailed the original and copies of the foregoing objection, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepaid and addressed as follows:

1. Original to:

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

2. One copy to the owner of the water right, and you must fill in the following information:

Owner name: Doyt H. and Roxie J. Simcoe

Owner's address: 562 Sunrise Blvd North

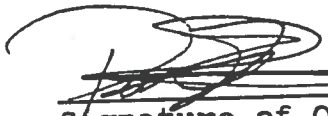
Twin Falls, Idaho 83301

3. One copy to:

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

4. One copy to:

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



Signature of Objector or attorney
mailing on Objector's behalf

CHANGES TO DIRECTOR'S REPORT, page 4

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

Question 14., page 4, Other

I.

GENERAL RESPONSE

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

II.

DESCRIPTIVE SUMMARY

(DIRECTOR'S REPORT PART I)

(hereinafter DRP-I)

(DRP-I at first unnumbered page)

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

III.

TABLE OF CONTENTS

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

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

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

IV.

INTRODUCTION

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

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

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

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

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

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

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

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

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

V.

DESCRIPTION OF THE WATER SYSTEM: BASIN 36

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

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

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

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

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

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

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

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

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

VI.

GENERAL PROVISIONS

GENERAL PROVISIONS 1 - 8 APPLY TO ALL WATER RIGHTS IN BASIN 36.
(DRP-I at page 9)

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

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

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

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

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

The objectors admit paragraphs a. and b.

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

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

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

The objectors deny the averments within this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(DIRECTOR'S REPORT PART II)

I.

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

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

(DIRECTOR'S REPORT PART III)

I.

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

VIII.

AFFIRMATIVE DEFENSES

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

AFFIRMATIVE DEFENSE NO. 1

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

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

AFFIRMATIVE DEFENSE NO. 2

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

AFFIRMATIVE DEFENSE NO. 3

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

AFFIRMATIVE DEFENSE NO. 4

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

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

AFFIRMATIVE DEFENSE NO. 5

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

AFFIRMATIVE DEFENSE NO. 6

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

AFFIRMATIVE DEFENSE NO. 7

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

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AFFIRMATIVE DEFENSE NO. 8

The Directors' Report fails to state a claim to the extent the same asserts a forfeiture, abandonment, prescriptive or adverse acquisition or loss, or loss resulting from estoppel, of the objectors' water right in the absence of any fact upon which forfeiture, abandonment, prescriptive or adverse acquisition for loss, or loss resulting from estoppel, may be based or asserted.

AFFIRMATIVE DEFENSE NO. 9

The objectors' water right is an incorporeal form of real property, as defined by Idaho Code Sections 7-703, 73-114, 55-101, and like statutes, and, as such, pursuant to Idaho Code Section 7-904, et. seq., the actions of the Director in attempting to limit, reduce and/or regulate such rights, and the assertion of some inconsistent proprietary ownership or right to use or control by the State of Idaho, constitutes an unauthorized and invalid taking of private property without the payment of just compensation, or compliance with statutory requirements, all in violation of Title 7, Chapter 7, Idaho Code.

AFFIRMATIVE DEFENSE NO. 10

The actions of the Director, the Department and their agents, servants and employees in recommending, limiting, reducing and/or regulating objector's water rights, either as alleged in the Director's Report or as in fact applied, violates objectors' rights as secured by Art. 1, Section 1; Art. 15, Sections 3, 4 and/or 5; and/or as otherwise provided in the Constitution of the State of Idaho.

AFFIRMATIVE DEFENSE NO. 11

The various allegations, statements and assertions contained in the Director's Report concerning the Department and/or the Director's position or intentions with regard to the adjudication, as well as the implementation of statutes and/or regulations, as well as the administration of water or management of water rights or claims to the beneficial uses of water, if implemented, constitute a violation of various provisions the United States and Idaho constitutions, and/or a violation of the letter, spirit and/or intent of various statutes enacted by the legislature, and/or constitute an exercise of purported authority or powers either in excess of those conferred by law, or in a manner inconsistent with those conferred by law, or both.

AFFIRMATIVE DEFENSE NO. 12

The individual recommendations relating to the specific water right of the objectors as set forth in the Director's Report are (1) not based upon substantial evidence and/or are not, in fact, the product of any reasonable, complete or accurate investigation as required by law; (2) are the product of arbitrary and capricious action on the part of the Department or the Director; (3) have been made in excess of the constitutional and statutory authority of the Department and the Director; (4) have been made upon an unlawful and invalid procedure; (5) are affected by various and sundry errors of law; and/or (6) are clearly erroneous in view of the reliable, probative and substantial evidence.

AFFIRMATIVE DEFENSE NO. 13

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

AFFIRMATIVE DEFENSE NO. 14

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

AFFIRMATIVE DEFENSE NO. 15

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

AFFIRMATIVE DEFENSE NO. 16

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

AFFIRMATIVE DEFENSE NO. 17

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

AFFIRMATIVE DEFENSE NO. 18

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

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

AFFIRMATIVE DEFENSE NO. 19

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

AFFIRMATIVE DEFENSE NO. 20

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

AFFIRMATIVE DEFENSE NO. 21

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

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AFFIRMATIVE DEFENSE NO. 22

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

AFFIRMATIVE DEFENSE NO. 23

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

AFFIRMATIVE DEFENSE NO. 24

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

AFFIRMATIVE DEFENSE NO. 25

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

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

AFFIRMATIVE DEFENSE NO. 26

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

AFFIRMATIVE DEFENSE NO. 27

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

WHEREFORE, the objectors pray for judgment as follows:

1. That the State of Idaho take nothing by reason of its Directors' Report, and that this action, and any claims asserted against objectors, be dismissed.

2. That a decree be entered adjudicating the existence, validity, amount and priority of objectors' water rights in accordance with objectors' claims.

3. That to the extent the acts of the Department or Director constitute a taking of objectors' property for public use, that objectors be allowed and awarded just compensation therefor.

4. That the objectors be allowed all costs of suit and reasonable attorney fees incurred herein.

5. For such further relief to which the Court finds objectors justly entitled.

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(WATER\21530ANS)



State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

25-Jan-1993

DOYT SIMCOE
562 SUNRISE BLVD N
TWIN FALLS ID 83301

RE: Copy of SRBA File(s): 36-00003F

Dear Mr. Simcoe:

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

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

\$2.25

Sincerely,


Jeanie Robertson
Records Clerk

Encl:

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(Date) January 21, 1993

IDAHO DEPARTMENT OF WATER RESOURCES
222 SHOSHONE ST. EAST
TWIN FALLS, IDAHO 83301

Dear Idaho Department of Water Resources:

Please provide me with a copy of all information included in my file as it relates to water right number A36-00003F.

Please advise me of any documents in my file which you are not releasing to me and why they are not being released.

Please bill me for the copy charge.

Sincerely,

Alroy H. Simcoe
(Name)

562 Sunrise Blvd. North
(Address)

Twin Falls, Idaho 83301
(City, State, Zip Code)

cc: David B. Shaw, Adjudication Bureau Chief
Idaho Department of Water Resources
1301 North Orchard Street
Statenhouse Mail
Boise, Idaho 83720-9000

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

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

Case No. 36-00003F

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

Petitioner,

vs.

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

Respondents.

OBJECTION

RECEIVED

MAY 04 1993

Department of Water Resources
Adjudication Bureau

I. GENERAL INFORMATION

1. Person objecting:

Name: United States of America,
Environment and Natural Resources Division
550 West Fort Street
Box 33
Boise, Idaho 83734

Briefly describe your interest in this water right: The United States
holds water rights of many types in all reporting areas within the SRBA.

2. Owner of the water right:

Name: SIMCOE, DOYT H. AND ROXIE J.
Address: 562 Sunrise Blvd N
Twin Falls, ID 83301

3. If this objection is filed by an attorney:

Attorney Name: David W. Harder
Attorney Address: United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street
Box 33
Boise, Idaho 83734
Attorney Phone No.: (202) 272-5784

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

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II. STATEMENT OF THE OBJECTION

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

1. ☐ Name and Address: I object to the name and/or address of the owner of the water right
2. ☐ Source: I object to the source of water.
3. ☒ Quantity: I object to:
 - ☒ a. the total quantity of water used in cubic feet per second; or
 - ☐ b. the total quantity of water stored in acre-feet per year; or
 - ☐ c. the total quantity of water reserved for each and every purpose, including all present and future uses.
4. ☒ Priority Date: I object to the priority date.
5. ☐ Points of Diversion: I object to the legal description of the point(s) of diversion.
6. ☐ Instream Flow: I object to the legal description of the beginning and ending points of the instream flow.
7. ☐ Purpose(s) of Use: I object to the purpose(s) of use.
8. ☐ Period of Year: I object to the period of year when water is used or is necessary for the purpose stated.
9. ☒ Place of Use: I object to:
 - ☒ a. the legal description of the place of use; or
 - ☐ b. the number of irrigated acres within each forty (40) acre subdivision.
10. ☒ Consumptive Use: I object to the annual volume of consumptive use.
11. ☐ Remarks: I object to the "remarks" listed with the water right.
12. ☒ Water Right Recommendation: I object to:
 - ☒ a. this water right being recommended at all; or
 - ☐ b. this water right not being recommended.
13. ☐ Description of Reservation: I object to the legal description of the reservation.
14. ☒ Other: I object to certain paragraphs of the general provisions in the Director's report as noted on the attached "Reasons Supporting Objections and Proposed Changes".

REASONS SUPPORTING EACH BOX CHECKED

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

See attached "Reasons Supporting Objections and Proposed Changes" numbered as per above check list.

CHANGES TO THE DIRECTOR'S REPORT

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

See attached "Reasons Supporting Objections and Proposed Changes" numbered as per above check list.

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

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

REASONS SUPPORTING OBJECTIONS AND PROPOSED CHANGES - 5 Pages

ATTACHMENT A - 1 Page

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VERIFICATION

In the District of Columbia,

The United States of America, being first duly sworn, upon oath, deposes and says:

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

By: David W. Horder
(Attorney signing in representative capacity)

Subscribed and sworn to before me this 24th day of April, 1993.

Alane Passero
Notary Public for: District of Columbia

Residing at: District of Columbia

My Commission Expires: July 14, 1997

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of April, 1993, I mailed the original and copies of the foregoing objection, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepaid and addressed as follows:

1. Original to:

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

2. One copy to the owner of the water right:

Name: SIMCOE, DOYT H. AND ROXIE J.

Address: 562 Sunrise Blvd N
Twin Falls, ID 83301

3. One copy to:

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

David W. Horder

Signature of Objector or attorney mailing
on Objector's behalf

REASONS SUPPORTING OBJECTIONS AND PROPOSED CHANGES

SIMCOE, ROXIE J.

SIMCOE, DOYT H.

CASE NO. 36-00003F

3. QUANTITY

a. The total quantity of water used in cubic feet per second

The Director's Report recommends a quantity of 0.8 cfs for this right. This is based on the assumption that 40 acres are irrigated and that 0.02 cfs are needed for each irrigated acre. The 1987 NAPP photography for this area shows that only approximately 37 acres are irrigated within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T7S, R13E. At a rate of 0.02 cfs per acre the maximum quantity recommended would then be 0.74 cfs.

Diversion Volume at Water Sources

The IDWR Director's Report fails to limit the total acre-feet of annual diversion from the water source for this right. The general provisions (Paragraph 13, Page 14) specify that the maximum acre-feet of water allowed annually at the field headgate is 4.0 acre-feet per acre. The only annual volume specified for this right is for consumptive use at the rate of 3.0 acre-feet per acre.

Since allowances are made in the peak diversion rate for (1) conveyance losses between the water source and field headgate and (2) the on-farm losses requiring more than 0.02 cfs/acre at the headgate, it can only be assumed that it is the Director's intention to allow similar unspecified increases in the annual diversion volume. The unquantified nature of the right, as described, is therefore unacceptable.

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Conveyance Losses

The conveyance loss quantified by IDWR is inaccurate because of inappropriate use of the following parameters in the Worstell formula:

- Seepage rate values were typically estimated at two feet per day throughout the Hagerman Valley. Readily available soils data demonstrate that widely varying seepage rates actually exist.
- Water surface top width values throughout the Hagerman Valley were typically estimated at ten feet. There are wide variations in size between the various ditches and along their lengths.

IDWR's computerized analysis used to calculate conveyance loss values for these ditch systems could have been performed using the variable seepage rates and widths.

4. PRIORITY DATE

The Director's Report recommends a priority date of September 10, 1884 for this right. An 1884 priority date is not substantiated for this recommended right. The 1884 priority date is based on the priority date decreed for right 36-00003 in 1932. The NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27 is included within the area described for that right. If in fact the area covered by this recommended right was irrigated prior to 1932, any water right with an 1884 priority date has been forfeited because of lack of use.

An aerial photograph of this area taken on July 24, 1953, shows no evidence that the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T7S, R13E, had ever been irrigated. Aerial photography taken for the Soil Conservation Service in 1964 indicates no irrigation occurring in that year or at any time during the period between 1953 and 1964.

The USGS Hagerman 7.5 minute orthophotoquad of the area shows the first evidence of irrigation within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27. The photograph, utilized as a base for the orthophotoquad, was taken on August 4, 1974. On that date, it is evident that approximately 10 acres were irrigated. Unless the claimant can show cause for an earlier date, a water right with a priority date, no earlier than March 15, 1975, should be recommended for 10 acres within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27. At 0.02 cfs per acre, the quantity for the water right recommended for the 10 acres should be 0.2 cfs.

The 1987 aerial photography shows a total of 37 acres under irrigation, indicating that an additional 27 acres was brought under irrigation between 1974 and 1987. Unless the claimant can show cause for an earlier priority date, the priority date for the additional 27 acres should be March 15, 1987. At 0.02 cfs per acre, the quantity for the water right recommended for the 27 acres should be 0.54 cfs.

9. PLACE OF USE

a. The number of irrigated acres within each forty (40) acre subdivision

The 1987 aerial photography shows that only 37 acres are irrigated within the NE $\frac{1}{4}$ SW $\frac{1}{4}$. Because 10 acres were brought under irrigation prior to August 4, 1974 and the remaining 27 acres were brought under irrigation at a later date, there should be two water rights recommended for this 40 acre subdivision. The total acreage in the two rights recommended should not exceed 37 acres.

10. CONSUMPTIVE USE

Because only 37 acres are irrigated, the recommended consumptive use should be less than the 120 afy recommended in the Director's Report. The water right recommended for the 10 acres, with a 1975 priority date, should have a consumptive use of 30 afy. The water

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right recommended for the 27 acres, with a 1987 priority date, should have a consumptive use of 81 afy.

12. WATER RIGHT RECOMMENDATION

a. This water right being recommended at all

Because no irrigation occurred within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27 from at least 1953 to 1964, any rights granted in 1932 have been forfeited in accordance with I.C. §42-222(2). Two separate water rights, one for 10 acres with a 1974 priority date and one for 27 acres with a 1987 priority date should be recommended instead of 36-00003F.

14. OTHER

General Provision, CONJUNCTIVE ADMINISTRATION, Section 3, Page 10; General Provision, ADMINISTRATION OF GROUND WATER, Section 4, Page 10; General Provision, ADMINISTRATION OF BASIN 36 RELATIVE TO THE SNAKE RIVER, Section 5, first paragraph, Page 10; General Provision, ADMINISTRATION OF SMALL DOMESTIC AND STOCK WATER RIGHTS, Section 6, Page 11: The U.S. objects to administration of federal water rights by the director to the extent that the director seeks authority beyond the scope of the waiver of sovereign immunity contained in the McCarran Amendment, 43 U.S.C. 666.

General Provision, ADMINISTRATION OF BASIN 36 RELATIVE TO THE SNAKE RIVER, Section 5, first paragraph, Page 1-10: Regarding the second sentence, which begins "(i)nformation presently available," the United States is without sufficient information or knowledge to form a belief as to the truth of the sentence, and therefore it is denied. Regarding the third sentence, which begins "(w)hen the director," it is denied.

General Provision, MEASURING DEVICES AND CONTROL WORKS, Section 7, Page 11: The U.S. objects to administration of federal

water rights by the director inconsistent with the McCarran Amendment. The U.S. further asserts that the director may not prescribe measuring devices and control works to be installed and maintained on federal property and the director may not prohibit or prevent the diversion of water to federal property for federal uses.

General Provision, IRRIGATION USE, Section 12, Paragraphs b.i.

- iii., Pages 13 & 14: all paragraphs are denied.

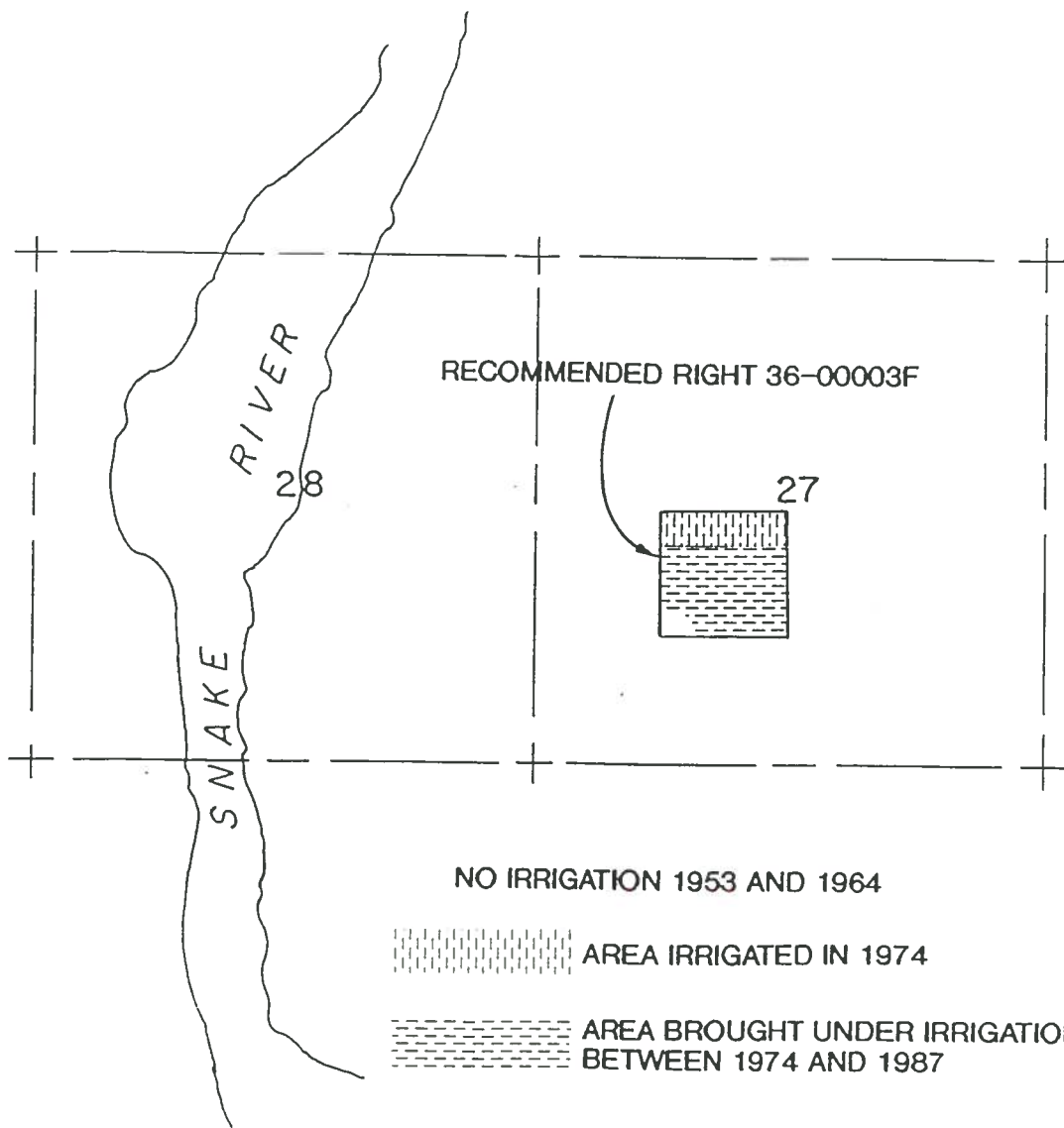
General Provision, IRRIGATION USE, Section 12, Paragraphs c.i.

- iii., Page 14: all paragraphs are denied.

General Provision, DIVERSION VOLUME FOR IRRIGATION, Section 13, the last sentence is denied. The Director's Report fails to place a limit on the total quantity of water that can be diverted from the water source. Since the water commissioner is typically required to deliver water from the water source to the farm system, adequate allocation of available water cannot be accomplished without limits being set on the total annual diversion, as well as the peak flow rates that are specified in the Director's Report. This is needed to insure that water is beneficially used. The peak rate of diversion should be based on peak irrigation requirements. Non-peak portions of the irrigation season typically require less water. Therefore, peak diversions made throughout the season cannot be considered beneficial use of water.

General Provision, DIVERSION RATES IN EXCESS OF .02 CFS PER ACRE, Section 16, Paragraph a, Page 15: Regarding the second sentence, which begins "For purposes," it is denied. Neither IDWR nor the claimant have demonstrated a reasonable and actual basis for a diversion rate in excess of .02 cfs per acre due to conveyance losses or field conditions.

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Department of Water Resources
Adjudication Bureau

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

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

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

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

OBJECTION

Petitioner,

vs.

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

36-00003F -0001/
93-04-0008

Respondents.

INSTRUCTIONS

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

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

(Over)

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

I. GENERAL INFORMATION

Please fill in the following information:

1. Person objecting:

Name: Doyt H. and Roxie J. Simcoe

Address: 562 Sunrise Blvd N.

Twin Falls, Idaho 83301

Briefly describe your interest in this water right:

Decreed water right pursuant to March 22,

1932 decision in New International Mortgage

Bank vs. Idaho Power Company with a priority

date of September 10, 1884.

2. Owner of the water right:

Name: Doyt H. and Roxie J. Simcoe

Address: 562 Sunrise Blvd N.

Twin Falls, Idaho 83301

3. If this objection is filed by an attorney:

Attorney Name: Hepworth, Nungester & Lezamiz

Attorney Address: P. Parker & Patrick D. Brown

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

Attorney Phone No.: (208)734-7510; Fax: (208)734-4115

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

II. STATEMENT OF THE OBJECTION

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

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

(Over)

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12. ☐ Water Right Recommendation: I object to:
- a. ☐ this water right being recommended at all; or
- b. ☐ this water right not being recommended.
13. ☐ Description of Reservation: I object to the legal description of the reservation.
14. ☒ Other: I object to: See Attached
- _____
- _____
- _____
- _____

REASONS SUPPORTING EACH BOX CHECKED

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

Box 3 - the quantity recommended is less than the amount
decreed and beneficially used; Box 8 - the period of use
begins before 3-15 and beyond 11-15; Box 10 - see response to
Box 3.

CHANGES TO THE DIRECTOR'S REPORT

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

The report should be amended to increase the quantity of
water to that amount decreed and beneficially used; to expand
the period of use; and to increase the corresponding
consumptive use.

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

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

Right Owners, Inc.'s compendium "A".

VERIFICATION (Must be Completed)

State of Idaho

County of Sun Falls

Doyt H. Simcoe, being first duly
(Name of person filing objection)
sworn, upon oath, deposes and says:

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

Doyt H. Simcoe
Signature of person filing objection

By: [Signature]
(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 20 day of April,
1993.

 Linda M. Rousseau
Notary Public for Idaho
Residing at: Sun Falls
My Commission Expires: 9-11-93

(Over)

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INSTRUCTIONS FOR MAILING

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

CERTIFICATE OF MAILING

I hereby certify that on the 28 day of April, 1993, I mailed the original and copies of the foregoing objection, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepaid and addressed as follows:

1. Original to:

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

2. One copy to the owner of the water right, and you must fill in the following information:

Owner name: Doyt H. and Roxie J. Simcoe
Owner's address: 562 Sunrise Blvd North
Twin Falls, Idaho 83301

3. One copy to:

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

4. One copy to:

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



Signature of Objector or attorney
mailing on Objector's behalf

CHANGES TO DIRECTOR'S REPORT, page 4

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

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Question 14., page 4, Other

I.

GENERAL RESPONSE

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

II.

DESCRIPTIVE SUMMARY

(DIRECTOR'S REPORT PART I)

(hereinafter DRP-I)

(DRP-I at first unnumbered page)

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

III.

TABLE OF CONTENTS

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

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

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

IV.

INTRODUCTION

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

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

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

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

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

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

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

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

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

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V.

DESCRIPTION OF THE WATER SYSTEM: BASIN 36

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

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

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

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

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

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

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

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

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

VI.

GENERAL PROVISIONS

GENERAL PROVISIONS 1 - 8 APPLY TO ALL WATER RIGHTS IN BASIN 36.
(DRP-I at page 9)

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

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

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

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

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

The objectors admit paragraphs a. and b.

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

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

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

The objectors deny the averments within this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW. (DRP-I, pages A-1 - B-25)

The objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred in said recommended water rights other than those specific admissions contained in Questions 1 - 12 of the attached individual objection, and therefore deny the same.

DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36)

(DIRECTOR'S REPORT PART II)

I.

Objectors do not understand the allegations, averments or contents of Part II of the Director's Report for Reporting Area 3 (Basin 36) to pertain or relate to objectors or their claims, and do not believe any response is required. To the extent a response is required, objectors deny the same in its entirety.

DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36)

(DIRECTOR'S REPORT PART III)

I.

No report denominated as Part III of the Director's Report for Reporting Area 3 (Basin 36) has been filed, and accordingly objectors are unable to admit, deny or otherwise response to the same. Objectors do not understand that the contemplated subject matter of such Part III will relate or pertain to objectors or their claims, and no response is required in any case. To the extent any response is required, objectors deny the same in its entirety.

VIII.

AFFIRMATIVE DEFENSES

Pursuant to I.R.C.P. 8(c), objectors herewith state the following matters of affirmative defense or avoidance:

AFFIRMATIVE DEFENSE NO. 1

The objectors' water right is an incorporeal form of real property (as defined by Idaho Code Sections 7-703, 73-114, 55-101,

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and like statutes) protected by Section 14, Article 1, of the Idaho Constitution, and the Fifth Amendment to the United States Constitution, and allege that the actions of the Director in recommending, limiting and/or regulating said rights is an unconstitutional infringement upon and a taking of private property, without just compensation and violation thereof.

AFFIRMATIVE DEFENSE NO. 2

The adjudication authorization legislation, I.C. Section 42-1401, et seq., on its face and as applied by the Director and the Department constitutes an improper delegation of constitutional power and authority conferred upon the executive, legislative and/or judicial branches of government and as such violate the provisions governing separation of powers set forth in Article 2, Section 1, Idaho Constitution.

AFFIRMATIVE DEFENSE NO. 3

The procedure set forth in the adjudication authorization legislation, statutes, I.C. Section 42-1401, et seq., and any rules, regulations, procedures, policies or standards promulgated by the Director and/or the Department, if any, are vague and so lacking in reasonable specificity so as to render them impossible of reasonable comprehension, or consistent and meaningful application.

AFFIRMATIVE DEFENSE NO. 4

The procedures, rules, regulations, policies or standards, if any, adopted, implemented and applied by the Department and/or the Director violate the equal protection and due

process clauses of the Fourteenth Amendment, United States Constitution, and Article 1, Sections 2 and 13, Idaho Constitution.

AFFIRMATIVE DEFENSE NO. 5

The adjudication authorization legislation, Idaho Code Section 42-1401, et seq., and the actions of the Director and Department in recommending, limiting and/or regulating the objectors' water right constitutes a violation of 42 U.S.C. Section 1983.

AFFIRMATIVE DEFENSE NO. 6

The water right owned by the objectors is the subject of valid existing decrees issued by the Director and Department, which decrees are binding upon the State of Idaho, the Department and the Director. As a result, the State of Idaho, the Department and the Director are precluded by the doctrines of res judicata, collateral estoppel, judicial estoppel and the like from relitigating or questioning the validity, existence or priority of such right, and/or from taking any position in the Director's Report, or otherwise, which is inconsistent with such decrees.

AFFIRMATIVE DEFENSE NO. 7

The Director's recommendations are contrary to decreed rights, historical use and extent licenses and permits issued by the Department. There has been no forfeiture nor abandonment of the objectors' water rights, nor have the objectors' water rights been prescriptively or adversely possessed, nor have such decrees been vacated or such licenses and permits revoked.

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AFFIRMATIVE DEFENSE NO. 8

The Directors' Report fails to state a claim to the extent the same asserts a forfeiture, abandonment, prescriptive or adverse acquisition or loss, or loss resulting from estoppel, of the objectors' water right in the absence of any fact upon which forfeiture, abandonment, prescriptive or adverse acquisition for loss, or loss resulting from estoppel, may be based or asserted.

AFFIRMATIVE DEFENSE NO. 9

The objectors' water right is an incorporeal form of real property, as defined by Idaho Code Sections 7-703, 73-114, 55-101, and like statutes, and, as such, pursuant to Idaho Code Section 7-904, et. seq., the actions of the Director in attempting to limit, reduce and/or regulate such rights, and the assertion of some inconsistent proprietary ownership or right to use or control by the State of Idaho, constitutes an unauthorized and invalid taking of private property without the payment of just compensation, or compliance with statutory requirements, all in violation of Title 7, Chapter 7, Idaho Code.

AFFIRMATIVE DEFENSE NO. 10

The actions of the Director, the Department and their agents, servants and employees in recommending, limiting, reducing and/or regulating objector's water rights, either as alleged in the Director's Report or as in fact applied, violates objectors' rights as secured by Art. 1, Section 1; Art. 15, Sections 3, 4 and/or 5; and/or as otherwise provided in the Constitution of the State of Idaho.

AFFIRMATIVE DEFENSE NO. 11

The various allegations, statements and assertions contained in the Director's Report concerning the Department and/or the Director's position or intentions with regard to the adjudication, as well as the implementation of statutes and/or regulations, as well as the administration of water or management of water rights or claims to the beneficial uses of water, if implemented, constitute a violation of various provisions the United States and Idaho constitutions, and/or a violation of the letter, spirit and/or intent of various statutes enacted by the legislature, and/or constitute an exercise of purported authority or powers either in excess of those conferred by law, or in a manner inconsistent with those conferred by law, or both.

AFFIRMATIVE DEFENSE NO. 12

The individual recommendations relating to the specific water right of the objectors as set forth in the Director's Report are (1) not based upon substantial evidence and/or are not, in fact, the product of any reasonable, complete or accurate investigation as required by law; (2) are the product of arbitrary and capricious action on the part of the Department or the Director; (3) have been made in excess of the constitutional and statutory authority of the Department and the Director; (4) have been made upon an unlawful and invalid procedure; (5) are affected by various and sundry errors of law; and/or (6) are clearly erroneous in view of the reliable, probative and substantial evidence.

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AFFIRMATIVE DEFENSE NO. 13

The Director's Report is a pleading subject to the provisions of the Idaho Rules of Civil Procedure, including, but not limited to the requirement of I.R.C.P. 8(a)(1) that such pleadings contain a clear and plain statement of the facts, demonstrating an entitlement to relief. The Director's Report violates such provision.

AFFIRMATIVE DEFENSE NO. 14

The Director's Report fails to state a claim upon which relief may be granted.

AFFIRMATIVE DEFENSE NO. 15

The Director's Report is subject to, and must comply with, the requirements of Idaho Code Section 42-1411. The Director's Report does not comply with the requirements of the statute.

AFFIRMATIVE DEFENSE NO. 16

In conducting the investigation and compiling the Director's Report, the Department and the Director have not complied with the requirements of Idaho Code Section 42-1410.

AFFIRMATIVE DEFENSE NO. 17

In conducting the investigation and compiling the Director's Report, the Department and the Director have not complied with the requirements of Idaho Code Section 42-1416.

AFFIRMATIVE DEFENSE NO. 18

The procedures specified in the authorizing legislation and procedural rules promulgated in accordance therewith serve to

deny objectors due process of law in violation of Amendment Fourteen to the Constitution of the United States and Art. 1, Section 13, Idaho Constitution.

AFFIRMATIVE DEFENSE NO. 19

The "General Provisions" and "Other Statements" contained in the Director's Report, along with the Claims Investigation Manual, Adjudication Memoranda and other materials of a similar nature used or employed by the Department, the Director and/or their agents, servants and/or employees constitute rules and regulations which were required to be proposed, promulgated, adopted and approved in conformity with the Administrative Procedures Act and other applicable statutory provisions. The Department, Director and their agents, servants and employees have failed to comply with such requirements, and accordingly, the "General Provisions," "Other Statements", Claims Investigation Manual and the like are invalid, void and of no force or effect.

AFFIRMATIVE DEFENSE NO. 20

Neither the "General Conditions," the Claims Adjudication Manual, Adjudication Memoranda or other promulgations, adoptions, policies, or the like have been submitted to or approved by the Legislature as required by Idaho Code Section 67-5217.

AFFIRMATIVE DEFENSE NO. 21

The relief requested by the Department and the Director in the Director's Report are beyond and in excess of the subject matter jurisdiction of the Court.

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AFFIRMATIVE DEFENSE NO. 22

The actions of the Legislature, or the Department and the Director to enact, adopt, implement or enforce statutes, regulations, rules or policies subsequent to November 19, 1987, and to apply or enforce the same for the purpose of, or with the effect of recommending, diminishing or altering objectors' water rights, constitute a violation of Amendment Fourteen, United States Constitution; Art. 1, Section 13, Idaho Constitution; the SRBA authorization legislation; and Idaho Code Sections 73-101 and 73-106.

AFFIRMATIVE DEFENSE NO. 23

These proceedings are subject to the requirements and provisions of Idaho Code Sections 12-117, 12-121, 12-123 and I.R.C.P. 11, and the provisions of the private attorney general doctrine, and other related doctrines, and the Department, Director and State of Idaho are obligated to objectors for the payment and reimbursement of any and all reasonable costs or attorney fees incurred herein.

AFFIRMATIVE DEFENSE NO. 24

The Director's Report asserts what amounts to be a taking of private property by power of eminent domain as governed by Idaho Code Section 7-701 et seq., and as such, venue is therefore improper.

AFFIRMATIVE DEFENSE NO. 25

The Department and the Director are equitably estopped from seeking any reduction in the quantity, quality or priority of

objectors' water rights by virtue of prior statements, representations and actions of the Department, Director or their agents, servants and employees.

AFFIRMATIVE DEFENSE NO. 26

The Department and the Director are barred by laches and the applicable statutes of limitation, including, but not limited to, Idaho Code Sections 5-202, 5-203, 5-204, 5-206, 5-207, 5-208, 5-215, 5-218, 5-219(2), 5-224 and/or 5-241.

AFFIRMATIVE DEFENSE NO. 27

Objectors hereby reserve the right to assert any further affirmative defenses not expressly stated herein, but which subsequently become apparent.

WHEREFORE, the objectors pray for judgment as follows:

1. That the State of Idaho take nothing by reason of its Directors' Report, and that this action, and any claims asserted against objectors, be dismissed.
2. That a decree be entered adjudicating the existence, validity, amount and priority of objectors' water rights in accordance with objectors' claims.
3. That to the extent the acts of the Department or Director constitute a taking of objectors' property for public use, that objectors be allowed and awarded just compensation therefor.
4. That the objectors be allowed all costs of suit and reasonable attorney fees incurred herein.
5. For such further relief to which the Court finds objectors justly entitled.

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(WATER\21530ANS)

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re the General Adjudication of
Rights to the Use of Water from the
Snake River Basin Water System

Case No. 36-00003F

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Department of Water Resources
Adjudication Bureau

The State of Idaho, ex rel. R. Keith
Higginson in his official capacity as
Director of the Idaho Department of
Water Resources,

OBJECTION

Petitioner,

vs.

The United States; the State of Idaho;
and all Claimants to the use of water
from the Snake River Basin Water
System,

36-00003F -0002/
93-04-0009

Respondents.

I. GENERAL INFORMATION

1. Person objecting:

Name: United States of America,
Environment and Natural Resources Division
550 West Fort Street
Box 33
Boise, Idaho 83734

Briefly describe your interest in this water right: The United States
holds water rights of many types in all reporting areas within the SRBA.

2. Owner of the water right:

Name: SIMCOE, DOYT H. AND ROXIE J.

Address: 562 Sunrise Blvd N
Twin Falls, ID 83301

3. If this objection is filed by an attorney:

Attorney Name: David W. Harder
Attorney Address: United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street
Box 33
Boise, Idaho 83734
Attorney Phone No.: (202) 272-5784

If filed by an attorney, notice of pending court proceedings will be sent to
the attorney only.

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II. STATEMENT OF THE OBJECTION

Please check each "box" which states your objection to the recommendation in the Director's Report.

1. ☐ Name and Address: I object to the name and/or address of the owner of the water right
2. ☐ Source: I object to the source of water.
3. ☒ Quantity: I object to:
 - ☒ a. the total quantity of water used in cubic feet per second; or
 - ☐ b. the total quantity of water stored in acre-feet per year; or
 - ☐ c. the total quantity of water reserved for each and every purpose, including all present and future uses.
4. ☒ Priority Date: I object to the priority date.
5. ☐ Points of Diversion: I object to the legal description of the point(s) of diversion.
6. ☐ Instream Flow: I object to the legal description of the beginning and ending points of the instream flow.
7. ☐ Purpose(s) of Use: I object to the purpose(s) of use.
8. ☐ Period of Year: I object to the period of year when water is used or is necessary for the purpose stated.
9. ☒ Place of Use: I object to:
 - ☒ a. the legal description of the place of use; or
 - ☐ b. the number of irrigated acres within each forty (40) acre subdivision.
10. ☒ Consumptive Use: I object to the annual volume of consumptive use.
11. ☐ Remarks: I object to the "remarks" listed with the water right.
12. ☒ Water Right Recommendation: I object to:
 - ☒ a. this water right being recommended at all; or
 - ☐ b. this water right not being recommended.
13. ☐ Description of Reservation: I object to the legal description of the reservation.
14. ☒ Other: I object to certain paragraphs of the general provisions in the Director's report as noted on the attached "Reasons Supporting Objections and Proposed Changes".

REASONS SUPPORTING EACH BOX CHECKED

In the space following, you must state the reason(s) by number for each box checked. You may use additional pages if necessary.

See attached "Reasons Supporting Objections and Proposed Changes" numbered as per above check list.

CHANGES TO THE DIRECTOR'S REPORT

Specifically describe how you want the Director's Report to be changed. You may use additional pages if necessary.

See attached "Reasons Supporting Objections and Proposed Changes" numbered as per above check list.

Please note: You should attach copies of documents which support your objection. Note on each document the "box number" it supports.

[X] Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary.

REASONS SUPPORTING OBJECTIONS AND PROPOSED CHANGES - 5 Pages

ATTACHMENT A - 1 Page

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VERIFICATION

In the District of Columbia,

The United States of America, being first duly sworn, upon oath, deposes and says:

That I am the entity filing this objection, that I am a water claimant in this proceeding, as defined by I.C. § 42-1401A(1) and (7), and that I have read the foregoing objection, know its contents and that the statements contained therein are true to the best of my knowledge and belief.

By: David W. Harder
(Attorney signing in representative capacity)

Subscribed and sworn to before me this 24th day of April, 1993.

Alane Passero
Notary Public for: District of Columbia

Residing at: District of Columbia

My Commission Expires: July 14, 1997

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of April, 1993, I mailed the original and copies of the foregoing objection, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

2. One copy to the owner of the water right:

Name: SIMCOE, DOYT H. AND ROXIE J.

Address: 562 Sunrise Blvd N
Twin Falls, ID 83301

3. One copy to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

David W. Harder
Signature of Objector or attorney mailing
on Objector's behalf

REASONS SUPPORTING OBJECTIONS AND PROPOSED CHANGES

SIMCOE, ROXIE J.

SIMCOE, DOYT H.

CASE NO. 36-00003F

3. QUANTITY

a. The total quantity of water used in cubic feet per second

The Director's Report recommends a quantity of 0.8 cfs for this right. This is based on the assumption that 40 acres are irrigated and that 0.02 cfs are needed for each irrigated acre. The 1987 NAPP photography for this area shows that only approximately 37 acres are irrigated within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T7S, R13E. At a rate of 0.02 cfs per acre the maximum quantity recommended would then be 0.74 cfs.

Diversion Volume at Water Sources

The IDWR Director's Report fails to limit the total acre-feet of annual diversion from the water source for this right. The general provisions (Paragraph 13, Page 14) specify that the maximum acre-feet of water allowed annually at the field headgate is 4.0 acre-feet per acre. The only annual volume specified for this right is for consumptive use at the rate of 3.0 acre-feet per acre.

Since allowances are made in the peak diversion rate for (1) conveyance losses between the water source and field headgate and (2) the on-farm losses requiring more than 0.02 cfs/acre at the headgate, it can only be assumed that it is the Director's intention to allow similar unspecified increases in the annual diversion volume. The unquantified nature of the right, as described, is therefore unacceptable.

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Conveyance Losses

The conveyance loss quantified by IDWR is inaccurate because of inappropriate use of the following parameters in the Worstell formula:

- Seepage rate values were typically estimated at two feet per day throughout the Hagerman Valley. Readily available soils data demonstrate that widely varying seepage rates actually exist.
- Water surface top width values throughout the Hagerman Valley were typically estimated at ten feet. There are wide variations in size between the various ditches and along their lengths.

IDWR's computerized analysis used to calculate conveyance loss values for these ditch systems could have been performed using the variable seepage rates and widths.

4. PRIORITY DATE

The Director's Report recommends a priority date of September 10, 1884 for this right. An 1884 priority date is not substantiated for this recommended right. The 1884 priority date is based on the priority date decreed for right 36-00003 in 1932. The NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27 is included within the area described for that right. If in fact the area covered by this recommended right was irrigated prior to 1932, any water right with an 1884 priority date has been forfeited because of lack of use.

An aerial photograph of this area taken on July 24, 1953, shows no evidence that the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T7S, R13E, had ever been irrigated. Aerial photography taken for the Soil Conservation Service in 1964 indicates no irrigation occurring in that year or at any time during the period between 1953 and 1964.

The USGS Hagerman 7.5 minute orthophotoquad of the area shows the first evidence of irrigation within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27. The photograph, utilized as a base for the orthophotoquad, was taken on August 4, 1974. On that date, it is evident that approximately 10 acres were irrigated. Unless the claimant can show cause for an earlier date, a water right with a priority date, no earlier than March 15, 1975, should be recommended for 10 acres within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27. At 0.02 cfs per acre, the quantity for the water right recommended for the 10 acres should be 0.2 cfs.

The 1987 aerial photography shows a total of 37 acres under irrigation, indicating that an additional 27 acres was brought under irrigation between 1974 and 1987. Unless the claimant can show cause for an earlier priority date, the priority date for the additional 27 acres should be March 15, 1987. At 0.02 cfs per acre, the quantity for the water right recommended for the 27 acres should be 0.54 cfs.

9. PLACE OF USE

a. The number of irrigated acres within each forty (40) acre subdivision

The 1987 aerial photography shows that only 37 acres are irrigated within the NE $\frac{1}{4}$ SW $\frac{1}{4}$. Because 10 acres were brought under irrigation prior to August 4, 1974 and the remaining 27 acres were brought under irrigation at a later date, there should be two water rights recommended for this 40 acre subdivision. The total acreage in the two rights recommended should not exceed 37 acres.

10. CONSUMPTIVE USE

Because only 37 acres are irrigated, the recommended consumptive use should be less than the 120 afy recommended in the Director's Report. The water right recommended for the 10 acres, with a 1975 priority date, should have a consumptive use of 30 afy. The water

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right recommended for the 27 acres, with a 1987 priority date, should have a consumptive use of 81 afy.

12. WATER RIGHT RECOMMENDATION

a. This water right being recommended at all

Because no irrigation occurred within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27 from at least 1953 to 1964, any rights granted in 1932 have been forfeited in accordance with I.C. §42-222(2). Two separate water rights, one for 10 acres with a 1974 priority date and one for 27 acres with a 1987 priority date should be recommended instead of 36-00003F.

14. OTHER

General Provision, CONJUNCTIVE ADMINISTRATION, Section 3, Page 10; General Provision, ADMINISTRATION OF GROUND WATER, Section 4, Page 10; General Provision, ADMINISTRATION OF BASIN 36 RELATIVE TO THE SNAKE RIVER, Section 5, first paragraph, Page 10; General Provision, ADMINISTRATION OF SMALL DOMESTIC AND STOCK WATER RIGHTS, Section 6, Page 11: The U.S. objects to administration of federal water rights by the director to the extent that the director seeks authority beyond the scope of the waiver of sovereign immunity contained in the McCarran Amendment, 43 U.S.C. 666.

General Provision, ADMINISTRATION OF BASIN 36 RELATIVE TO THE SNAKE RIVER, Section 5, first paragraph, Page 1-10: Regarding the second sentence, which begins "(i)nformation presently available," the United States is without sufficient information or knowledge to form a belief as to the truth of the sentence, and therefore it is denied. Regarding the third sentence, which begins "(w)hen the director," it is denied.

General Provision, MEASURING DEVICES AND CONTROL WORKS, Section 7, Page 11: The U.S. objects to administration of federal

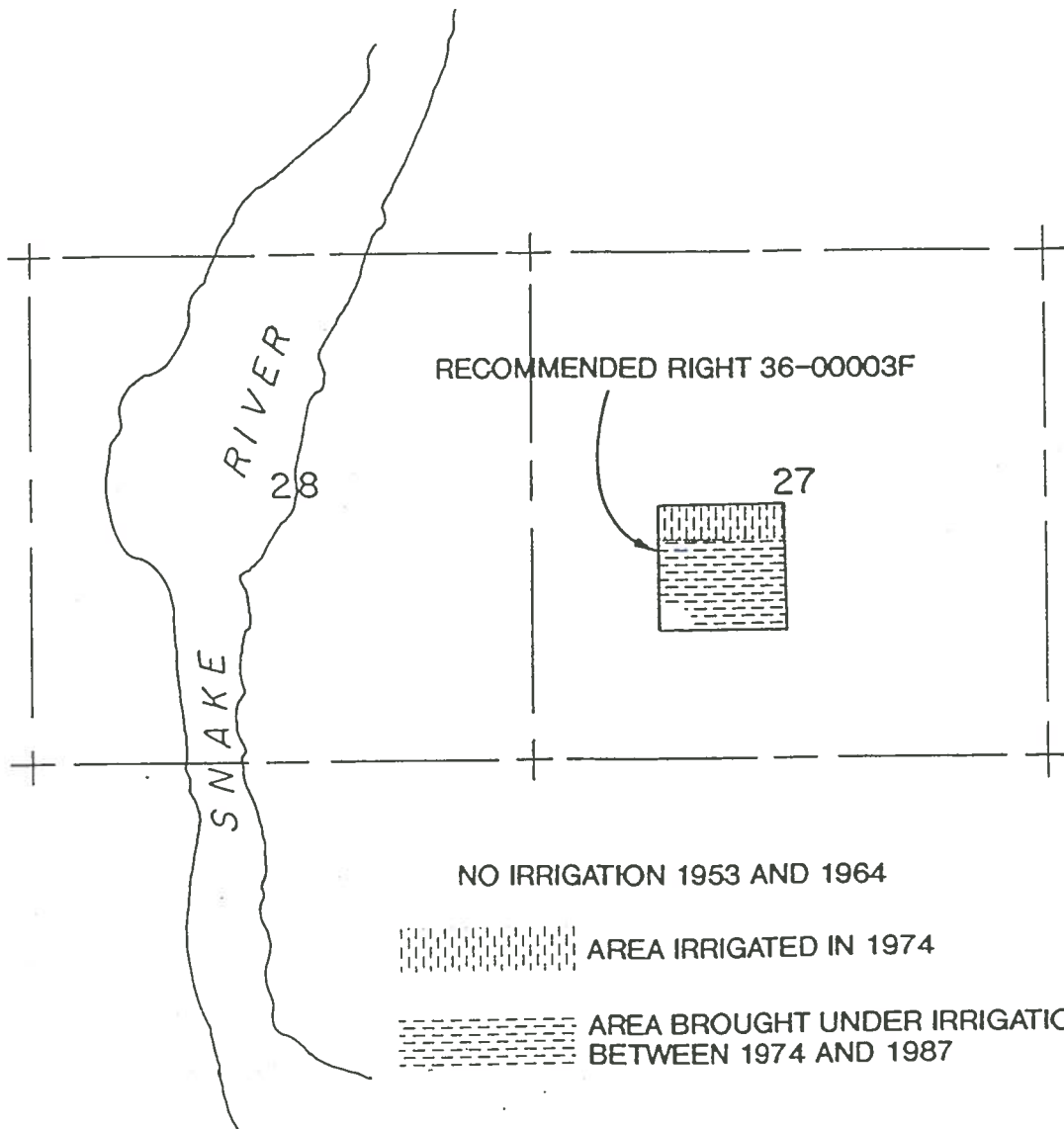
water rights by the director inconsistent with the McCarran Amendment. The U.S. further asserts that the director may not prescribe measuring devices and control works to be installed and maintained on federal property and the director may not prohibit or prevent the diversion of water to federal property for federal uses.

General Provision, IRRIGATION USE, Section 12, Paragraphs b.i.
- iii., Pages 13 & 14: all paragraphs are denied.

General Provision, IRRIGATION USE, Section 12, Paragraphs c.i.
- iii., Page 14: all paragraphs are denied.

General Provision, DIVERSION VOLUME FOR IRRIGATION, Section 13, the last sentence is denied. The Director's Report fails to place a limit on the total quantity of water that can be diverted from the water source. Since the water commissioner is typically required to deliver water from the water source to the farm system, adequate allocation of available water cannot be accomplished without limits being set on the total annual diversion, as well as the peak flow rates that are specified in the Director's Report. This is needed to insure that water is beneficially used. The peak rate of diversion should be based on peak irrigation requirements. Non-peak portions of the irrigation season typically require less water. Therefore, peak diversions made throughout the season cannot be considered beneficial use of water.

General Provision, DIVERSION RATES IN EXCESS OF .02 CFS PER ACRE, Section 16, Paragraph a, Page 15: Regarding the second sentence, which begins "For purposes," it is denied. Neither IDWR nor the claimant have demonstrated a reasonable and actual basis for a diversion rate in excess of .02 cfs per acre due to conveyance losses or field conditions.



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NCA ASSOCIATES
ENGINEERS - PLANNERS

NOTICE OF ERROR

RESPONSE

CORRECTED R PROOF

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JAN 20 1993

AUG-24-1992

NOTICE OF ERROR FORM

Please type or print clearly, fill out completely, and return to:

Idaho Department of Water Resources

Statehouse Mail

Boise, Idaho 83720-9000

The notice of error must be received at IDWR by the **deadline date** printed below with your proposed recommendation.

RECEIVED

Department of Water Resources

Southern Region Office

SEP-24-1992

YOUR DEADLINE FOR FILING A NOTICE OF ERROR IS:

1. Water right number: 36-00003F

2. Name: Roxie J. Day + H. SIMCOE

Address: 562 Sunrise Blvd North
Twin Falls, Idaho 83301

Weekday Telephone Number: 733-5037, 733-6900

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Department of Water Resources

JAN 20 1993

TEAR AT PERFORATIONS AND COMPLETE FORM ON OTHER SIDE

(Instead of filling in items 3 and 4 below you may include a copy of your proposed recommendation with the changes marked on the copy.)

3. Describe the portion of proposed recommendation with which you disagree:

Period of Use change to a shorter time period —

⊛ There is NO change for ^{my claim} on the quantity of H₂O in my prior claim. I am concerned if the quantity of H₂O being allocated for the type of soil is adequate @ 11 mmers inch —

4. Describe the changes you wish to have made in the proposed recommendation:

Do not shorten time period —
Protect the priority date — concerned with well development that could impact spring flow —

5. Describe why you disagree with the proposed recommendation:

Believe weather cycles and weather conditions on occasions support irrigation activity in early March — also late fall.

6. Date: 09-17-92

SIGNATURE

Roxie J. Day + H. Simcoe



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

OCTOBER 15, 1992

R. KEITH HIGGINSON
Director

- MR + MRS DOYT SIMCOE
- 562 SUNRISE BLVD NORTH
- TWIN FALLS, ID 83301

RE: NOTICE OF ERROR FOR SEASON OF USE AND DIVERSION AMOUNTS
WATER RIGHT NO(S): 36-00003 F

DEAR MR + MRS SIMCOE:

THIS LETTER IS IN RESPONSE TO THE NOTICE OF ERROR (NOE) YOU RECENTLY FILED WITH IDWR REGARDING THE DIRECTOR'S PROPOSED RECOMMENDATION OF THE CLAIM LISTED ABOVE. YOUR NOE QUESTIONS TWO POINTS; 1) YOUR NOE INDICATES THAT YOU WOULD LIKE THE RECOMMENDATION TO SHOW A LONGER SEASON OF USE FOR IRRIGATION. AND 2) THE BASIS FOR RECOMMENDATION OF AN AMOUNT THAT IS LESS THAN THE AMOUNT SHOWN IN A PREVIOUS DECREE.

- 1) THE DIRECTOR HAS APPROVED EXTENDING THE PERIOD OF USE FOR THE HAGERMAN VALLEY TO 3/15 TO 11/15.

THE PROPOSED RECOMMENDATION IS BASED ON IRRIGATION SEASON OF USE STANDARDS ADOPTED BY THE DIRECTOR FOR THE VARIOUS REGIONS THROUGH THE STATE. THESE STANDARDS ARE BASED ON THE PERIOD OF THE YEAR IN WHICH THERE IS LESS THAN A 75% CHANCE OF A 24 DEGREE F. FROST.

IN ADDITION, SINCE THERE ARE SOME YEARS IN WHICH WATER CAN BE BENEFICIALLY USED FOR IRRIGATION OUTSIDE THE IRRIGATION SEASON, THE PROPOSED DIRECTOR'S REPORT INCLUDES A GENERAL PROVISION WHICH PROVIDES FOR IRRIGATION OUTSIDE THE IRRIGATION SEASON UNDER CERTAIN CONDITIONS. THE CONDITIONS ARE THAT THE WATER IS BENEFICIALLY USED, AS DETERMINED BY THE DIRECTOR; THAT ALL WATER RIGHTS WITH A PERIOD OF USE OUTSIDE THE IRRIGATION SEASON REGARDLESS OF PRIORITY, ARE SATISFIED; AND THAT THE USE DOES NOT CONFLICT WITH THE PUBLIC INTEREST AS DETERMINED BY THE DIRECTOR. THIS PROPOSED GENERAL PROVISION WILL BE INCLUDED IN THE DIRECTOR'S REPORT.

- 2) UNDER IDAHO LAW, A WATER RIGHT IS LIMITED TO THE AMOUNT OF WATER BENEFICIALLY USED FOR THE PURPOSES FOR WHICH THE WATER RIGHT WAS ESTABLISHED. THE AMOUNT OF WATER BENEFICIALLY USED IS LIMITED TO THE AMOUNT THAT IS ACTUALLY USED AND IS REASONABLY REQUIRED. FOR IRRIGATION PURPOSES, A REASONABLE AMOUNT IS THE

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JAN 20 1993

PAGE 2

AMOUNT REQUIRED USING IRRIGATION METHODS THAT ARE REASONABLY EFFICIENT UNDER CURRENT CIRCUMSTANCES. IF THE AMOUNT OF A WATER RIGHT SHOWN IN A DECREE IS GREATER THAN THE AMOUNT THAT IS BENEFICIALLY USED, THEN THE PORTION THAT IS NOT BENEFICIALLY USED IS FORFEITED.

THE AMOUNT PROPOSED TO BE RECOMMENDED FOR YOUR CLAIM IS BASED ON THE AMOUNT OF WATER DETERMINED TO BE BENEFICIALLY USED FOR THE RECOMMENDED USES, BASED ON AVAILABLE DATA AND CURRENT METHODS OF ANALYSIS.

IF YOU STILL DISAGREE WITH IDWR'S RECOMMENDATIONS YOU WILL HAVE AN OPPORTUNITY TO FILE AN OBJECTION TO THE DIRECTOR'S REPORT WITH THE COURT. WHEN THE DIRECTOR'S REPORT IS FILED WITH THE COURT, YOU WILL BE MAILED A NOTICE THAT WILL CONTAIN MORE INFORMATION ABOUT THE OBJECTION PROCESS.

SINCERELY,

A handwritten signature in cursive script, reading "Robert V. Horstelt".

SENIOR WATER AGENT

MICROFILMED

JAN 20 1993

Water Right Number - R36-00003F

Prefix Translation: RESEARCH

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***

SIMCOE

ROXIE J

1 - 562 SUNRISE BLVD N

2 -

3 -

City- TWIN FALLS

State- ID Zip- 83301

Phone - 208-733-5037

SIMCOE

DOYT H

1 - 562 SUNRISE BLVD N

2 -

3 -

City- TWIN FALLS

State- ID Zip- 83301

Phone - 208-733-5037

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +
09/10/1884 ERROR IN REGION D - DECREED+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
BILLINGSLEY CREEK SNAKE RIVER+ - - - - Point of Diversion - - - - - +
TwN Rng Sec Tract Lot RFlg County

07S 13E 11 SE SE NE (47) GOODING

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume

01 - IRRIGATION

03/15

11/15

0.800

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
0.800 120.0+ - - - - Place of Use - - - - - +
TwN Rng Sec Tract Lot Acres Code Description County

07S 13E 27

NE SW

40.0

01

IRRIGATION

(47) GOODING

Total Acres: 40.0

+ - - Diversion Means - VIA BUCKEYE DITCH, PUMP TO SPRINKLERS

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - NONE

+ - - - - Remarks - - - - - +
WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.

MICROFILMED

JAN 20 1993

Water right number - R36-00003F

Prefix Translation: RESEARCH

+ - - - - Old Water Right Numbers - - - - - +

+ - - - - Old Water Right Numbers - - - - - +

3600003

+ - - - - Conditions of Approval - - - - - +

No Conditions of Approval found.

+ - - - Decree Plaintiff - - - + + - - - Decree Defendant - - - + + - Decree Date - +

00/00/0000

+ - - - - Comments - - - - - +

Date: 08/05/1992 User Id: WORSTELL Subject: CHANGE OF OWNER
OWNERSHIP CHANGED 10/10/1991

Date: 09/22/1992 User Id: SCHULTZ Subject: NOTICE OF ERROR (NOE)
RECEIVED NOE 9/21/92. CHANGED NOE FLAG FROM BLANK TO A.

CLAIM VERIFIED 8/5/92. DID NOT REVERIFY ANY PART OF CLAIM.

Date: 10/15/1992 User Id: WORSTELL Subject: NOTICE OF ERROR RECORD
CHANGED PERIOD OF USE TO 3/15 TO 11/15

+ - - Audit Fields - - +

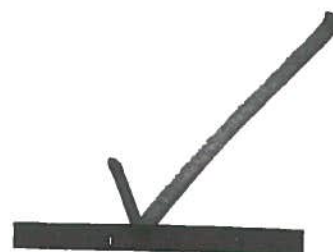
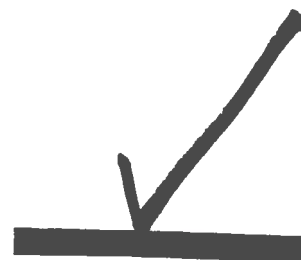
10/15/92 WORSTELL

+ - - - - Adjudication Rights Dates and Flags Area - - - - - +

Court Report Filing	- 00/00/0000	Field Inspection Made	- 08/16/1990	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 10/15/1992	Old Judicial District	-
Claim Received Date	- 09/08/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S002116	Water District	- 36A
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- AND	Presumption Flag	-
				Notice of Error Flag	- C

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JAN 20 1993

R PROOF
CVR
MAPS
PHOTOS
MISC



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JAN 20 1993

AJ0743NP
(OD-124)

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT
(REGIONAL)

VERIFIED BY *HHT + RVW*

08/05/92 10:57:15
Page 1

Water Right Number - **R36-00003F** Prefix Translation: RESEARCH Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***

SIMCOE ROXIE J 1 - 562 SUNRISE BLVD N
2 -
3 -
City- TWIN FALLS State- ID Zip- 83301
Phone - 208-733-5037

SIMCOE DOYT H 1 - 562 SUNRISE BLVD N
2 -
3 -
City- TWIN FALLS State- ID Zip- 83301
Phone - 208-733-5037

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +

09/10/1884 ERROR IN REGION **D - DECREED**

+ - - - - Source - - - - - + + - - - - Tributary - - - - - +

BILLINGSLEY CREEK SNAKE RIVER

+ - - - - - - - - - - - - - - - Point of Diversion - - - - - +

| Trn | Rng | Sec | Tract | Lot | RFlg | County |
|-----|-----|-----|----------|-----|------|---------|
| 07S | 13E | 11 | SE SE NE | | (47) | GOODING |

+ - - - - - - - - - - - - - - - Water Use - - - - - +

| Code | Description | Period From | Period To | Diversion Rate | Diversion Volume |
|-----------------|-------------|-------------|-----------|----------------|------------------|
| 01 - IRRIGATION | | 04/01 | 10/31 | 0.800 | |

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +

0.800 120.0

+ - - - - - - - - - - - - - - - Place of Use - - - - - +

| Trn | Rng | Sec | Tract | Lot | Acres | Code | Description | County |
|-----|-----|-----|-------|-----|-------|------|-------------|--------------|
| 07S | 13E | 27 | NE SW | | 40.0 | 01 | IRRIGATION | (47) GOODING |

Total Acres: 40.0

+ - - Diversion Means - VIA BUCKEYE DITCH, PUMP TO SPRINKLERS

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - NONE

+ - - - - - - - - - - - - - - - Remarks - - - - - +

WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.

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IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT
(REGIONAL)

08/05/92 10:57:15
Page 2

Water right number - R36-00003F

Prefix Translation: RESEARCH

+ - - - - Old Water Right Numbers - - - - - +

+ - - - - Old Water Right Numbers - - - - - +
3600003

+ - - - - Conditions of Approval - - - - - +
No Conditions of Approval found.

+ - - - - Decree Plaintiff - - - + + - - - - Decree Defendant - - - + + - Decree Date - +
00/00/0000

+ - - - - Comments - - - - - +
Date: 08/05/1992 User Id: WORSTELL Subject: CHANGE OF OWNER
OWNERSHIP CHANGED 10/10/1991

+ - - Audit Fields - - +
08/05/92 WORSTELL

+ - - - - Adjudication Rights Dates and Flags Area - - - - - +

| | | | | | |
|----------------------|--------------|-----------------------|--------------|-------------------------|---------|
| Court Report Filing | - 00/00/0000 | Field Inspection Made | - 08/16/1990 | Civil Case Number | - 39576 |
| Objection Filed Date | - 00/00/0000 | Field Inspection Flag | - | Old Case Number | - |
| Response Filed Date | - 00/00/0000 | Verified Date | - 08/05/1992 | Old Judicial District | - |
| Claim Received Date | - 09/08/1988 | Last Amended Date | - 00/00/0000 | Temporary Right | - P |
| | | Receipt Number | - S002116 | Water District | - 36A |
| | | POU Ownership Flag | - Y | Federal/State Indicator | - S |
| | | Name Connector | - AND | Presumption Flag | - |
| | | | | Notice of Error Flag | - |

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JAN 20 1993

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT
(REGIONAL)

02/05/92 14:51:25
Page 1

VERIFIED BY

See

Water Right Number - R36-00003F

Prefix Translation: RESEARCH

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***
SIMCOE

ROXIE J

1 - 562 SUNRISE BLVD N
2 -
3 -

State- ID Zip- 83301

SIMCOE

DOYT H

City- TWIN FALLS
Phone - 208-733-5037
1 - 562 SUNRISE BLVD N
2 -
3 -

State- ID Zip- 83301

*** O - ORIGINAL OWNER ***
~~MARSHALL~~

~~KENNETH W~~

~~1 - 185 BLAIR DR~~

~~2 -
3 -~~

~~State- ID Zip- 83301~~

~~MARSHALL~~

~~HELEN L~~

~~City- TWIN FALLS
Phone - 208-733-3983
1 - 185 BLAIR DR
2 -
3 -~~

~~State- ID Zip- 83301~~

~~City- TWIN FALLS
Phone - 208-733-3983~~

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +
09/10/1884 ERROR IN REGION D - DECREED

+ - - - - Source - - - - + + - - - - - Tributary - - - - - +
BILLINGSLEY CREEK SNAKE RIVER

+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County
07S 13E 11 SE SE NE (47) GOODING

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
01 - IRRIGATION 04/01 10/31 0.800 160.00
+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
0.800 160.00 120.0

+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County
07S 13E 27 NE SW 40.0 01 IRRIGATION (47) GOODING

Total Acres: 40.0

**Needs Conv. Loss added*

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

14:36:22
06/28/90

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A36-00003F

LAST: MARSHALL
ADDRESS: 185 BLAIR DR.
CITY: TWIN FALLS
PHONE NUMBER: 208-733-3983

FIRST: KENNETH W.

STATE: ID ZIP: 83301

OWNER CODE: C

LAST: MARSHALL
ADDRESS: 185 BLAIR DR.
CITY: TWIN FALLS
PHONE NUMBER: 208-733-3983

FIRST: HELEN L.

STATE: ID ZIP: 83301

OWNER CODE: C

FIELD EXAM REQUIRED?

VERIFICATION REQUIRED DUE TO REMARKS?

NO REMARKS IN CLAIM

DATABASE
N

FIELD
EXAMINER

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JAN 20 1993

CONTACT PERSON: _____

PHONE NUMBER: (____) ____-____

DATE OF FIELD EXAM: ____/____/____

APPOINTMENT MADE: Y(____) N(____)

TIME: ____:____ A(____) P(____)

ACCOMPANIED BY: _____

PHONE NUMBER: (____) ____-____

RELATIONSHIP TO CLAIMANT: _____

DIRECTIONS TO PROPERTY / REMARKS:

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JAN 20 1993

JAN 20 1993

A. AJ CLAIM: # A36-00003F PRIORITY DATE: 09-10-1884 STAGE: D
B. WR RECORD: # 36-00003 PRIORITY DATE: 09-10-1884 STAGE: D

C. FIELD EXAM REQUIRED?

DUE TO PRIORITY DATE DISCREPANCY? (Y/N)

DATABASE
N

FIELD
EXAMINER
N

ARE THERE OBVIOUS REASONS TO QUESTION THE PRIORITY DATE CLAIMED? Y() N(X)
IF YES EXPLAIN.

REMARKS:

=====

RECOMMENDED PRIORITY DATE:
09-10-1884

REVIEWED BY hht

DATE 7-17-90

=====

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JAN 20 1993

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

| RIGHT | TWP. | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | CNTY |
|------------|------|------|------|-----|-----|-----|-----|---------|
| A36-00003F | 07S | 13E | 11 | SE | SE | NE | | GOODING |

OTHER AJ CLAIMS WITH SAME AJ POD

| A PREFIX | R PREFIX |
|------------|----------|
| A36-10223 | NONE |
| A36-00103A | |
| A36-00003B | |
| A36-00003C | |
| A36-00003E | |
| A36-00003J | |
| A36-00039G | |

WR RECORDS IN SAME 40 ACRE TRACT

36-00005
36-00019
36-00021
36-00024
36-00025
36-00026
36-00027
36-00034
36-00035A
36-00035B
36-00039A
36-00039B
36-00040
36-00051
36-00052
36-00064
36-00065
36-00067
36-00071
36-00076
36-00077
36-00082
36-00083
36-00085
36-00087
36-00088
36-00089
36-00090
36-00091
36-00094
36-00095
36-00096
36-00103
36-00108
36-00112A
36-00112B
36-00113B
36-00113C
36-00113D
36-00125
36-04008
36-04115
36-04261
36-07271
36-07658
36-07739

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JAN 20 1993

36-07834
36-07840
36-07853
36-07875
36-07957
36-08058
36-08319
36-08335

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

B. WR POINT OF DIVERSION AND SOURCE:

| RIGHT | TWP. | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | CNTY |
|----------|------|------|------|-----|-----|-----|-----|---------|
| 36-00003 | 07S | 13E | 11 | | SE | NE | | GOODING |

OTHER WR RECORDS WITH SAME WR POD

AJ CLAIMS IN SAME 40 ACRE TRACT
A PREFIX R PREFIX

| | | |
|-----------|------------|------|
| 36-00005 | A36-00025 | NONE |
| 36-00019 | A36-00087 | |
| 36-00021 | A36-07658 | |
| 36-00024 | A36-10409 | |
| 36-00025 | A36-00051D | |
| 36-00026 | A36-10119 | |
| 36-00027 | A36-10120 | |
| 36-00034 | A36-10751 | |
| 36-00035A | A36-10752 | |
| 36-00035B | A36-10755 | |
| 36-00039A | A36-10061 | |
| 36-00039B | A36-00103B | |
| 36-00040 | A36-00108A | |
| 36-00051 | A36-00003G | |
| 36-00052 | A36-00027 | |
| 36-00064 | A36-00039C | |
| 36-00065 | A36-00090E | |
| 36-00067 | A36-00051B | |
| 36-00071 | A36-00076A | |
| 36-00076 | A36-00089B | |
| 36-00077 | A36-00089D | |
| 36-00082 | A36-10283 | |
| 36-00083 | A36-10312 | |
| 36-00085 | A36-00090A | |
| 36-00087 | A36-00003D | |
| 36-00088 | A36-00090B | |
| 36-00089 | A36-00090C | |
| 36-00090 | A36-00090D | |
| 36-00091 | A36-00090F | |
| 36-00094 | A36-00108F | |
| 36-00095 | A36-00125A | |
| 36-00096 | A36-00026 | |
| 36-00103 | A36-00051C | |
| 36-00108 | A36-00071A | |
| 36-00112A | A36-00089A | |
| 36-00112B | A36-00108C | |
| 36-00113B | A36-00108D | |
| 36-00113C | A36-00108E | |

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JAN 20 1993

36-00113D
36-00125
36-04008
36-04115
36-04261
36-07271
36-07658
36-07739
36-07834
36-07840
36-07853
36-07875
36-07957
36-08058
36-08319
36-08335

A36-00108H
A36-04008
A36-04115
A36-04261
A36-00113B
A36-10316
A36-10588
A36-00039J
A36-00096A
A36-00113F
A36-00113G
A36-10559
A36-00048B
A36-00048C
A36-10223
A36-00103A
A36-00003B
A36-00003C
A36-00003E
A36-00003J
A36-00039G

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JAN 20 1993

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

C. FIELD EXAM REQUIRED?

| | DATABASE | FIELD EXAMINER |
|----------------------------------|----------|----------------|
| DUE TO POD DISCREPANCY? (Y/N) | Y | <u>N</u> |
| DUE TO SOURCE DISCREPANCY? (Y/N) | N | <u>N</u> |

REMARKS:

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

| TWP. | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | COUNTY |
|-----------|------------|------------|-----------|-----------|-----------|------------|----------------|
| <u>7S</u> | <u>13E</u> | <u>X11</u> | <u>SE</u> | <u>SE</u> | <u>NE</u> | <u>---</u> | <u>Gooding</u> |

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

REVIEWED BY: hht

DATE: 7-17-90

A. ROOT WATER RIGHT NUMBERS: A36-00003A
A36-00003B
A36-00003C
A36-00003D
A36-00003E
A36-00003F
A36-00003G
A36-00003H
A36-00003J

MICROFILMED
JAN 20 1993

B. POU LISTING

| TWP | RNG | SEC | 1/4 | 1/4 | LOT | NAME | AJ
#/ACRES | WR
#/ACRES | LANDSAT
DATA | FIELD
EXAM. | RECOMM.
ACRES |
|-------------|-----|-----|-----|-----|--------------------------------|------------------|---------------|---------------|-----------------|----------------|------------------|
| 07S | 13E | 27 | NE | SW | MARSHALL , KENNETH W. | A36-00003F /40.0 | - | / | 38.0 | | |
| | | | | | NEW INTERNATIONAL MORTGAGE BAN | | 36-00001 | / | | | |
| | | | | | NEW INTERNATIONAL MORTGAGE BAN | | 36-00002 | / | | | |
| | | | | | NEW INTERNATIONAL MORTGAGE BAN | | 36-00003 | / | | | |
| | | | | | BIG BEND IRRIGATION & MINING C | | 36-00133 | / | | | |
| | | | | | BIG BEND IRRIGATION & MINING C | | 36-00192 | / | | | |
| | | | | | BIG BEND IRRIGATION & MINING C | | 36-02007 | / | | | |
| TOTAL ACRES | | | | | | A36-00003F | 40.00 | | 38.00 | | |

ARE IRRIGATED ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, Y() N()
IF YES SEE ATTACHED SHEET:

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE
Y

FIELD
EXAMINER
N

PRESUMPTION FLAG:

REMARKS:

Landset data within acceptable tolerance

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JAN 20 1993

RECOMMENDATIONS:

TOTAL ACRES: 40

REVIEWED BY: hnt

DATE: 7-17-90

A. AJ CLAIMED USES:

| PURPOSES | MONTH/DAY | DIVERSION QUANTITY |
|-------------------------------------|---------------------|--------------------|
| A36-00003F IRRIGATION | FROM 03-15 TO 11-15 | .800 CFS |
| TOTAL DIVERSION RATE/VOLUME CLAIMED | | .800 CFS |

B. WR RECORDED USES:

| PURPOSES | MONTH/DAY | DIVERSION QUANTITY |
|-------------------------------------|-----------|--------------------|
| 36-00003 IRRIGATION | FROM TO | 20.000 CFS |
| TOTAL DIVERSION RATE/VOLUME CLAIMED | | 20.000 CFS |

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

| | DATABASE | FIELD EXAMINER |
|--|----------|----------------|
| DUE TO WATER-USE DISCREPANCY? (Y/N) | N | <u>N</u> |
| DUE TO DIVERSION RATE DISCREPANCY? (Y/N) | Y | <u>N</u> |
| DUE TO PERIOD FROM/TO DISCREPANCY? (Y/N) | Y | <u>N</u> |

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

RECOMMEND TO WR STANDARDS OR OTHER?

Y(X) N()

Y(X) N(X)

Explain in remarks, below.

REMARKS:

4-1 10-31

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JAN 20 1993

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

Y() N(X)

split

AJ TOTAL CLAIMED DIVERSION RATE: 0.800 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 20.000 CFS

*** IF NO or IF STATUTORY CLAIM or BENEFICIAL USE then flow measurement required. ***
** If an amount smaller than the original diversion rate is **
** claimed and an exam is NOT required, explain in remarks. **

FLOW MEASUREMENT REQUIRED?

DUE TO STAGE OR DIVERSION RATE DISCREPANCY? (Y/N)

FIELD
DATABASE EXAMINER
Y N

B.

FLOW MEASUREMENT

MEASUREMENT METHOD

Theoretical

, SEE ATTACHED CALCULATIONS.

C. ARE OTHER WATER RIGHTS USED? Y() N(X) IF YES COMPLETE OVERLAP REVIEW.

OTHER RIGHTS LISTED IN CLAIM: NONE

NO CLAIMS FOUND WITH SAME POU AND IRRIGATION USAGE

NO RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION

MICROFILMED

JAN 20 1993

D.

RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE

ACRES 40 x 0.02 CFS/ACRE = 0.80 CFS
(Taken from p/u review)

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y() N()

*** IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y() N() ***

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = 120.0 AF/A
ACRES 40 x CONSUMPTIVE VOL. AF/A FOR AREA 3.0 =
TOTAL CONSUMPTIVE USE 120.0 AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = AF/A
ACRES 40 x DIVERSION VOL. AF/A FOR AREA 4.0 =
TOTAL DIVERSION VOLUME 160.0 AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y() N(X)

REMARKS: (Include limitations on CONSUMPTIVE USE for combined rights.)

1b. CALCULATIONS

Claimed .80
Recom. .80

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JAN 20 1993

No allowance for conveyance
loss due to amt claimed.

RECOMMENDATIONS:

| REC.
PURPOSES | REC. PERIOD
FROM TO | REC. DIV
RATE CFS | REC. DIV
VOL. AF/A | REC. CONS.
USE |
|----------------------|--|--|---------------------------------|---|
| IRRIGATION | <u>4-1</u> <u>10-31</u>
~~03-15~~ ~~11-15~~ | DATABASE EXAMINER
0.800 <u>0.80</u> | DATABASE EXAMINER
<u>168</u> | DATABASE EXAMINER
120.0 <u>120.0</u> |
| TOTAL FOR THIS RIGHT | | 0.800 | | 120.0 |

REVIEWED BY: hht

DATE: 7-17-90

FOI

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A. CHECK ONLY THE FOLLOWING THAT APPLY:

| | ACCEPTED
AS CLAIMED | NEEDS
REVIEW |
|------------------------------|------------------------|-----------------|
| OWNERSHIP _____ | (X) | () |
| FORFEIT/ABANDON _____ | (X) | () |
| ADDITIONAL DIV. AMOUNT _____ | (X) | () |

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 36-00003

| | | | |
|-----------------------------------|--------------------|-------------------|-----|
| TOTAL DIVERSION RATE OF WR SPLITS | DATABASE
20.000 | EXAMINER
_____ | CFS |
|-----------------------------------|--------------------|-------------------|-----|

SPLITS:

| OLD RIGHT
NUMBERS | CURRENT
CLAIM NUMBERS | DIVERSION
RATE | CURRENT "R"
CLAIM NUM. | "R" DIV.
RATE | WR RIGHT
NUMBERS | DIVERSION
RATE |
|----------------------|--------------------------|-------------------|---------------------------|------------------|---------------------|-------------------|
| A36-00003 | A36-00003A | 1.600 | - | | 36-00003 | 20.000 |
| A36-00003 | A36-00003B | 7.160 | - | | 36-00003 | 20.000 |
| A36-00003 | A36-00003C | 0.300 | - | | 36-00003 | 20.000 |
| A36-00003 | A36-00003D | 0.240 | - | | 36-00003 | 20.000 |
| A36-00003 | A36-00003E | 0.200 | - | | 36-00003 | 20.000 |
| A36-00003 | A36-00003F | 0.800 | - | | 36-00003 | 20.000 |
| A36-00003 | A36-00003G | 0.400 | - | | 36-00003 | 20.000 |
| A36-00003 | A36-00003H | 12.000 | - | | 36-00003 | 20.000 |
| A36-00003 | A36-00003J | 4.000 | - | | 36-00003 | 20.000 |
| TOTAL CFS | | 26.700 | | | | 20.000 |

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)
IF NO, is the written review sheet attached? (Y/N)

DATABASE
N

FIELD
EXAMINER
N

REMARKS:

Claim is for 1" per acre
See ~~A36-00003~~ SPLIT RIGHT REVIEW.
attached.

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JAN 20 1993

AUTHENTICATION:

SIGNATURE:

Steve Clelland

DATE:

8-14-90

NAME OF FIELD EXAMINER:

STEVE CLELLAND

TITLE:

MICROFILMED

JAN 20 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

14:36:22
06/28/90

PAGE: 15
QUICKLOOK INFORMATION

CLAIM NUMBER: A36-00003F

| WR ELEMENT | FIELD EXAM
Y/N | CORRESPONDENCE
SENT/RECEIVED
BY WHOM/DATE | FIELD EXAM
BY WHOM/DATE | CHANGE
CLAIM
Y/N | VERIFIED BY
CODE | COMPLETED
REVIEW
WHOM/DATE | COMPLETED
DATA ENTRY
WHOM/DATE | VERIFIED
DATE
WHOM/DATE |
|---------------------------|-------------------|---|----------------------------|------------------------|---------------------|----------------------------------|--------------------------------------|-------------------------------|
| PRIORITY DATE | N | | | N | | SCC
8-14-90 | DB
10-1-90 | |
| POINT OF DIV | Y N | | | N | | SC
2-5-90 | | |
| SOURCE | N | | | N | | | | |
| PLACE OF USE | Y N | | | N | 1, 4, 5, 6 | | | |
| DIV. AMOUNT
CFS/VOLUME | Y N | | | N | | | | |
| CONSUMPTIVE USE | - N | | | N | | | | |
| PURPOSES | N | | | N | | | | |
| PERIOD OF USE | Y N | | | N | | | | |
| BASIS OF CLAIM | Y N | | | N | | | | |
| REMARKS | N | | | (Y) | 6 | | | |

hnt
7-17-90

"VERIFIED BY" CODES

TOPO MAP/ORTHO-PQ = 1
ASCS MAP = 2
WATERMASTER RECORDS = 3
NAPP PHOTOS = 4
FIELD EXAM = 5
OTHER (SEE REMARKS) = 6

THESE CODES ARE USED TO INDICATE HOW THE FIELD EXAMINER VERIFIED THE INFORMATION
USED FOR THIS FIELD EXAMINATION. INDICATED ARE ALL CODES WHICH APPLY.

- split review

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JAN 20 1993

HHT
8/5/892

136-0000 3F

MARSHALL



Pump in Diversion
from Buckeye Ditch

PHOTO TAKEN by
STEVE CLELAND
8-16-90

NOTES

TO: A36-0000 3 F DATE: 8-16-1990

MARSHALL

Pump #1 ~~Engine~~: 60 PSI

outlet pipe $\approx 5\frac{1}{2}$ " O.D.

Pump in the Buckeye ditch

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JAN 20 1993

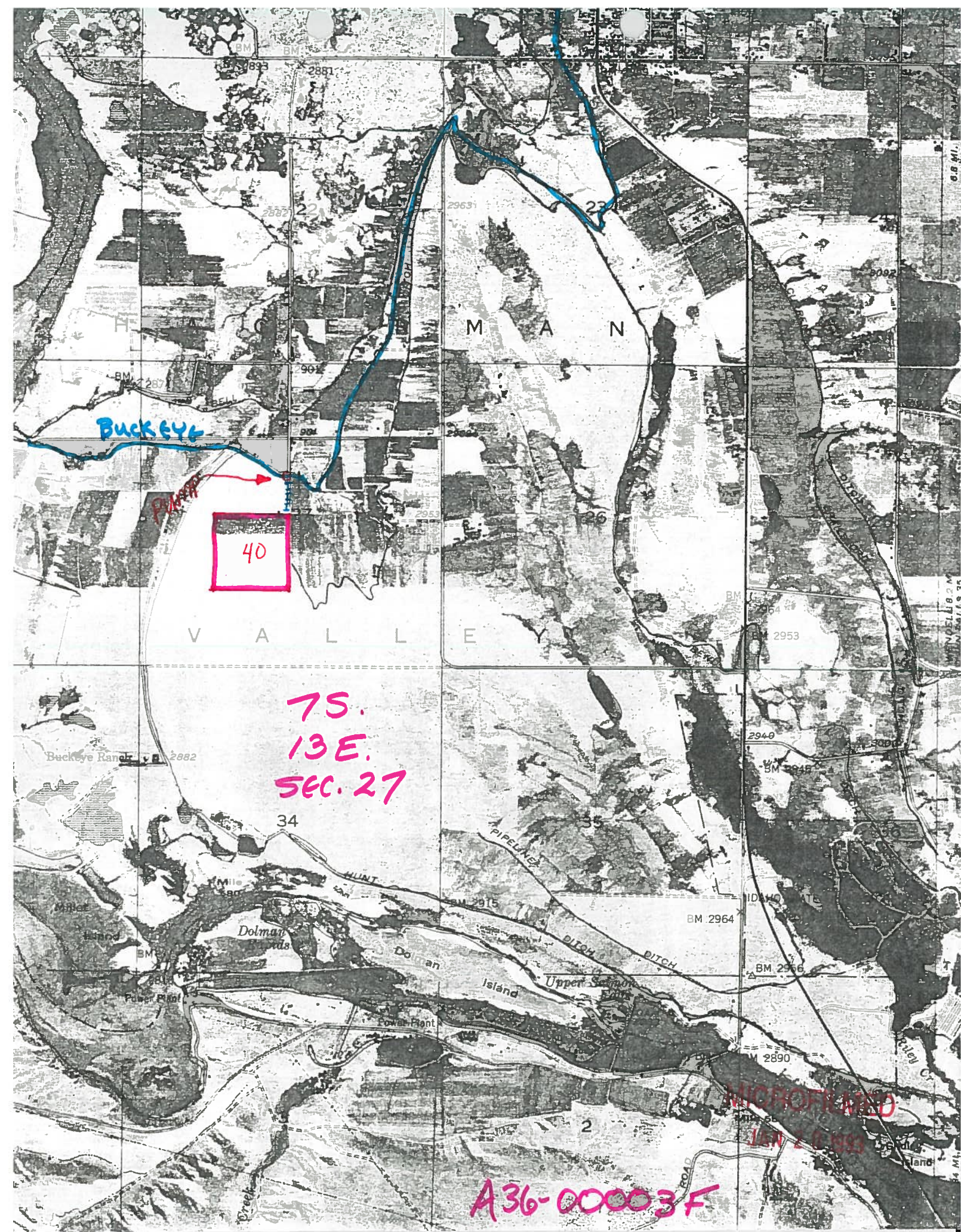
FROM: See



MARSHALL
pump from
Buckeye ditch

8-16-90

A36-00003F



SYSTEM CLAIM NUMBERS P36 00003F _____

AGENT HHT
INITIALS
DATE 8/5/92

[illegible]

Add Water District 36A

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JAN 20 1993

DECREED RIGHT SPLIT ANALYSIS

PARENT RIGHT NO. 36-00003 TOTAL DIVERSION RATE 20.0 PREPARATION DATE 7-29-92 HHT

| CLAIM
PORTION | CLAIMED
RATE | RECOMMENDED
RATE | IS CLAIMED
RATE EXCEEDED
BY ANALYSIS | CONVEYANCE
LOSS | DOES DIV RATE +
CALC. C.L. EXCEED
CLAIMED RATE | TOTAL
RECOMMENDED
DIV. RATE |
|------------------|-----------------|---------------------|--|--------------------|--|-----------------------------------|
| A | 1.6 | 0.26 13ac. | N | 0.10 | N | 0.36 |
| B | 7.16 | 3.25 129ac. | N | 1.75 | N | 5.00 |
| C | 0.30 | 0.20 10ac. | N | 0.26 | Y | 0.30 |
| D | 0.24 | 0.24 2ac. | Y | 0 (0.17) | NA | 0.24 |
| E | 6.20 | 6.20 5ac. | Y | 0 (0.06) | NA | 0.20 |
| F | 0.80 | 0.80 40ac. | N | (0.26) | Y | 0.80 |
| G | 0.40 | 0.09 3ac. | N | 0.03 | N | 0.12 |
| H | 20.0 | 4.48 224ac. | N | 3.89 | N | 8.69 |
| J | 4.0 | 0.30 15ac. | N | 0.16 | N | 0.46 |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| Total | 34.7 | 9.82 | | | | 16.17 |

Recommended rates do not exceed decreed diversion rate
HHT

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JAN 20 1993

See 8-3-92

CONVEYANCE LOSS - WORSTELL

| REACH | LENGTH
(FT) | AVE
WIDTH
(FT) | SEEPAGE
(FT/DAY) | WORSTELL
LOSS
(CFS) | DELIVERY
(CFS) | DELIVERY
LEFT
(CFS) | LOSS
FACTOR | DELIVERY
LOSS
(CFS) | FLOW
(CFS) |
|--------|----------------|----------------------|---------------------|---------------------------|-------------------|---------------------------|----------------|---------------------------|---------------|
| 1 | 800 | 10.0 | 2.00 | 0.20 | 0.06 | 18.83 | 0.0107 | 0.00 | 26.81 |
| 2 | 600 | 10.0 | 2.00 | 0.15 | 1.02 | 18.77 | 0.0081 | 0.02 | 26.55 |
| 3 | 1400 | 10.0 | 2.00 | 0.35 | 0.24 | 17.75 | 0.0199 | 0.01 | 25.38 |
| 4 | 800 | 10.0 | 2.00 | 0.20 | 0.44 | 17.51 | 0.0115 | 0.02 | 24.79 |
| 5 | 1100 | 10.0 | 2.00 | 0.28 | 0.17 | 17.07 | 0.0163 | 0.01 | 24.14 |
| 6 | 1200 | 10.0 | 2.00 | 0.30 | 0.10 | 16.90 | 0.0179 | 0.01 | 23.70 |
| 7 | 300 | 10.0 | 2.00 | 0.08 | 1.22 | 16.80 | 0.0045 | 0.11 | 23.29 |
| 8 | 1000 | 10.0 | 2.00 | 0.25 | 0.16 | 15.58 | 0.0162 | 0.02 | 22.00 |
| 9 | 500 | 10.0 | 2.00 | 0.13 | 0.50 | 15.42 | 0.0082 | 0.06 | 21.58 |
| 10 | 2200 | 10.0 | 2.00 | 0.56 | 4.13 | 14.92 | 0.0373 | 0.62 | 20.96 |
| 11 | 5500 | 10.0 | 2.00 | 1.39 | 0.20 | 10.79 | 0.1288 | 0.06 | 16.27 |
| 12 | 1700 | 10.0 | 2.00 | 0.43 | 0.09 | 10.59 | 0.0406 | 0.03 | 14.68 |
| 13 | 3900 | 10.0 | 2.00 | 0.99 | 0.34 | 10.50 | 0.0938 | 0.14 | 14.16 |
| 14 | 600 | 10.0 | 2.00 | 0.15 | 0.27 | 10.16 | 0.0149 | 0.12 | 12.84 |
| 15 | 1500 | 10.0 | 2.00 | 0.38 | 0.62 | 9.89 | 0.0383 | 0.29 | 12.42 |
| 16 | 1600 | 10.0 | 2.00 | 0.40 | 1.00 | 9.27 | 0.0436 | 0.51 | 11.42 |
| 17 | 600 | 10.0 | 2.00 | 0.15 | 0.30 | 8.27 | 0.0183 | 0.16 | 10.01 |
| 18 | 300 | 10.0 | 2.00 | 0.08 | 3.25 | 7.97 | 0.0095 | 1.75 | 9.56 |
| 19 | 3000 | 10.0 | 2.00 | 0.76 | 0.24 | 4.72 | 0.1606 | 0.17 | 6.24 |
| 20 | 3000 | 10.0 | 2.00 | 0.76 | 4.48 | 4.48 | 0.1692 | 3.89 | 5.24 |
| TOTALS | 31600 | | | 7.98 | 18.83 | | | 7.98 | |

REACH = SECTION OF CHANNEL
 LENGTH = LENGTH OF REACH, THE CHANNEL CAN BE DIVIDED INTO EQUAL LENGTH REACHES
 OR ACTUAL LENGTHS BETWEEN DELIVERY POINTS
 AVE WIDTH = AVERAGE TOP WIDTH OF REACH
 SEEPAGE = SOIL SEEPAGE RATE OF REACH
 WORSTELL LOSS = CONVEYANCE LOSS IN REACH BASED ON WORSTELL METHOD
 DELIVERY = TOTAL DELIVERIES IN REACH
 DELIVERY LEFT = SUM(DELIVERIES OF CURRENT AND REMAINING REACHES)
 LOSS FACTOR = WORSTELL LOSS/DELIVERY LEFT
 DELIVERY LOSS = SUM(LOSS FACTORS OF CURRENT AND PREVIOUS REACHES) X DELIVERY,
 REPRESENTS THE LOSSES ASSIGNED TO THE DELIVERIES IN THE REACH
 FLOW = TOTAL FLOW AT BEGINNING OF EACH REACH

Buckeye Ditch

MICROFILMED

JAN 20 1993

2 rts @ 0.20 each.

36-0003F.

~~to~~ claimed .80

Div. Pat. Rec .80

No allowance for
conveyance loss.