

12/13/2005

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

RIGHT NUMBER: 22-12756
NAME AND ADDRESS: D & A INC
PO BOX 89
ST ANTHONY ID 83445
SOURCE: UNNAMED STREAM TRIBUTARY: HENRYS FORK
QUANTITY: 0.600 CFS
Right Nos. 22-12756 and 22-13174 are limited to a total combined diversion rate of 0.6 cfs.
PRIORITY DATE: 05/26/1910
POINT OF DIVERSION:
T07N R40E S11 NWNWSW Within FREMONT County
PURPOSE AND PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 10/31	0.600 CFS

PLACE OF USE: IRRIGATION Within FREMONT County
T07N R40E S10 Lot 6 SESE 30.0

30 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 30 acres in a single irrigation season. Combined Right Nos.: 22-12756 and 22-13174.

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.

This right is subject to regulation by the watermaster of Water District No 01.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

This right is a split from former right 22-2052.

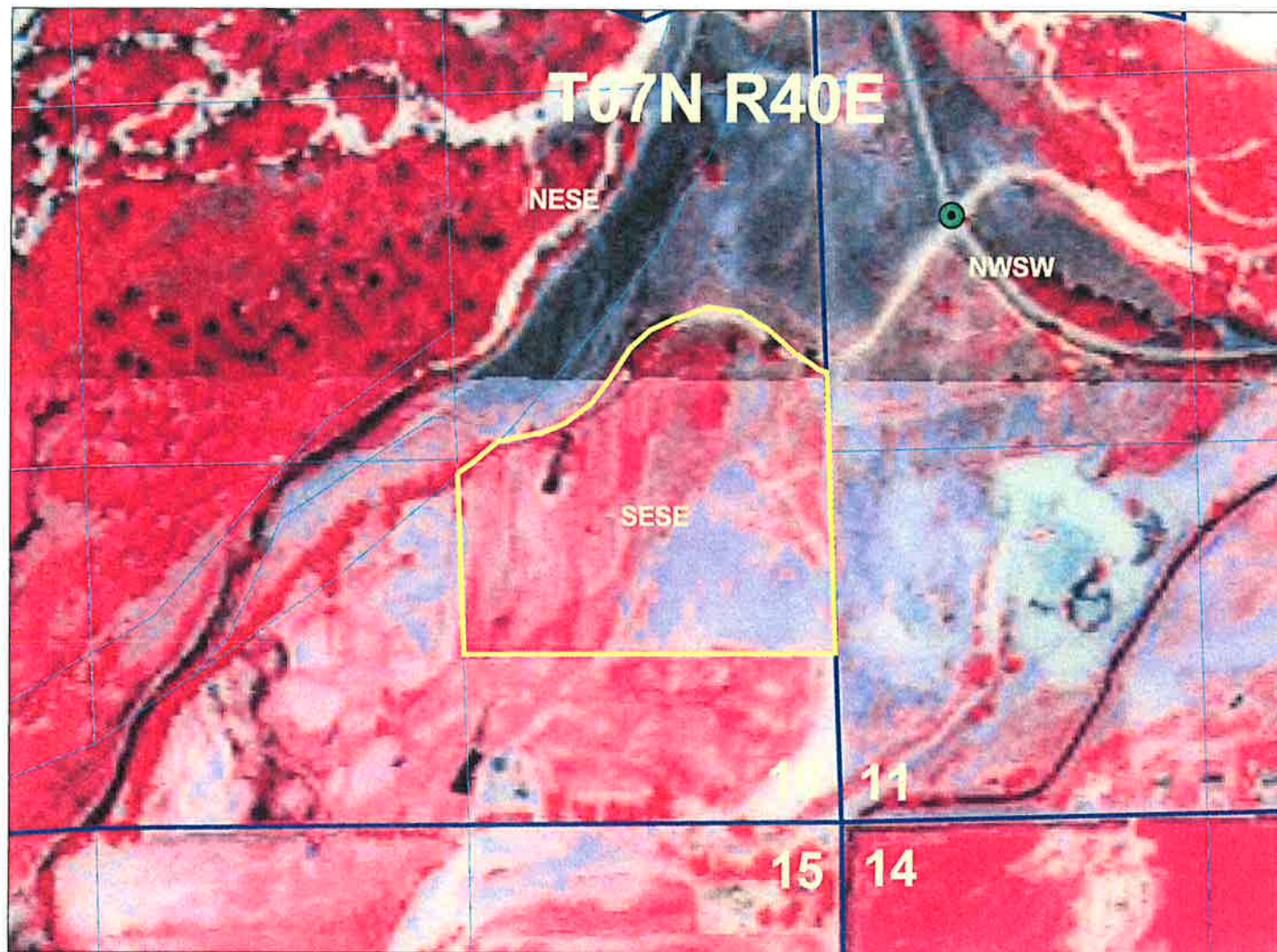
Right Nos. 22-2033A, 22-12629, 22-12756, and 22-13174 are also diverted through point of diversion described above.



Department of Water Resources

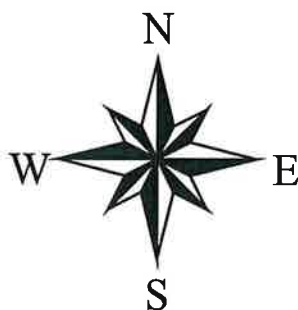
Eastern Region

Claim No.: 22-12756 & 22-13174



0 660 1320 1980 2640 Feet

- Point of Diversion
- Place of Use
- Township/Range
- Sections
- QQ



GIS Place of Use Illustration
1987/88 NAPP Photography
Prepared by: Kristin Moore
Date Prepared: December 2005

08/29/2006

**NOTICE OF ERROR
REPLY**

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

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

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS:

Water right number: 22-12756

D & A INC

PO BOX 89

ST ANTHONY ID 83445

Telephone Number: (208)624-3181

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

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

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

☒ I AGREE with this proposed recommendation; no changes need to be made.

DATE:

10/26/06

SIGNATURE:

Royce E Dalley

Please print your name:

Royce E Dalley

IDWR Regional Office, 900 N Skyline Dr Ste A, Idaho Falls, ID 83402, 2085257161

Kunz
10/27

Claim no. 22-12756

Claimant Contact Log

Date **Remarks** **Agent initials**

12-09-05

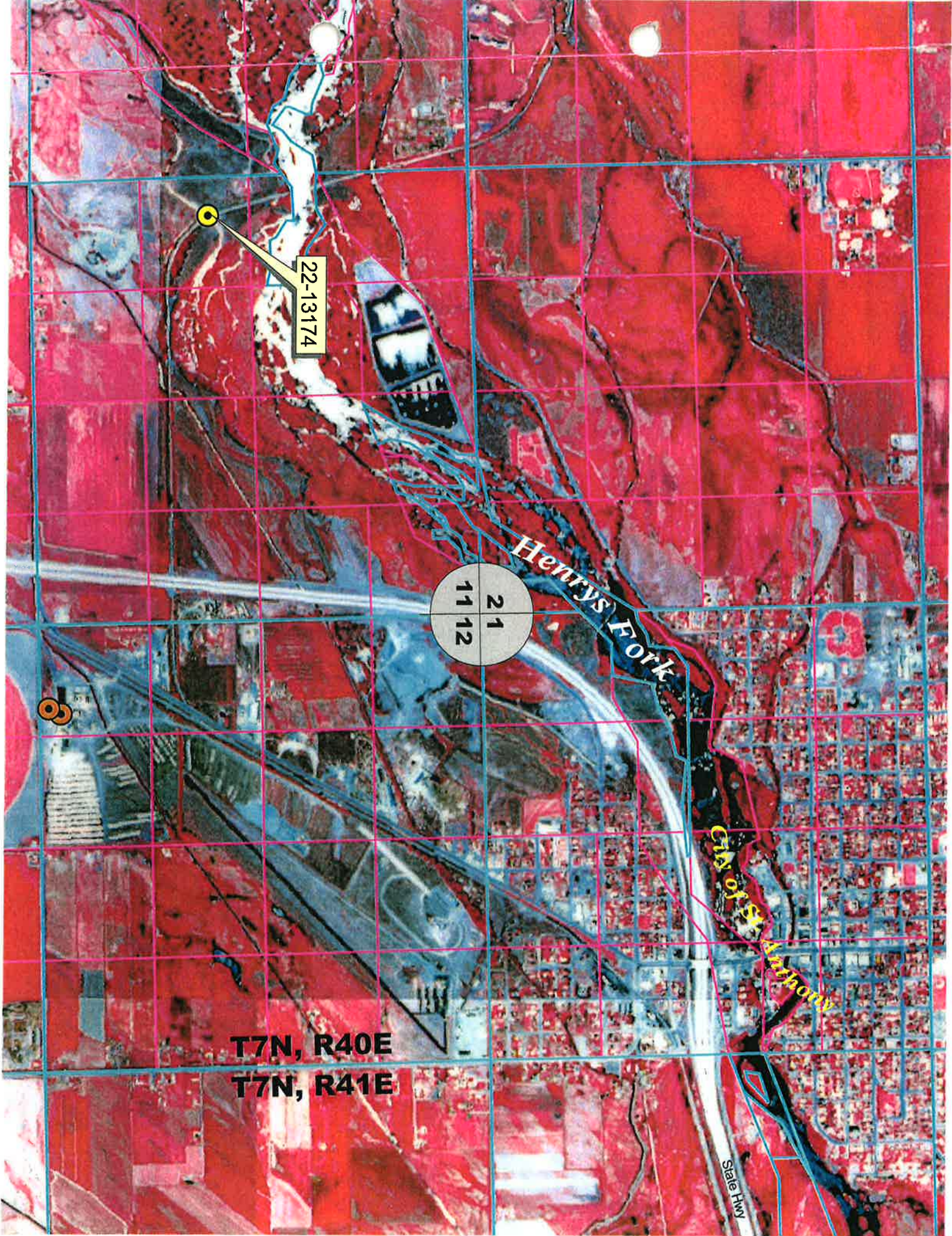
Previously claimed as 22-12631, but it was changed to current.
Unsure exactly what went on.

Split of 22-2052, which was licensed for 155 ac and 3.2 cfs.
However, I cannot find another claim on 22-2052 to account for the
remainder of the acres and water. There are no other claims w/ the
priority date of 5-26-1910. Claim says this right is for 70% of 22-2052,
but that is an exceedingly large amount of water for 30 ac. of ground.
Therefore, recommending only 1"/ac = 6.6 cfs.

letter mentioned on the claim is the permit # or the water license #,
not the most recent water right #.
KM

12-13-05

Claim 22-12629 appears to be a split from 22-2052 as well. But
if 22-12756 is 70%, then 12629 is overclaiming their 30%. It should
only be 6.96 cfs. Because the sum of acres for both claims is only
40 ac, concentrating cfs to 1"/ac.



22-13174

21
11 12

Henry's Fork

City of St. Anthony

State Hwy

T7N, R40E
T7N, R41E

9

Unnamed stream
3.2 second feet
Fremont County
Irrigation and domestic
5-26 1910

S T A T E O F I D A H O

Water License No. 6161

WHEREAS, On the 26th day of May, A.D. 1910, AXTEL O. NYBORG, of St. Anthony, County of Fremont, State of Idaho, duly made application (No. 8939) to me for a permit to use 3.2 cubic feet per second of the waters of an unnamed stream, County of Fremont, State of Idaho, for irrigation and domestic purposes, and

WHEREAS, On the 26th day of May, A.D. 1910, Permit No. 6161, was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 26th day of May, A.D. 1911, and for the application to beneficial use of said water on or before the 26th day of May, A.D. 1912, and

WHEREAS, On the 24th day of September A.D. 1910, AXTEL O. NYBORG, the holder of said permit duly made proof of the completion of adequate works for the diversion of 3.2 cubic feet per second of said waters, as evidenced by my Certificate No. 6161, dated October 15, 1910, confirming the completion of works of sufficient capacity of diverting and conveying to the place of intended use 3.2 cubic feet per second of the waters of an Unnamed Stream with date of priority of May 26, 1910, and

WHEREAS, On the 24th day of September. A.D. 1910, AXTEL O. NYBORG, the holder of said permit duly made proof of the application to beneficial use of 3.2 cubic feet per second of said water:

NOW, THEREFORE, By virtue of authority vested in me by the laws of the State of Idaho, I hereby grant and confirm to AXTEL O. NYBORG, of St. Anthony, County of Fremont, State of Idaho, the holder and owner of said Permit No. 6161, a perpetual right, dating from May 26, 1910, to the use of 3.2 second feet of the waters of an UNNAMED STREAM, in the County of Fremont, and State of Idaho, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at a point 943' East and 415' South of the 1/4 section corner of sections 10 and 11, Township 7 North of Range 40 East of the Boise Meridian, and conducted to and upon (80 acres in south half of southeast quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$), 40 acres in Northeast Quarter of southeast quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) and 35 acres in Southeast quarter of north east quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) of section 10, Township 7 North of Range 40 East of the Boise Meridian, for the purpose of irrigation and domestic use, subject, however, to the laws of the State of Idaho applicable to a license for the use of the waters of the State, and subject also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and the seal of my office at Boise, Idaho, this 15th day of October,

A.D. Nineteen hundred and ten.

(SEAL) Recorded October 15, 1910

D.G. Martin
State Engineer

22 2052

POU
80 ac. S $\frac{1}{2}$ SE $\frac{1}{4}$
40 ac. NE SE
35 ac. SENE
S10 7N40E
155 ac.

22-2052

No. 8939

APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho

1. Name of applicant: Axtel O. Nyborg
 Postoffice address: St. Anthony
 County: Fremont State: Idaho
2. The quantity of water claimed is three and one fifth cubic feet per second
3. Source of water supply: Unnamed stream
 County of Fremont
4. Location of point of diversion: 943 feet E. and 415 feet S. of 1/4 section corner to section 10, and 11, Tp. 7 N.R. 40 East of Boise Meridian.
5. To be used for:
 - I. Irrigation and domestic use:
 - (a) Amount of land to be irrigated :160 acres.
 - (b) In the following legal subdivisions: Lots 5,6 of section 10, Tp 7 N.R. 40 E.B.M.
6. Estimated cost of works: \$430.00 as my portion
7. Description of works for diversion:
 - I. Kind of works: Dam and ditch
 - II. Dimensions of works :
 - (a) Height of dam 4 feet, length of dam at top 100 feet, length of dam at bottom 75 feet. Material used in construction: Stone and earth
 - (d) Conduit ditch, width at bottom 3 feet, width at water line 3.6 feet, depth of water 1.2 feet. Length of conduit is one mile, and it crosses the following quarter sections: SW $\frac{1}{4}$ Section 11, SE $\frac{1}{4}$ Section 10, T 7 N .R. 40 E., to land described in 5 I. (b) above which is the point of intended use.
8. Time required for the completion of the construction of such work is one year.
9. Time required for the complete application of the water to the proposed use is one additional year.

BE IT KNOWN, That the undersigned hereby makes application for a permit to appropriate the public waters of the State of Idaho as herein set forth.

Axtel O. Nyborg,

Applicant

Remarks: This is the same ditch constructed under permit 5295 made by John R. Winter. The applicant in this case joined with John R. Winter in the construction of this ditch each paying equal shares. Mr. Winter has made his proofs and the petitioner has used the water for years and will proceed to make his proofs in the near future.

APPROVAL OF STATE ENGINEER

The number of this permit is 6161

Date of first receipt of application: 9.00 A.M. May 26, 1910

Recorded in Book 18. Page 6161. Approved May 26, 1910

This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho and hereby grant the same, subject to the following limitations and conditions:

Work to begin on or before July 25, 1910, and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.

One-fifth of the work above specified to be completed on or before November 26, 1910.

The whole of said work to be completed on or before May 26, 1911.

The time for proof of beneficial use of water appropriated in accordance herewith, to extend to May 26, 1912.

Witness my hand this twenty sixth day of May, 1910.

D.G. Martin

State Engineer

Blank notice for proof of completion and beneficial use mailed applicant August 6, 1910
 Notices received August 15, 1910, fixing September 24, 1910, as date and St. Anthony as place
 of proof.

Notice for publication mailed Fremont County News, August 15, 1910

Deposition blanks mailed Thomas Elliott August 15, 1910

J.O. Webster authorized to make examination of works August 15, 1910

Report of water commissioner received September 14, 1910

Affidavit of publication, depositions and fees received September 28, 1910

Certificate and license issued October 15, 1910.

 Permit No. 6161

CERTIFICATE OF COMPLETION OF WORKS.

To All Whom it May Concern:

This is to certify that AXTEL O. NYBORG, of St. Anthony, County of Fremont, and State of Idaho, the holder of Permit No. 6161, issued upon Application No. 8939, bearing date of priority of May 26, 1910, authorizing the diversion of 3.2 second feet of the waters of an unnamed stream, County of Fremont, State of Idaho, for irrigation and domestic purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use 3.2 second feet of the waters of an unnamed stream, that the point of diversion of said waters is at a point 943' East and 415' South of the 1/4 section corner of sections 10 and 11, township 7 North of Range 40 East of the Boise Meridian, and the lands proposed to be irrigated by the use of said water are described as follows, to-wit: South half of south east quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) 40 acres in northeast quarter of southeast quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) and 35 acres in southeast quarter of northeast quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) of section 10, Township 17 North of Range 40 East of the Boise Meridian.

Witness my hand this fifteenth day of October, A.D. 1910.

D.G. Martin

State Engineer of the State of Idaho

License issued for ³² second feet
Page 702

WRD417

WATER RIGHTS PROOF READING REPORT

05/08/85

PAGE 1

WATER RIGHT NUMBER 22-2052 ✓

OWNER LAST NAME - NYBORG ✓

FIRST NAME - AXTEL O ✓

ORIG OWNER -

ADDRESS LINE 1 -

ADDRESS LINE 2 -

ADDRESS LINE 3 -

CITY - ST. ANTHONY ✓

STATE - ID ZIP CODE - 83445 ✓

SOURCE - UNNAMED STREAM ✓

TRIBUTARY OF - SINKS ✓

STAGE - LICENSE ✓

STATUS -

PRIORITY - 05-26-1910 ✓ COUNTY - FREMONT ✓

TOTAL DIV. RATE - 3.2000 -CFS

TOTAL DIV. VOLUME - .00 AFA TRFR/AMEND -

WATER DIST. - 01 ✓ DLE/CAREY ACT -

RIGHT BASIS -

DIVERSION POINT - NWSW 11 07N 40E LOT REDIV -

0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0

FROM - TO - USE - IRRIGATION ✓

USE DIV. RATE - 3.2000 CFS USE DIV. VOLUME - .00 AFA

FROM - 01-01 TO - 12-31 USE - DOMESTIC ✓

USE DIV. RATE - .0000 CFS USE DIV. VOLUME - .00 AFA

USE - IRRIGATION

PLACE OF USE - T4N 07N R4G 40E SEC 10 ✓ TRACT SESE LOT AC 40 ✓ TRACT SWSE LOT AC 40 ✓

TRACT NESE LOT AC 40 ✓ TRACT SENE LOT AC 35 ✓

DATE - TOTAL ACRES 155 ✓

DECREE NAME -

REMARKS -

NON IRRIG USE -

OTHER RIGHTS FOR SAME USE -

PROOF DUE -

PERMIT/DENIED -

PROTESTED -

HEARING -

OLD NO. - 6161 ✓

PROOF MADE -

FLD EXAM -

COND. OF APPROVAL -

DIVERSION MEANS -

Report of Engineer

1. State name of applicant and number of permit: Axel O. Nyberg - Permit 6161
2. State source of water supply: Unnamed stream
3. Location of point of diversion: 943' E. & 415' S. of 1/4 Sec. cor. to Secs. 10 & 11, Tp. 17 N., R. 40 E., B.M.
4. State whether or not the works of diversion are fully completed and in accordance with terms of permit: Yes
5. Describe works as they exist, giving dimensions of same as follows:
 - (a) Width of conduit at bottom: 3 feet Company ditch 6 feet
 - (b) Width at water line: 4 feet " 7 "
 - (c) Depth of water: 1.5 feet " 2 "
 - (d) Grade per mile: 5 " 4 "
6. State whether or not water has been turned into works of diversion and if so, to what extent: There is at this time about 4 feet of water being used upon the land
7. Give exact location of lands to be irrigated. Give exact number of acres under cultivation in each forty acre tract: S2 of SE4. NE4 of SE4 and SE4 of NE4 Sec. 10. same being lots 5 & 6. Cultivated all of S2 of SE4. 40 acres in NE4 of SE4. 35 acres in SE4 of NE4. Sec. 10. Tp. 7 N. R. 40 E. B.M.
8. Submit map on enclosed plat, source of supply, point of diversion, route of ditch or ditches and cross hatch lands to be irrigated.

Remarks: This land has been under cultivation for a number of years. This proof being made to perfect title to water only. Company ditch 6 feet wide at bottom.

J. O. Webster
Water Commissioner
1st Div.

STATE OF IDAHO,

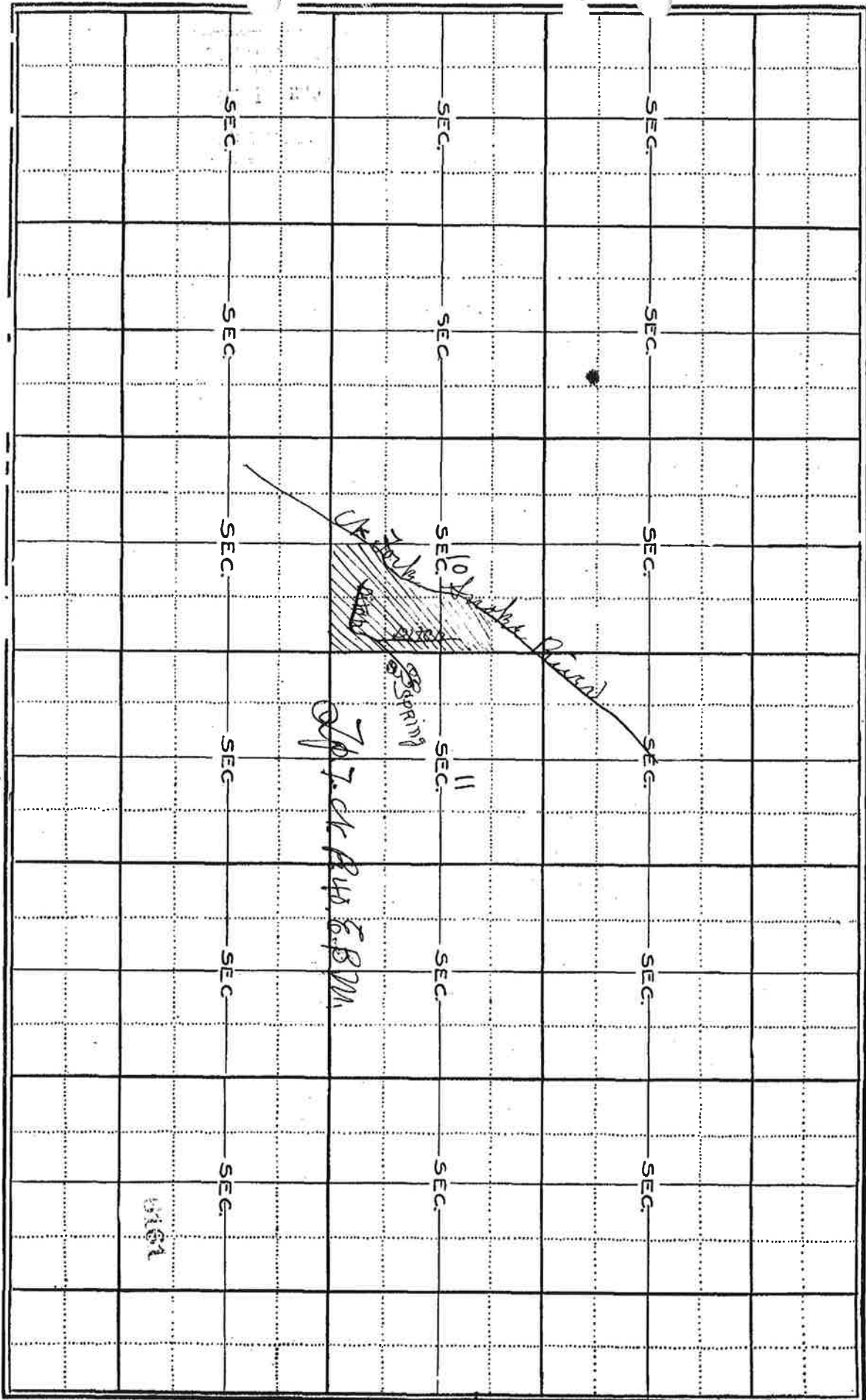
County of _____ } ss.

_____, being first duly sworn, deposes and says that the statements contained in the within report are correct to the best of his knowledge and belief.

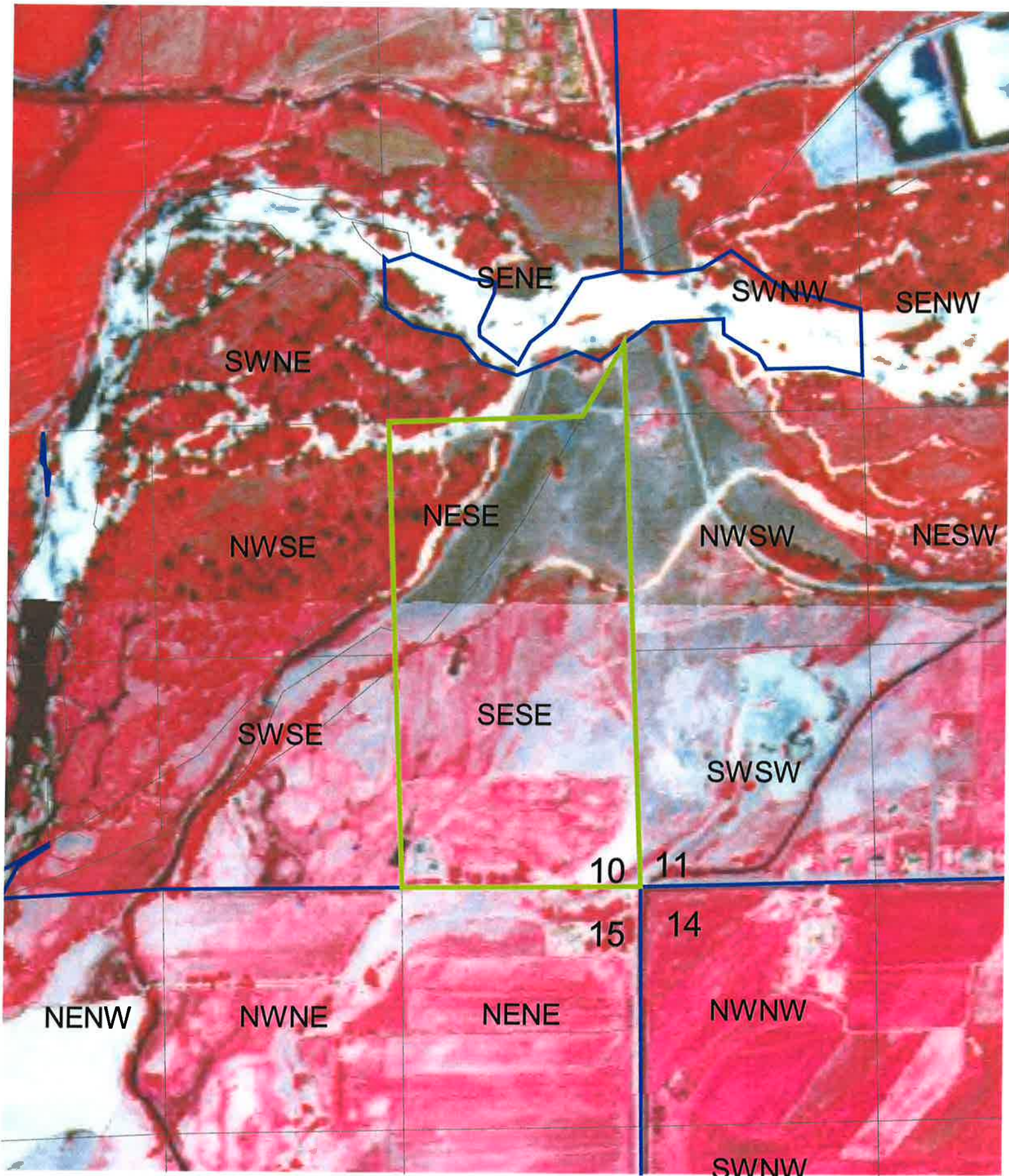
Subscribed and sworn to before me this _____ day of _____ 190_____

My Commission Expires _____

Notary Public.



22-12756



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 22-12756
Date Received: 3/7/89
Receipt No: M002882
Received By:

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name of Claimant(s)

D & A INC Phone: (208)624-3181

PO BOX 89

ST ANTHONY ID 83445

2. Date of Priority: 05/26/1910

3. Source: UNNAMED STREAM Trib. to: HENRYS FORK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
07N	40E	10	SE NE SE	FREMONT	

5. Description of diverting works:

POND & DITCH FROM SECTION 11. HEADGATE TO FLOOD IRRIGATION.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	05/01	11/01	2.24 ✓	

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

8. Total consumptive use:



9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
07N	40E	10	NE	SE	IRRIGATION	10
			SE	SE	IRRIGATION	20
					Section Acres	30
					Total Acres	30

11. Place of use in counties: FREMONT

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

13. Other Water Rights Used:

14. Remarks:

CLAIM IS FOR 70% OF LIC. 22-06161
THIS RIGHT ORIGINALLY GIVEN NUMBER A22-12631. A CLAIM WAS ALREADY RECIEPTED WITH
THIS NUMBER

I WAS UNABLE TO LOCATE A WR. WITH THE NUMBER 22-06161
JDC

22-2052

LICENSE 22-06161 IS ACTUALLY 22-02052. THIS CLAIM IS FOR 70% OF LICNESE 22-02052
(CSAXTON 5/17/01)

POD, AND SOURCE ON CLAIM AMENDED TO MORE ACCURATELY REPRESENT IRRIGATION PRACTICES.
PRIORITY DATE AMENDED TO REPRESENT ORIGINAL PRIORITY DATE ON LICNESE 22-02052.

15. Basis of Claim: License

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 Organizations:

I do solemnly swear or affirm that I am Sec. _____ of _____ Title

DTA Inc _____, that I have signed the foregoing Organization
document in the space below as Sec. _____ of

DTA Inc _____ Title
Organization and that the statements contained in the
foregoing document are true and correct.

Signature of Authorized Agent [Signature]

Sec. DTA Inc.
Title and Organization

5/21/01
Date

State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 21st

of May 2001

Jennifer Crabtree

Notary Public

Residing at Idaho Falls, Idaho

My commission Expires 9/23/03



10

22-13174
22-12756
put in file