

RECEIVED

JAN -2 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES Department of Water Resources

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

December 21, 2001

VIVA SAUER
ROY E SAUER
898 E 2830 S
HAGERMAN ID 83332

Re: Snake River Basin Adjudication (SRBA)

Water Right(s) #36-33D, 36-10622

Change of Address

*All Conds modified 1-2-02
-sal*

Dear Water Right Holder:

IDWR has been notified the address presently in our records is incorrect. Although we have reached you at the address above, we need your written confirmation this is your correct mailing address before we can change our records. Future notices related to your water right can be sent only to the address on your water right or as otherwise changed by you.

Please sign your name at the bottom of this letter and return it to this office. Make corrections to your name and address if necessary **and list any other water rights you may have** before returning this letter by January 11, 2002. Thank you for your help.

If your mail delivery address changes in any form, please contact us in writing so we can update our records.

If there has been a change in ownership of the property connected with the water rights referenced above, please call this office toll-free at 1-800/451-4129 to obtain a form to make this required change to the water right record.

Sincerely,

Sally
Sally Sherman
Technical Records Specialist
Adjudication Bureau

SS:region

#####

The address is correct as shown above or as otherwise changed.

Roy E Sauer
Viva Sauer

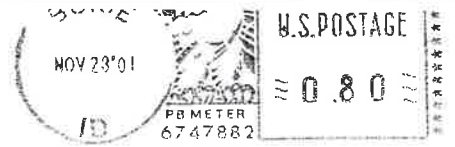
Claimant Signature

208-837-4995

Telephone No.

e River Basin Adjudication
e of the Attorney General
Box 44449
e ID 83711-4449

ADDRESS SERVICE
REQUESTED



☐ INSUFFICIENT ADDRESS
☐ NO SUCH NUMBER
☐ INCORRECT ZIP CODE USED
☐ ATTEMPTED NOT KNOWN
☐ NO SUCH STREET
☐ VACANT
☐ NO POSTAGE
☒ NOT DELIVERABLE AS
ADDRESSED - UNABLE
TO FORWARD
ROUTE NO. _____ DATE _____
CAUTION: INITIALS _____

36-330 PD
36-10622 PD

898E2830S

SAUER, VIVA + Roy E.
RT 1 BOX 45
HAGERMAN ID 83332

mother's old address

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\21530SUP.NO2\lmr)

RECEIVED

FEB 25 1993

Department of Water Resources
Adjudication Bureau

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

11 * * * * *

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

Case No. 39576

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

HAGERMAN WATER RIGHT OWNERS,
INC. AND ITS INDIVIDUAL
MEMBERS' SECOND SUPPLEMENTAL
NOTICE OF APPEARANCE

21 Petitioner,)

22 vs.)

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

Respondents.)

* * * * *

24 COMES NOW the law firm of Hepworth, Nungester & Lezamiz
25 and supplements it Notice of Appearance to add on behalf of



Hepworth,
Nungester,
& Lezamiz

SECOND SUPPLEMENTAL NOTICE OF APPEARANCE - 1

MICROFILMED
OCT 11 1994

1 Hagerman Water Right Owners, Inc. and its individual members, the
2 following individuals:

3	Mallane, Thomas	A36-00055AA
4	Mavencamp, John V.	A36-00104A
4	Pothier, Norman	A36-00064A
	Vader, Loren	A36-10706
5	Vader, Loren	A36-02588
	Culbertson, Stowe Allen & Mildred Sue	A36-00090D
6	Culbertson, Stowe Allen & Mildred Sue	A36-10409
	Barnard, Clifton R.	A36-02008
7	Barnard, Clifton R.	A36-02009
	Rea, Edna Mae & Bell, Verl C.	A36-00003A
8	Rea, Edna Mae & Bell, Verl C.	A36-000033E
	Sauer, Roy E.	A36-00033D
	Jensen, Darrell W.	A36-10308
9	Jensen, Darrell W.	A36-10309
	Jensen, Darrell W.	A36-10310
10	Jensen, Darrell W.	A36-00011A
	Robinson, Creed & Sandra	A36-00090E
11	Robinson, Creed & Sandra	A36-10588
	Zabala, Ignacio Nick	A36-00051C
12	Zabala, Ignacio Nick	A36-10312-00051E
	Zabala, Ignacio Nick	A36-10314

13 Dated this 24 day of February, 1993.

14 HEPWORTH, NUNGESTER & LEZAMIZ,
15 CHARTERED

16 By: 
Patrick D. Brown
17 Attorneys for Respondents

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 he caused to be mailed a copy of the
23 above and foregoing SECOND SUPPLEMENTAL NOTICE OF APPEARANCE on the



Hepworth,
Nungester,
& Lezamiz

MICROFILMED
OCT 11 1994

1 2A day of February, 1993, to:

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

5 Chief, Natural Resources Division (1)
6 Office of Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

7 The United States Department of Justice (1)
8 Environment and Natural Resources Division
550 West Fort Street, Box 33
9 Boise, ID 83734

10 
11 Patrick D. Brown



Hepworth,
Nungester,
& Lezamiz

MICROFILMED
OCT 11 1994

AJ5514NP

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION ATTORNEY NAME ADD/UPDATE

DATE: 03/15/93
TIME: 23:19:17.8
PAGE: 1

INPUT: AJ_SELECTION:HHT-NOA-BROWN2.SEL

TYPE OF ACTION: ADD

MODIFY ALL FIELDS FLAG:

LAST NAME: BROWN

ADDRESS LINE 1: HEPWORTH NUNGESTER LEZAMIZ

ADDRESS LINE 3: PO BOX 389

CITY: TWIN FALLS

FIRST NAME: PATRICK D

ADDRESS LINE 2:133 SHOSHONE ST N

STATE: ID ZIP: 833030389

PHONE NUMBER: (208) 734-7510

36-00003A ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00011A ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00033D ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00033E ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00051C ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00051E ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00055AA ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00064A ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00090D ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00090E WATER RIGHT HAS ONE ATTORNEY OWNER CODE - NOT ADDED
36-00104A ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-02008 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-02009 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-02588 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-10308 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-10309 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-10310 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-10314 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-10409 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-10588 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-10706 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
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A36-10409 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-10588 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-10706 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE

added as first supplement

added as first supplement

MICROFILMED
OCT 11 1994

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: A36-00033D
Date Received: 8/25/1988
Receipt No: S001730
Received By: SCC

COPY
FOR DO NOT RETURN
FILES

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: ROY E. SAUER 208-837-4995
Address: RT. 1 BOX 45
HAGERMAN, ID 83332

OR
Name: VIVA SAUER 208-837-4995
Address: RT. 1 BOX 45
HAGERMAN, ID 83332

2. Date of Priority: MAR 08, 1902

3. Source: WEATHERBY SPRINGS Trib. to: BILLINGSLEY CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
07S	14E	30	SE	NE	SW		GOODING

5. Description of diverting works:
PIPELINE TO CURRAN DITCH TO NORTH PIPELINE TO OPEN DITCH.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.090		

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

8. Total consumptive use is 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	NE		IRR	3.0
Section Acres							3.0
Total Acres							3.0

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:
UNCLEAR HOW THE WATER GETS FROM WEATHERBY SPRINGS TO THE CURRAN
DITCH. THIS CLAIM IS A PORTION OF DECREED WR #36-0033.

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

NEW INTERNATIONAL MORTGAGE BAN
Decree Plaintiff

IDAHO POWER COMPANY
Decree Defendant

vs

MICROFILMED
JAN 1 1994
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 ☒ 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): Roy E Sauer Date: Aug-15

Date: _____

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 25th day

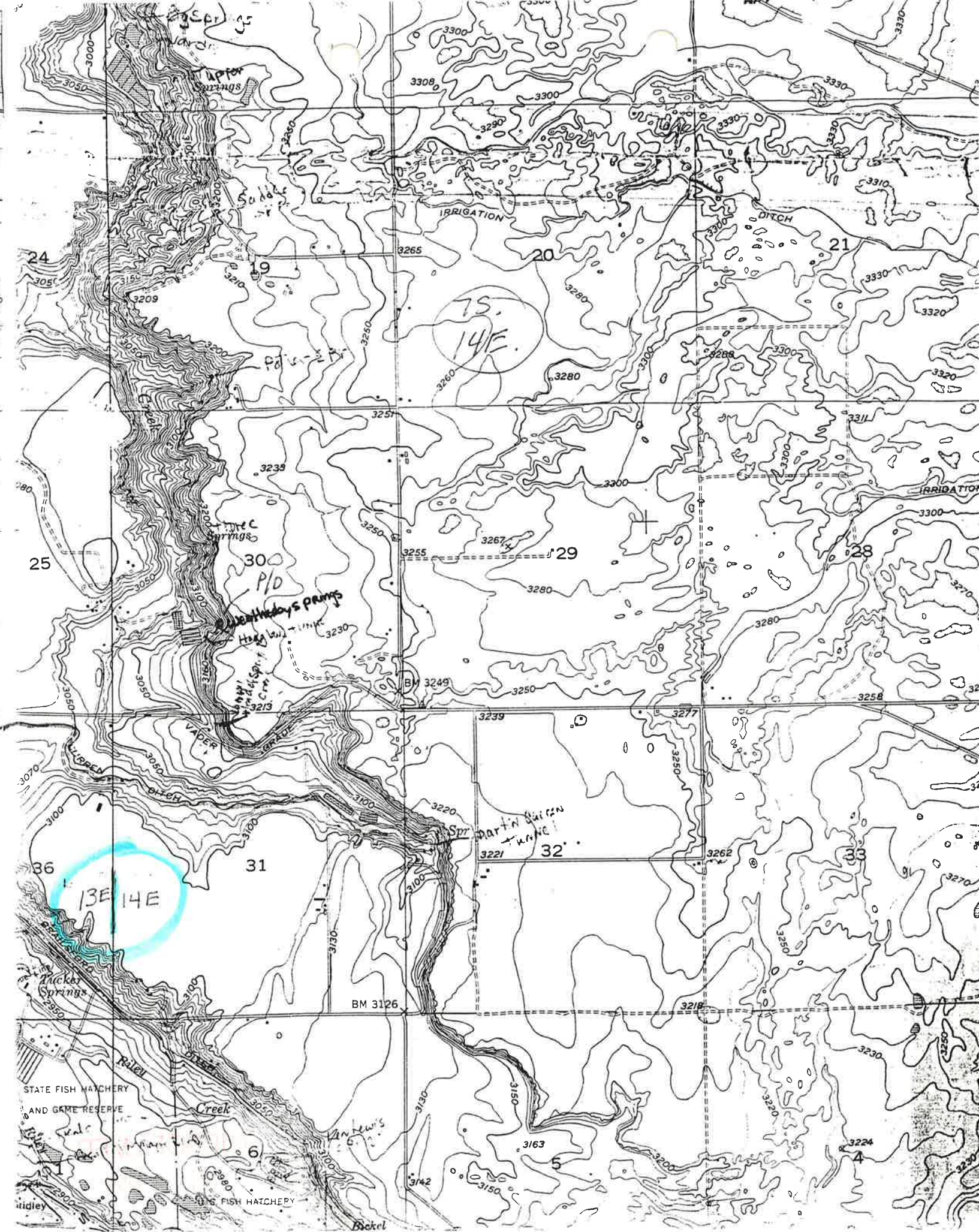
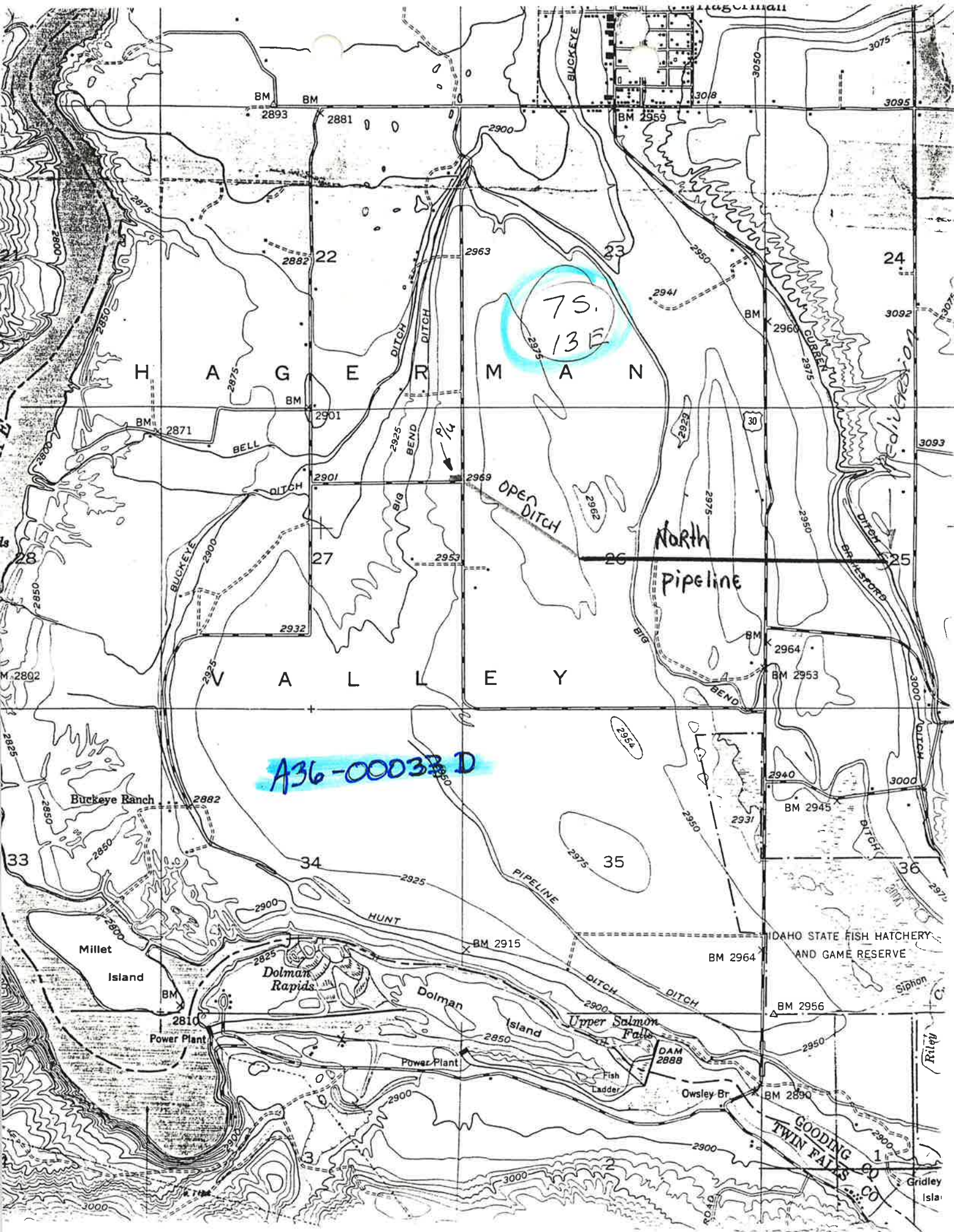
of August 19 88

Roxanne Storey
Notary Public

Seal

Residing at Buhl, Id

My Commission Expires 6-30-94



RECEIVED

MAR 02 1999

Department of Water Resources

RECEIVED

MAR 08 1999

1999 FEB 26 AM 11:57

Department of Water Resources
Southern Region

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): 36-00033D

On February 26, 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 26, 1999.


TERI HRANAC
Deputy Clerk

1999 FEB 26 AM 11: 57
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 36-00033D

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 to this water right were resolved by stipulation of the parties with a *Standard Form 5*. All parties to the subcase and IDWR are signatories to the *Standard Form 5*.

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 these water rights, 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 36-00033D*.

DATED: February 26, 1999.


FRITZ X. HAEMMERLE, Special Master
Snake River Basin Adjudication

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

In Re SRBA)

Case No. 39576)

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

Water Right 36-000330

1999 FEB 26 AM 11:57
DISTRICT COURT-SREA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: ROY E. SAUER
VIVA SAUER
ROUTE 1, BOX 45
HAGERMAN, ID 83332

SOURCE: WEATHERBY SPRINGS TRIBUTARY: BILLINGSLEY CREEK

QUANTITY: 0.09 CFS

PRIORITY DATE: 03/08/1902

POINT OF DIVERSION: T07N R14E S30 SENESW Within Gooding County

PURPOSE AND			
PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	02-15 TO 11-30	0.09 CFS

PLACE OF USE: Irrigation Within Gooding County
T07N R13E S27 NENE 1.0
1.0 Acres Total

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 26 1999

[Signature]
SPECIAL MASTER

1999 FEB 26 AM 11: 57

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)

CERTIFICATE OF MAILING

Case No. 39576)
_____)

Water Right(s): 36-00033D

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 26, 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

ROY E. SAUER
VIVA SAUER
ROUTE 1, BOX 45
HAGERMAN, ID 83332



Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1
02/26/99

CLAIM NUMBERS 36-00033DDATE 10/7/97

TRANSFER NUMBER _____

OBJECTION FILED _____

AGENT JKTOTAL ACRES FROM RECOMMENDATION 1GEOGRAPHIC INFO SYSTEM 1.1

RIGHT NO				NE				NW				SW				SE			
	TNS	RNG	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
RECOM	75	13E	27	1															1
GIS				1.1															1.1
RECOM																			
GIS																			
RECOM																			
GIS																			
RECOM																			
GIS																			

UPDATED

POLYGON #

UPDATED

B36-DBPOU.DBF



B36-DBPOD.DBF

POLYGON CREATED ON 604

(✓)

ATTRIBUTES OF B36-POU.SHP

576 10/14

ATTRIBUTES OF B36-POD.SHP

463 10/14

=Weatherby

P/U CONFLICT yes () no (X)

P/D CONFLICT yes () no (X)

READY FOR DECREE yes () no ()

SENT FOR DECREE yes () no ()

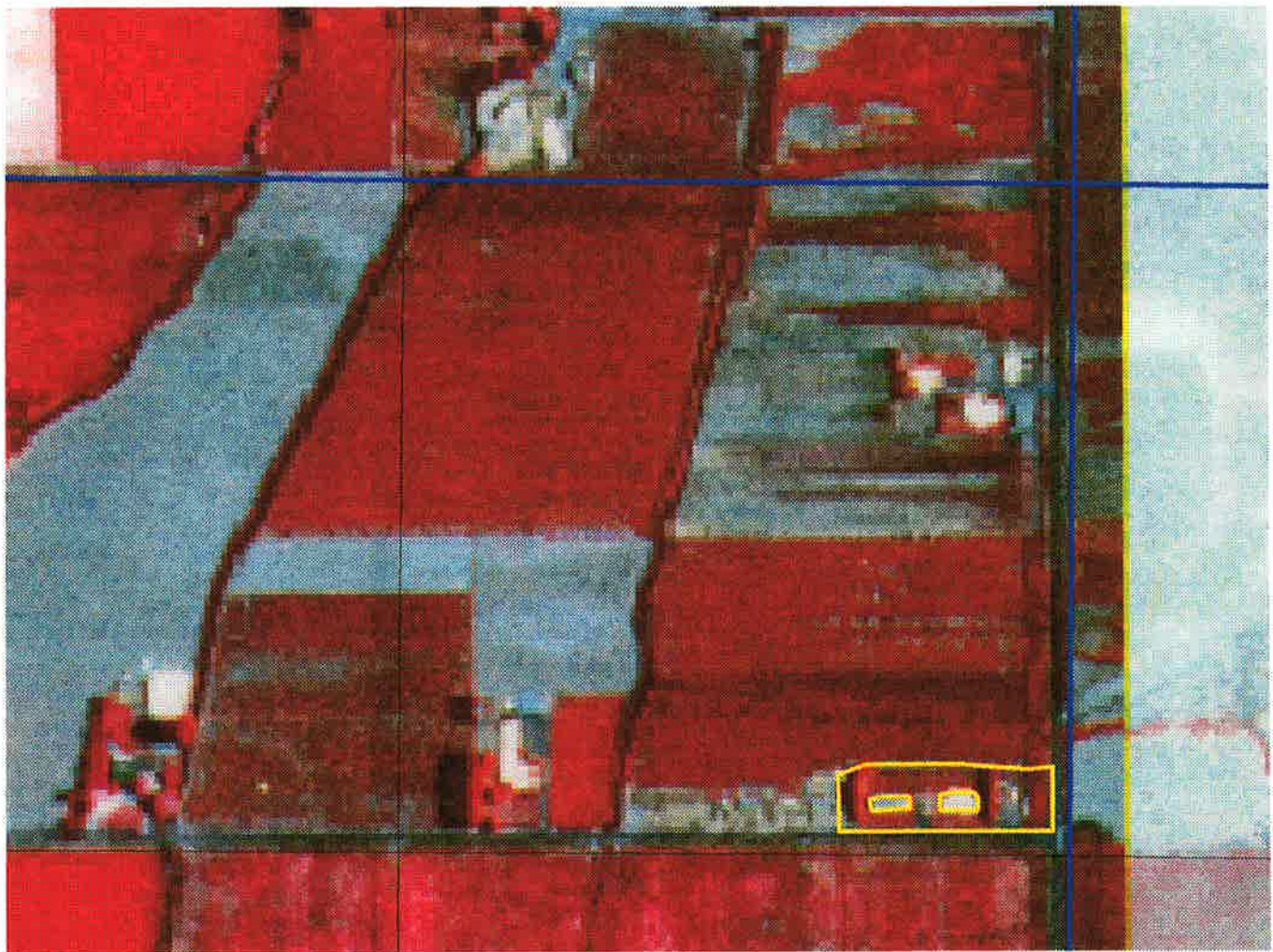
SUBCASE NO. 36-00033D

	CLAIM (8/25/88)	AMENDED CLAIM	RECOMMENDATION	OBJECTION
NAME	Roy or Viva Sauer	N/A	Roy & Viva Sauer	
BASIS OF CLAIM	Decree		Decree	
SOURCE	Weatherby Springs		Weatherby Springs	
QUANTITY	0.090 cfs		0.090 cfs	XX as decreed with a corresponding consumptive use.
PRIORITY DATE	3/8/1902		3/8/1902	
PURPOSE OF USE	Irrigation		Irrigation	
PERIOD OF USE	3/15 - 11/15		3/15 - 11/15	XX 1/1 - 12/31
POINT OF DIVERSION	T07S R14E S30		T07S R14E S30	
PLACE OF USE	T07S R13E S27 3 acres		T07S R13E S27 1 acre	
REMARKS			0.06 cfs of this right is limited to use for conveyance losses in delivery of this right. Water is delivered through the Bar S Ditch, Curren Ditch & North Pipeline.	XX strike all except last sentence

Note: this claim is a portion of decreed wr #36-0033. Claimant/objector mentions Jones v. Reservoir Land Co. Decree, Gooding County, Case #16676.

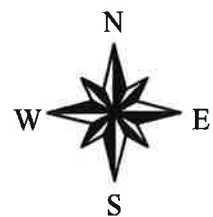
IDAHO DEPARTMENT OF WATER RESOURCES

36-00033D
SAUER



660 0 660 1320 Feet

TNS 7S, RNG 13E, SEC 27 NENE



⊙ RECOMMENDED POINT OF DIVERSION



RECOMMENDED PLACE OF USE



SECTION LINES &/OR TRACT LINES

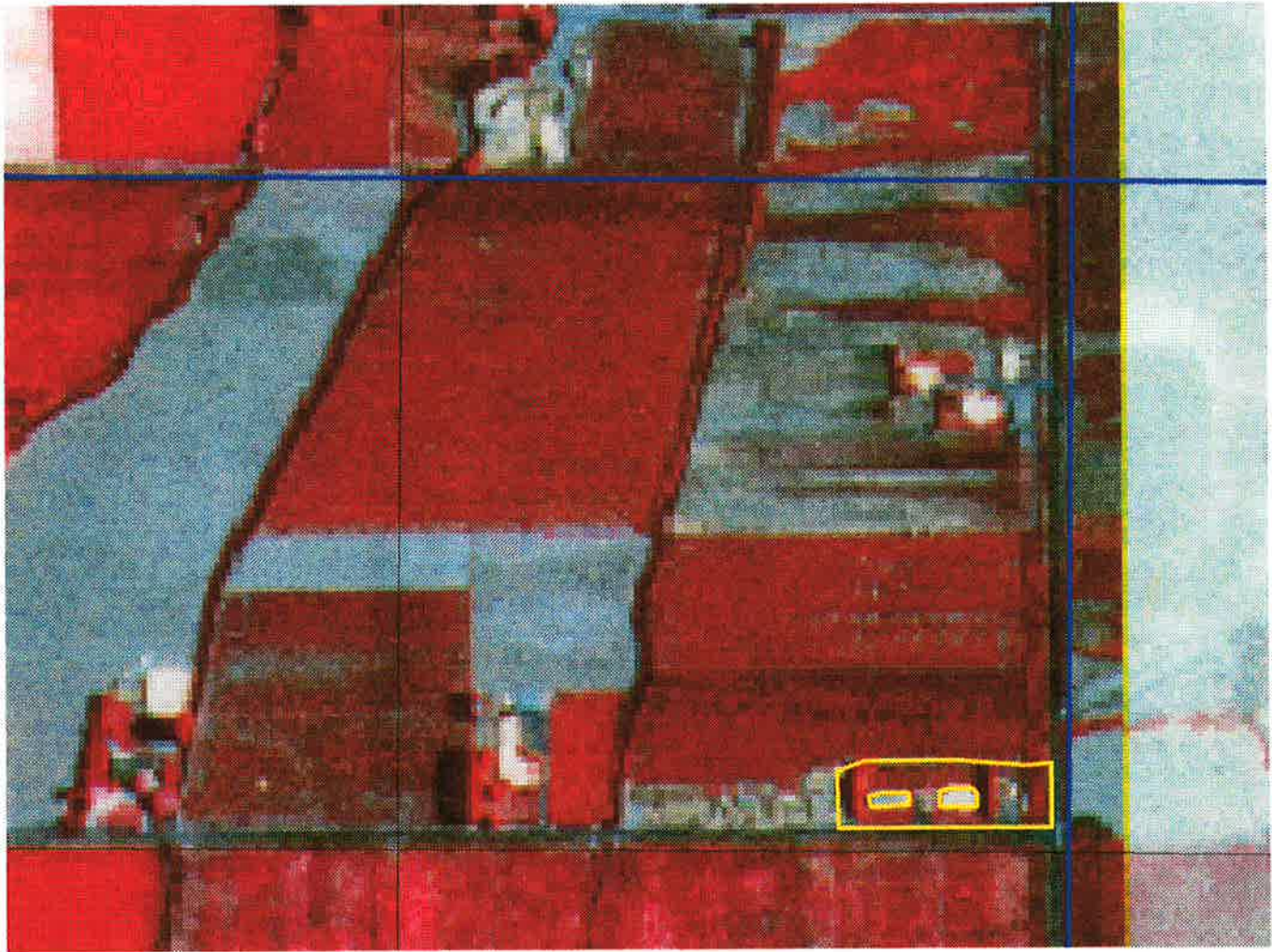


QUARTER/QUARTER LINES

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

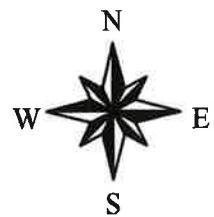
IDAHO DEPARTMENT OF WATER RESOURCES

36-00033D
SAUER



660 0 660 1320 Feet

TNS 7S, RNG 13E, SEC 27 NENE



⊙ 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

R PROOF

CVR

MAPS

PHOTOS

MISC

MICROFILMED

OCT 11 1994

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. 36-00033D -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)

2. Person who filed objection:

Name: ROY E & VIVA SAUER
Address: ROUTE 1 BOX 45
HAGERMAN ID 83332

3. If this response is filed by an attorney:

Attorney Name(s): NICHOLAS B. SPENCER
Attorney Address: DEPUTY ATTORNEY GENERAL(S)
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711-4449
Attorney Phone No.: (208) 327-7900

II. STATEMENT OF THE RESPONSE

3. |X| Quantity: I respond to the objection concerning:
- 3a. |X| The total quantity of water used in cubic feet per second.
8. |X| 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. |X| Consumptive Use: I respond to the objection concerning the annual volume of consumptive use.
11. |X| Remarks: I respond to the objection concerning the "remarks" listed with the water right.
14. |X| Other: I respond to the objection concerning:

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

REASONS SUPPORTING EACH BOX CHECKED

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

In further response to this objection item, IDWR responds that it recommended this element of the water right as claimed. The objection does not state a different amount sought; 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 this element of the water right as claimed. By now

(Over)

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SEEKING A YEAR ROUND IRRIGATION SEASON OF USE THE CLAIMANT
improperly seeks to use the objection process to amend the claim.
A claimant must obtain leave of the court to amend a claim after
a director's report is filed, just as a party must obtain leave
of the court to file a late claim after the director's report is
filed. Once leave of the court is granted, IDWR can investigate
the amended claim and make an appropriate recommendation to the
court.

In response to Statement of the Objection item 10 and all
allegations of the objection regarding this item, IDWR responds
as follows: (1) The decree asserted by the claimant did not set
an annual volume of consumptive use for this water right. (2)
Idaho Code Sec. 42-1411(2)(i) requires the director to determine
the annual volume of consumptive use for each water right
acquired under state law and recommended in the director's
report. (3) Idaho Code Sec. 42-1401A(2) provides that the
quantification of consumptive use "is included as a rebuttable
presumption in a decree only for the purpose of transfers
pursuant to section 42-222, Idaho Code"; therefore, the
consumptive use recommended for this water right is included
solely for use in future transfer proceedings. (4) The annual
volume of consumptive use recommended for this right is 3 acre
feet per acre. This is the maximum volume of water consumed by
the most water consumptive crop (pasture) that can be grown in
the area during the period of year when water is used for
irrigation, as provided for by Idaho Code Sec. 42-1401A(2). (5)
The recommendation of the director to the SRBA Court as to how
the right should be decreed does not constitute a taking because
it is simply a recommendation and not a final determination of
the right. (6) The eventual decree by the SRBA Court of the
amount of water beneficially used, even if less than the amount
previously decreed, will not constitute a taking because the
right is limited to that amount beneficially used.

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

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

In response to 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.

☒ 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. A36-00033D

4

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

4

(Over)

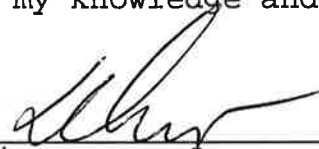
VERIFICATION (Must be Completed)

State of IDAHO

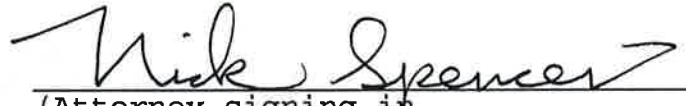
County of ADA

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 10 day of SEPTEMBER,
1993.



Notary Public for Idaho
Residing at: BOISE ID
My Commission expires: JUNE 10, 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

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

COPY

Ident. Number: A36-00033D
Date Received: 8/25/1988
Receipt No: S001730
Received By: SCC

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: ROY E. SAUER
Address: RT. 1 BOX 45
HAGERMAN, ID 83332 208-837-4995
OR
Name: VIVA SAUER
Address: RT. 1 BOX 45
HAGERMAN, ID 83332 208-837-4995
2. Date of Priority: MAR 08, 1902
3. Source: WEATHERBY SPRINGS Trib. to: BILLINGSLEY CREEK
4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
07S	14E	30	SE	NE	SW		GOODING
5. Description of diverting works:
PIPELINE TO CURRAN DITCH TO NORTH PIPELINE TO OPEN DITCH.
6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.090		
7. Total Quantity Appropriated is:
0.090 C.F.S. (and/or) A.F.A.
8. Total consumptive use is Acre Feet Per Annum.
9. Non-irrigation uses:

A36-00033D

Page 1

Date: 08/25/88

COPY

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10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
07S	13E	27	NE NE		IRR	3.0
Section Acres						3.0
Total Acres						3.0

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:

UNCLEAR HOW THE WATER GETS FROM WEATHERBY SPRINGS TO THE CURRAN DITCH. THIS CLAIM IS A PORTION OF DECREEED WR #36-0033.

15. Basis of Claim: DECREEED

Case Number:

Court :

Decree date: 3/22/1932

NEW INTERNATIONAL MORTGAGE BAN
Decree Plaintiff

vs

IDAHO POWER COMPANY
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 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): Roy E. Sauer Date: Aug-15

Date: _____

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 25th day

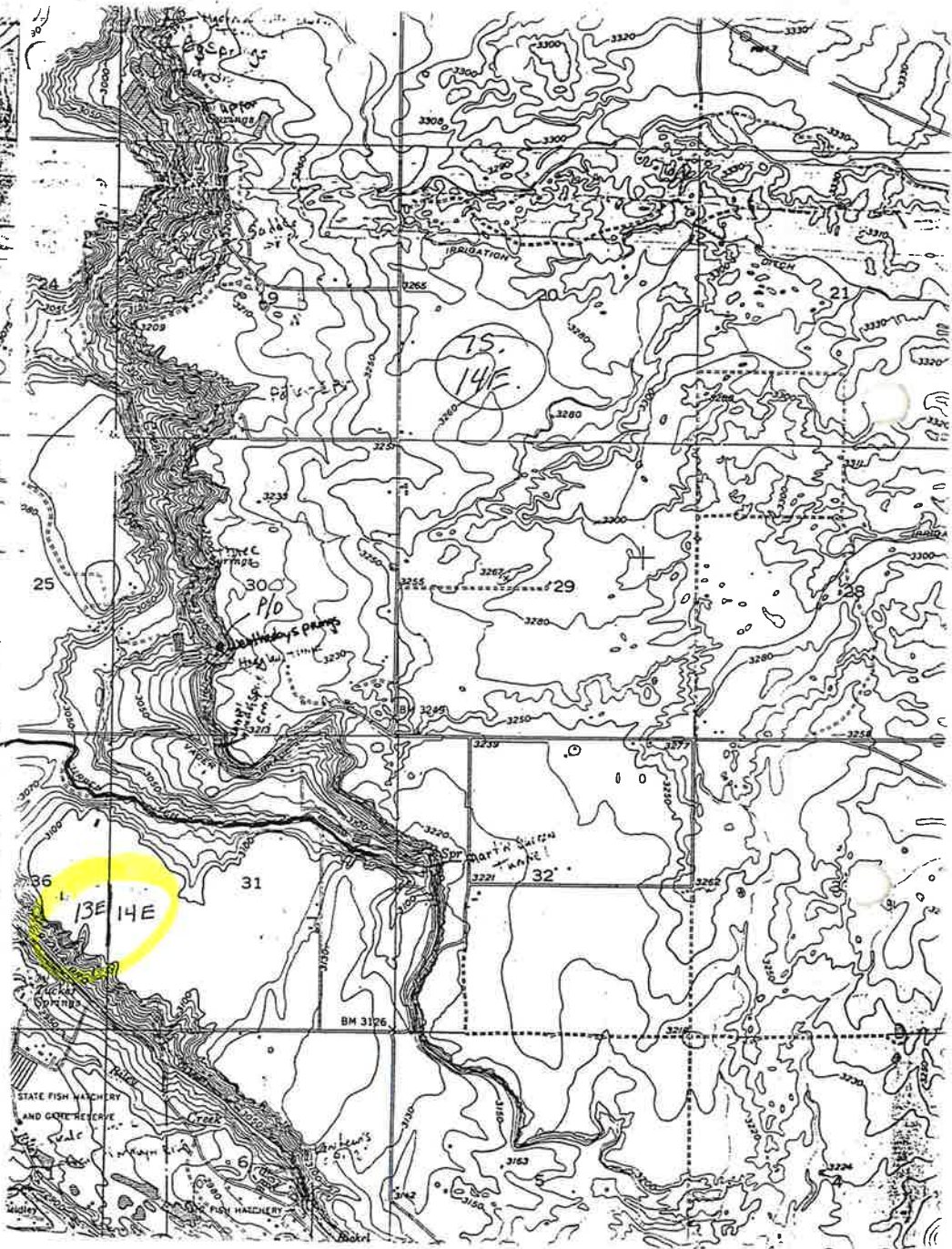
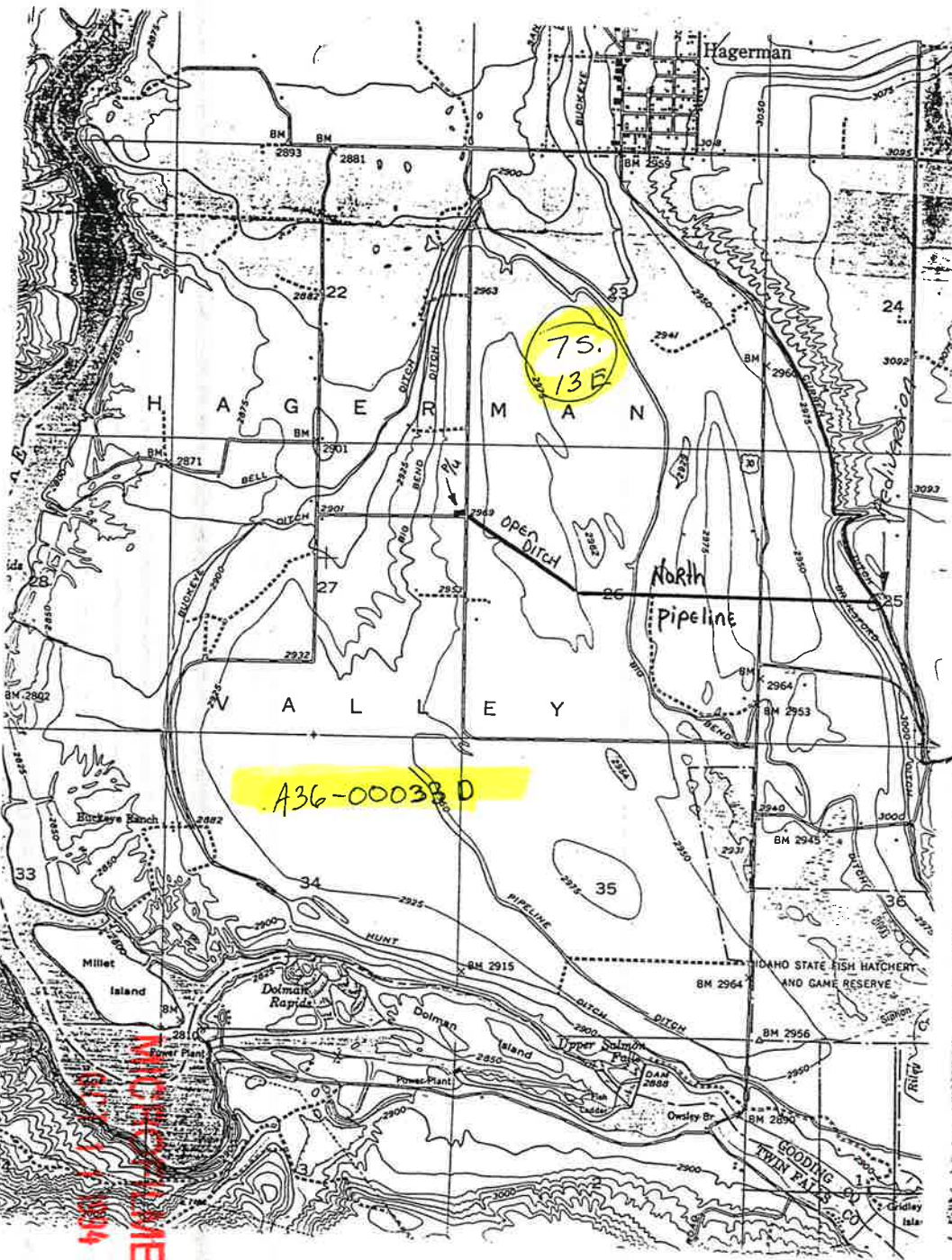
of August 19 88

Roxanne Storey
Notary Public

Seal

Residing at Buhl, ID

My Commission Expires 6-30-94



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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- EX-100
FILED
- WORKS (page 11 of Part I of the director's report)
- (17) VI. General Provision 8. FIRE FIGHTING PURPOSES (page 11 of Part I of the director's report)
 - (18) VI. General Provision 9. CONSUMPTIVE USE (page 12 of Part I of the director's report)
 - (19) VI. GENERAL PROVISION 10 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH DOMESTIC USE AS A PURPOSE OF USE (page 12 of Part I of the director's report)
 - (20) VI. General Provision 10. DOMESTIC USE (page 12 of Part I of the director's report)
 - (21) VI. GENERAL PROVISION 11 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH STOCK WATER USE AS A PURPOSE OF USE (page 13 of Part I of the director's report)
 - (22) VI. General Provision 11. STOCK WATER USE (page 13 of Part I of the director's report)
 - (23) VI. GENERAL PROVISIONS 12-16 APPLY TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH IRRIGATION AS A PURPOSE OF USE (page 13 of Part I of the director's report)
 - (24) VI. General Provision 12. IRRIGATION USE (pages 13-14 of Part I of the director's report)
 - (25) VI. General Provision 13. DIVERSION VOLUME FOR IRRIGATION (page 14 of Part I of the director's report)
 - (26) VI. General Provision 14. CONSUMPTIVE USE FOR IRRIGATION (pages 14-15 of Part I of the director's report)
 - (27) VI. General Provision 15. AMOUNT OF COMBINED WATER RIGHTS FOR IRRIGATION (page 15 of Part I of the director's report)
 - (28) VI. General Provision 16. DIVERSION RATES IN EXCESS OF .02 CFS PER ACRE (pages 15-16 of Part I of the director's report)
 - (30) VI. 17. INSTRUCTIONS FOR USE OF LIST OF RECOMMENDED WATER RIGHTS (pages A-i through A-iii of Part I of the director's report)
 - (31) VI. 18. IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW (pages A-1 through B-25 of Part I of the director's report)
 - (32) DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36), (DIRECTOR'S REPORT PART II)
 - (33) DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36), (DIRECTOR'S REPORT PART III)

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

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

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

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

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

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

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

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

RECEIVED

APR 30 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

Case No. A36-00033D
(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,

36-00033D -0001/
93-04-0030

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: Roy E. Sauer & Viva Sauer

Address: Route #1, Box 45

Hagerman, Idaho 83332

Briefly describe your interest in this water right:

Priority date March 8, 1902;

Water right decreed 3/22/32 pursuant to

New International Mortgage Bank v.

Idaho Power Company & Jones, et al v.

Reservoir Land Co., et al, Case No. 16676,

Gooding County dated April 24, 1979

2. Owner of the water right:

Name: Roy E. Sauer & Viva Sauer

Address: Route #1, Box 45

Hagerman, Idaho 83332

3. If this objection is filed by an attorney:

Attorney Name: Patrick D. Brown & Penelope Parker

Attorney Address: Hepworth, Nungester & Lezamiz

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

Attorney Phone No.: (208) 734-7510

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

II. STATEMENT OF THE OBJECTION

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

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

(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.

See Page 7

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.

Maximum quantity: as decreed with a corresponding consumptive

use; Remarks: strike all except last sentence; Period of Use:

1/01 - 12/31

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 Twin Falls

Roy E. Sauer/Viva Sauer

(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.

Roy E Sauer - Viva Sauer
Signature of person filing objection

By: [Signature]

(Attorney signing in
representative capacity)

1993 . Subscribed and sworn to before me this 19th day of April,

[Signature]
Notary Public for Idaho
Residing at: Hagerman, Idaho
My Commission Expires: 5-3-95

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(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: Roy E. Sauer & Viva Sauer

Owner's address: Route #1, Box 45

Hagerman, Idaho 83332

3. One copy to:

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

4. One copy to:

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



Signature of Objector or attorney
mailing on Objector's behalf

REASONS SUPPORTING EACH BOX CHECKED, page 4

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

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

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

CHANGES TO DIRECTOR'S REPORT, page 4

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

Question 14., page 4, Other

I.

GENERAL RESPONSE

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

II.

DESCRIPTIVE SUMMARY

(DIRECTOR'S REPORT PART I)

(hereinafter DRP-I)

(DRP-I at first unnumbered page)

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

III.

TABLE OF CONTENTS

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

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

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

IV.

INTRODUCTION

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

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

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

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

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

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

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

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

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

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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OCT 11 1994

WICHORFIELD

(WATER\21530ANS)

Roy E Sauer
898 E. 2830 St
Nog man, Idaho
83332



Dept of Water Resources, Se. Region
RECEIVED 222 Shoshone St. East
Twin Falls, Idaho

MAR 03 1993

Department of Water Resources
Southern Region Office

83301

A36-00033D

RECEIPT
For Monies Paid
to the
IDAHO DEPARTMENT OF WATER RESOURCES

Receipt No: S015442

RECEIVED

MAR 03 1993
Department of Water Resources
Southern Region Office

Date: 3/ 3/1993
Time: 10:30:16

Received

From: SAUER VIVA J.

Type of Payment	Program Acct Class	Amount
FEE FOR COPY OF ADJUDICATION CALIM 64100	229 21 1760	4.04

Total

CHECK 166

\$4.04

Region: SOUTHERN

Signature: _____

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OCT 11 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

22-Feb-1993

ROY E SAUER
RT 1 BOX 45
HAGERMAN ID 83332

RE: Copy of SRBA File(s): 36-00033D

Dear Mr. Sauer:

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:

\$4.04

Sincerely,

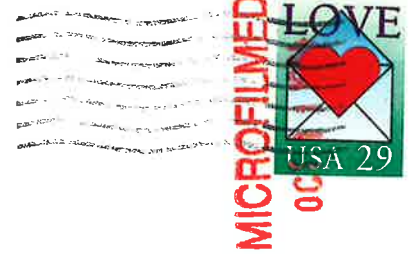

Jeanie Robertson
Records Clerk

Encl:

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OCT 11 1994

Roy E. Sauer
Rt. 1, Box 45
Hagerman, Idaho 83332



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FEB 19 1993

Department of Water Resources
Southern Region Office

Idaho Department of Water Resources
222 Shoshone St. East
Twin Falls, Idaho 83301

A36-00033D

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FEB 19 1993
Department of Water Resources
Southern Region Office

Feb 14
(Date)

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 36-000330.

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,

Roy E. Sauer
(Name)

Rt 1 Box 45
(Address)

Nagerman, Idaho 83332
(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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OCT 11 1994

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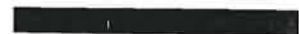
CVR



MAPS



PHOTOS



MISC

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JAN 20 1993



Water Right Number - R36-00033D

Prefix Translation: RESEARCH

Old (D) Number -

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

*** C - CURRENT OWNER ***

SAUER

ROY E

1 - RT 1 BOX 45

2 -

3 -

City- HAGERMAN

Phone - 208-837-4995

State- ID Zip- 83332

SAUER

VIVA

1 - RT 1 BOX 45

2 -

3 -

City- HAGERMAN

Phone - 208-837-4995

State- ID Zip- 83332

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +
03/08/1902 ERROR IN REGION D - DECREEED+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
WEATHERBY SPRINGS BILLINGSLEY CREEK+ - - - - Point of Diversion - - - - - +
TwN Rng Sec Tract Lot RFlg County
07S 14E 30 SE NE SW (47) GOODING+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
01 - IRRIGATION 04/01 10/31 0.090+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
0.090 3.0+ - - - - Place of Use - - - - - +
TwN Rng Sec Tract Lot Acres Code Description County
07S 13E 27 NE NE 1.0 01 IRRIGATION (47) GOODING

Total Acres: 1.0

+ - - Diversion Means - BAR S DITCH TO CURREN DITCH TO NORTH PIPELINE TO OPEN DITCH.

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - NONE

+ - - - - Remarks - - - - - +
0.06 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE
LOSSES IN DELIVERY OF THIS RIGHT.
WATER IS DELIVERED THROUGH THE BAR S DITCH, CURREN DITCH AND
NORTH PIPELINE.

VERIFIED BY

KK

MICROFILMED
JAN 20 1993

Water right number - R36-00033D

Prefix Translation: RESEARCH

+ - - - - Old Water Right Numbers - - - - - +

+ - - - - Old Water Right Numbers - - - - - +

3600033

+ - - - - Conditions of Approval - - - - - +

No Conditions of Approval found.

+ - - - Decree Plaintiff - - - +

NEW INTERNATIONAL MORTGAGE BANK

+ - - - Decree Defendant - - - +

IDAHO POWER COMPANY

+ - Decree Date - +

03/22/1932

+ - - - - Comments - - - - - +

Date: 08/06/1992 User Id: CHRISTEN Subject: COPIED FROM REMARKS

UNCLEAR HOW THE WATER GETS FROM WEATHERBY SPRINGS TO THE CURRAN

A DIVERSION RATE OF CFS AT THE FIELD HEADGATE IS

CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE

WATER IS DELIVERED THROUGH THE BAR S DITCH, CURREN DITCH AND

DITCH.

RECOMMENDED FOR THE PLACE OF USE DESCRIBED ABOVE.

LOSSES IN DELIVERY OF THIS RIGHT.

NORTH PIPELINE.

+ - - Audit Fields - - +

08/06/92 CHRISTEN

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

Court Report Filing - 00/00/0000

Objection Filed Date - 00/00/0000

Response Filed Date - 00/00/0000

Claim Received Date - 08/25/1988

Field Inspection Made - 00/00/0000

Field Inspection Flag -

Verified Date - 08/06/1992

Last Amended Date - 00/00/0000

Receipt Number - S001730

POU Ownership Flag - Y

Name Connector - OR

Civil Case Number - 39576

Old Case Number -

Old Judicial District -

Temporary Right - P

Water District - 36A

Federal/State Indicator - S

Presumption Flag -

Notice of Error Flag -

MICROFILMED
JAN 20 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

16:49:52
06/28/90

PAGE: 14
QUICKLOOK INFORMATION

CLAIM NUMBER: A36-00033D

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			SC/HH 9/13/90	N		SC 8-5-92	DB D	KK C 8-6-92
POINT OF DIV	Y			N				
SOURCE				N				
PLACE OF USE	Y			N	1,4,5			
DIV. AMOUNT CFS/VOLUME	Y			Y	6. Decree			
CONSUMPTIVE USE	-			Y				
PURPOSES				Y				
PERIOD OF USE	Y			N				
BASIS OF CLAIM	Y			N	6.			
REMARKS	Y			N				
				Y	6.			

"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.

RECEIVED
JAN 20 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

16:49:52
06/28/90

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A36-00033D

LAST: SAUER
ADDRESS: RT. 1 BOX 45
CITY: HAGERMAN
PHONE NUMBER: 208-837-4995

FIRST: ROY E.
STATE: ID ZIP: 83332

OWNER CODE: C

LAST: SAUER
ADDRESS: RT. 1 BOX 45
CITY: HAGERMAN
PHONE NUMBER: 208-837-4995

FIRST: VIVA
STATE: ID ZIP: 83332

OWNER CODE: C

FIELD EXAM REQUIRED?

VERIFICATION REQUIRED DUE TO REMARKS?

DATABASE
Y

FIELD
EXAMINER

CLAIM REMARKS: UNCLEAR HOW THE WATER GETS FROM WEATHERBY SPRINGS TO THE CURRAN
DITCH.

MICROFILMED
JAN 20 1993

CONTACT PERSON: None

PHONE NUMBER: () -

DATE OF FIELD EXAM: 9/13/10

APPOINTMENT MADE: Y() N()

TIME: : A() P()

ACCOMPANIED BY: _____

PHONE NUMBER: () -

RELATIONSHIP TO CLAIMANT: _____

DIRECTIONS TO PROPERTY / REMARKS:

MICROFILMED

JAN 20 1993

SERVICE
DITCH

field exam found



green trailer

white trailer

only irrigation is down around
trailers
does not exceed one acre

has

A. AJ CLAIM: # A36-00033D PRIORITY DATE: 03-08-1902 STAGE: D
B. WR RECORD: # 36-00033 PRIORITY DATE: 03-08-1902 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:
03-08-1902

REVIEWED BY

SA

DATE

10-9-90

=====

MICROFILMED
JAN 20 1993

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A36-00033D	07S	14E	30	SE	NE	SW		GOODING

OTHER AJ CLAIMS WITH SAME AJ POD

A PREFIX	R PREFIX
A36-00086G	NONE

WR RECORDS IN SAME 40 ACRE TRACT

36-00009
36-00010
36-00011
36-00015
36-00016
36-00017
36-00041
36-00042
36-00044
36-00045
36-00060
36-00061
36-00062
36-00063
36-00068
36-00069
36-00086A
36-00086B
36-00105
36-00116
36-00118
36-00119
36-00120
36-02029
36-07071
36-07740

SOURCE: WEATHERBY SPRINGS

TRIB: BILLINGSLEY CREEK

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
36-00033	07S	14E	30		NE	SW		GOODING

OTHER WR RECORDS WITH SAME WR POD

AJ CLAIMS IN SAME 40 ACRE TRACT

	A PREFIX	R PREFIX
36-00009	A36-00009	NONE
36-00010	A36-00033C	
36-00011	A36-00060	
36-00015	A36-00086G	
36-00016	A36-00119	
36-00017	A36-00063	
36-00041	A36-00116	

MICROFILMED
JAN 20 1993

36-00042
36-00044
36-00045
36-00060
36-00061
36-00062
36-00063
36-00068
36-00069
36-00086A
36-00086B
36-00105
36-00116
36-00118
36-00119
36-00120
36-02029
36-07071
36-07740

A36-00086F
A36-00086H
A36-00011B
A36-00011A
A36-00011C
A36-00105
A36-00120
A36-00061
A36-00062

MICROFILMED

JAN 20 1993

SOURCE: WEATHERBY SPRINGS

TRIB: BILLINGSLEY CREEK

C. FIELD EXAM REQUIRED?

DUE TO POD DISCREPANCY? (Y/N)
DUE TO SOURCE DISCREPANCY? (Y/N)

DATABASE
Y
N

FIELD
EXAMINER
N
N

REMARKS:

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

TWP. RGE. SEC. 1/4 1/4 1/4 LOT COUNTY

as claimed

SOURCE: WEATHERBY SPRINGS

TRIB: BILLINGSLEY CREEK

REVIEWED BY:

SC

DATE: 10-9-90

no change

A. ROOT WATER RIGHT NUMBERS: A36-00033A
A36-00033B
A36-00033C
A36-00033D
A36-00033E

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	NE		SAUER, ROY E.	A36-00033D / 3.0	- /	41.0		
						BIG BEND IRRIGATION & MINING	CA36-02007 / 29.0	- /		1.0	1.0
						SAUER, ROY E.	A36-10622 /	- /			
						BIG BEND IRRIGATION & MINING	CA36-00192 / 29.0	36-00192 /			
						ELLIS, LEROY E.	A36-00033C / 8.0	- /			
						VEENSTRA, JR., PETE	A37-10123 /	- /			
						BIG BEND IRRIGATION & MINING	CA36-00133 / 29.0	36-00133 /			
						KING, MARION E.	A36-08158 / 1.0	36-08158 / 0.5			
						CLIFFORD, EDNA N.		36-00033 /			
						CLIFFORD, EDNA N.		36-00034 /			
						MC CARTY, JOHN		36-02029 / 40.0			
TOTAL ACRES						A36-00033D	3.00		41.00		1.0

ARE IRRIGATED ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, Y() N(X)
IF YES SEE ATTACHED SHEET:

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE
Y

FIELD
EXAMINER
X

Confirmed by field Exam + NAPP photo.
use is for lawn + garden around 2 Houses (trailers).

Correct ownership
for Basis of Claim

PRESUMPTION FLAG:

REMARKS:

MICROFILMED
JAN 21 1993

RECOMMENDATIONS:

TOTAL ACRES: 1.0

REVIEWED BY: SCC

DATE: 10-9-90

A. AJ CLAIMED USES:

PURPOSES
A36-00033D IRRIGATION

MONTH/DAY
FROM 03-15 TO 11-15

4-1 10-31

DIVERSION QUANTITY
.090 CFS

TOTAL DIVERSION RATE/VOLUME CLAIMED

.090 CFS

B. WR RECORDED USES:

PURPOSES
36-00033 IRRIGATION

MONTH/DAY
FROM TO

DIVERSION QUANTITY
3.000 CFS

TOTAL DIVERSION RATE/VOLUME CLAIMED

3.000 CFS

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

DUE TO WATER-USE DISCREPANCY? (Y/N)
DUE TO DIVERSION RATE DISCREPANCY? (Y/N)
DUE TO PERIOD FROM/TO DISCREPANCY? (Y/N)

DATABASE
N
Y
Y

FIELD
EXAMINER
N
N
N

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y(☒) N(☐)

RECOMMEND TO WR STANDARDS OR OTHER?

Y(☐) N(☒) Explain in remarks, below.

REMARKS:

MICROFILMED
JAN 20 1993

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

Y() N(☒)

AJ TOTAL CLAIMED DIVERSION RATE: 0.090 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 3.000 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

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JAN 20 1993

B.

FLOW MEASUREMENT

MEASUREMENT METHOD _____, SEE ATTACHED CALCULATIONS.

*sonic flow measurement
of North pipe.*

C. ARE OTHER WATER RIGHTS USED? Y() N(☒) IF YES COMPLETE OVERLAP REVIEW.

OTHER RIGHTS LISTED IN CLAIM: NONE

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

CLAIM	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A36-00033D	WEATHERBY SPRINGS	SAUER , ROY E.	0.090	0.030		
A36-02007	TUCKER SPRINGS, UPPER	BIG BEND IRRIGATION & MINING C	4.000	0.006	2895.90	4.58
A36-00033C	WEATHERBY SPRINGS	ELLIS , LEROY E.	3.000	0.375		
A36-00133	TUPPER SPRINGS, UPPER	BIG BEND IRRIGATION & MINING C	20.000	0.022	14479.60	16.47
A36-08158	GROUNDWATER	KING , MARION E.	0.110	0.110		

LIST ALL RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION.

CLAIM NO.	PURPOSES	NAME	MONTH/DAY	RATE	VOLUME
A36-10622	DOMESTIC	SAUER , ROY E.	FROM 01-01 TO 12-31	.060 CFS	
A36-10622	STOCKWATER	SAUER , ROY E.	FROM 01-01 TO 12-31	.040 CFS	
A37-10123	DOMESTIC	VEENSTRA, JR. , PETE	FROM 01-01 TO 12-31	.040 CFS	
A36-08158	STOCKWATER	KING , MARION E.	FROM 07-20 TO 08-30	.020 CFS	
A36-08158	DOMESTIC	KING , MARION E.	FROM 01-01 TO 12-31	.060 CFS	

D. RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE *0.03 per statute*
ACRES 1.0 x ~~0.02~~ CFS/ACRE = 0.03 CFS
(Taken from p/u review)

1b. CALCULATIONS

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y(X) N()

*** IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y() N(X) ***

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = AF/A

ACRES 1.0 x CONSUMPTIVE VOL. AF/A FOR AREA 3.0 =

TOTAL CONSUMPTIVE USE 3.0 AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = AF/A

ACRES 1.0 x DIVERSION VOL. AF/A FOR AREA 4.0 =

TOTAL DIVERSION VOLUME 4.0 AF/A

Total conveyance loss = 0.10 cfs

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y() N()

*allow = 0.06 cfs
(limited by claim)*

REMARKS: (Include limitations on CONSUMPTIVE USE for combined rights.)

*HHH
7/16/92*

*Sprinkler irrigated - Recommend 0.03 cfs except with recommended metering
inundated - recommended*

TOTAL = 0.09 cfs

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JAN 20 1993

RECOMMENDATIONS:

REC. PURPOSES	REC. PERIOD FROM TO	REC. DIV RATE CFS	REC. DIV VOL. AF/A	REC. CONS. USE
IRRIGATION	4-1 10-31 03-15 11-15	DATABASE EXAMINER 0.090 0.015	DATABASE EXAMINER 4.0 N/A	DATABASE EXAMINER 0.0 3.0
TOTAL FOR THIS RIGHT		0.090 0.09		0.0

REVIEWED BY: Sce DATE: 10-9-90

~~Proportional rate 0.015 cfs.
0.014 cfs.
(allowed 0.011 cfs/Acre) since no other claim~~

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(Water is probably used on Rotational basis - details unknown.)

F01 =

D02 = 0.06 af3

A. CHECK ONLY THE FOLLOWING THAT APPLY:

OWNERSHIP _____
FORFEIT/ABANDON _____
ADDITIONAL DIV. AMOUNT _____

ACCEPTED AS CLAIMED	NEEDS REVIEW
(☒)	()
(☒)	(☒)
()	(☒)

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 36-00033

TOTAL DIVERSION RATE OF WR SPLITS

DATABASE
3.000

EXAMINER

CFS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
A36-00033	A36-00033A	0.320	-		36-00033	3.000
A36-00033	A36-00033B	0.500	-		36-00033	3.000
A36-00033	A36-00033C	3.000	-		36-00033	3.000
A36-00033	A36-00033D	0.090	-		36-00033	3.000
A36-00033	A36-00033E	0.750	-		36-00033	3.000
TOTAL CFS		4.660				3.000

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:

See A36-00033 for Split Review.

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JAN 20 1993

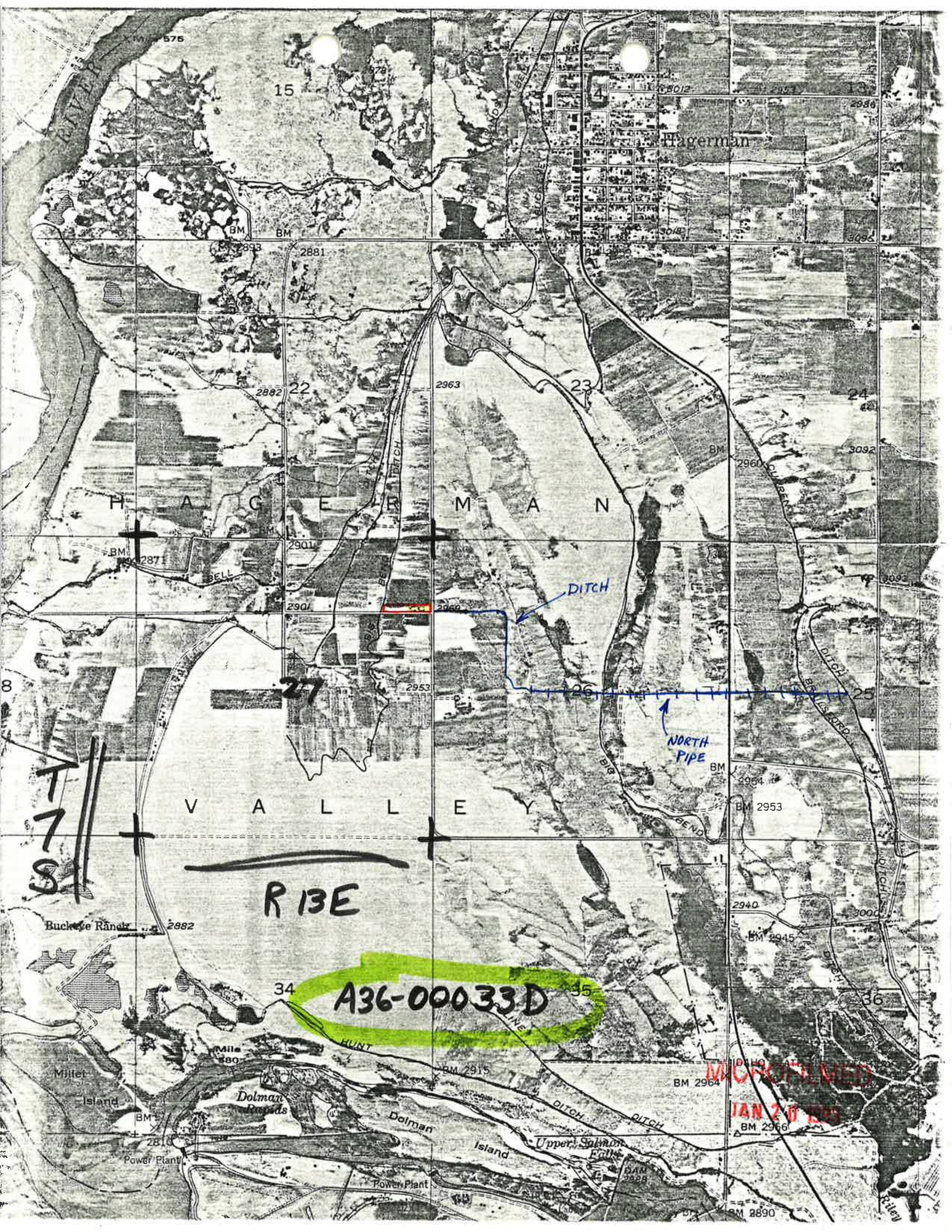
AUTHENTICATION:

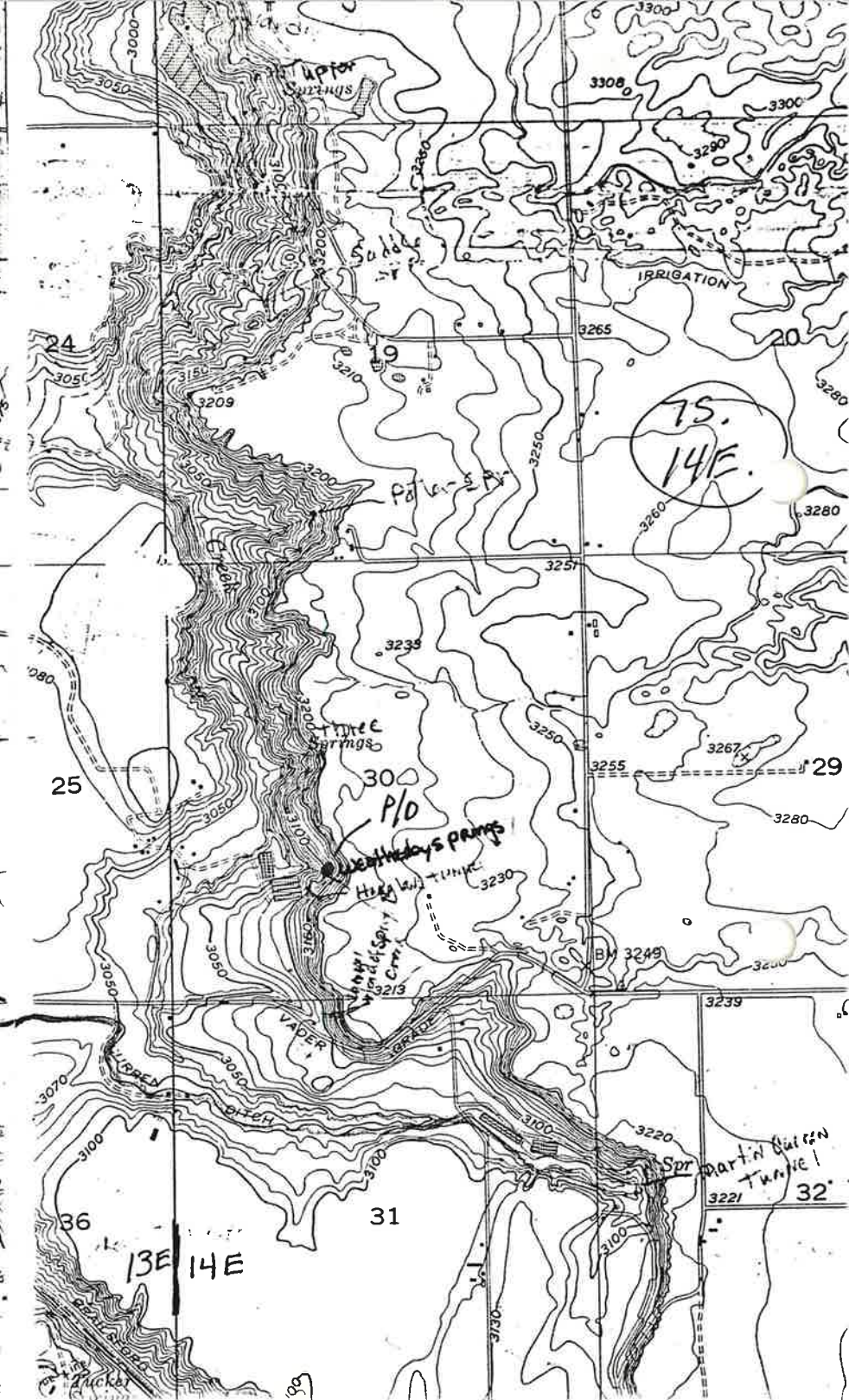
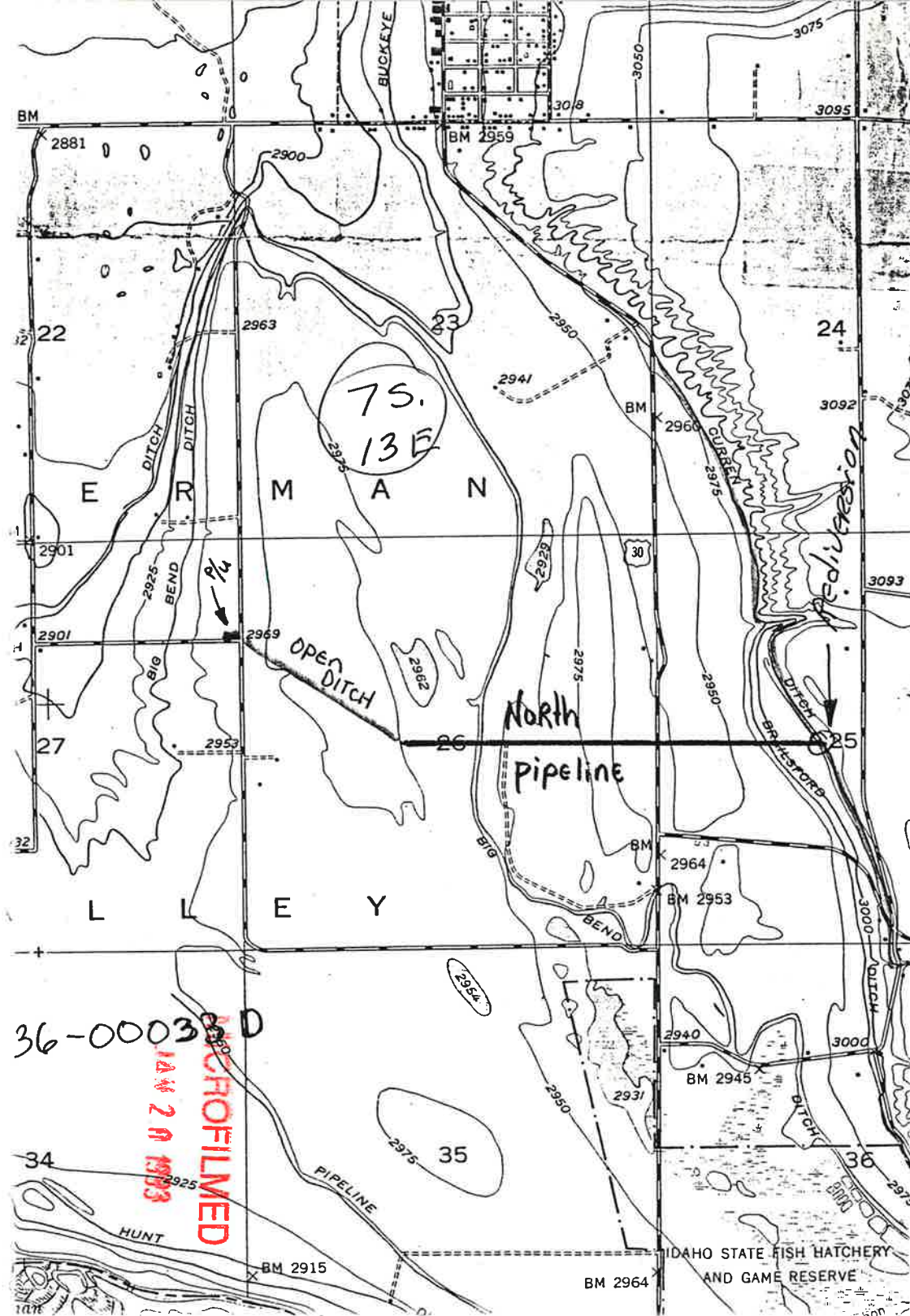
SIGNATURE: Steve Leppard

DATE: 10-9-90

NAME OF FIELD EXAMINER: _____ TITLE: _____

MICROFILMED
JAN 20 1993





SC 8-3-92

MICROFILMED

JAN 20 1993

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	2600	7.0	2.00	0.46	6.25	6.25	0.0736	0.46	6.71
2	0	0.0	0.00	0.00	0.00	0.00	0.0000	0.00	-0.00
3	0	0.0	0.00	0.00	0.00	0.00	0.0000	0.00	-0.00
4	0	0.0	0.00	0.00	0.00	0.00	0.0000	0.00	-0.00
5	0	0.0	0.00	0.00	0.00	0.00	0.0000	0.00	-0.00
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	2600			0.46	6.25			0.46	

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

UPPER BAR-S DITCH

$$0.46 \text{ cfs} \div 16 = 0.029 \text{ cfs}$$

per right

THESE RIGHTS SHARE THIS
CONVEYANCE LOSS:

these rights share in the
conveyance loss:

36-00011B
36-00011D
36-00033B
36-00105
36-00189A

36-00011A 36-00198A
36-00011C 36-15157
36-00033C 36-00044
36-00033D 36-00042A
36-00033E 36-11142

36-00015

- But their portions are not
identified in the Deed.

Sc 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	

36-00042
36-00011A, 36-00044, 36-00018 (0.10 cfs @)
36-000105
* 36-00004
CURREN / BAR - S
DITCHES

MICROFILMED

JAN 20 1993

* THESE RIGHTS SHARE THIS PORTION:

- 36-00015
- 36-00189A
- 36-11142
- 36-00198A
- 36-15157
- 36-00011B
- 36-00011C
- 36-00011D
- 36-00033B
- 36-00033C
- 36-00033D
- 36-00033E

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

$0.161 \div 12 = 0.05 \text{ cfs per RIGHT}$

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

5
8-3-92
MICROFILMED
JAN 20 1993

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	2900	2.0	2.00	0.15	2.32	2.32	0.0632	0.15	2.47
2	0	0.0	2.00	0.00	0.00	0.00	0.0000	0.00	0.00
3	0	0.0	0.00	0.00	0.00	0.00	0.0000	0.00	0.00
4	0	0.0	0.00	0.00	0.00	0.00	0.0000	0.00	0.00
5	0	0.0	0.00	0.00	0.00	0.00	0.0000	0.00	0.00
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	2900			0.15	2.32			0.15	

LOWER BAR-S DITCH

$$0.15 \div 7 = 0.02 \text{ cfs}$$

PER RIGHT

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
 CONVEYANCE LOSS:

~~36-00011D~~ * ~~36-00033B~~ *
 36-00011C 36-00033C
~~36-00011D~~ * 36-00033D
 36-00033E

* OTHER RIGHTS WILL NOT HAVE
 CONVEYANCE LOSS LISTED IN DECREE.

36-00033D

DECREED RIGHT SPLIT ANALYSIS

PARENT RIGHT NO. 36-00033 TOTAL DIVERSION RATE 3.00 cfs PREPARATION DATE 8-5-92
SC

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
33A	X	Renumbered to A36-00035D	—	X	X	X X X
33B	0.75	1.38	Y	0.10 (1.48)	Y	0.75
33C	3.00	0.16	N	0.10	N	0.26
33D	0.09	0.03	N	0.10 (0.13)	Y	0.09
33E	0.50	0.34	N	0.10	N	0.44
33F	0.50	0.29	N	0.10	N	0.39
33G	0.25	0.29	Y	0.10 (0.39)	Y	0.25
—	—	—	—	—	—	—
—	—	—	—	—	—	—
—	—	—	—	—	—	—
—	—	—	—	—	—	—
—	—	—	—	—	—	—
TOTALS:	5.09	2.47		0.60 (3.07)		2.18

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JAN 20 1993

JAN 23 1979

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APR 21 1989

Department of Water Resources
Southern Region Office

HEPWORTH, NUNGESTER & FELTON
Bank & Trust Building
Post Office Box 389
Twin Falls, Idaho 83301
Tel. No. 208-734-7510
Attorneys for Plaintiffs

Chapter No. _____
Case No. _____
Filed Jan 22 1979
CLERK
Deputy

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

* * * * *

JOHN W. JONES, JR., and DELORIS D.)
JONES, husband and wife; and W. A.)
SANDY and FLORENCE M. SANDY, husband)
and wife, dba, JONES AND SANDY)
LIVESTOCK,)

Case No. 16676

Plaintiffs,

vs.

RESERVOIR LAND COMPANY, INC., an)
Idaho corporation; KNAKE EYE LAND)
& CATTLE CO. and VIEJO MANAGEMENT)
CO.; dba BUCKEYE LAND CO.; BUCKEYE)
LAND CO.; CLIFFORD PETERSON; OMER E.)
LORANGER and BEVERLY B. LORANGER,)
husband and wife; WALLACE W. BATES)
and LOLEITA V. BATES, husband and)
wife; RICHARD P. SAUER and LUCILLE B.)
SAUER, husband and wife; SHELDON G.)
CARLETON and BARBARA S. CARLETON,)
husband and wife; EDNA M. (BELL) REA;)
STANLEY J. HOSKOVEC and BETTY)
HOSKOVEC, husband and wife; ALFRED)
H. COLE and PHYLLIS A. COLE, husband)
and wife; ELLIS & WEIR, INC., a)
domestic corporation; HAROLD V.)
WOLINE and LOIS C. WOLINE, husband)
and wife; FRED STURTEVANT and JOYCE)
E. STURTEVANT, husband and wife;)
and DOES I THROUGH V,)

STIPULATION OF FACTS

Defendants.

* * * * *

STIPULATION OF FACTS -1-

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JAN 20 1993

1 COMES NOW the parties through their attorneys of
2 record and stipulate as follows:

3 WHEREAS, the Bar S ditch carrying water from Weatherby
4 Springs across Billingsly Creek consists of an open ditch and a
5 series of metal pipes;

6 WHEREAS, on or about 1960 or 1961, a steel pipe with
7 an outside diameter of 24 inches was welded near the mouth or
8 inlet portion of the pipe or siphon crossing Billingsly Creek;

9 WHEREAS, at all times since 1960 or 1961, to the
10 present date, this pipe or siphon has been restricted at its
11 inlet by a section or sections of metal pipe having an outside
12 diameter of 24 inches;

13 WHEREAS, the maximum flow discharge for said original
14 pipe or siphon at all times since 1960 or 1961 has been 325
15 miners inches of water; and,

16 WHEREAS four other reputed or alleged diverters of
17 water from the Bar S ditch downstream from said crossing at
18 Billingsly Creek have been discovered, who have not been named
19 in the above-entitled proceeding and who, therefore, cannot be
20 bound by any judgment, decree, adjudication or stipulation
21 entered in the above-entitled proceeding;

22 All parties, by and through their attorneys of record,
23 agree and stipulate: ~

24 1. (a) that plaintiffs shall continuously, and on
25 a year round basis, allow 325 miners inches of water from
26 Weatherby Springs to be delivered into the Bar S ditch from the
27 outlet of its fish hatchery operation upon the express condition

28 STIPULATION OF FACTS -2-

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JAN 20 1993

1 precedent that defendant Buckeye Land Company enclose on or before
2 January 1, 1980, the existing open Bar S ditch with a suitable
3 enclosed pipeline along the entire reach of said Bar S ditch
4 located on the property presently owned by plaintiffs downstream
5 from plaintiffs fish hatchery operation; or in the alternative,

6 (b) in the event said open ditch is not enclosed
7 as set out in subparagraph (a) immediately above, that plaintiffs
8 shall continuously allow 325 miners inches of water from Weatherby
9 Springs to be delivered into the Bar S ditch from the outlet of
10 its fish hatchery operation from March 1 until November 1 of
11 each year, and plaintiffs shall continuously allow 200 miners
12 inches of water from Weatherby Springs to be delivered into the
13 Bar S ditch from the outlet of its fish hatchery operation from
14 November 1 until March 1 of each year.

15 2. that the trial date scheduled for this matter be
16 vacated to allow these individuals to be named so as to provide
17 for a full adjudication of the water rights of all individuals
18 diverting water along said stream;

19 3. that all other issues of law and fact not stipulated
20 by the parties herein are reserved until the time of trial.

21 DATED this _____ day of January, 1979.

22

23

HEPWORTH, NUNGESTER & FELTON

24

25

26

By 
John C. Hepworth for Plaintiffs

27

28 STIPULATION OF FACTS -3-

1 PARRY, ROBERTSON, DALY & LARSON

2 AND

3 BENOIT AND ALEXANDER

4
5 By *Robert Alexander*
6 Bob Alexander for Defendants
7 Buckeye Land Company and Reservoir
8 Land Company

9 CHURCH, CHURCH, & SNOW

10 By *Harold H. Weir*
11 For Defendants
12 Ellis & Weir, Inc. *H. Weir*

13 JAMES HOBDEY & VARIN

14
15 By *Clifford Peterson*
16 For Defendants
17 Clifford Peterson; Omer E. Loranger
18 and Beverly B. Loranger; Wallace W.
19 Bates; Richard P. Sauer and Lucille B.
20 Sauer; Sheldon G. Carleton and Bar-
21 bara S. Carleton; Edna M. Rea;
22 Stanely J. Hoskovec and Betty
23 Hoskovec; and Alfred H. Cole.

24 ORDER

25 IT IS SO ORDERED.

26 *1-22-79*
27 *151 Douglas D. Kramer*
28 District Judge

STIPULATION OF FACTS -4-

DISTRICT COURT
GOODING CO. IDAHO

APR 27 AM 9:00

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

JOHN W. JONES, JR., and
DELORIS D. JONES, et al

Plaintiffs,

vs.

RESERVOIR LAND COMPANY, INC.,
et al,

Defendants.

CASE NO. 16676

MEMORANDUM OPINION

The matter before the court is defendants' motion to amend the order of this Court dated January 22, 1979 incorporating a stipulation by all parties concerning their respective water rights in Weatherby Springs. The defendants' contend that their attorneys signed the stipulation under the mistaken impression that it called for 325 miner's inches of water to be delivered through the Billingsley Creek Siphon. In fact, the stipulation states that the water is to be delivered into the Bar S Ditch from the outlet of plaintiffs' fish hatchery operation. Though some comment was made at oral argument and in defendants' brief as to counsels' lack of authority to make the stipulation as worded, there is nothing in the affidavits filed with the Court to support that proposition. If there was a mistake in the formation of the stipulation it was unilateral, not mutual. Typically, a mutual mistake is required to make a contract voidable. Restatement, Contracts § 503. The stipulation explicitly deals with the problem of water loss in the Bar S Ditch. If the defendants place a suitable enclosed pipe line along the ditch by January 1, 1980 they are entitled to 325 miner's inches year round. If not, they are entitled to merely 200 inches from November 1 to March 1 of each year. The stipulation underscores the fact that the parties were well aware of the excessive water loss problem in the Bar S ditch at the time it was signed. It is well recognized in Idaho that only a reasonable loss in transport is allowed to the holder of a water right. Glenn Dale Ranches Inc. v. Shaub 94 Idaho 585, 494 P.2d 1029 (1972). The Court cannot believe that the dispute now before it centers around an amount of water which would constitute a reasonable loss. It must involve water substantially in excess of that amount. If so, the defendants are not entitled to the water under the Glenn Dale Ranches case. Accordingly, the Court sees no reason to exercise its discretion in favor of the defendants. The motion to alter or amend is denied. There appears no reason to order specific performance of the stipulation at this time.

MEMORANDUM OPINION/1

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JAN 20 1993

However, the Court will not hesitate to enforce its order should it be necessary to do so. No attorney's fees will be allowed.

Dated this 24 day of April, 1979.


Douglas D. Kramer
District Judge

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JAN 20 1993