

11/28/2005

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

RIGHT NUMBER: 21-12985
NAME AND ADDRESS: DONNA T FUCHS
3857 E 500 N
RIGBY ID 83442
ROBERT E FUCHS
3857 E 500 N
RIGBY ID 83442

SOURCE: FALL RIVER TRIBUTARY: HENRYS FORK

QUANTITY: 3.500 CFS
The rights listed below are limited to a total combined diversion rate of 3.5 cfs.
Combined Right Nos.: 21-114C, 21-115A, 21-12991

PRIORITY DATE: 12/10/1949

POINT OF DIVERSION: T09N R43E S35 SENWSE Within FREMONT County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	04/01 10/31	3.500 CFS
STOCKWATER	01/01 12/31	0.040 CFS

PLACE OF USE: IRRIGATION Within FREMONT County

T08N R41E S12 Lot 1 SENE	31.0	T08N R42E S06 Lot 9 NESW	21.0
T08N R42E S06 Lot 8 SWSW	9.0	T08N R42E S06 SESW	40.0
T08N R42E S06 NESE	39.0	T08N R42E S06 Lot 14 NWSE	32.0
T08N R42E S06 SWSE	40.0	T08N R42E S06 SESE	40.0
T08N R42E S07 NENE	40.0	T08N R42E S07 NWNE	40.0
T08N R42E S07 NENW	40.0	T08N R42E S07 Lot 1 NWNW	27.0
T08N R42E S07 Lot 2 SWNW	30.0	T08N R42E S07 Lot 3 NWSW	30.0
T08N R42E S07 Lot 4 SWSW	30.0		

STOCKWATER same as IRRIGATION

489 ACRES TOTAL

420 The rights listed below are limited to the irrigation of a combined total of 489 acres in a single irrigation season. Combined Right Nos.: 21-114C, 21-115A, 21-115B, 21-12985, 21-12991

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

This right is based upon an enlargement of Right No. 21-114C pursuant to Section 42-1426, Idaho Code.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use
This right is for an enlargement of 343 acres within the place of use described for this right.

PROFILED
SCANNED

JUN 21 2008

out

for

69

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

RIGHT NUMBER: 21-12985

NAME AND ADDRESS: DONNA T FUCHS
3857 E 500 N
RIGBY ID 83442

ROBERT E FUCHS
3857 E 500 N
RIGBY ID 83442

SOURCE: FALL RIVER

TRIBUTARY: HENRYS FORK

QUANTITY: 3.500 CFS

The rights listed below are limited to a total combined diversion rate of 3.5 cfs. Combined Right Nos.: 21-114C, 21-12985

~~The rights listed below are limited to a total combined diversion rate of 3.5 cfs. Combined Right Nos.: 21-114C, 21-12991, 21-115A~~

The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.

PRIORITY DATE: 12/10/1949

POINT OF
DIVERSION: T09N R43E S35 SENWSE Within FREMONT County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 10/31	3.500 CFS
STOCKWATER	01/01 12/31	0.040 CFS

PLACE OF USE: IRRIGATION in FREMONT County

T08N R41E S12 Lot 1 SENE	31.00	T08N R42E S06 Lot 9 NESW	21.00
T08N R42E S06	SES	T08N R42E S06	NESE 39.00
T08N R42E S06 Lot 14 NWSE	32.00	T08N R42E S06	SWSE 40.00
T08N R42E S06	SESE 40.00	T08N R42E S07	NENE 40.00
T08N R42E S07	NWNE 40.00	T08N R42E S07	NENW 40.00
T08N R42E S07 Lot 1 NWNW	27.00	T08N R42E S07 Lot 2 SWNW	30.00
~~T08N R42E S07 Lot 3 NWSW~~	~~30.00~~	~~T08N R42E S07 Lot 4 SWSW~~	~~30.00~~

STOCKWATER same as IRRIGATION

420 ACRES TOTAL ~~480 ACRES~~

The rights listed below are limited to the irrigation of a combined total of 420 acres in a single irrigation season. Combined Right Nos.: 21-114C, 21-115A, 21-115B, 21-12985, 21-12991

~~The rights listed below are limited to the irrigation of a combined total of 480 acres in a single irrigation season. Combined Right Nos.: 21-114C, 21-115A, 21-115B, 21-12985, 21-12991.~~

DK
9/3/08

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

~~This right is based upon an enlargement of Right No. 21-114C pursuant to Section 42-1426, Idaho Code.~~

The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Water is delivered through North Fremont Canal System (Farmers Own Canal).

~~This right is for an enlargement of 363 acres within the place of use described for this right.~~

~~This right is for an enlargement of 343 acres within the place of use described for this right.~~

Water Right Analysis

Water Right Number: 21-12985

Total Diversion Rate: 3.50

Total Acres 480.0

Twp	Rng	Sec	QQ	Lot	Water Right	Correct	RLF LLC PROPERTY
					Objection	W.R.	
					21-12985	21-12985	21-13013
08N	41E	12	SENE	1	31.0	31.0	
08N	42E	6	NESW	9	21.0	21.0	
08N	42E	6	SESW		40.0	40.0	
08N	42E	6	NESE		39.0	39.0	
08N	42E	6	NWSE	14	32.0	32.0	
08N	42E	6	SWSE		40.0	40.0	
08N	42E	6	SESE		40.0	40.0	
08N	42E	7	NENE		40.0	40.0	
08N	42E	7	NWNE		40.0	40.0	
08N	42E	7	NENW		40.0	40.0	
08N	42E	7	NWNW	1	27.0	27.0	
08N	42E	7	SWNW	2	30.0	30.0	
08N	42E	7	NWSW	3	30.0		30.0
08N	42E	7	SWSW	4	30.0		30.0
					480.0	420.0	60.0

Water Right To Be Corrected		CFS	Acres	CFS per ACRE	
21-12985		3.50	480.0	0.0073	
Corrected Water Rights					
21-12985		3.50	420.0	0.0073	
Combined Total		3.50	420.0		
New Recommendation					
21-12985		3.50	420.0		

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
ERIC L. OLSEN
CONRAD J. AIKEN
RICHARD A. HEARN, M.D.
DAVID E. ALEXANDER
LANE V. ERICKSON
PATRICK N. GEORGE
SCOTT J. SMITH
STEPHEN J. MUHONEN
BRENT L. WHITING
JOSHUA D. JOHNSON
JOHANATHON S. BYINGTON
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TELEPHONE (208) 395-0011
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WWW.RACINELAW.NET

SENDER'S E-MAIL ADDRESS: BJN@RACINELAW.NET

POCATELLO OFFICE
201 EAST CENTER STREET
POST OFFICE BOX 1281
POCATELLO, IDAHO 83201
TELEPHONE: (208) 232-6101
FACSIMILE: (208) 232-6109

IDAHO FALLS OFFICE

477 SHOUF AVENUE
SUITE 203A
IDAHO FALLS, ID 83402
TELEPHONE: (208) 528-6101
FACSIMILE: (208) 528-6108

COEUR D'ALENE OFFICE

250 NORTHWEST
BOULEVARD, SUITE 108A
COEUR D'ALENE, ID 83814
TELEPHONE: (208) 765-6888

ALL OFFICES TOLL FREE
(877) 232-6101

LOUIS F. RACINE (1917-2005)
WILLIAM D. OLSON, OF COUNSEL

January 23, 2009
via facsimile: 208-525-7177

IDWR Eastern Regional Office
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718

RE: Amended Notice of Claim, no. 21-12985 - Fuchs

Gentlemen:

Pursuant to the court's prior verbal order granting motion to amend a claim and the *Order Vacating and Resetting Subcase Deadlines* recently issued in the above-referenced subcase, attached please find the *Amended Notice of Claim to a Water Right* for subcase no. 21-12985.

Thank you for your courtesy and cooperation.

Yours very truly,

Becky J. Harvey
Becky J. Harvey
Paralegal

/bh
Enclosures

PROFILED

RECEIVED

JAN 23 2009

Department of Water Resources
Eastern Region

Form No.42-1409 (2)a (Internal)

**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 21-12985

Date Received: _____

Receipt No: _____

Received By: _____

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

Please type or print clearly

1. Name of Claimant (s) Donna T. Fuchs Phone (208) 745-6268Mailing Address 3857 E 500 N Rigby Idaho ZIP 83442
Street or Box City State2. Date of Priority (Only one (1) per claim) 6/01/1890
Month Day Year (YYYY)3. Source of water supply (Check one) Ground Water () or Other () (a) Falls River
which is tributary to (b) Henrys Fork4. a. Location of Point of Diversion is: Township 09N, Range 43E, Section 35,
SE, 1/4 of NW, 1/4 of SE, 1/4 Govt. Lot _____, BM., County of Fremont

Additional points of diversion if any: _____

If available, GPS Coordinates _____

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

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

Govt. Lot _____, BM., County of _____

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

_____, 1/4 Govt. Lot _____, BM., County of _____

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

Last Name _____ Ident No. _____

PROFILED

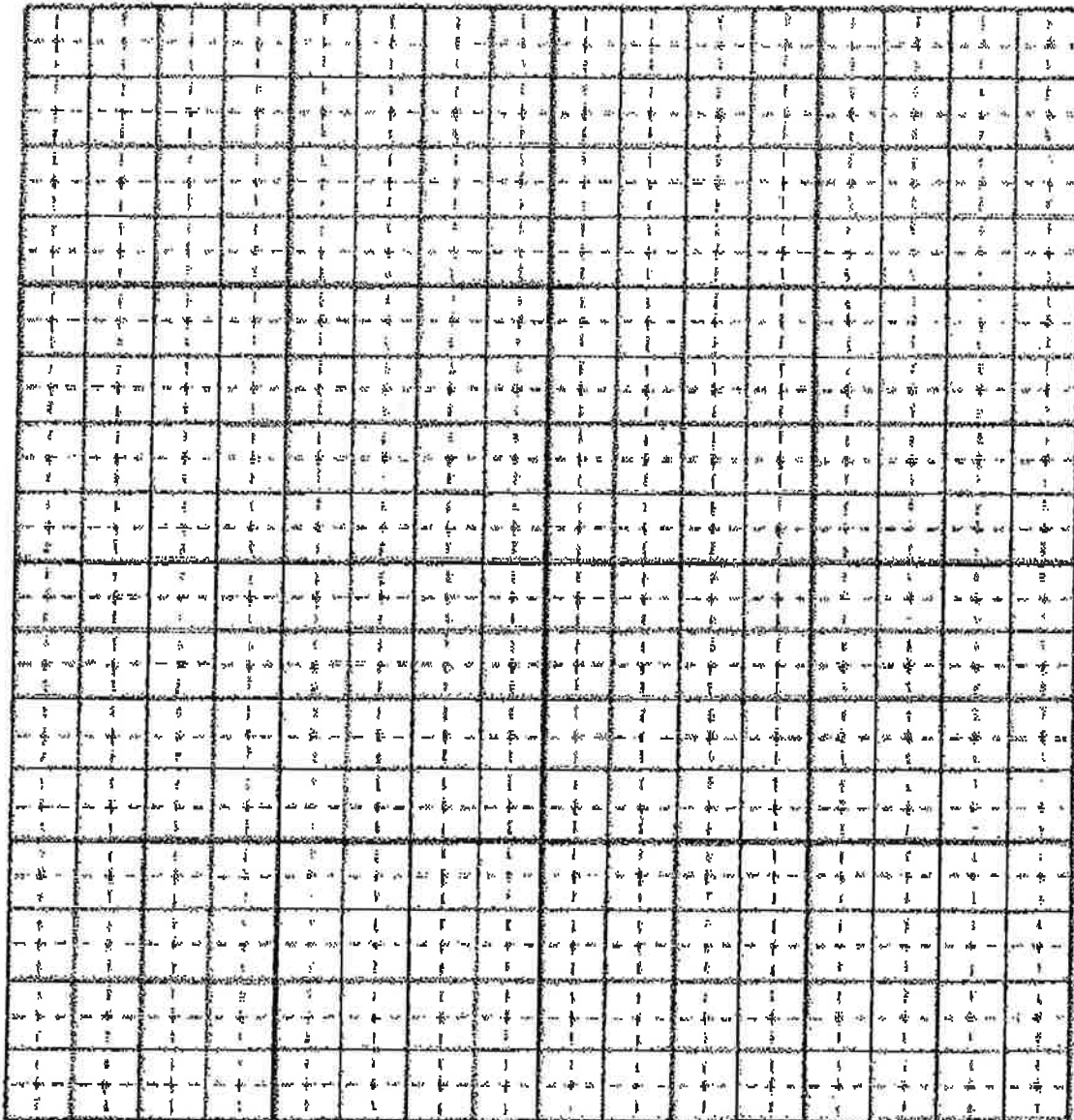
RECEIVED

JAN 23 2009

Department of Water Resources
Eastern Region

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

Scale: 2 Inches equals 1 mile



Last Name _____ Ident No. _____

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JAN 23 2009

Department of Water Resources
Eastern Region

14. Basis of Claim (Check One) Beneficial Use ☒ Posted Notice ☐ License ☐ Permit ☐ Decree ☐

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number _____

15. 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 under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date: _____

_____ Date: _____

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am

_____ of _____
Title Organization

that I have signed the foregoing document in the space below as

_____ of _____
Title Organization

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

Signature of Authorized Agent [Signature] Date 1-23-09

Title and Organization Scott J. Smith, attorney at law
Racine Olson Nye Budge & Bailey, Chartered

Please Print Name

16. Notice of Appearance:

Notice is hereby given that I, Scott J. Smith, will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature [Signature]

Address 201 E. Center St., Pocatello, Idaho 83201

Date 1-23-09

Last Name _____ Ident No. _____

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JAN 23 2009

Department of Water Resources
Snake River Region

ATTACHMENT A**Irrigation within Fremont County**

T08N R41E S12 LOT 1	SENE	31.0 acres
T08N R42E S06 LOT 9	NESW	21.0 acres
T08N R42E S06 LOT 8	SWSW	9.0 acres
T08N R42E S06	SESW	40.0 acres
T08N R42E S06	NESE	39.0 acres
T08N R42E S06 LOT 14	NWSE	32.0 acres
T08N R42E S06	SWSE	40.0 acres
T08N R42E S06	SESE	40.0 acres
T08N R42E S07	NENE	40.0 acres
T08N R42E S07	NWNE	40.0 acres
T08N R42E S07	NENW	40.0 acres
T08N R42E S07 LOT 1	NWNW	27.0 acres
T08N R42E S07 LOT 2	SWNW	30.0 acres

TOTAL ACRES: 429.0 acres

Stockwater same as Irrigation

NOTE: This is the same Place of Use recommended in the Preliminary Recommendation dated 11/28/2005, with the exception that Lots 3 and 4 of T08N R42E S07 have been eliminated because the Claimant no longer owns them.

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JAN 23 2009

Department of Water Resources
Eastern Region



State of Idaho
Department of Water Resources
Eastern Region



Claim No.(s): 21-114C, 21-115A, 21-115B, 21-12985, 21-12991



Place of Use
Section
Point of Observation

GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by T. Galbrath
Date: Nov. 2005

RECEIVED
JAN 23 2009

Department of Water Resources
Eastern Region



Idaho Department of Water Resources

MEMORANDUM

File: 21-12985 Fuchs
Date: 6-1-2009
Subject: Objection Resolution- Priority Date

Ernie and I met with Scott Smith, Steve Houser and Bill Fuchs today to discuss the priority date of this water right. The claimant wants the priority date to be 1890 like 21-114C. This water right was filed as an enlargement of 21-114C that lies on the north part of the farm.

The claimant claims that the north portion of the farm was originally irrigated by Black Spring Creek since around 1894. The water from Black Spring Creek had been transferred to Silkey Ditch, Farmers Own Canal and back to Silkey Ditch to improved delivery of the water.

During the meeting, the claimant stated that the Black Spring Creek was lower than the Farmers Own canal and that is the reason for the transfers (911, 933). Based on this new information, how did they irrigate the north portion of the farm from the Black Spring Creek.

The claimant will continue to look for additional documentations to prove that the acres to the north were irrigated before the 1950 priority date.

From the desk of Denise Kidman



Idaho Department of Water Resources

MEMORANDUM

File: 21-12985 Fuchs
Date: February 19, 2009
Subject: Priority Date

An amended claim for 21-12985 was filed to change the priority date from 12/10/1949 to 6/01/1890. 21-12985 was an enlargement and based on beneficial use. The original claim was filed on 12/10/1949 and was advertised on 12/15/1949.

On 12/10/1949, Edgar Barney filed an Affidavit for Change of Point of Diversion of a Decreed Water Right with IDWR. He claimed that it was "too much upkeep on present ditch".

This claim was not based on a Posted Notice or included in the Rexburg Decree but based on beneficial use. Based on that information, the priority date can not be changed to 6/01/1890.

During the investigation to resolve the objection for this water right, IDWR noticed that the original claimed priority date was inaccurate based on the information in the file. The affidavit for the change of diversion was submitted in December 1949, but the change couldn't have begun or finished until spring of 1950. The earliest date that this water right could have been put to beneficial use is 4/1/1950. From that information, the priority date for 21-12985 will be changed to 4/1/1950.

PROFILED

SCANNED

MAR 30 2009

From the desk of Denise Kidman

December 15, 1949

Mr. Edgar Barney
Box 205
St. Anthony, Idaho

Dear Mr. Barney:

This will acknowledge receipt of Affidavit for Change of Point of Diversion of Decreed Water Right from the SW $\frac{1}{4}$ Section 18 to a proposed point of diversion in the SE $\frac{1}{4}$ Section 35, Township 9 North, Range 43 East, B.M.

Notice of Publication has been sent to the Fremont County News for publication of notice once a week for two consecutive weeks. It will be necessary for you to pay for the publication and to furnish this office with an Affidavit of Publication from the newspaper, with \$1.00 fee for recording said Certificate, after which a Certificate of Change in Point of Diversion will be mailed to you.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

RWT:bh

PROFILED **MICROFILMED**

SCANNED
MAR 30 2009

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

Boise

Date December 12, 1949

**Fremont County News,
St Anthony, Idaho.**

Gentlemen:

Enclosed you will find notice for publication once a week
for two consecutive weeks prior to **January 5, 1950**
the date set for the hearing, the expense of the publication to be
paid by the applicant, **Edgar Barney, Box 205 St. Anthony, Idaho.**

to whom you should furnish proof of publication on or prior to the
date set for the hearing.

Please acknowledge receipt of this notice, and furnish this
department with a copy of the first publication, in order that we may
check same.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

By

Rey. W. Thompson,
Supervisor of Water Distribution,

SCANNED

MAY 30 2009

MICROFILMED
PROFILED

NOTICE OF PROPOSED CHANGE OF POINT OF DIVERSION

Notice is hereby given that Edgar Barney of St. Anthony, Idaho, has applied to the State Reclamation Engineer, of the State of Idaho for a certificate authorizing him to change the point of diversion of 5.8 cubic feet per second of the waters of Fall River and Black Spring Creek, from his present point of diversion located in the SW $\frac{1}{4}$ Section 18, Twp. 8.N. R. 42 E. to a proposed point of diversion located in the SE $\frac{1}{4}$ Section 35, Twp. 9.N. R. 43.E.

And that on the 5th day of January 1950, at Room 107, State House Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, opportunity will be given any and all persons to appear and present for his consideration any reasons or reasons why a certificate should not be issued authorizing such change in point of diversion.

MARK. R. KULP.

State Reclamation Engineer,

PROFILED

SCANNED

MAR 30 2009



Idaho Department of Water Resources

MEMORANDUM

File: 21-12985 Fuchs
Date: 8-28-2008
Subject: SF5 and Lot 3 & 4 property

On July 22, 2003, I received a phone call from Becky Harvey informing me that there is still a problem on the SF5's. Fuchs claimed acreage in T8N R42E SEC 7 NWSW Lot 3 and T8N R42E SEC 7 SWSW Lot 4 in which they do not own. Those acres are owned and claimed by RLF (21-13013).

E52- Needed to change the total diversion rate combined right #'s to 21-114C and 21-12985.

E56- Needed to change to reflect reduction of acreage.

K09- Changed enlargement acres from 343 to 363.

420 acres

Lot 1 contains 27 acres

$27 + 30 = 57$ PPU

Lot 2 contains 29.67 acres

27-114C was decreed to lots 1 & 2. For the enlargement acreage, we took the total acres irrigated (420) and subtracted the acreage of lots 1 & 2 (57 PPU) to get 363 acres.

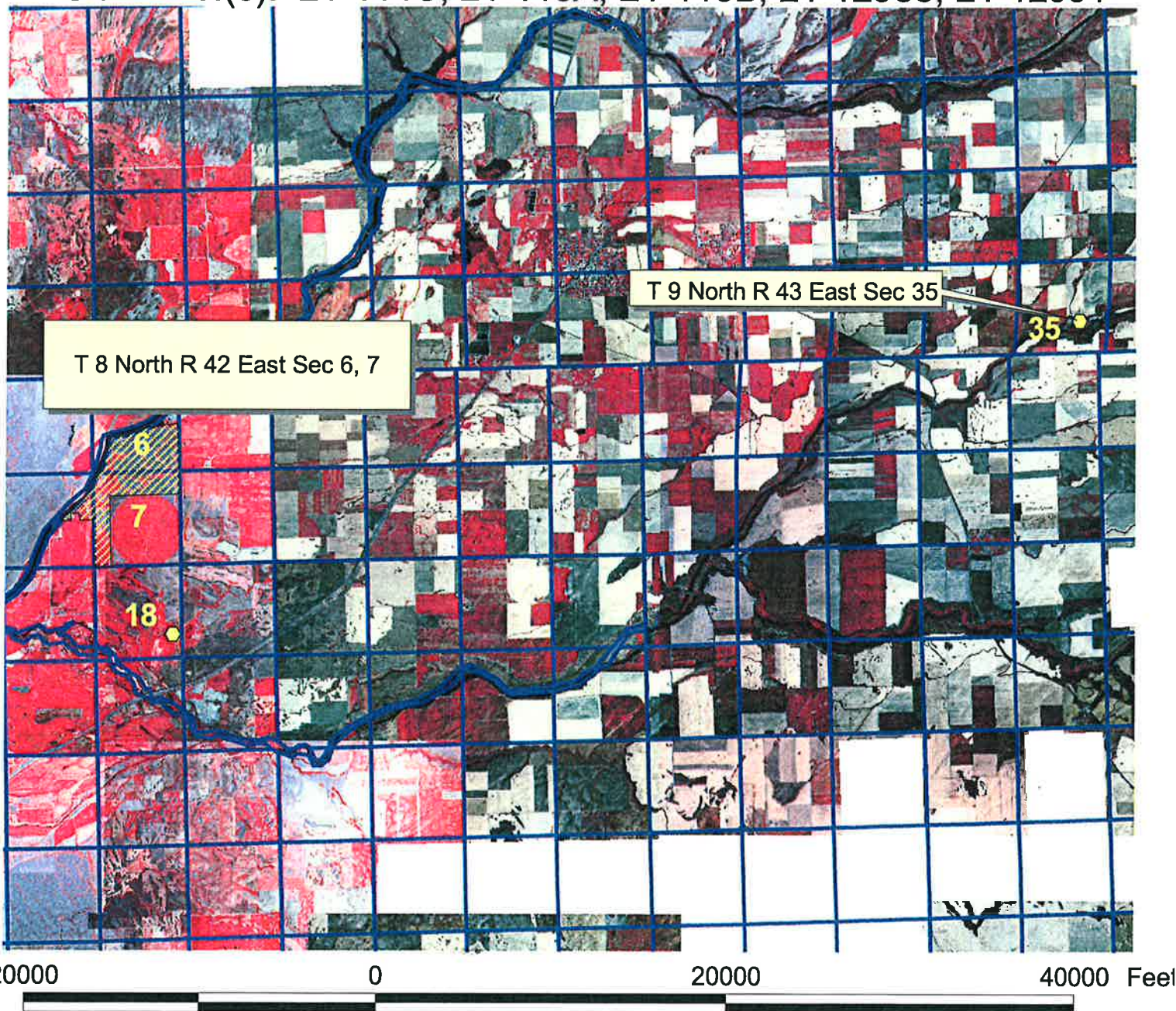
From the desk of Denise Kidman



State of Idaho
Department of Water Resources
Eastern Region



Claim No.(s): 21-114C, 21-115A, 21-115B, 21-12985, 21-12991



Place of Use
Sections
Points Of Diversion

GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by T. Galbraith
Date: Nov. 2005



New

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 21-12985
Date Received: 10/12/2005
Receipt No: E 031341
Received By: JRM

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

1. Name of Claimant(s)

DONNA T FUCHS Phone: (208)745-6268
3857 E 500 N
RIGBY ID USA 83442

ROBERT E FUCHS Phone: (208)745-6268
3857 E 500 N
RIGBY ID USA 83442

2. Date of Priority: 12/10/1949

3. Source: FALL RIVER Trib. to: HENRYS FORK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
09N	43E	35	SE NW SE	FREMONT	

5. Description of diverting works:

Water carried by the North Fremont Canal System

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/01	10/31	4	
STOCKWATER	01/01	12/31	0.04	

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

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
----------	-------	---------	----------------	-----	-------

08N	42E	6	NE	SE		IRRIGATION	38
			SW	SE		IRRIGATION	40
			SE	SE		IRRIGATION	40
			NE	SW	9	IRRIGATION	22
			SW	SW	8	IRRIGATION	13
			SE	SW		IRRIGATION	40
			NW	SE	14	IRRIGATION	33

Section Acres 226

08N	42E	7	NE	NE		IRRIGATION	40
			NE	NW		IRRIGATION	40
			NW	NW	1	IRRIGATION	27
			SW	NW	2	IRRIGATION	40
			NW	NE		IRRIGATION	40

Section Acres 187

Total Acres 413

11. Place of use in counties: FREMONT

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

13. Other Water Rights Used:

14. Remarks:

This claim add acres to claim 21-114c and should have a combined use limits for the quantity for a total of 4 cfs.

15. Basis of Claim: Beneficial Use

16. Signature(s)

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

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s): Danna J. Fuchs Date: 10/12/05

Date: _____

State of Idaho)
County of Madison) SS.

Subscribed and sworn (or affirmed) before me this 12th day of October 2005



Andrea Ader
Notary Public
Residing at St. Anthony Idaho
My commission Expires 9/16/2008