

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

RIGHT NUMBER: 34-2459

NAME AND ADDRESS:

CHARLES B ISOM
3199 W 2200 N
ARCO ID 83213

FERN A ISOM
3199 W 2200 N
ARCO ID 83213

SOURCE:

Source:

Tributary:

GROUND WATER

QUANTITY:

4.170 CFS

833.000 AFY

~~0.000 AFY~~

The rights listed below are limited to a total combined diversion rate of 12.5 cfs. Combined Right Nos.: 34-2459, 34-2460, 34-2461, 34-2462 and 34-10925.

The rights listed below are limited to a total combined diversion rate of 24.5 cfs. Combined Right Nos.: 34-2459, 34-2460, 34-2461, 34-2462, 34-10925 and 34-7037.

The rights listed below are limited to a total combined annual diversion volume of 8441.5 af. Combined Right Nos.: 34-2459, 34-2460, 34-2461, 34-2462, 34-7037, 34-7138 and 34-10925.

~~USE OF THIS RIGHT WITH RIGHT NOS. 34-02460, 34-02461, 34-02462 AND 34-10925 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 12.50 CFS.~~

~~USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 8441.5 AF.~~

~~COMBINED RIGHT NOS.: 34-07138, 34-02460, 34-02461, 34-02462, 34-07037 AND 34-10925.~~

PRIORITY DATE:

04/19/1965

Pursuant to a call, in times of scarcity, the diversion of water under this right from the two wells in T05N R26E S34 SENWSW and T04N R26E S3 NESENW has a priority date of May 18, 1982.

POINT OF DIVERSION:

T03N R26E S2 SWSNW
Within BUTTE County

T03N R26E S2 SENESW
Within BUTTE County

T04N R26E S3 NESENW
Within BUTTE County

T04N R26E S26 NWNWNW Injection
Within BUTTE County

T04N R26E S26 NWNWNW Rediversion
Within BUTTE County

T05N R26E S34 SENWSW
Within BUTTE County

Groundwater diverted from the points of diversion in T05N R26E S34 SENWSW and T04N R26E S3 NESENW is comingled with the Island Canal then injected into the Big Lost River at the point of injection and rediverted into the Munsey Canal at the point of rediversion.

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
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PURPOSE AND PERIOD OF USE:	Purpose of use	Period of use:	Quantity:
	IRRIGATION	04/01 11/01	4.170 CFS <u>833.00 AFY</u>

PLACE OF USE: IRRIGATION within BUTTE County

T03N R26E S14 NENW 39.0
 T03N R26E S14 NWNW 36.0
 T03N R26E S14 SWNW 40.0
 T03N R26E S14 SENW 40.0
 T03N R26E S14 NESW 40.0
 T03N R26E S14 NWSW 40.0
 T03N R26E S14 SWSW 40.0
 T03N R26E S14 SESW 40.0
 T03N R26E S15 NENE 39.0
 T03N R26E S15 NWNE 40.0
 T03N R26E S15 SWNE 40.0
 T03N R26E S15 SENE 40.0
 T03N R26E S15 NENW 39.0
 T03N R26E S15 NWNW 39.0
 T03N R26E S15 SWNW 40.0
 T03N R26E S15 SENW 40.0
 T03N R26E S15 NESW 40.0
 T03N R26E S15 NWSW 40.0
 T03N R26E S15 SWSW 40.0
 T03N R26E S15 SESW 40.0
 T03N R26E S15 NESE 40.0
 T03N R26E S15 NWSE 40.0
 T03N R26E S15 SWSE 40.0
 T03N R26E S15 SESE 40.0
 T03N R26E S16 NENE 39.0
 T03N R26E S16 NWNE 39.0
 T03N R26E S16 SWNE 40.0
 T03N R26E S16 SENE 40.0
 T03N R26E S16 NESE 40.0
 T03N R26E S16 NWSE 40.0
 T03N R26E S16 SWSE 39.0
 T03N R26E S16 SESE 39.0
 T03N R26E S22 NENE 40.0
 T03N R26E S22 NWNE 40.0
 T03N R26E S22 SWNE 40.0
 T03N R26E S22 SENE 40.0
 T03N R26E S22 NENW 40.0
 T03N R26E S22 NWNW 40.0
 T03N R26E S22 SWNW 40.0
 T03N R26E S22 SENW 40.0

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
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T03N R26E S23 NENW 40.0
T03N R26E S23 NWNW 40.0
T03N R26E S23 SWNW 40.0
T03N R26E S23 SENW 40.0
T03N R26E S23 NESW 40.0
T03N R26E S23 SESW 33.0
T03N R26E S23 NESE 39.0
T03N R26E S23 NWSE 40.0
T03N R26E S23 SWSE 40.0
T03N R26E S23 SESE 40.0

1980 ACRES TOTAL

This right is limited to the irrigation of 238 acres within the place of use described above in a single irrigation season.

The rights listed below are limited to the irrigation of a combined total of 714 acres in a single irrigation season. Combined Right Nos.: 34-2459, 34-2460, 34-2461 and 34-2462.

The rights listed below are limited to the irrigation of a combined total of 1740 acres in a single irrigation season. Combined Right Nos.: 34-2459, 34-2460, 34-2461, 34-2462 and 34-10925.

The rights listed below are limited to the irrigation of a combined total of 1664 acres in a single irrigation season. Combined Right Nos.: 34-2459, 34-2460, 34-2461, 34-2462, 34-7037 and 34-7138.

The rights listed below are limited to the irrigation of a combined total of 1980 acres in a single irrigation season. Combined Right Nos.: 34-2459, 34-2460, 34-2461, 34-2462, 34-7037, 34-7138 and 34-10925.

~~USE OF THIS RIGHT WITH RIGHT NOS.: 34-02460, 34-02461, 34-02462 AND 34-07037 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 1664 ACRES IN A SINGLE IRRIGATION SEASON.~~

~~USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 1980 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 34-07138, 34-02460, 34-02461, 34-02462, 34-07037 AND 34-10925.~~

~~THIS RIGHT IS LIMITED TO THE IRRIGATION OF 238 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.~~

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

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

~~THIS 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.~~

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
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EXPLANATORY MATERIAL: BASIS OF CLAIM - License ~~BASIS OF CLAIM - Deceed~~

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

Right No. 34-10925 is an enlargement of this right pursuant to Section 42-1426, Idaho Code.

~~RIGHT NOS. 34-02460, 34-02461, 34-02462 AND 34-10925 ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.~~

~~RIGHT NO. 34-10925 IS AN ENLARGEMENT OF THIS RIGHT PURSUANT TO SECTION 42-1426, IDAHO CODE.~~

~~RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.~~

W. Kent Fletcher
FLETCHER LAW OFFICE
1200 Overland Avenue
P.O. Box 248
Burley, Idaho 83318-0248
(208) 678-3250
(208) 878-2548 - fax
Email: wkf@pmt.org
ISB No. 2248
Attorney for **BIG LOST RIVER IRRIGATION DISTRICT**

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NOV 30 2010
DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 39576

)
) Subcase Nos. 34-2459, 34-2460,
) 34-2461, 34-2462, 34-10925
)

) **STIPULATION RESOLVING**
) **OBJECTIONS OF BIG LOST**
) **RIVER IRRIGATION DISTRICT**

Robert L. Harris on behalf of Claimant, Charles B. Isom and Fern A. Isom, and Kent
Fletcher on behalf of the Big Lost River Irrigation District, stipulate as follows:

1. Amended Director's Reports pertaining to the above described water rights were filed
on or about December 8, 2009.

2. Included in the Amended Director's Reports under the heading of "Point of
Diversion" is the following language:

Ground water diverted from the points of diversion in ... is commingled with the
Island Canal then injected into the Big Lost River at the point of injection and re-
diverted into the Munsey Canal at the point of re-diversion.

3. Claimants and Big Lost River Irrigation District agree that the above language is not an element of the water right and does not create any vested right to transport water through the Big Lost River Irrigation District system.

4. Big Lost River Irrigation District filed objections to the Amended Director's Reports, objecting to the language set forth above and other provisions of the Reports.

5. The parties agree that the above language shall not be inserted in the Partial Decrees.

6. In consideration of the language not being included in the Partial Decrees, Big Lost River Irrigation District withdraws its other objections.

7. The terms of this Stipulation may be incorporated into an SF-5s, recommendations of the Special Master and the Partial Decrees, as the case may be.

DATED this 23rd day of November, 2010.

HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.


Robert L. Harris
Attorneys for Claimants
P.O. Box 50130
Idaho Falls, Idaho 83405

DATED this 24 day of November, 2010.

FLETCHER LAW OFFICE


Kent Fletcher
Attorney for Big Lost River Irrigation District
P.O. Box 248
Burley, Idaho 83318-0248

commencement of the SRBA, then the amounts diverted will be added to the amount of the flow at the Howell gaging station for the purposes of applying this provision.

b. The surface waters of the following streams shall be administered as separate from the surface waters of the Big Lost River: Rock Springs Creek, Rock Creek, Beda Creek, Corral Creek, Sage Creek, Upper Cedar Creek, Lower Cedar Creek, Dry Creek (also known as Cedar Creek), Pete Creek, Willow Creek, Pinto Creek, Lehman Creek, Vance Creek, Grant Creek and Hamilton Creek.

c. The Back Channel, which separates from the main channel of the Big Lost River in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 5, Township 8 North, Range 22 East, B.M., shall be considered part of the natural channel of the Big Lost River.

i. When the flow at the Howell gaging station is less than 1400 CFS, the flow in the Back Channel shall be kept as near as practicable to 150 CFS as determined by the director, but shall not exceed that amount.

ii. When the flow of the Howell gaging station is at or exceeds 1400 CFS, the flow in the Back Channel shall be kept as near as practicable to 200 CFS as determined by the director. The flow shall not exceed that amount unless all surface water rights existing at the time of administration (including water rights with a junior priority), and that are within their period of use, are satisfied.

iii. These provisions shall not be considered to enlarge the amount of water to which appropriators diverting from the Back Channel are entitled.

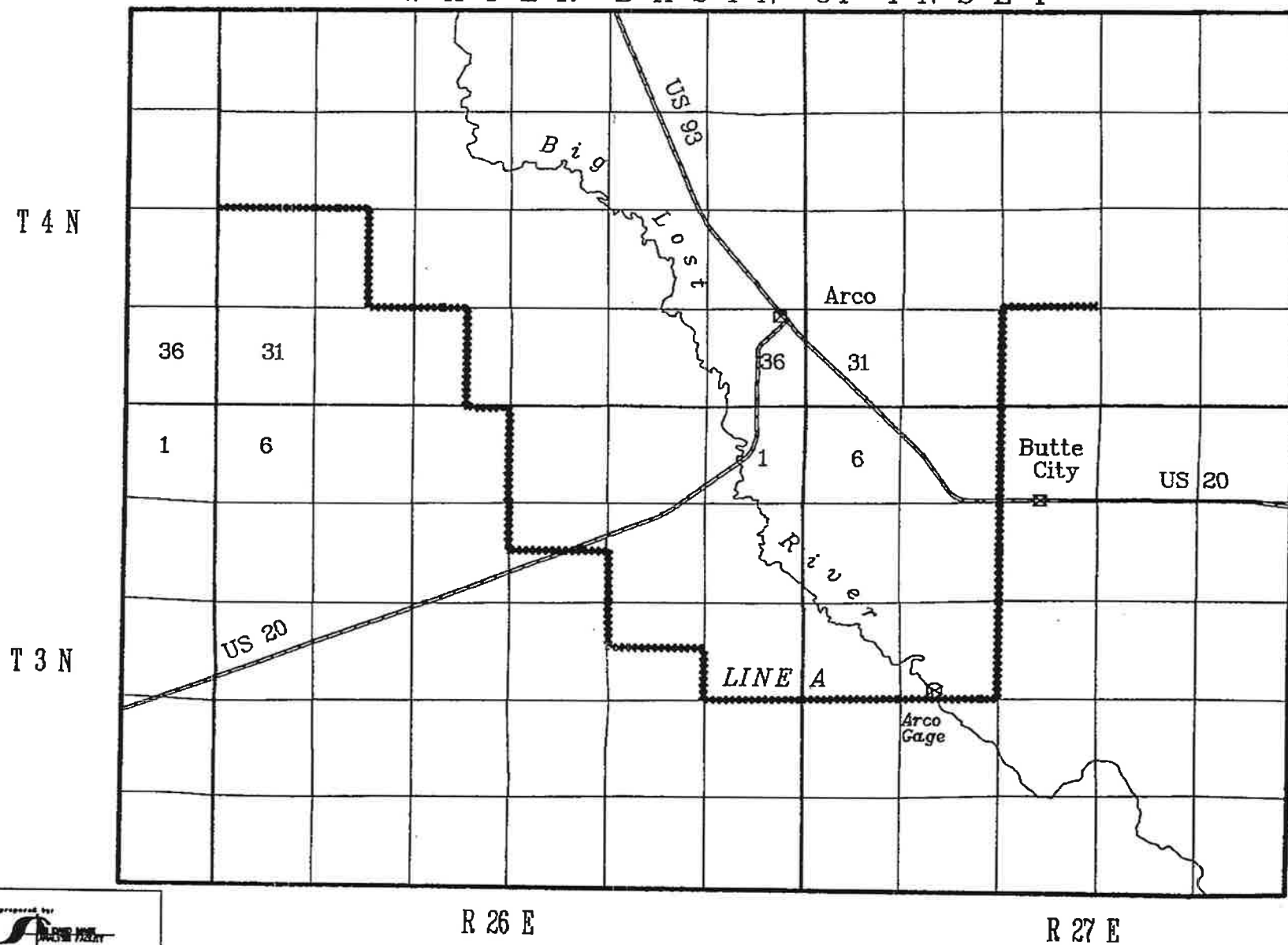
iv. The water users of water district 34 (as established by the director pursuant to statute) may elect (in the manner prescribed by statute) that the administration of flows into the Back Channel without a measuring device and control works at the head of the Back Channel is not sufficiently precise to protect senior water rights and that a measuring device and control works shall be installed. In this event, the costs of installation and maintenance shall be borne by the water users of water district 34 as costs of the water district in the manner prescribed by statute. The measuring device and control works shall be of a type approved by the director, and must be approved prior to installation.

6. ADMINISTRATION OF GROUND AND SURFACE WATER RIGHTS WITHIN BASIN 34.

a. The diversion of ground water pursuant to rights with points of diversion located up gradient (northerly) of Line A in Figure 2 are presumed to reduce the flow of the Big Lost River upstream from the last (most downstream)

Figure 2

WATER BASIN 34 INSET



prepared by
ALPINE MOUNTAIN
Water Department of Water Resources
200 South Graham
Salt Lake City, UT 84143
801-532-1234

Scale 1:100,000

diversion from the Big Lost River. Ground water diverted pursuant to these rights shall therefore be administered as part of the Big Lost River and tributaries unless the ground water user can show to the satisfaction of the director, that due to well construction or location, the diversion of ground water from a particular point of diversion does not reduce the flow of the Big Lost River as described above.

b. Administration of these rights as part of the Big Lost River and its tributaries will result in curtailment of these diversions in most years. While this will protect senior surface water rights, such administration would not promote the public purpose of full economic development of underground water resources. Therefore, curtailment of these diversions will not be required if a plan, acceptable to and approved by the director, is in place to provide mitigation or compensation to those holding prior surface water rights in a manner to assure the availability of water to the surface water rights in amounts that would be available absent junior ground water diversions or other substantially equivalent mitigation or compensation.

c. The diversion of ground water pursuant to rights with points of diversion located down gradient (southerly) of Line A in Figure 2 does not reduce the flow of the Big Lost River upstream from the last (most downstream) diversion from the Big Lost River. Ground water diverted pursuant to such rights is therefore not subject to administration as part of the Big Lost River and its tributaries. Ground water rights in this category are identified in the listing of water rights by a remark noting the right will be administered as separate from the Big Lost River.

7. ADMINISTRATION OF BASIN 34 AND SNAKE RIVER BASIN. The surface waters of Basin 34 shall be administered as separate from the remainder of the Snake River Basin water system. Ground water rights in Basin 34 shall be subject to administration as part of the Snake River Plain aquifer. The administration plan for the Snake River Plain aquifer will, when developed as part of or pursuant to the SRBA, give due consideration to the location and actual impact of ground water diversions in Basin 34 on the Snake River Plain aquifer.

8. REASONABLE PUMPING LEVELS. Administration of all rights from ground water shall be subject to reasonable pumping levels, as determined by the director pursuant to statute.

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DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case 39576

) A. Subcase 34-2459
)
)
)
)
)

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Big Lost River Irrigation District

Address: P.O. Box 205
Mackay, Idaho 83251

Daytime Phone: (208) 588-2231

Name & Address of Attorney, if any:

W. Kent Fletcher

PO Box 248

Burley, ID 83318

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

Name: Charles B. Isom and Fern A. Isom

Address: 3199 W. 2200 N.
Arco, Idaho 83213

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

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☒ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: _____
10. **I object because:**
 - ☐ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S):

- Combined diversion rates exceed historical diversion rates.
- There is no transport agreement in place with the Big Lost River Irrigation District for this right.
- If the water right makes reference to transportation of water through the Big Lost River Irrigation District facilities, it must state that it is subject to the permission, rules and regulations of the Big Lost River Irrigation District.

- The combined rights as recommended may exceed the capacity of the Big Lost River Irrigation District facilities.
- Alternative manners of delivery must be maintained in order to prevent injury in the event the capacity of the Big Lost River Irrigation District is exceeded.
- The number of acres allowed exceeds the number of acres reported by the person irrigating with these rights.
- The elements required for an accomplished transfer have not been met. The accomplished transfer may cause injury to the Big Lost River Irrigation District facilities.
- Such other matters as may be established at the time of hearing.

F.

VERIFICATION (Must be completed)

State of Idaho)
) ss.
 County of Cassia)

W. Kent Fletcher, duly sworn, upon oath, deposes and says:

That I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.


 W. Kent Fletcher, Attorney for Objector

Subscribed and sworn to before me on:

December 17, 2009

Bona Rae Davis

Notary Public for Idaho
 Residing at: Burley
 My Commission expires: July 5, 2014

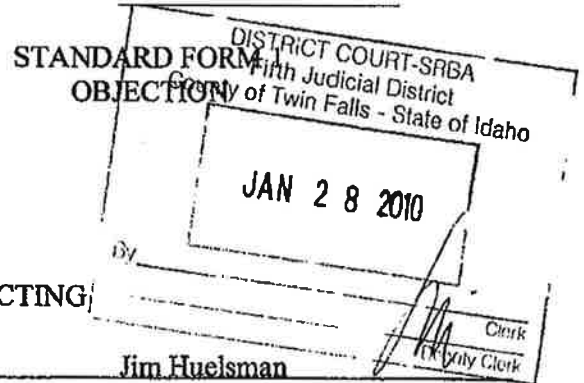


IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)

34-2459, 34-2460, 34-2461,
A. Subcase 34-2462 & 34-10925

Case No. 39576)



Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name:	<u>Doug Schureman</u>	<u>Jim Huelsman</u>
Address:	<u>3059 W. 2230 N.</u>	<u>3304 W. 3400 N</u>
	<u>Arco, Idaho 83213</u>	<u>Moore, Idaho 83255</u>

Daytime Phone: _____

Name:	<u>Tyler Felton</u>
Address:	<u>P.O. Box 989</u>
	<u>Ketchum, Idaho 83340</u>

Daytime Phone: _____

Name & Address of Attorney, if any:
Travis L. Thompson / Paul L. Arrington
Barker, Rosholt & Simpson, LLP
P.O. Box 485, Twin Falls, Idaho 83303
(208) 733-0700

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

Name:	<u>Charles B. Isom and Fern A. Isom</u>
Address:	<u>3199 W. 2200 N.</u>
	<u>Arco, Idaho 83213</u>

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

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: See below
4. ☐ **Priority Date**
Should be: _____
5. ☒ **Point of Diversion**
Should be: See below
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
- 10 ☐ **I object because:**
☐ This water right Should not exist.

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

E. REASONS SUPPORTING OBJECTIONS(S): _____

Objection

Water Right Nos. 34-2459, 34-2460, 34-2461, 34-2462, 34-10925

Diversion Rate: The recommended diversion rate is inconsistent with the licensed diversion rate as follows:

Right	License	Recommendation	Increase
34-2459	714 AFY	833 AFY	119 AFY
24-2460	714 AFY	933 AFY	119 AFY
34-2461	357 AFY	416.5 AFY	59.5 AFY
34-2462	357 AFY	416.5 AFY	59.5 AFY
		TOTAL INCREASE	357 AFY

In addition, the license for water right 34-7037, issued on September 2, 1994 includes the following remark:

The combined annual volume of water under this right [34-7037] and Right Nos. 34-2459 /2460 /2461 /32462 /7138/ 10925 shall not exceed 6930.0 acre feet. (Emphasis added).

There is no justification for enlarging the combined diversion volume to 8441.5 AFY (an increase of 1511.5 AFY).

Point of Diversion: The accomplished transfer of these water rights to add two new wells will injure water rights in the area of the new wells. The Department should perform an injury analysis.

Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Ave. West, Suite 103
P.O. Box 485
Twin Falls, Idaho 83303-0485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

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DEPARTMENT OF
WATER RESOURCES

Attorneys for Doug Schureman, Tyler Felton & Jim Hueslman

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

In Rc SRBA

Case No. 39576

Subcase No. 34-2459, 34-2460, 34-2461,
34-2462, 34-10925

**OBJECTOR'S RESPONSE TO
CLAIMANT'S MOTION FOR
SUMMARY JUDGMENT**

COMES NOW, Doug Schureman, Tyler Felton¹ and Jim Hueslman (collectively, referred to as "Schureman"), by and through their attorneys Barker Rosholt & Simpson, LLP, and hereby submit this response to the Claimants' *Motion for Summary Judgment*, filed with this Court on November 4, 2010. As discussed herein, there are material issues of fact that are in dispute, therefore, summary judgment should be denied.

INTRODUCTION

Through the above claims, the Claimants, Isom Acres Limited Partnership, Charles Isom and Don Isom (collectively, "Isom"), seek to create a water right where none existed and to collaterally attack their prior licenses. They would have this Court enter a partial decree based

¹ Mr. Felton passed away in early 2010. Objectors are in the process of substituting the estate as a party.

on an accomplished transfer theory that would allow the diversion of as much as 24.5 cfs (1225 inches) from the so-called "island wells" even though there is no evidence that they had any authority to convey any water from the island wells to their place of use prior to 1995. The authority to convey this water is vital to Isom's claim because the points of diversion (the island wells) are 8 miles from the place of use. The only way to convey the water from the island wells to the place of use is through the Big Lost River Irrigation District's ("BLRID") conveyance system. Absent permission to convey the water, Isom would have not ability to beneficial use the water at the place of use.

Schureman filed an objection to the water rights alleging injury associated with the accomplished transfer. Remand is required by the accomplished transfer statute. There is no discretion. Isom's citation to a decision refusing to remand to address the ownership of a water right is unpersuasive. Indeed, this Special Master has recognized the nondiscretionary nature of the remand provision and should apply it in this case.

Isom seeks to collaterally attack his licenses – an action expressly prohibited by this Court. Whereas the prior licenses included a combined volume limitation of 3.5 acre feet per acre and 6930 acre feet per year, Isom advocates a volume limitation of 8441.5 acre feet per year – or 4.26 acre feet per acre. The law does not allow such an action in the SRBA Court.

Isom's sole factual support for his motion is a 1995 agreement, an affidavit from Charles Isom and the license for water right 37-7037. Yet, none of these are sufficient to demonstrate an absence of material facts. The 1995 agreement is facially insufficient to demonstrate an accomplished transfer which must have taken place prior to November 19, 1987. None of the agreements prior to 1995 listed the island wells as authorized points of diversion for conveyance

through the BLRID's system. As such, there was no evidence of authority to convey this groundwater through the Munsey Canal prior to 1995.

However, even if there was some authority to divert water through the system, the evidence shows that, at most, the amount of ground water diverted through the system prior to 1987 was 12 cfs (600 inches).

Ironically, the Claimants now try to hide behind the very decree they argued should be set aside. They claim that Schureman should be estopped from asserting its objection because many of the elements remain unchanged from the prior decree. Isom provides no legal support for this novel theory. Indeed, the law expressly provides that Schureman may file an objection to the director's report and the factual circumstances are different. That notwithstanding, the factual issues are not the same.

In the end, Isom has failed to demonstrate the necessary lack of disputed material facts. As such, summary judgment should be denied.

STATEMENT OF FACTS

This matter involves a recommendation by the Director for the above water rights that adds two points of diversion – commonly referred to as the “island wells.” The legal description of these island wells is as follows:

NESENW, S3, T4N, R26E
SWNWSW, S34, T5N, R26E

These rights were originally partially decreed on December 16, 1997 without these points of diversion. The prior decrees only listed points of diversion near the place of use – commonly referred to as the “airport wells.”

Isom moved the Court for an order setting aside the partial decrees so that the island wells could be included. On September 4, 2009, this Court issued its *Order on Motion to Set*

Aside Partial Decree, setting a deadline for filing amended claims, an amended Director's report and objections. That *Order* did not set any limitations on the ability of parties to the SRBA to participate in these proceedings. The Amended Director Reports for the above water rights were issued on December 8, 2009. Schureman filed a timely *Objection*.

The history of the island wells is very important to these proceedings. Indeed, Isom's entire case rests on his ability to demonstrate the *authority* and *ability* to deliver water from the island wells to his place of use prior to 1987.

As to the authority to deliver the water, Isom relies on a 1995 *Water Pumping and Transport Agreement* entered between the previous owner (Crater Farms, Inc.) and the BLRID. *Harris 2nd Aff.* Ex. G. The use of BLRID conveyance systems to deliver water to the Isom place of use began in the 1970's.² Agreements in 1974, 1978, 1979 and 1980 show that the previous owners of the Isom property entered into agreements with BLRID to convey as much as 1000 inches through the Munsey Canal. *Arrington Aff.* Exs. A-D. Each of these agreements identifies the same two points of diversion from which ground water was authorized to be diverted into the Munsey Canal. *Id.* These authorized points of diversion are listed as follows:

E ½ SW, S23, T3N, R26
SESW, NESE, S33, T5, R26

Id. These points of diversion are not the island wells. Schureman is unaware of any pre-1987 agreement with BLRID to convey water diverted from the island wells.

As to the ability to divert water, Isom relies on the license exam for licensed water right 34-7037. *Harris 2nd Aff.* Exs. C & D. There are two island wells drilled in association with the licensed water right 34-7037. *Harris 2nd Aff.* Ex. D. The first well was drilled in August, 1976. *Arrington Aff.* Ex. E at 3-4. The second island well was drilled in May, 1982. *Id.* at 4. A field

² At that time, the property was owned by Crater Farms. However, for ease of reference, the property will be referred to as the Isom property.

exam and licensing report were completed in August, 1985. *Arrington Aff.* Ex. F.³ According to the report, although the system had a capacity of 24.66 cfs, *id.* at 7 (12.62 cfs from one well and 12.04 cfs from the other), the actual flow measurement was only 15.26 cfs, *id.* at 12 (7.23 cfs from one well and 8.03 cfs from the other).⁴

The licensing process for 34-7037 included numerous objections by local water users. *See Arrington Aff.* Ex. G (request for extension of time to submit proof of beneficial use due to “pending resolution of protests”); *see also generally, Id.* Ex. E (discussing the procedural history). The then-Director of the Idaho Department of Water Resources (“IDWR”), A. Kenneth Dunn, issued an *Order Adopting Proposed Memorandum* on May 19, 1986, with specific limitations to address the injury claims. *Arrington Aff.* Ex. E. As it relates to the island wells, the Director provided:

1. Flow meters of a type approved by the Department of Water Resources shall be installed and maintained on *each diversion to assure that the total pumping rate does not exceed 12.00 cubic feet per second at any time.*

Id. at 5 (emphasis added). In other words, the Director ordered that diversions from the island wells would be limited to 12 cfs (600 inches) – the diversion rate of water right 37-7037. *Harris 2nd Aff.* Ex. D.

As originally drafted and executed, the 1995 agreement allowed for the diversion of 600 inches (12 cfs). *Harris 2nd Aff.* Ex. G. On January 12, 1998, the BLRID acting office manager, Rita M. Lundy, sent Crater Farms, a letter indicating that, although the agreement allowed for the conveyance of 600 inches, the BLRID had approved a diversion of 1000 inches based on the existence of water right 34-7138. *Arrington Aff.* Ex. H. She indicated that the agreement would

³ The beneficial use exam and licensing report consist of 40 numbered pages (i.e. Page ___ of 40). References to page numbers in this brief will be to those page numbers (i.e. page 7 refers to “Page 7 of 40”).

⁴ Isom references the diversion capacity of 24.66 cfs but overlooks the flow measurements of 15.26 cfs. *Isom Br.* at 4.

be amended to recognize this water rights. *Id.*⁵ Importantly, water right 34-7138 is a surface water right and is not diverted through the island wells. *Harris 2nd Aff.* Ex. F.

Water rights 34-7037 and 34-7138 were each licensed in 1994 with specific volume limitation remarks. *See Harris 2nd Aff.* Exs. D & F. Both licenses state that, “when combined **with all other rights**,” they “shall provide no more than .02 cfs per acre nor more than 3.5 afa per acre for the lands above.” *Id.* (emphasis added). In addition, they both include the following remark:

The combined annual volume of water under this right [34-7037] and the Right Nos. 34-24 59/2460/2461/2462/7138/10925 shall not exceed 6930.0 acre feet.

Id. The Director’s report, however, recommended these water rights with an annual volume of 8441.5 acre feet – approximately 4.26 acre feet per acre. There is no information in the back file or otherwise known to Schureman to support this increased volume limitation.

STANDARD OF REVIEW

Summary judgment shall be rendered when “the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c).

Disputed facts are to be construed in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party. *Gem State Ins. Co. v. Hutchinson*, 145 Idaho 10, 175 P.3d 172 (2007).

⁵ The copy of the 1995 agreement provided by Isom is not the amended page referenced in this letter. *See Harris 2nd Aff.* Ex. G. Schureman has been unable to locate this amended first page.

ARGUMENT

I. Schureman is Not Barred by Res Judicata from Filing Objections to the Amended Director's Reports.

Isom asserts that Schureman's objections are barred by *res judicata* by the previous partial decrees. *Isom Br.* at 7-8. He claims that, since some of the elements objected to by Schureman were identical to those contained in the partial decree, *res judicata* bars any action by this Court on these elements. *Id.* Yet, this Court specifically ruled that objections could be filed in the *Order on Motion to Set Aside Partial Decree*. Furthermore, Idaho law provides Schureman with an opportunity to file an objection to the Director's report. I.C. § 42-1412. Nothing in this Court's *Order on Motion to Set Aside Partial Decree* or in the statute that limits Schureman's ability to participate in these proceedings. Isom sought to have the prior decrees set aside. He cannot now hide from the consequences of that decision.

Notwithstanding the legal flaw in Isom's argument, the issues simply are not the same. Indeed, the prior Director's report and decrees did not include the island wells as points of diversion. Rather, they only included the airport wells – which Isom admits are 8 miles away from the island wells. *Isom Br.* at 9. The prior proceedings did not question whether or not Isom could divert 24.5 cfs from the island wells. There was no accomplished transfer implicated in the prior proceedings. In short, no questions relating to the island wells were even addressed in the prior proceedings. As such, Schureman did not have any need, let alone an opportunity, to address the concerns raised by the new Director's reports. Accordingly, *res judicata* simply does not apply.

II. The Accomplished Transfer Statute Requires a Remand – the Decision is Not Discretionary.

Isom accuses Schureman of trying to “circumvent the SRBA process” in seeking a remand pursuant to Idaho Code § 42-1425. *Isom Br.* at 14-15.⁶ To support his theory, Isom relies exclusively on a decision in Basin 74 where Special Master Dolan denied a request for remand. *Id.* Isom fails to acknowledge, however, that that issue dealt with the ownership of certain water rights.⁷

To the contrary, the language of section 42-1425 is clear. Indeed, this Special Master has held that the remand provisions are not discretionary. In enacting the accomplished transfer statute, the Legislature recognized that “prior to the commencement of the [SRBA], many persons entitled to the use of water or owning land to which water has been made appurtenant ... changed the place of use, point of diversion, nature or purpose of use, or period of use of their water rights without compliance” with section 42-222 (the transfer statute). I.C. § 42-1425(1)(a). The Legislature recognized that the denial of these claims for failure to comply with 42-222 “would cause significant undue financial impact to a claimant and the local economy.” *Id.* § 42-1425(1)(b). As such, in order to “avoid the harsh economic impacts that would result from a denial of the claim,” *id.*, the Legislature enacted the accomplished transfer statute. Under this

⁶ Isom tries to confuse the matter by questioning whether Schureman’s injury allegations relate to a delivery call or the accomplished transfer statute. *Isom Br.* at 14. To clear up Isom’s confusion, this matter involves the adjudication of water rights for which an accomplished transfer is been claimed.

⁷ Those subcases involved competing claims to the same water rights (Group A and Group B). The Director’s reports recommended the water rights in the names of members of Group A under the theory that an accomplished transfer had occurred when the properties were all owned by the same individual. That property was subdivided and is currently owned by members of Group A and Group B. The accomplished transfer moved the water from property owned by Group B to property owned by Group A. Group B filed objections to the Director’s report, asserting that the accomplished transfer never occurred and that the water should be appurtenant to the original place of use – property owned Group B. They asserted that the water rights claimed and recommended to Group A should not exist. The motion for remand under section 42-1425 was denied, therefore, because the issue was one of ownership – not of injury resulting from an accomplished transfer.

statute, a water user could claim a water right as an accomplished transfer and thereby avoid the strict procedural requirements of section 42-108 and 42-222, *id.* at § 42-1425.

The waiver of these requirements, however, is not unlimited. As the statute makes clear, the waiver only exists to the extent that no one objects to the accomplished transfer. Indeed, “all requirements of sections 42-108 and 42-222, Idaho Code, are hereby waived *in accordance with the following procedures*: (a) *If an objection is filed* to a claim for accomplished change of place of use, point of diversion, nature or purpose of use or period of use, the district court shall remand.” *Id.* § 42-1425(2) (emphasis added). This Special Master affirmed the mandatory nature of the accomplished transfer statute hearing requirements in her *Order on Summary Judgment* (water rights 29-271 *et seq.*). There, the Court recognized that “However duplicative a formal remand may be, it is provided for when an objection is filed relating to I.C. § 42-1425.”

In this case, an accomplished transfer has been claimed. Schureman filed an objection to the point of diversion. As such, the law demands a remand and summary judgment should be denied.

III. The Remark on the Amended Director’s Reports Does Not Address Injury Caused by the Claimed Accomplished Transfer.

Isom alleges that even if there is injury, the following remark placed on each amended Director’s report addresses that injury:

Pursuant to a call, in times of scarcity, the diversion of water under this right from the two wells in T05N R26E S34 SWNWSE and T04N R25E S3 NESENW has a priority date of May 18, 1982.

Isom Br. at 15. According to Isom, this remark will give Schuremen “the protection they desire.” *Id.*

Isom’s argument is wrong and demonstrates a misunderstanding of the procedure for a ground water call. Unlike surface water administration with its attendant “shut and fasten”

obligations, I.C. §§ 42-602 & -607, the Ground Water Act prohibits the administration of ground water rights unless and until the Director has determined a reasonable pumping level. I.C. § 42-226; *Baker v. Ore-Ida Foods, Inc.*, 95 Idaho 575, 585 (1973) (“A senior appropriator is only entitled to be protected to the extent of the ‘reasonable ground water pumping levels’ as established by the IDWR”). As such, for ground water rights subject to the Ground Water Act, administration will not occur until a reasonable pumping level has been established and reached. Accordingly, those diverting under junior ground water rights are free to deplete the source while those diverting under senior ground water rights must continue to suffer the consequences of depletions that require deeper wells or even eliminate the water supply.

The *Affidavit of Darrell E. McDonald* and *Affidavit of Norma K. Soward*, filed in support of their *Motion to File Late Objection or Alternatively to Participate*, demonstrate the concerns of injury shared by Schureman. Both explain how their ground water diversions have been impacted by diminishing water supplies and that they have been forced to drill deeper wells and/or install stronger pumps to divert their decreed water supplies. Based on their experiences, they fear that increased diversions by Isom will force them to drill even deeper to acquire water.

To Schureman’s knowledge, no reasonable pumping level has been established for the area including the island wells. Under the law, therefore, Schureman will have no recourse when Isom’s diversions deplete the water supply. Accordingly, an assurance that diversions from the Island Wells will be limited to a priority of 1982, alone, is no protection at all. *See also McDonald Aff.* ¶ 9 (explaining that the subordination provision is really no protection because it will force McDonald to enter a call every year and rely on the watermaster to administer the ground water. “If and when this can be done, the negative impact on the local water table and

thus by ability to divert the full amount of my water rights will have occurred); *Sowards Aff.* ¶ 10 (same).

IV. Isom Has Not Shown Any Authority to Divert Water from the Island Wells for Conveyance Through the BLRID System Prior to 1987.

Isom asserts that he has a right to deliver water from the island wells to his place of use using the BLRID conveyance system prior to 1987. His only support for this contention is a 1995 conveyance agreement with BLRID and the *Isom Affidavit*. Yet, the 1995 agreement does not evidence any pre-1987 deliveries through the BLRID system. Furthermore, the *Isom Affidavit* only provides Mr. Isom's "understanding" of how water was delivered prior to 1987 – there is no firsthand knowledge. As such, this evidence does not support Isom's claim.

Importantly, none of the pre-1987 conveyance agreements include the island wells as authorized points of diversion. *Arrington Aff.* At Exs. A-D. These agreements identify the points of diversion from which BLRID authorized the diversion of ground water to be conveyed to the Isom place of use. *Id.* The island wells were not included in the four agreements during the 1970's and 1980's. *Id.* In fact, it was not until the 1995 agreement that the island wells were identified as authorized points of diversion for delivery through the BLRID system. *Harris 2nd Aff.* at Ex. G. Since Isom cannot show that he had the authority to deliver water from the island wells prior to 1987, he cannot sustain a motion for summary judgment.

V. If Isom Did Have Authority to Delivery Water Through the BLRID System Prior to 1987, It Was Only For 600 Inches (12 cfs) from the Island Wells.

Even if, *arguendo*, Isom did have authority to deliver water from the island wells to his place of use through the BLRID system, the evidence demonstrates that he only had the authority to deliver 600 inches of ground water.

The only evidence of diversions prior to 1987 comes from the field exam and license report conducted in 1985. *Arrington Aff.* Ex. F. According to that exam, while the system had a capacity of 24.66 cfs, *id.* at 7, the flows were measured at 15.26 cfs, *id.* at 12.⁸

On May 19, 1986, the Director issued an order that further limited the diversion of water from the island wells. *Arrington Aff.* Ex. E. In response to protests filed against a request to amend the permit application for 34-7037 to add the second island well, the Director ordered that:

1. Flow meters of a type approved by the Department of Water Resources shall be installed and maintained on each diversion ***to assure that the total pumping rate does not exceed 12.00 cubic feet per second at any time.***

Id. at 5 (emphasis added). There is no evidence that this *Order* was ever challenged by Isom or his predecessor in interest or that the 12 cfs (600 inch) limitation was ever lifted to allow for additional diversions from the island wells.

The 1995 agreement provides further evidence that the water delivered through the BLRID system was limited to 600 inches (12 cfs) from the island wells. As originally drafted, the 1995 agreement only identified water right 37-7037 and limited diversions to 600 inches (12 cfs). *Harris 2nd Aff.* Ex. G. Although this rate was subsequently increased to 1000 inches (20 cfs), there is no evidence that Isom had conveyed that much water through the BLRID system prior to 1987. *Isom Br.* at 14.

In a 1998 letter from BLRID, Crater Farms was informed that the agreement would be amended to allow conveyance of 1000 inches by specifically referencing water right 34-7138. *Arrington Aff.* Ex. H ("To correct this I have re-typed the first page of this transport agreement noting that you have another license #34-7138 for 16 CFS or another 800 inches"). Importantly,

⁸ In light of the flow measurements, *Arrington Aff.* Ex. F at 12, Isom's claim that "the accomplished transfer happened based on the physical capacity of the diversion system," *Isom Br.* at 13, is wrong. Even though the capacity may have been 24.66 cfs, the actual measured diversions were 15.26 cfs. *Arrington Aff.* Ex. F at 7 & 12.

water right 34-7138 is a surface water right – it is not diverted through the island wells. *Harris 2nd Aff.* Ex. F. As such, it is clear that the transport of 1000 inches included, at most, 600 inches of ground water, with the remainder being made up of surface water.

Contrary to Isom's allegation that the historical practice was to divert the entire 24.5 cfs from the island wells, *Isom Br.* at 13-14, the evidence demonstrates that, at most, 12 cfs (600 inches) of island well water was delivered through the BLRID system. As such, summary judgment should be denied.

VI. The Volume Limitations Must be Consistent with the Licenses.

Isom contends that he should be permitted to divert a larger volume of water in order to make up for conveyance losses. *Isom Br.* at 9-10. Water rights 34-7037 and 34-7138 were both licensed with the following remark:

The combined annual volume of water under this right [34-7037] and the Right Nos. 34-2459/2460/2461/2462/7138/10925 shall not exceed 6930.0 acre feet.

Harris 2nd Aff. Exs. D & F. Isom admits that “it is undisputed that IDWR licensed the above subcases such that in combination, they are allowed 3.5 acre-feet per acre – based on an IDWR standard – for a total of 6930 acre-feet.” *Isom Br.* at 9.

Notwithstanding this provision, and Isom's admission, the above water rights were recommended with the following volume limitation remark, which Isom alleges is “appropriate:”

The rights listed below are limited to a total combined annual diversion volume of 8441.5 af. Combined Right Nos. 34-2459, 34-2460, 34-2461, 34-2462, 34-7037, 34-7138 and 34-10925.

The volume recommended is 1511.5 acre feet larger than the volume recognized on the licenses and allows for 4.26 acre feet per acre.

“The law of the case in the SRBA is that a party may not subsequently challenge elements or conditions decided in a license.” *Order on Motion to Dismiss Objections & Request*

for Attorney Fees, Subcase Nos. 37-494, *et al* (The Valley Club), at 5 (Oct. 10, 2008); *see also*, e.g., *Memorandum Decision & Order on Motions for Summary Judgment*, (Subcase Nos. 63-2529, *et al.*) (June 11, 2009) (attempt to challenge licensed diversion volume “constitutes an impermissible collateral attack on the prior administrative proceedings”); *Memorandum Decision and Order on Challenge; Order on State's Motion to Dismiss Claimant's Notice of Challenge* (Subcase No. 36-8099) (2000) (IDWR license becomes final when the time to appeal it has expired); *Response to United States Motion for Status Conference*, (Subcase No. 03-10022) (2000) (scope of what can be litigated in SRBA is limited and does not include collateral attacks on previously perfected water rights); *Memorandum Decisions & Order On Challenge, Order On State of Idaho's Motion to Dismiss Claimants Notice of Challenge*, (Subcase No. 36-8099) (2000) (collateral attack on IDWR license is not permissible when a party has failed to exhaust administrative remedies); *Order on Challenge of “Facility Volume” Issue & Additional Evidence Issues*, (Subcase Nos. 37-2708, *et al.*) (1999) (the SRBA Court disfavors collateral attacks on licenses).

Even though he admits that the rights were licensed with a total diversion rate of 6930 acre feet, *Isom Br.* at 10, Isom asserts that the increased volume is a “reasonable amount” to account for “the over 8-mile trip the Isom water must make through the BLRID system.” *Isom Br.* at 9-10. As such, they claim that it was an appropriate exercise by the Director to increase the volume. *Id.* Yet, they cannot overcome the weight of the prior license.

The prior licenses specifically limit the annual volume to 6930 acre-feet per year – or 3.5 acre-feet per acre. In fact, the licenses state that, “when combined *with all other rights*,” they “shall provide *no more than* .02 cfs per acre nor more than 3.5 afa per acre for the lands above.” *Harris 2nd Aff. Exs. D & F* (emphasis added).

The Director understood that this water would travel a long way to the place of use. *Harris 2nd Aff.* Ex. D. Indeed, the license references the BLRID conveyance system through which the water was delivered. *Id.* This is the so-called “8-mile trip” that Isom uses to justify the enhanced volume limitations. *Isom Br.* at 9. Notwithstanding potential conveyance losses, the Director licensed the rights for 3.5 acre-feet per acre. That decision was not challenged by Isom, or his predecessor in interest, and cannot be challenged now in the SRBA.

Isom misunderstands the law when he alleges that Schureman must present “evidence that the additional amount of acre-feet is unjustified under the circumstances.” *Isom Br.* at 9. To the contrary, the law is clear. Isom cannot collaterally attack the licenses. Since the licenses only provide an annual diversion volume of 6930 acre feet, and limit the per acre diversion to “3.5 afa,” any attempt to increase the volumes cannot stand. As such, summary judgment should be denied.

CONCLUSION

The increased diversions from the island wells will injure neighboring ground water users. Since an objection was filed to the accomplished transfer, remand is necessary – the law demands as much. That notwithstanding, the facts simply do not support Isom’s contentions. There is no evidence that Isom had any authority to convey water through the BLRID system prior to 1987. If, *arguendo*, Isom can show that water was conveyed through the BLRID system, it was, at most, only 600 inches. Finally, Isom cannot collaterally attack a license in the SRBA. As such, the increased diversion volumes must be rejected.

In the end, the outstanding questions of material facts prevent summary judgment. As such, Isom’s motion should be denied.

///

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
AMENDMENT NO. 34-7037

CRATER FARMS, INC.

Applicant,

LARMEN D. ANDERSEN, ET AL

Protestants.

SOURCE: GROUNDWATER

COUNTY: BUTTE

PROPOSED MEMORANDUM DECISION AND ORDER
APPROVING APPLICATION FOR AMENDMENT OF PERMIT NO. 34-7037

BY HEARING OFFICER BOBBY D. FLEENOR

Crater Farms, Inc. (Applicant) having filed with the Department of Water Resources an application to amend the point of diversion of Permit No. 34-7037; protests having been received; and a hearing having been held, the Department finds and concludes as follows:

FINDINGS OF FACT

Background of Permit

1. Crater Farms, Inc. originally filed with the Department of Water Resources on May 4, 1973, for a permit to appropriate 12.00 cubic feet per second of water from a groundwater source for the irrigation of 1,720 acres of land. In this original application, the applicant requested two points of diversion; one in the NE1/4SW1/4, and one in the NW1/4SW1/4, Sec. 2, Twp. 3N, Rge. 26E B.M. The land to be irrigated was described as Sec. 15, W1/2, Sec. 14, N1/2, Sec. 22, SW1/4NE1/4, NW1/4, E1/2SW1/4, SE1/4 Sec. 23, all in Twp. 3N, Rge. 26E B.M., Butte County. After the requisite advertising and processing period,

MICROFILMED

Crater Farms, Inc. was granted Permit No. 34-7037 on June 18, 1973.

2. On March 12, 1974, Crater Farms requested an amendment of Permit No. 34-7037 which would allow them additional points of diversions in the SE1/4SE1/4, Sec. 22, and SW1/4SE1/4, Sec. 23, in Twp. 4N, Rge. 26E. Water from the well proposed in Sec. 23 would be pumped into the Arco Canal within the SW1/4SE1/4, Sec. 23, Twp. 4N, Rge. 26E, and exchanged for water diverted from the Big Lost River through the Munsey ditch at a point within the NW1/4NW1/4, Sec. 26, Twp. 4N, Rge. 26E. Water from the well proposed in Sec. 22 would be comingled with Big Lost River water and also diverted at the Munsey Ditch. This proposed amendment of Permit No. 34-7037 was approved by the Director of the Department of Water Resources on April 26, 1974.

3. A second request for amendment was received from Crater Farms on April 5, 1976. Through this application Crater Farms requested a change in their permit to provide for an additional well to be located in the NW1/4SW1/4, Sec. 34, Twp. 5N, Rge. 26E, and the elimination of the well previously proposed in the SW1/4SE1/4, Sec. 23, Twp. 4N, Rge. 26E. In addition, the place of use was reduced to 1,680 acres by the elimination of 40 acres contained within the SW1/4NE1/4, Sec. 23, Twp. 3N, Rge. 26E. No protests against the approval of this amendment were received and on May 14, 1976, these changes proposed for Permit No. 34-7037 were approved by the Director of the Department of Water Resources.

Substance of Amendment and Protests

4. A third request to amend Permit No. 34-7037 was received from Crater Farms on January 20, 1981. This application for amendment proposes to add a well in the NE1/4NW1/4, Sec. 3, Twp. 4N, Rge. 26E as a point of diversion. Notice of this change was advertised in the Arco Advertiser on February 12 and 19, 1981. Protests against the approval of this application were received from

Seth E. Beal, Joe Smith, Larman D. Andersen, Elden Reynolds, Albert Babcock, M. G. Babcock, David B. Bleak, Gerald Stewart, Richard E. Reynolds, Craig Stewart, Richard Taylor, Larry Reynolds, Jay F. Pearson, and Rueben H. Babcock all of Moore, Idaho. A hearing in the matter was held in Arco, Idaho, on April 22, 1981. All protestants appeared at this hearing except Seth E. Beal, whose protest is therefore set aside. At this hearing the protestants argued that the additional well would result in the diversion of more water than originally permitted and that the water rights of others in the area, both groundwater and surface water, would be adversely effected by the proposed change.

5. Evidence and information considered in this matter includes the following:

- a) Application for Permit No. 34-7037
- b) Application for Amendment approved April 26, 1974
- c) Application for Amendment approved May 14, 1976
- d) Application for Amendment received by the department on January 20, 1981.
- e) Protests received to approval of the Application for Amendment received on January 20, 1981.
- f) The hearing tape of testimony received on April 22, 1981.
- g) The well driller's report of the 224 foot deep well drilled by Pete Cope Drilling Co., Inc. in NE1/4NW1/4, Sec. 3, Twp. 4N, Rge. 26E B.M.
- h) U.S.G.S. open-file Report 70-93, 109 p. E.G. Crosthwaite, C. A. Thomas and K. L. Dyer; 1970, Water Resources in the Big Lost River Basin, South-Central Idaho.

Additional Findings

6. A well drilled for Crater Farms under this permit in the NW1/4-

SW1/4, Sec. 34, Twp. 5N, Rge. 26E, in August of 1976, had a static water level of nine (9) feet and a total depth of 171 feet. The driller's log for this well shows perforations in the well casing between 35 and 165 feet.

7. The additional well proposed under this application would be located about 1/2 mile south of and closer to the place of use than the well described in Finding No. 1. The well would be nine miles due north of the place of use and would require the use of the East Side and Munsey Ditches to transport the water to its proposed place of use. This well is also located further from the Big Lost River than the existing well in Finding No. 1.

8. Available data indicate a relatively unrestricted interchange between surface and groundwater. In the area of the proposed well this interchange primarily takes place with the water table perched above a clay layer which is normally encountered between 25 and 50 feet below land surface.

9. Well driller logs in the area of the proposed well indicate water is normally encountered between 5 and 50 feet before penetrating a clay confining layer. Below this layer additional water bearing strata has been encountered within 150 feet of the land surface.

10. The well proposed in the NE1/4NW1/4, Sec. 3, Twp. 4N, Rge. 26E was constructed in May 1982.

11. The well log for the well in the NE1/4NW1/4, Sec. 3, Twp. 4N, Rge. 26E shows that the surface seal depth is twenty (20) feet, that the well casing has been perforated from 35'5" to 134'6" below land surface and that the clay confining layer is in between 30 and 34 feet below land surface.

CONCLUSIONS OF LAW

1. By casing out the water encountered above the first confining layer, groundwater pumped will not effect the flows of the Big Lost River to a measurable extent.

2. The well in the NE1/4NW1/4, Sec. 3, Twp. 4N, Rge. 26E as presently constructed intercepts water above the first confining layer and does not minimize the effect on surface water flows.

3. The department may approve the amendment with certain conditions in order to prevent the diversion and use of more water than originally permitted and to prevent injury to other water users.

ORDER

IT IS, THEREFORE, HEREBY ORDERED and Application for Amendment No. 34-7037 is APPROVED subject to the following conditions:

1. Flow meters of a type approved by the Department of Water Resources shall be installed and maintained on each diversion to assure that the total pumping rate does not exceed 12.00 cubic feet per second at any time.

2. Diversion and use of water from the well in the NE1/4NW1/4, Sec. 3, Twp. 4N, Rge. 26E is subject to the control of the Watermaster of Water District 34 and shall be considered together with the surface water priorities of the Big Lost River.

3. Upon reconstruction of the well under a plan with prior department approval, or upon a showing satisfactory to the Department that minimal hydraulic connection exists between the well and surface water flows, the Director may waive condition No. 2.

4. The permit holder shall comply with the original conditions of permit approval.

Dated this 17 day of March, 1986.


BOBBY D. FLEENOR
Hearing Officer

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
LICENSING REPORT

34-7037
Permit No.

PAGE 7 OF 40

1. Measurement Calculations

a) Field Measurement Calculations (Include theoretical capacities and system capacity)

$$Q = \left[\frac{C(d)^2 \sqrt{\text{INCHES}}}{448.8} \right] K$$

$$K = 1.067$$

$$C = 3.99 \text{ for } 12" \text{ annubar} \\ = 4.01 \text{ for } 13.25" \text{ annubar}$$

$$Q_{402} = \left[\frac{4.01(13.75)^2 \sqrt{49}}{448.8} \right] 1.067 = 12.62 \text{ cfs}$$

$$Q_{583} = \left[\frac{3.99(12.5)^2 \sqrt{66}}{448.8} \right] 1.067 = \frac{12.04 \text{ cfs}}{24.66 \text{ cfs}}$$

Q LIMITED BY PERMIT TO 12.0 cfs

b) Volume Calculations for Irrigation:

$$V_{in} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) = 1720 \times 3 \text{ af} = 5160 \text{ af}$$

$$V_{div} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 = 12(1.9835)(214) = 5093.6$$

$$V = \text{Smaller of } V_{in} \text{ and } V_{div} = 5093.6$$

c) Volume Calculations for Other Uses:

2. Overlap Review

a) Other water rights with same place of use: GROUNDWATER 34-2459/2460/2461/2462

Big Lost River 34-7138

b) Other water rights with same point of diversion: NONE: SEE PAGE 9 OF 40

c) Analysis:

SEE PAGE 9 OF 40

SEP 21 1994

OVERLAP ANALYSIS:

CONSIDER WELLS #217 & #182 (PUMP DIRECTLY INTO PRIVATE DITCH), THAT ARE NOT REGULATED BY THE WATER MASTER, AS THE SOURCE FOR THE FOLLOWING LICENSES:

34-2459 @ 4.17 cfs/ 238 ac
34-2460 @ 4.17 cfs/ 238 ac
34-2461 @ 2.08 cfs/ 119 ac
34-2462 @ 2.08 cfs/ 119 ac

TO ELIMINATE HAVING TO HAVE THE WATERMASTER REGULATE WELLS #217 & #182 (THAT PUMP INTO A PRIVATE DITCH) THE FOLLOWING SHOULD BE CONSIDERED:

1. THE POINTS OF DIVERSION FOR THIS RIGHT 34-7037 SHOULD BE LIMITED TO WELLS #402 / #583.
2. GROUNDWATER WELLS #402 & #583 SHOULD BE CONSIDERED A SEPARATE SOURCE.
3. GROUNDWATER WELLS #402 & #583 SHOULD BE UNDER WATERMASTER CONTROL.

IF P/D'S #402 & #583 ARE CONSIDERED AS A SEPARATE SOURCE THERE WOULD BE NO POINT OF DIVERSION OVERLAP, AND THE ONLY CONSIDERATION NECESSARY WOULD BE TO LIMIT IRRIGATION TO 0.02 CFS/ACRE ON 1720 ACRES WITHIN THE 1982 ACRES OF THE PERMISSIBLE PLACE OF USE.

RECOMMENDATIONS:

1. P/D'S FOR 34-7037 LIMITED TO WELLS #402 / #583.
#402 - SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SEC 34, T05N, R26E
#583 - NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SEC 03, T04N, R26E
2. P/D'S #402 & #583 ARE TO BE CONSIDERED A SEPARATE SOURCE.
3. P/D'S #402 & #583 ARE TO BE UNDER WATERMASTER CONTROL.
4. P/U 1720 ACRES WITHIN 1982 ACRES OF PERMISSIBLE P/U


KEITH C. WILSON

9 Sept 1991

SEP 21

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT34-7037
PAGE 14 OF 40Permit No. 34-7037**System Description (continued)**

4.

	Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
WELLS	Well # 583	G.E.	100	CWJ316286	Berkeley	# 8200408
	Well # 402	G.E.	125	EAT526171	Aurora	V 77-71337
	Well # 182	G.E.	200	EDJ515138	Layne-Bowler	# 44660
	Well # 217	U.S. Motors	125	C2954-03-273	Johnston	10" discharge
REDIVERSIONS	RE-DIVERSIONS					
	Munsey Ditch	-	-	-	-	-
	# 588	G.E.	75	TVJ 602119	Winthroath	12" discharge
	# 618	G.E.	50	RKJ 309012	Worthington	VTP-57306
	# 4	G.E.	100	CKJ 327143	Johnston	PG-14366
	# 301	U.S. Motors	100	C 1008138	Johnston	# 1H 14112
	# 2	Westinghouse	250	76A65060	Johnston	10" discharge
	# 592	Yaskawa	100	0078316401	Worthington	# 14 HH 220
	# 1	Westinghouse	250	676A650604	Johnston	JY14102
	Pond # 465	U.S. Motors	100	R9981-01-210 R2113073	Johnston	

*Code to correspond with No. on map and aerial photo

5. Point(s) of Diversion:

	Ident. No.	Gov't. Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
WELLS	# 583		NE	SE	NW	3	4N	26E	Butte	U.S.G.S. Map/on site inspection
	# 402		SE	NW	SW	34	5N	26E	Butte	"
	# 182		NE	SW		2	3N	26E	Butte	"
	# 217		SE	NW		2	3N	26E	Butte	"
REDIVERSIONS	RE-DIVERSIONS									
	MUNSEY DITCH		NW	NW	NW	26	4N	26E	Butte	USGS Map/ON SITE INSPECTION
	# 588		NW	SE	SE	2	3N	26E	Butte	"
	# 618		NW	SE	SE	2	3N	26E	Butte	"
	# 4		SW	SW	NW	13	3N	26E	Butte	"
	# 301		SW	SW	NW	13	3N	26E	Butte	"
	# 2		SE	SE	NE	15	3N	26E	Butte	"
	# 592		SE	SE	NE	15	3N	26E	Butte	"
	# 1		SE	NE	NE	22	3N	26E	Butte	"
	# 465		SE	NW	SW	23	3N	26E	Butte	"

Do not use this space

SEP 21 1994

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

34-7037
PAGE 19 OF 40

System Description (continued)

Permit No. 34-07037

3. NARRATIVE: Description.

**NOTE: TO BETTER UNDERSTAND THE FOLLOWING NARRATIVE
REFER TO THE ATTACHED PAGES OF MAPS & PHOTOS.**

Well #402 (PHOTOS 1a, 1b, 1c) discharges into the Island Ditch, then Well #583 (PHOTOS 2a, 3b, 2c) also discharges into the Island Ditch. The Island Ditch carries the water to the Eastside Ditch. The Eastside Ditch carries the water and discharges the water into the Big Lost River just across from the headgate of the Munsey Ditch (PHOTO 3, & MAP 3). The Munsey Ditch delivers water to the redirection pumps #588 & #618 (PHOTOS 4a, 4b, & MAP 4) in Sec 2, T03N, R26E, and redirection pumps #4 & #301 (PHOTO 5, & MAP 5) in Sec 13, T03N, R26E.

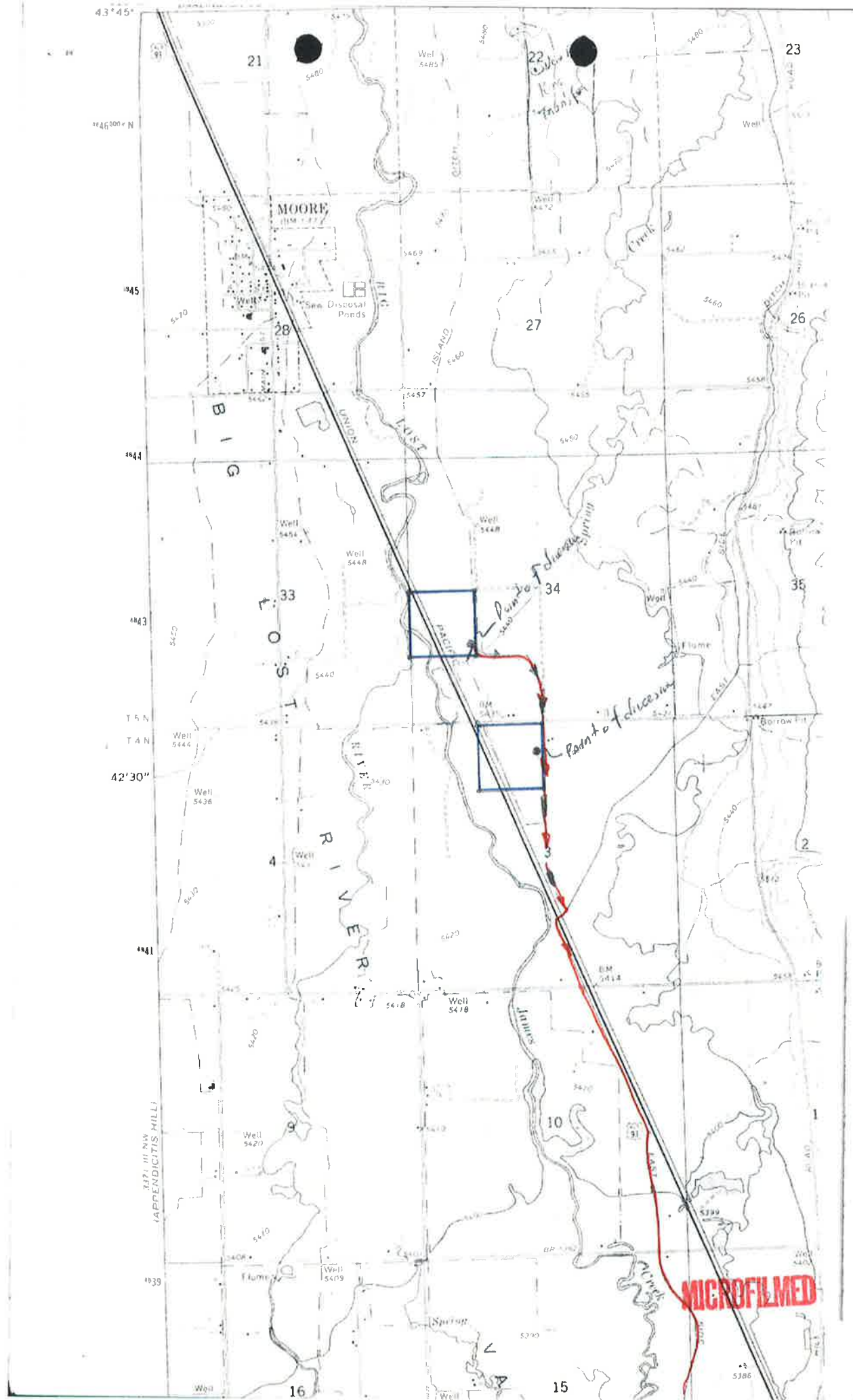
Rediversion pumps #588 & #618 (MAP 6) deliver water through a buried mainline that discharges into a private ditch just beside Well #182 (PHOTO 6a, 6b, & MAP 6). The water from Well #182, the redirection pumps #588 & #618, and then water from Well #217 (PHOTO 7 & MAP 6) is carried to redirection systems #2 & #592 (PHOTO 8, & MAPS 6 & 7), #1 (PHOTO 9 & MAP 8), and #465 (PHOTO 10 & MAP #9) (pond). The water is pumped through mainlines from redirection systems #2 & #592, #1, and #465 (pond), to laterals with sprinklers.

Rediversion pumps #4 & #301 (PHOTOS 11a, 11b, 11c, MAP #10) from the Munsey ditch pump water into a buried mainline, that splits, and carries water to the irrigation systems at redirection pumps #2 & #592, and #1 (MAP #10).



Keith C. Wilson
Senior Resource Agent

SEP 21 1994



UTM GRID AND 1972 MAGNETIC NORTH
 INFORMATION AT CENTER OF SHEET

MICROFILMED

5 11M 82

25

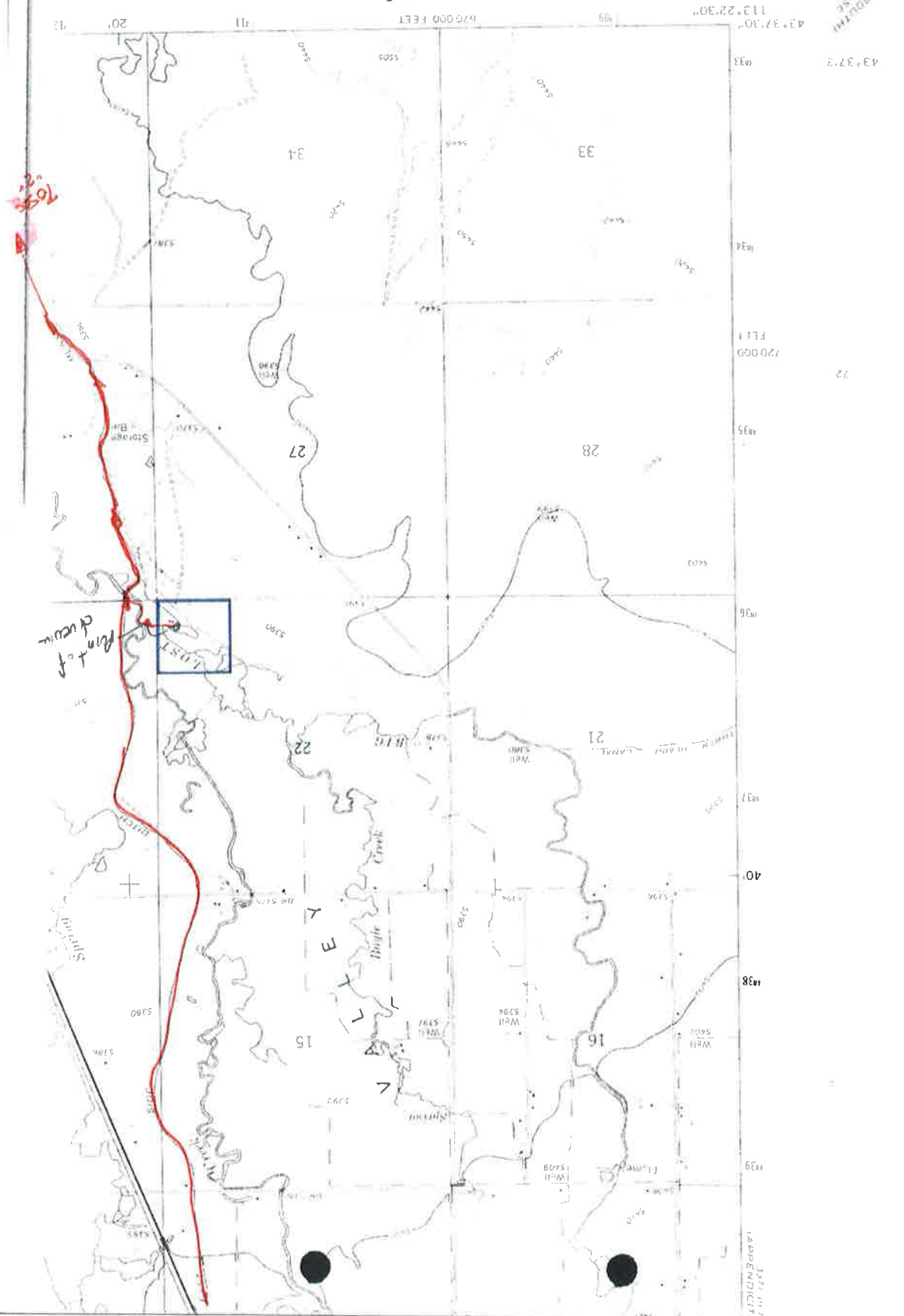
Mapped, edited, and published by the Geological Survey

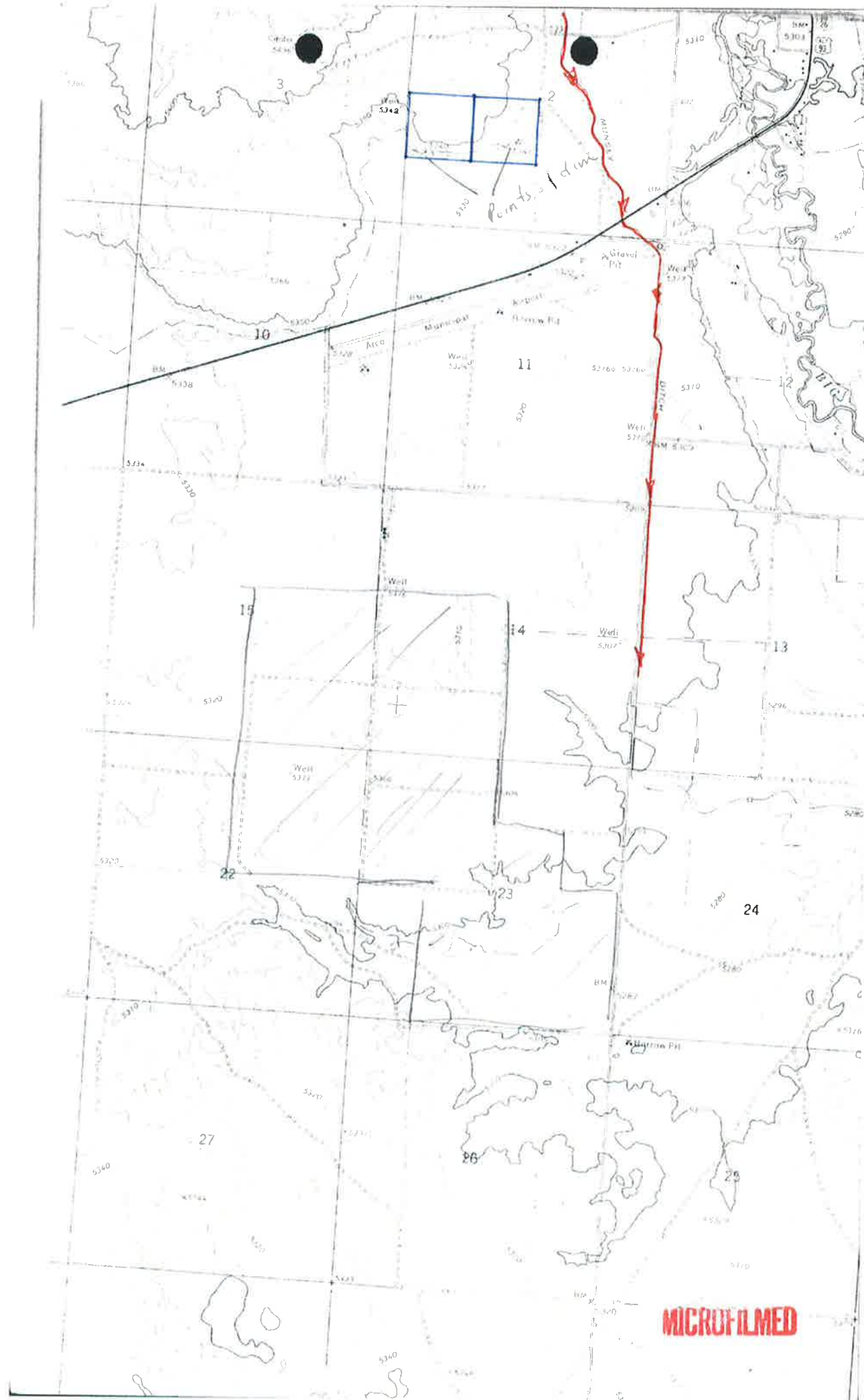
Control by USGS and NOS/NOAA

Topography by photogrammetric methods from aerial photographs taken 1971. Field checked 1972

system, central zone (transverse Mercator)
1000 metre Universal Transverse Mercator
zone 12, shown in blue 1927 North American datum

Fine red dashed lines indicate selected fence lines





POINT OF DIVERSION
34-7138

REDIVERSION FOR
34-7037

34-
2462
2461
2460
2459

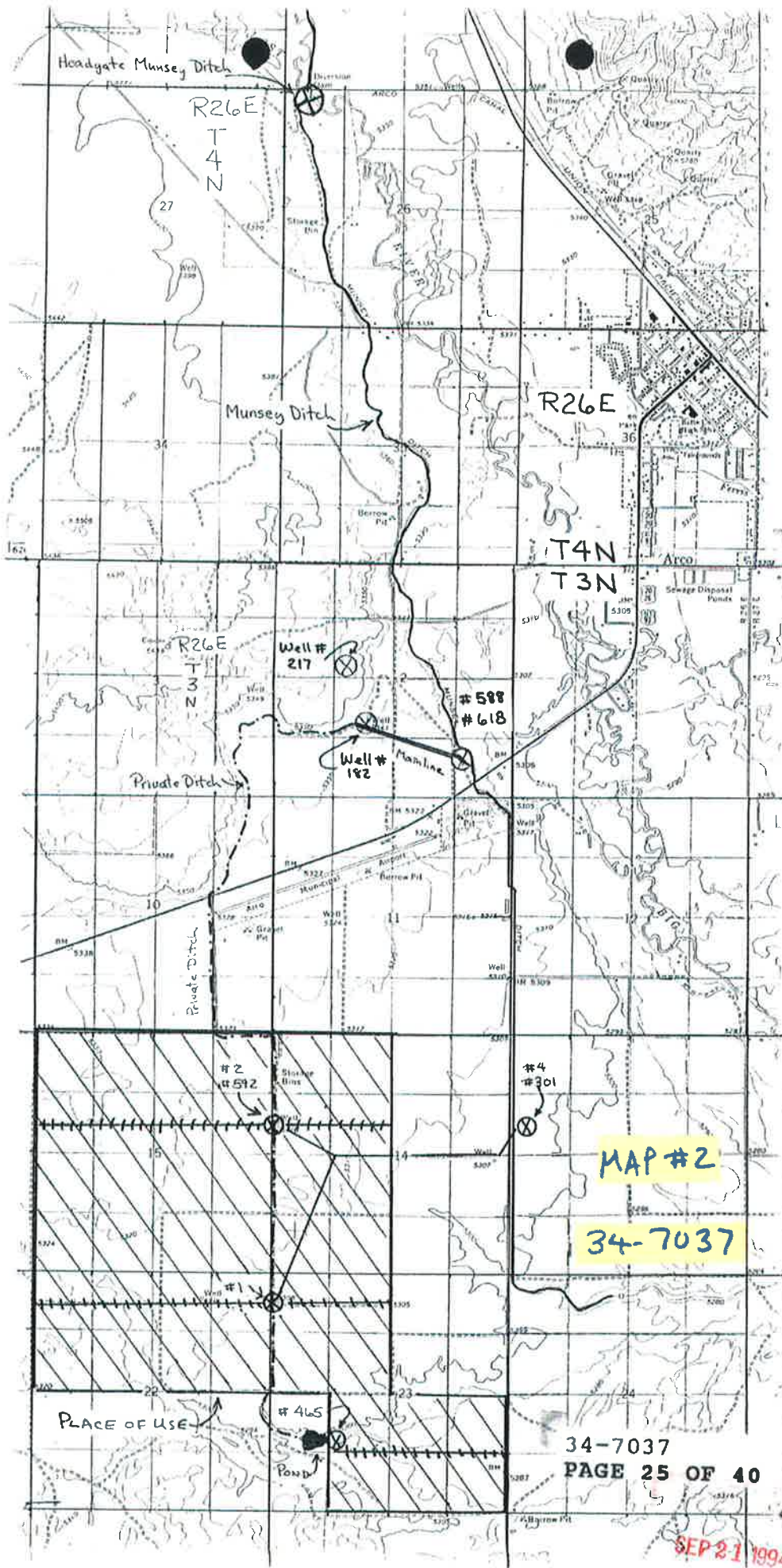
PLACE OF USE
(34-7037 (Groundwater)
34-7138 (Big Lost River)

IRRIGATION
SYSTEM
34-7037 ; 34-7138

⊗ REDIVERSION
NUMBER

34-7037
(GROUNDWATER)

SEP 8 1 1994



MAP #2

34-7037

34-7037
PAGE 25 OF 40

SEP 21 1994

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 34-07138

Priority: May 5, 1976

Maximum Diversion Rate:

16.00 CFS

This is to certify, that CRATER FARMS INC

PO BOX 91

ARCO ID 83213

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated April 5, 1976; and has submitted Proof of Beneficial Use on May 31, 1983. An examination indicates that the works have a diversion capacity of 24.520 cfs of water from:

BIG LOST RIVER

tributary to SINKS

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	05/01 to 10/15	16.00 CFS	

LOCATION OF POINT(S) OF DIVERSION:

NWNW , Sec. 26, Township 04N, Range 26E
BUTTE County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
03N	26E	14	NENW 39	NWNW 36	SWNW 40	
			SENE 40	NESW 40	NWSW 40	
			SWSW 40	SESW 40		315
	15		NENE 39	NWNE 40	SWNE 40	
			SENE 40	NENW 39	NWNW 39	
			SWNW 40	SENE 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			637
	16		NENE 39	NWNE 39	SWNE 40	
			SENE 40	NESE 40	NWSE 40	
			SWSE 39	SESE 39		316
	22		NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENE 40		320
	23		NENW 40	NWNW 40	SWNW 40	
			SENE 40	NESW 40	SESW 33	
			NESE 39	NWSE 40	SWSE 40	
			SESE 40			392

Total number of acres irrigated: 1980

CONDITIONS/REMARKS:

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.

SEP 21 1994

State of Idaho
Department of Water Resources

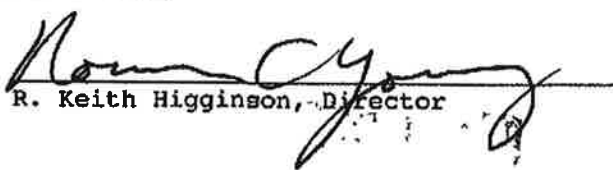
WATER RIGHT LICENSE

WATER RIGHT NO. 34-07138

CONDITIONS/REMARKS:

3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. Use of water under this water right will be regulated by the watermaster of State Water District No. 34.
5. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.5 afa per acre for the lands above.
6. This right is limited to the irrigation of 1664 acres in the place of use described above in a single irrigation season.
7. The combined annual volume of water under this right and Right Nos. 34-02459/02460/02461/02462/07037/10925 shall not exceed 6930.0 acre feet.
8. Measuring devices of a type approved by this Department shall be maintained at the point of diversion, point of rediversion from the Big Lost River into Munsey Ditch and at all points described below where water is again rediverted from ditches or a pond onto irrigated acres.
 - Munsey Ditch - SESE, S2, T3N, R26E (2 points)
 - Munsey Ditch - SWNW, S13, T3N, R26E (2 points)
 - Private Ditch - SENE, S15, T3N, R26E (2 points)
 - Private Ditch - NENE, S22, T3N, R26E
 - Pond at end of Private Ditch - NWSW, S23, T3N, R26E
9. Water is rediverted from the Munsey Ditch into mainlines and a private ditch and pond for delivery to the acres irrigated.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 15th day of July, 1994.

Acting for  R. Keith Higginson, Director

SEP 21 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 SRBA)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 34-07138

1997 DEC 16 AM 11:11
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

NAME & ADDRESS: CRATER FARMS INC
P O BOX 91
ARCO ID 83213

SOURCE: BIG LOST RIVER TRIBUTARY: SINKS

QUANTITY: 16.00 CFS

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 8441.5 AF.
COMBINED RIGHT NOS.: 34-02459, 34-02460, 34-02461, 34-02462,
34-07037 AND 34-10925.

PRIORITY DATE: 05/05/1976

POINT OF DIVERSION: T04N R26E S26 NWNWNW Within BUTTE County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
IRRIGATION Irrigation Season 16.00 CFS

PLACE OF USE: IRRIGATION Within BUTTE County

T03N R26E S14	NENW 39	NWNW 36	SWNW 40	SENW 40
	NESW 40	NWSW 40	SWSW 40	SESW 40
S15	NENE 39	NWNE 40	SWNE 40	SENE 40
	NENW 39	NWNW 39	SWNW 40	SENW 40
	NESW 40	NWSW 40	SWSW 40	SESW 40
	NESE 40	NWSE 40	SWSE 40	SESE 40
S16	NENE 39	NWNE 39	SWNE 40	SENE 40
	NESE 40	NWSE 40	SWSE 39	SESE 39
S22	NENE 40	NWNE 40	SWNE 40	SENE 40
	NENW 40	NWNW 40	SWNW 40	SENW 40
S23	NENW 40	NWNW 40	SWNW 40	SENW 40
	NESW 40	SESW 33	NESE 39	NWSE 40
	SWSE 40	SESE 40		

1980 ACRES TOTAL

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 1980 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 34-02459, 34-02460,
34-02461, 34-02462, 34-07037 AND 34-10925.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 1664 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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

MEASURING DEVICES OF A TYPE APPROVED BY IDWR SHALL BE
MAINTAINED AT THE POINT OF DIVERSION, POINT OF REDIVERSION FROM
THE BIG LOST RIVER INTO MUNSEY DITCH AND AT ALL POINTS DESCRIBED
BELOW WHERE WATER IS AGAIN REDIVERTED FROM DITCHES OR A POND ONTO
IRRIGATED ACRES.

MUNSEY DITCH - T03N, R26E, S02, SESE (2 POINTS)

MUNSEY DITCH - T03N, R26E, S13, SWNW (2 POINTS)

PRIVATE DITCH - T03N, R26E, S15, SENE (2 POINTS)

PRIVATE DITCH - T03N, R26E, S22, NENE

POND AT END OF PRIVATE DITCH - T03N, R26E, S23, NWSW.

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 34-07138

PAGE 1
DEC-12-1997

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 34-07037

1997 DEC 16 AM 11:10

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

NAME & ADDRESS: CRATER FARMS INC
PO BOX 91
ARCO ID 83213

SOURCE: GROUNDWATER

POINT OF INJECTION INTO AND POINT OF REDIVERSION FROM BIG LOST
RIVER.

QUANTITY: 12.00 CFS

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 8441.5 AF.
COMBINED RIGHT NOS.: 34-02459, 34-02460, 34-02461, 34-02462,
34-07138 AND 34-10925.

PRIORITY DATE: 05/04/1973

POINT OF DIVERSION: T04N R26E S03 NESENW Within BUTTE County
T05N R26E S34 SENWSW
T04N R26E S26 NWNWNW (INJECTION)
NWNWNW (REDIVERSION)

PURPOSE AND PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
IRRIGATION Irrigation Season 12.00 CFS

PLACE OF USE:	IRRIGATION	Within BUTTE County			
	T03N R26E S14	NENW 39	NWSW 40	SWNW 40	SENW 40
		NESW 40	NWSW 40	SWSW 40	SESW 40
	S15	NENE 39	NWNE 40	SWNE 40	SENE 40
		NENW 39	NWNW 39	SWNW 40	SENW 40
		NESW 40	NWSW 40	SWSW 40	SESW 40
		NESE 40	NWSE 40	SWSE 40	SESE 40
	S16	NENE 39	NWNE 39	SWNE 40	SENE 40
		NESE 40	NWSE 40	SWSE 39	SESE 39
	S22	NENE 40	NWNE 40	SWNE 40	SENE 40
		NENW 40	NWNW 40	SWNW 40	SENW 40
	S23	NENW 40	NWNW 40	SWNW 40	SENW 40
		NESW 40	SESW 33	SWNW 40	SENW 40
		SWSE 40	SESE 40	NESE 39	NWSE 40
	1980 ACRES TOTAL				

USE OF THIS RIGHT WITH RIGHT NOS. 34-02459, 34-02460, 34-02461
AND 34-02462 IS LIMITED TO THE IRRIGATION OF 1664 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 1980 ACRES IN A SINGLE
IRRIGATION SEASON.

COMBINED RIGHT NOS.: 34-02459, 34-02460, 34-02461, 34-02462,
34-07138 AND 34-10925.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 1664 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 34-07037

Priority: May 4, 1973

Maximum Diversion Rate:

12.00 CFS

This is to certify, that CRATER FARMS INC
PO BOX 91

ARCO ID 83213

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated May 4, 1973; and has submitted Proof of Beneficial Use on March 5, 1985. An examination indicates that the works have a diversion capacity of 24.660 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/15 to 10/15	12.00 CFS	

LOCATION OF POINT(S) OF DIVERSION:

Injection
Rediversion

SENW , Sec. 3, Township 04N, Range 26E
NWSW , Sec. 34, Township 05N, Range 26E
NWNW , Sec. 26, Township 04N, Range 26E
NWNW , Sec. 26, Township 04N, Range 26E
BUTTE County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
03N	26E	14	NENW 39	NWNW 36	SWNW 40	
			SENW 40	NESW 40	NWSW 40	
			SWSW 40	SESW 40		315
	15		NENE 39	NWNE 40	SWNE 40	
			SENE 40	NENW 39	NWNW 39	
			SWNW 40	SENW 40	NESW 40	
			NWSW 40	SWSW 40	SESW 40	
			NESE 40	NWSE 40	SWSE 40	
			SESE 40			637
	16		NENE 39	NWNE 39	SWNE 40	
			SENE 40	NESE 40	NWSE 40	
			SWSE 39	SESE 39		316
	22		NENE 40	NWNE 40	SWNE 40	
			SENE 40	NENW 40	NWNW 40	
			SWNW 40	SENW 40		320
	23		NENW 40	NWNW 40	SWNW 40	
			SENW 40	NESW 40	SESW 33	
			NESE 39	NWSE 40	SWSE 40	
			SESE 40			392

Total number of acres irrigated: 1980

CONDITIONS/REMARKS:

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.

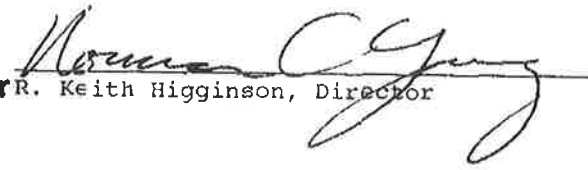
State of Idaho
Department of Water Resources**WATER RIGHT LICENSE**

WATER RIGHT NO. 34-07037

CONDITIONS/REMARKS:

3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. Use of water under this water right will be regulated by the watermaster of State Water District No. 34.
5. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.5 afa per acre for the lands above.
6. The combined annual volume of water under this right and Right Nos. 34-02459/02460/02461/02462/07138/10925 shall not exceed 6930.0 acre feet.
7. This right is limited to the irrigation of 1664 acres in the place of use described above in a single irrigation season.
8. Measuring devices of a type approved by this Department shall be maintained at the points of diversion, point of rediversion from the Big Lost River into Munsey Ditch and at all points described below where water is again rediverted from ditches or a pond onto irrigated acres.
 - Munsey Ditch - SESE, S2, T3N, R26E (2 points)
 - Munsey Ditch - SWNW, S13, T3N, R26E (2 points)
 - Private Ditch - SENE, S15, T3N, R26E (2 points)
 - Private Ditch - NENE, S22, T3N, R26E
 - Pond at end of Private Ditch - NWSW, S23, T3N, R26E
9. Water is discharged from the wells into Island Ditch which then flows into the East Side Ditch. It is then injected into the Big Lost River and rediverted into the Munsey Ditch. Water can be rediverted from the Munsey Ditch into mainlines or a private ditch and pond for delivery to the acres irrigated.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 2ND
day of SEPTEMBER, 1994.


Acting for R. Keith Higginson, Director



Holden Kidwell
Hahn & Crapo P.L.L.C.
L A W O F F I C E S

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com

E-mail: rharris@holdenlegal.com

September 18, 2009

RECEIVED

SEP 21 2009

Department of Water Resources
Eastern Region

Ernie Carlsen
Idaho Department of Water Resources
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

RE: Amended Notices of Claim for Water Right Nos. 34-2462, 34-2461, 34-2460,
34-2459, and 34-10925.

Enclosed you will find Amended Notices of Claim for the Charles Isom water rights located in Butte County. As you may recall, the issues surrounding these cases is whether or not the Island wells should be added as points of diversion to these water rights. The SRBA Court recently determined that there was a clerical error in the filing of these claims, and that additional evidence regarding use of the Island wells on these claims could be considered. We previously provided to you information relative to this issue, and in particular, documents attached to pleadings filed in the SRBA Court on these subcases. I suspect the Department has them in their files, but if you do not, please let me know, and I will be happy to provide additional copies.

If you have any questions or concerns, please let me know.

Best Regards,

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

G:\WPDATA\IRLH\7151 SORESENSEN, MITCH\09 Munsey\Ernie Carlsen ltr 091809.wpd:cdv

Robert L. Harris, Esq. (ISB # 7018)
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Dr., Ste. 200
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

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

In Re SRBA

Case No. 39576

Subcase Nos.: 34-2459, 34-2460, 34-
2461, 34-2462, 34-10925 and 34-7037

**AFFIDAVIT OF
CHARLES B. ISOM**

STATE OF IDAHO)
) ss.
County of Bonneville)

I, Charles B. Isom, do solemnly swear (or affirm) that the testimony given in this sworn statement is the truth, the whole truth, and nothing but the truth, that it is made on my personal knowledge, and that I would so testify in open court if called upon to do so.

And being so sworn I depose and say:

1. I am over the age of eighteen (18) and competent to testify as to the matters contained herein.
2. I am the current owner of Water Right Nos. 34-2459, 34-2460, 34-2461, 34-2462, 34-10925 and 34-7037 (the "Water Rights").

SCANNED

DEC 07 2009

3. As listed on the partial decrees, Water Right Nos. 34-2459, 34-2460, 34-2461, 34-2462, and 34-10925 share two common points of diversion which are located in the SWSENW and the SENESW, both in Section 2, T3N., R26E. These wells are commonly referred to as the "Airport Wells".
4. As listed on the partial decrees, Water Right No. 34-7037 is diverted through two wells found in the NESENW of Section 3, T4N., R26E., and the SENWSW of Section 34, T5N., R26E. These wells are commonly referred to as the "Island Wells", and these wells divert into the Island Canal to be delivered to the same place of use as water from the Airport Wells are delivered.
5. The Water Rights, as they are currently listed on the partial decrees for the Water Rights, do not accurately reflect my historic irrigation practices.
6. Historically, at times during each irrigation season since I owned the property to which the Water Rights are appurtenant, I have diverted the allowed diversion rate of all of the Water Rights, up to 24.5 cfs, from the Island Wells only to irrigate my property when the Airport Wells were not producing sufficient amounts of water. Thus, at times, the entirety of the Water Rights were diverted from the Island Wells only.
7. It is my understanding from Mr. Bell, who is now deceased, that this practice was undertaken previous to 1987. The Island Wells were drilled in 1982, and since that time, the wells were used interchangeably depending on the time of the year to divert the entirety of the 24.5 cfs of ground water authorized under the Water Rights.
8. I have continued this historic practice, such that when the Airport wells are not producing sufficient amounts of water, the entirety of the Water Rights are diverted from the Island

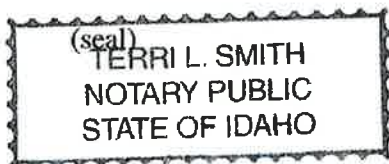
Wells. It was my belief and understanding that this practice was documented in the current partial decrees, but I now understand that it is not.

9. In my view, the partial decrees for the Water Rights should be changed so that the Water Right Nos. 34-2459, 34-2460, 34-2461, 34-2462, and 34-10925 should include two additional points of diversion in NESENW of Section 3, T4N., R26E., and the SENWSW of Section 34, T5N., R26E. A spreadsheet of how the water rights should be corrected is attached hereto as Exhibit A.

DATED this 25 day of March, 2009.

Charles B. Isom
Charles B. Isom

SUBSCRIBED AND SWORN TO before me this 23rd day of March, 2009.



[Signature]
Notary Public for Idaho
Residing at Burley, Idaho
My Commission Expires: 8/2/14

CERTIFICATE OF MAILING

I certify that on this _____ day of March, 2009, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

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

2. Copies to:

Charles B. & Fern A. Isom
3199 W. 2200 N.
Arco, ID 83213

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

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

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

Robert L. Harris

G:\WPDATA\RLH\7151 SORENSON, MITCH\07 SRBA P.D., Isom\Affidavit.Charles.Isom.wpd:cdv

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EXHIBIT A

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CHARLES AND FERN ISOM WATER RIGHT SUMMARY

Owner	Water Right No.	Basis	Priority Date	Source	Individual Diversion Rate	Combined Diversion Rate (cfs)	Individual Volume Limitation	Combined Volume Diversion Limitation (Acre-feet per year)	Individual Acre Limitation	Combined Acres Limitation	Point of Diversion	Comments
Charles B. Isom Fern A Isom	34-2459	Partial Decree	April 19, 1965	Ground Water	4.17	12.5	None	8441.5	238	1980	SWSESW, 3N, 26E, Sec. 2 SESESW, 3N, 26E, Sec. 2 NESESW, 4N, 26E, Sec. 3 SESWSW, 5N, 26E, Sec. 34	The "Airport Wells" are the top two PODs, and the "Island Wells" are the bottom two PODs.
	34-2460	Partial Decree	April 19, 1966	Ground Water	4.17		None		238			
	34-2461	Partial Decree	May 3, 1965	Ground Water	2.08		None		119			
	34-2462	Partial Decree	May 3, 1966	Ground Water	2.08		None		119			
	34-10925	Partial Decree	May 1, 1982	Ground Water	7.6	None	None		536 (enlargement)		NESESW, 4N, 26E, Sec. 3 SESWSW, 5N, 26E, Sec. 34	The "Island Wells"
	34-7037	Partial Decree	May 4, 1973	Ground Water	12		None		1664			
	34-7138	Partial Decree	May 5, 1976	Big Lost River	16	None	None		1664			

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February 12, 2009

Mr. Ernest Carlsen
Idaho Department of Water Resources
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

Re: Charles B Isom's Water Rights 34-2459, 34-2460, 34-2461, 34-2462 and
34-10925

Dear Ernie:

This letter is a follow up to our telephone conversations regarding the use of the 4 wells used to supply Mr. Isom's above referenced water rights. For convenience the older wells near the airport will be referred to as the **airport wells** and the newer wells that pump into the Island Canal will be referred to as the **island wells**.

As of 2007 the airport wells were equipped with a 125 hp pump and a 200 hp pump. The first record of the 200 hp pump being in place is 2001 when a new pole number was assigned. The new pole number could mean the electrical service was changed, perhaps to supply power to a larger pump. The original horsepower prior to 2001 has not been confirmed.

As of 2007 the island wells were equipped with a 200 hp pump and a 250 hp pump. There is no indication the horsepower of either of these wells has been changed.

Power records for 1984 through 1987 when Bells owned the property were obtained and power records for 1998 through 2007 when Isoms owned the property were obtained. Obtaining the old records is more difficult because of the effort required by the Lost River Electric staff. In retrospect the years 1984 through 1987 were not particularly good years for analysis because of the availability of surface water. The records indicate no ground water was pumped in 1984 and only a small amount was pumped in 1986.

Figure 1 is a monthly comparison of the airport wells and island wells use based upon the average monthly power consumption for the period 1984 through 1987. The figure shows the continuing use of the island wells later into the season and a higher rate of use for the airport wells earlier in the season. Of the period 1984 through 1987 the last year, 1987, showed the largest use of ground water. Figure 2 is a comparison of the average power use by month comparing the airport wells to the island wells. The peak use of the airport wells occurred in May and the peak use of the island wells was in July and August. The island wells continued to be used later in the season than the airport wells, apparently as the airport well supply diminished.

Figure 3 is the monthly comparison of the airport wells and island wells based upon the average monthly power consumption for the period 1998 through 2007. The figure

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shows the airport well use peaks in July but the island well peak is not until September after the airport well use has reduced significantly. Figure 3 shows notably higher power consumption than either Figures 1 or 2. Information is not currently available to know if that increased power use translates into more water being diverted or increased pumping levels and the increased energy required to maintain the same water supply. Likewise, the power use comparison between the sets of wells is instructive to show when each set is used most heavily during the year but the comparison of the values between the 2 sets is not necessarily a comparison of the relative amount of water pumped from each set of wells.

All 3 figures show the use of the island wells later in the season than the airport wells indicating the airport well supply is likely diminished toward the end of the season. Even though both sets of wells are used to meet the typical July peak water requirement, the 2 sets of wells do not peak simultaneously except in Figure 1 and I am not sure the Figure 1 averages are representative because of the short record and some years without any or only limited ground water use.

I hope this information helps resolve the issue of the island wells be alternate points of diversion for the airport wells. If you have any questions or need additional information, please let me know.

Yours truly,

David B. Shaw

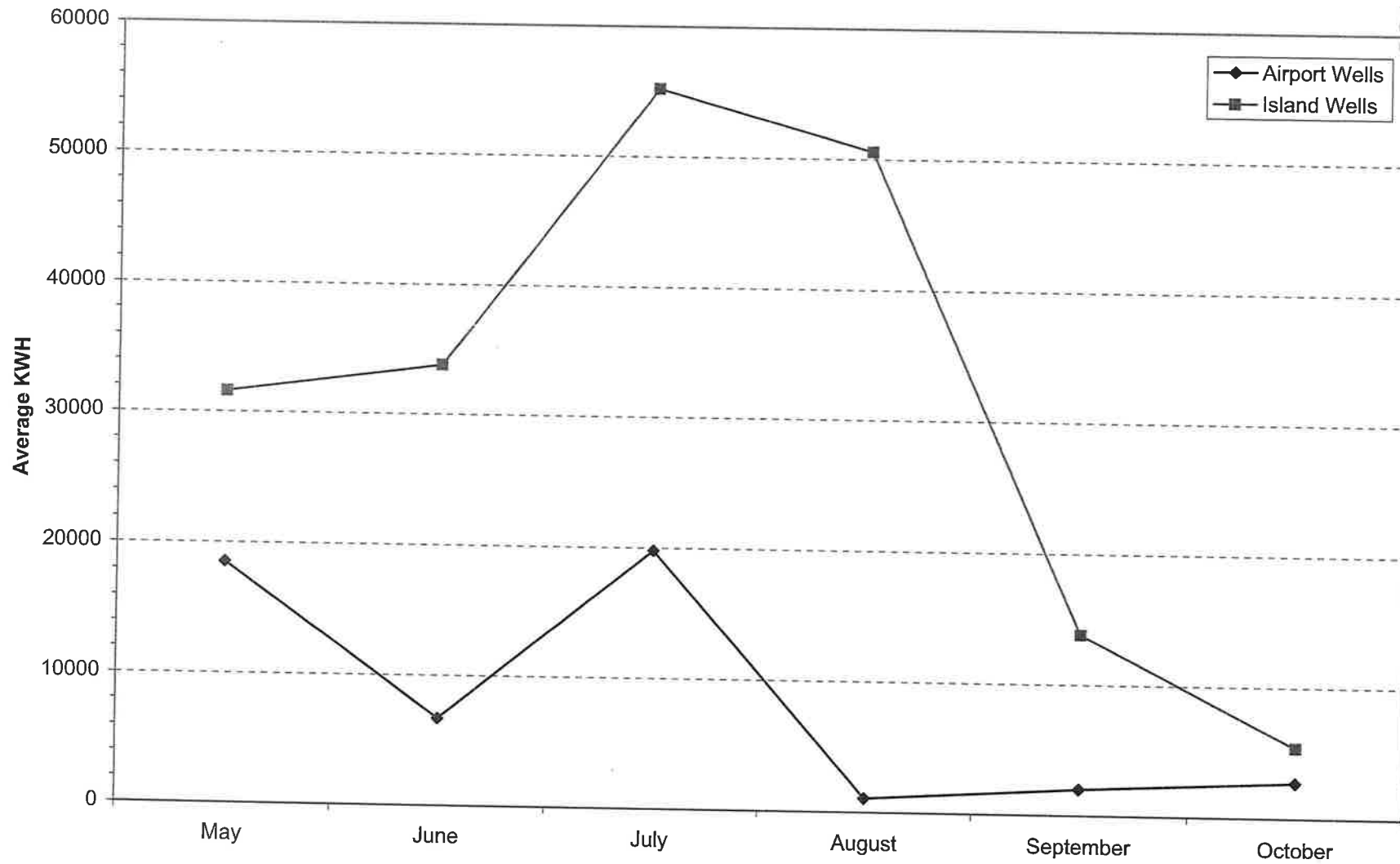
Enc.

cc: Charles B. Isom

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Figure 1

Airport Wells Diversions Compared to Island Wells Diversions 1984 - 1987

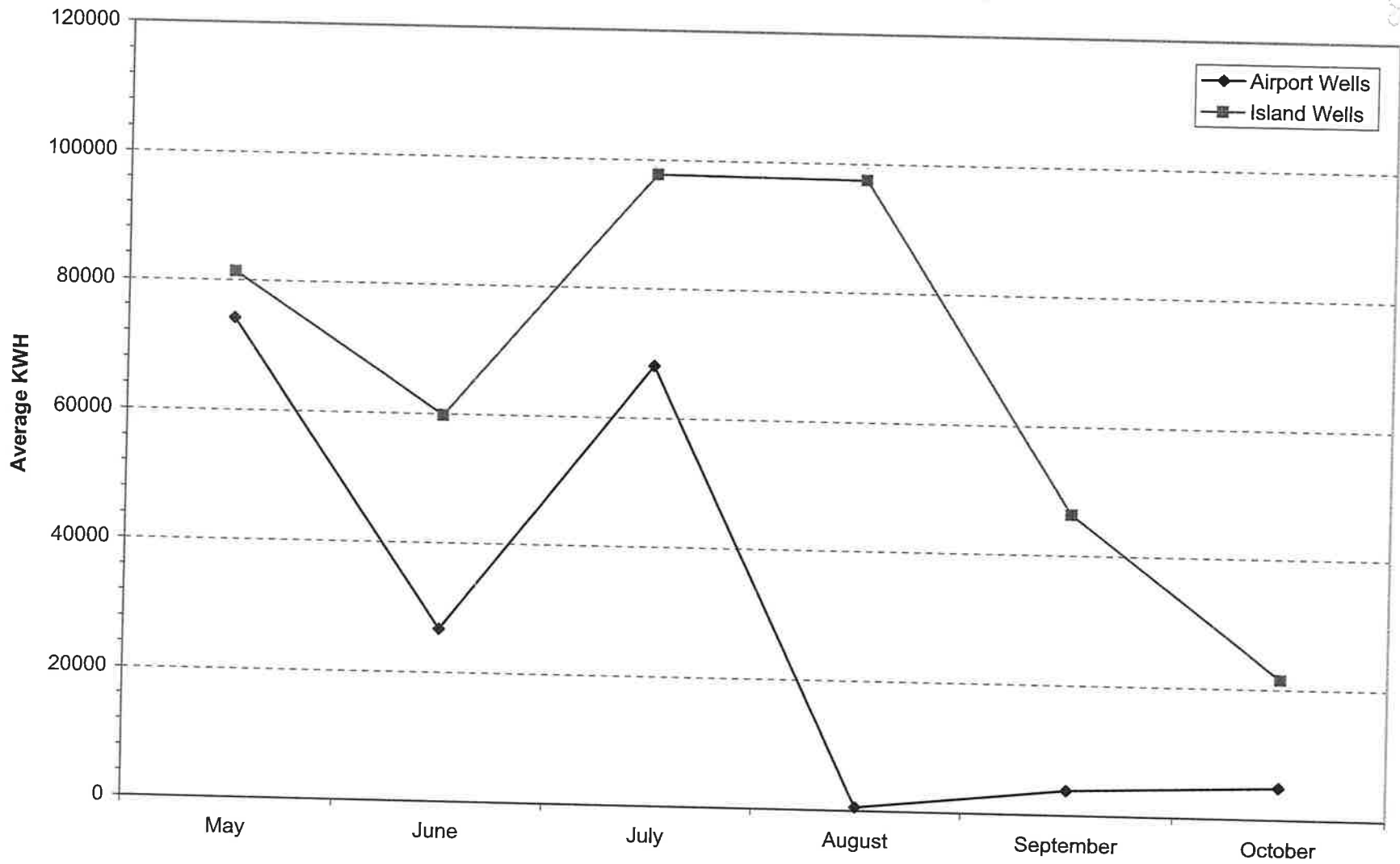


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Figure 2

Airport Wells Diversions Compared to Island Wells Diversions 1987



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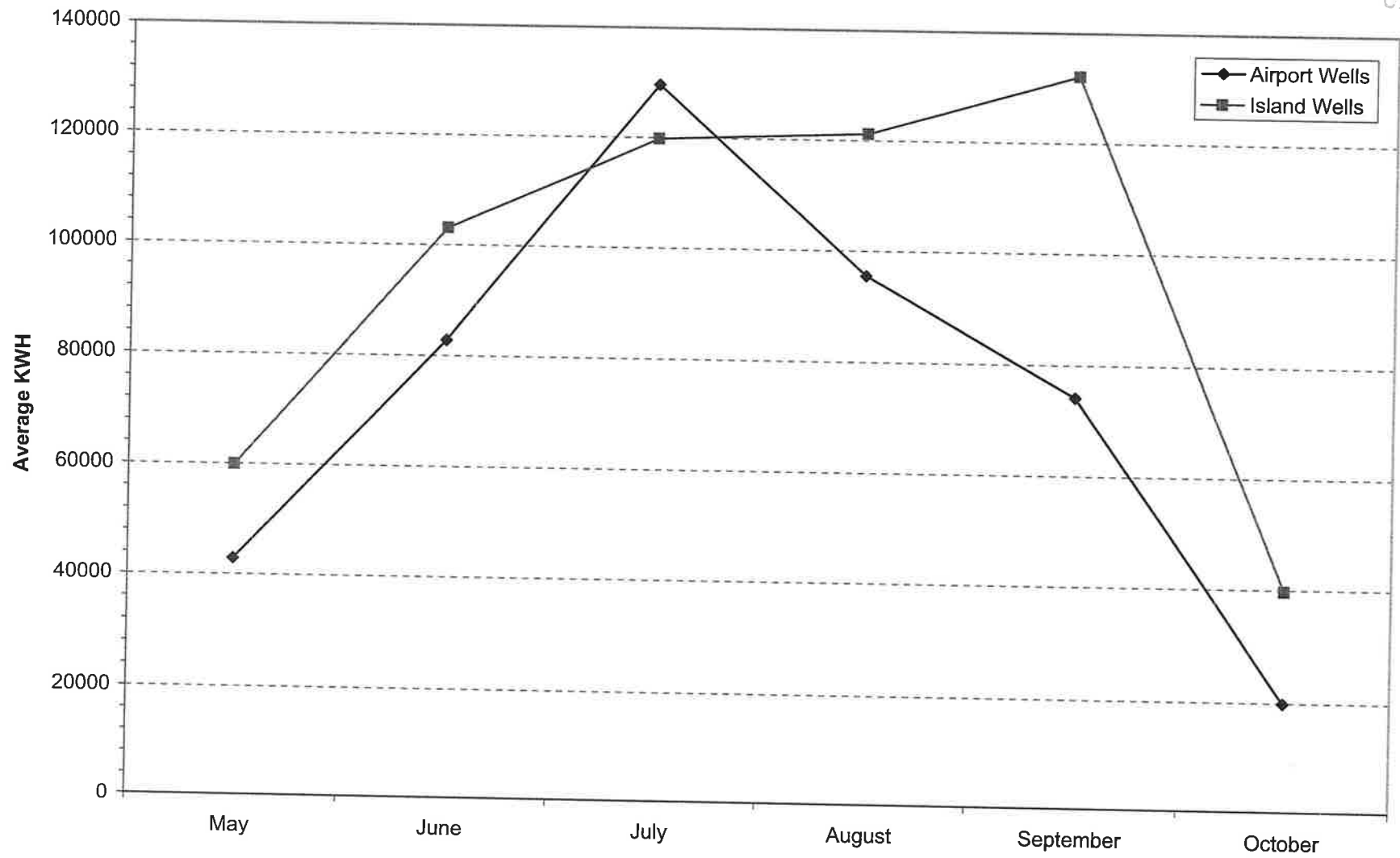
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Figure 3

Airport Wells Diversions Compared to Island Wells Diversions 1998 - 2007

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 34-2459

Date Received _____

Receipt Number _____

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s) Charles B. Isom. Phone (208) 768-2204
Mailing Address 3199 W. 2200 N., Arco, ID Zip 83213
2. Date of Priority (Only (1) per claim) April 19, 1965
3. Source of water supply (a) Groundwater
which is tributary to (b) _____
- 4.a. Location of existing point of diversion is:
Township 3N Range 26E Section 2, SW 1/4 of SE 1/4 of NW 1/4, Govt. Lot _____,
Township 3N Range 26E Section 2, SE 1/4 of NE 1/4 of SW 1/4, Govt. Lot _____,
Township 4N Range 26E Section 3, NE 1/4 of SE 1/4 of NW 1/4, Govt. Lot _____,
Township 5N Range 26E Section 34, SE 1/4 of NW 1/4 of SW 1/4, Govt. Lot _____,
County of Butte County
Parcel (PIN) No. _____
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 _____ B.M., County of _____
ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4 Govt. Lot _____ B.M., County of _____
5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. _____
6. Water is claimed for the following purposes: _____ (Both dates are inclusive) (cfs) (acre feet)
For Irrigation purposes from 04/01 to 11/01 amount 4.17 cfs or _____
7. Total quantity claimed (a) 4.17 (cfs) and/or (b) _____ (acre feet)
8. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) _____

9. Description of place of use:
- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
 - If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instruction for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TLS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	26E	14					39	36	40	40	40	40	40	40					315
		15	39	40	40	40	39	39	40	40	40	40	40	40	40	40	40	40	637
		16	39	39	40	40									40	40	39	39	316
		22	40	40	40	40	40	40	40	40									320
		23					40	40	40	40	40	33	39	40			40	40	392

Parcel (PIN) No(s). _____

Total number of acres irrigated 1980

10. In which county(ies) are lands listed above as place of use located? Butte

11. Do you own the property listed above as place of use? Yes ☒ No ☐
If your answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.
_____ or None ()

13. Remarks:

14. Basis of Claim (Check one) Beneficial Use ☐ Posted Notice ☐ Permit ☐ Decree ☐ License ☒
If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

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 _____

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) Charles B. Isom Date 9-10-09

_____ Date _____

Last Name _____ Ident. Number _____

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07 2:30

17. Notice of Appearance:

Notice is hereby given that I, Robert L. Jannis 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 Robert L. Jannis
Address PO Box 5030 Idaho Falls, ID 83405
Date Sept. 18, 2009

G:\WPDATA\IRLH\7151 SORENSON, MITCH\07 SRBA P.D., from\Amended Claim, 34-2459.wpd.cdv

Last Name _____ Ident. Number _____

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