11/21/2003

IDAHO DEPARTMENT OF WATER RESOURCES

PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 25-4110

NAME AND ADDRESS: ELKINGTON BROTHERS
5080 E SUNNYSIDE RD
IDAHO FALLS ID 83401

SOURCE: ROCK CREEK TRIBUTARY: WILLOW CREEK

QUANTITY: 0.700 CFS
40.000 AFY

PRIORITY DATE: 01/17/1886

POINT OF DIVERSION:

T01N R40E S30 SENW Within BONNEVILLE County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION FROM STORAGE	05/01 11/01	40.00 AFY
STOCKWATER	01/01 12/31	0.020 CFS
IRRIGATION	05/01 11/01	0.700 CFS
IRRIGATION STORAGE	01/01 12/31	40.00 AFY

PLACE OF USE: IRRIGATION Within BONNEVILLE County

T01N R40E S30	NENE	21.0	T01N R40E S30	NWNE	11.0
T01N R40E S30	SWNE	3.0	T01N R40E S30	SENE	0.2

IRRIGATION FROM STORAGE same as IRRIGATION
STOCKWATER same as IRRIGATION

35.2 ACRES TOTAL

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

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

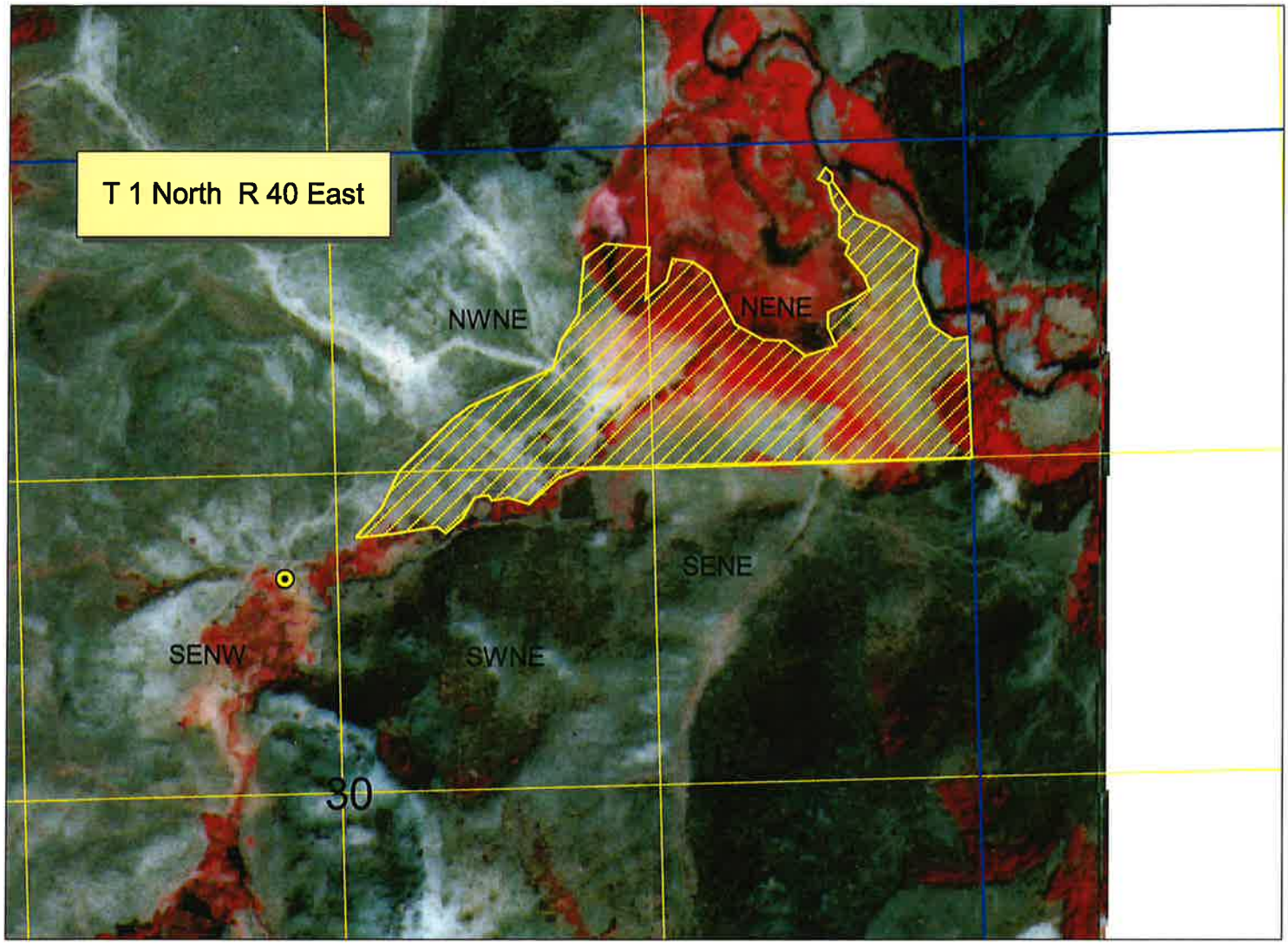
EXPLANATORY MATERIAL: Statutory Claim

State of Idaho

Division of Water Resources

Eastern Region

Water Right(s): 25-04110



1320 0 1320 Feet

N

Point of Diversion
Place of Use
Section
Quarter Quarter

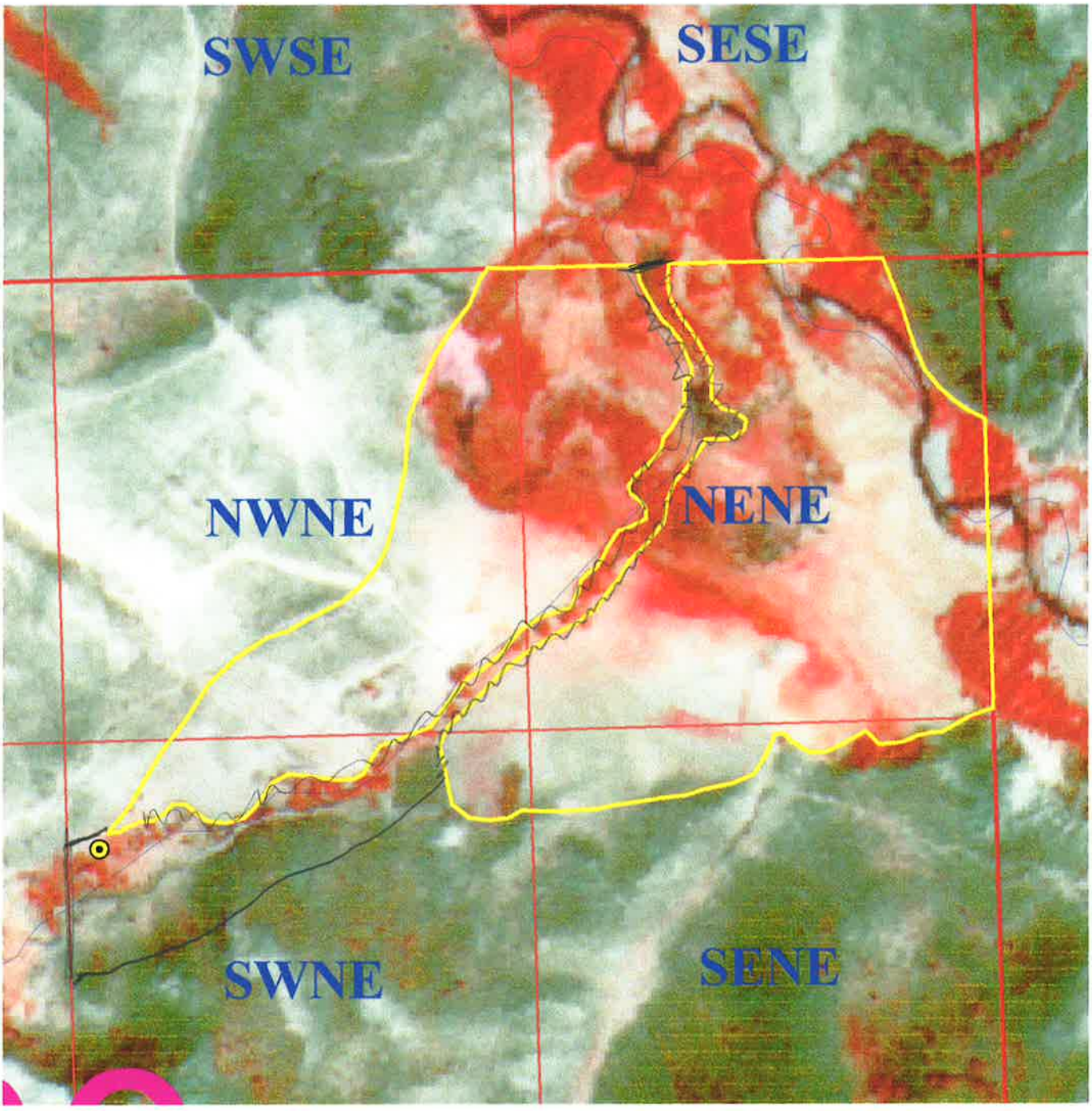
SCANNED
AUG 1 1 2004
FILED

GIS Place of Use Illustration
1987/1988 NAPP photography
Prepared by R. Mikesell
Date: November 2003

Water Right Claim Number 25-04110

11/08/2000

Township , 1N40E



435 acres in NW SE

Legend

- Irrigated Area
- Place of Diversion
- Section Line
- Quarter Section Line
- Roads
- Streams and Canals

N

300 0 300 600 900 Feet

Spatial Dynamics

SCANNED
JUL 3 0 2001

Log for claim 25-04110 **Spatial Dynamics CAT** **11/8/00**

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
01n40e	30	NENE	21	36	INDISCERNIBLE
01n40e	30	NWNE	10	13	
01n40e	30	SWNE	3	3.9	
01n40e	30	SENE	3	3.8	
Totals:			37	56.7	

Form No. 243
9/81

Cl... No. 25-4110

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

CLAIM TO A WATER RIGHT

AMENDED

Under the provisions of Section 42-243, **Idaho Code**, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), **Idaho Code**. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that KEITH &/OR BRENT ELKINGTON (Name of Claimant)

Rt. #7, Box 92 Idaho Falls, Id. 83401 (Mailing Address) (Zip Code) Telephone No. 522-8551

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use) 1/17/1886

A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

(2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)
ROCK CREEK tributary to WILLOW CREEK

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

	(cfs, af)	(Domestic, Irrigation, Stock, Etc.)	(Both dates Inclusive) Period of Use From (Mo., Day)	To (Mo., Day)
Quantity	40.0 AF	Use Storage for Irrig.	1/1	12/31
Quantity	40.0 AF	Use Irrig. from Stor.	5/1	11/01
Quantity	5.00cfs	Use Irrigation	5/1	11/01
Quantity	.02cfs	Use Stockwater	1/1	12/31
Quantity		Use		

(4) 5.00cfs (cfs, af) TOTAL QUANTITY USED.

(5) A) Point of diversion: (Location of point where water is diverted from its source)
SW ¼ NE ¼, Sec. 30 Twp. 1N Rge. 40E B.M., County of Bonneville
Additional points of diversion:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. Dam 12' high then 2 ditches to flood irrigate land in question

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
1N	40E	30	16	9	4	8													37

No. of acres 37

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

NOTE: Include here the type and number of stock watered: 300 head cattle

(7) If you are claiming water as a member of an organization, list name of organization:

MICROFILMED

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	ELKINGTON BROTHERS 5080 E SUNNYSIDE RD IDAHO FALLS ID 83401 (208) 523-2286	01/17/1886	IRRIGATION	05-01	11-01	5.000 CFS	
			IRRIGATION STORAGE	01-01	12-31		40.00 AFA
			IRRIGATION FROM STORAGE	05-01	11-01		40.00 AFA
			STOCKWATER	01-01	12-31	0.020 CFS	
					TOTAL DIVERSION:	5.000 CFS	40.00 AFA
					CONSUMPTIVE USE:		92.50 AFA

Water Source: ROCK CREEK Tributary to: WILLOW CREEK Stage: STATUTORY CLAIM

Point(s) of Diversion: T01N R40E S30 SWNE BONNEVILLE County

Place of use Legal Description for: IRRIGATION

			NE				NW				SW				SE				
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
01N	40E	30	21	10	03	03													37.0
																		TOTAL ACRES	37.0

Place of use location for IRRIGATION FROM STORAGE is the same location as described for: IRRIGATION

Place of use location for STOCKWATER is the same location as described for: IRRIGATION

POU County: BONNEVILLE

Non-Irrigation Uses: S/300 RANGE

Dates: Exam Made Date: Verified Date: 06/03/1985 Objection Filed Date:

Misc: Water District Number: 01 Field Inspection Flag: Y
Presumption Flag:

Audit: 09/11/89 CARLSEN 03/29/95 POST-STD

A25-04110

May 7, 1991

ELKINGTON BROTHERS
5080 E SUNNYSIDE ROAD
IDAHO FALLS ID 83401

RE: **Evidence of Priority**

Dear Mr. Elkington:

The Notices of Claim identified with the numbers shown at the end of this letter has been filed in the Snake River Basin Adjudication (SRBA). The Notices indicates the water usage are based on "Beneficial Use" or a "Statutory Claim". Water rights of this type are established by the historical use of water, dating back to when water was first used for the purpose claimed, at or on the place of use identified on the Notice. The date the water was first put to use, known as the priority date, has not been confirmed by a License, Decree, or Permit. For this reason, proof must be provided supporting the priority date.

For your reference I have provided a printout of your Notices and the pamphlet entitled **"Evidence of Priority"**. The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement. While I encourage you to read all of the pamphlet, I direct your attention to the two sections entitled **"What Kind of Evidence is Required"** and **"Some Examples of Documents Which May Be Evidence of the Priority Date"**.

A review of the files, for 25-04110 reveals documents have been submitted to support a priority date of January 16, 1896 for the diversion of 5.0 cfs from Rock Creek. Unfortunately, these documents make no reference to the storage of water for irrigation purposes. To recommend both the diversion of natural flow and storage evidence of when the reservoir was first used must be provided.

It is our goal to recommend this historical water rights within the Snake River Basin as accurately as possible. Field exams to verify other items of the Notices have been or soon will be conducted by Department personnel. **But, the Department will not recommend the Notices be decreed by the court if no evidence of a priority date is submitted.**

MICROFILMED
NOV 1 0 1992

Please submit the required evidence supporting the priority dates by **June 6, 1991,** referencing all documents with the corresponding Notice numbers. If you have any questions not covered by this letter or the enclosed pamphlet, please contact this office.

All Notices required to submit this evidence are currently being reviewed for recommendation to the court. Hence, the need for expediency on your part or your agency. Every effort should be made to submit this information within 30 days of the date of this letter.

Respectfully submitted,

Ernest Carlsen.

Ernest Carlsen
Water Right Supervisor, Adjudication

EC:sc

Enclosure: Brochure on "Evidence of Priority"
Proof Report

A25-04107
ELKINGTON BROTHERS
5080 E. SUNNYSIDE RD.

IDAHO FALLS ID 83401

A25-04110
ELKINGTON BROTHERS
5080 E. SUNNYSIDE RD.

IDAHO FALLS ID 83401

Examination of Abstract of Title

No. 6- The Bonneville Abstract Company, Ltd., Idaho Falls, Idaho

Andrew D.Smith.

Grantor.

to

Rebecca Keplinger,

Grantee.

Quitclaim

Character of Instrument Deed
Date October 26,1905
Recorded February 5,1906 at 11 A.M.
Book "J" of Deeds at Page 92
Records of Bonneville County, Idaho
Transcribed from Book #6 at Page 163
Records of Bingham County, Idaho
Consideration $1.00

Acknowledgment.

Date October 26, 1905
Before Otto E.McCutcheon, Notary Public
In and for Bingham County, State of Idaho
Is Official Seal Affixed) yes
Is Acknowledgment regular) yes
Does Acknowledgment show separate rare notes of wife)

Grantor Warrants, relinquishes and forever quitclaims
Covenants To have and to hold
Does wife join throughout instrument?
Are there any encumbrances or liens?
Are there any conditions, limitations or recitals?

Conveys a certain water location dated January 16,1896 and recorded in the Recorder's Office in and for Bingham County, Jan. 17,1896 at 9 o'clock and ten minutes A.M. in Book "2" of Water Locations at page 10, and claiming the use of the waters of Smith Creek formed by the union of Rock and.....Creeks and also springs of Smith Creek proper, the point of diversion being described in said record as follows:

"A point on said Creek about one mile above where the said Smith Creek empties into 'Wilson Creek' and the same being in certain unsurveyed lands in Twp. 1 North of Range 40 East, the purpose of said location being the irrigation of lands bordering on said Smith Creek and being the same land now occupied by the party of the second part under Desert Entry No. 3467, also all ditches and diversion work connected with said location.

MICROFILMED
NOV 1 0 1995

IN THE MATTER OF:)

AFFIDAVIT

State of Idaho)
County of BONNEVILLE)

I, Thomas A Robison, being first duly sworn, deposes and says: The Water Referred to as Rock Creek has been used on the land owned by the Elkington Bros, known as Keith and Brent Elkington for the last sixty years. That I know of.

(The water referred to as Rockcreek has been used on the land owned by the Elkington Bros., known as Keith and Brent Elkington, for the last 60 years that I know of.)

(Signature)

Subscribed and sworn to before me this ____ day of _____, 19__

(Notary Public)

Residing at _____.
My Commission Expires _____.

MICROFILMED
NOV 10 1982

IN THE MATTER OF:)
)
)
)
)
)
)

AFFIDAVIT

State of Idaho)
County of _____)

_____ being first duly sworn,

deposes and says: I, Karl M. Brown and my brother, Merle V. Brown purchased this property January 28, 1960. (The Northeast Quarter (NE¼) and the East half of the Northwest Quarter (E½NW¼) of section Thirty (30), Township One (1) North, Range Forty (40), East of the Boise Meridian, with all water and water rights appurtenant thereto or generally used in connection therewith. We operated such property as a cattle ranch for 13 years using water rights for irrigation purposes on meadow land which was necessary to make the ranch productive.

We sold this property to Elkington Bros. in Dec. 1972.

_____
(Signature)

Subscribed and sworn to before me this ___ day of _____, 19__.

_____
(Notary Public)

Residing at _____.
My Commission Expires _____.

MICROFILMED
NOV 10 1982

25-4110

SCHEDULE B

This policy does not insure against loss by reason of the matters shown or referred to in this Schedule except to the extent that the owner of any mortgage or deed of trust is expressly insured in Paragraphs numbered 3 and 4 on page 1 of this policy.

1. Rights or claims of persons in possession or claiming to be in possession, easements, liens or incumbrances including material or labor liens, which are not shown by the public records; reservations in patents or state grants; or in acts authorizing the issuance thereof; mineral rights, water rights, claims or title to minerals or water.

2. Questions of location, boundary and area; overlaps and encroachments by improvements belonging to these or adjoining premises, as dependent upon actual survey for determination.

3. Assessments which are not shown as existing liens by the public records; taxes not yet payable, pending proceedings for vacating, opening or changing streets or highways preceding entry of the final ordinance or order therefor.

4. Any laws, governmental acts or regulations, including but not limited to zoning ordinances, restricting, regulating or prohibiting the occupancy, use or enjoyment of the land or any improvement thereon, or limiting the height of improvements, or prohibiting a reduction in the dimensions or area, or separation in ownership, of any lot or parcel of land; or the effect of any violation of any such restrictions, regulations or prohibitions.

5. Five cubic feet of water being water from South Creek, by the union of the waters of Rock and Moon Creek, and also springs of South Creek property, as disclosed in Water Location recorded on January 17, 1886, in Book A of Water Locations, at page 9, records of Bonneville County, Idaho.

6. Contract and Grant of Easement dated July 19, 1955, executed by and between Orland E. Robison and Florence E. Robison, husband and wife, to United States of America, recorded on December 3, 1955, in Book 15 of Lease & Contracts, at page 236, records of Bonneville County, Idaho, as follows:

For the consideration hereinafter expressed, Vendor does hereby grant unto the United States and its assigns, the right, privilege, and easement to construct, operate, and maintain an electric transmission line, with all poles, crossarms, cables, wires, guys, supports, fixtures and devices, used or useful in the operation of said line, through, over and across the above described premises.

7. Mortgage dated May 26, 1965, executed by Karl G. Brown and Hallie Brown, husband and wife; and Merle V. Brown and Zelda Brown, husband and wife, to The Federal Land Bank Of Spokane, a corporation, to secure payment of $16,500.00 and interest, recorded on June 14, 1965, under Instrument No. 348677, records of Bonneville County, Idaho.

This policy is issued simultaneously with Mortgagee's Policy No. 24174, in the amount $17,500.00 and any payment by the company under said Mortgagee's Policy shall reduce the amount of the company's

MICROFILMED
NOV 10 1992

Continuation of Abstract of Title

No. 5- The Bonneville Abstract Company, Ltd., Idaho Falls, Idaho

Andrew J.Smith,

Grantor.

to

...ck Connelley,

Grantee.

Character of Instrument Water Location
Date January 16,1896
Recorded January 17,1896 at 9:10 A.M.
Book "A" of Water Loc. Page 9
Records of Bonneville County, Idaho
Transcribed from Book "Z" at Page10
Records of Bingham County, Idaho
Consideration XX

Acknowledgment
Subscribed and sworn to:
Dated January 16,1896
Before W.R.Rands,Notary Public
In and for Bingham County, State of Idaho
Is Official Seal Affixed? yes
Is Acknowledgment regular? yes
Does Acknowledgment show separate examination of wife?

Granting Words
Covenants
(Does title pass throughout instrument)
Are there any exceptions or claims?
Are there any conditions, limitations or recitals?

State of Idaho
County of Bingham

To All Persons to Whom These Presents Shall Come:

Be It Known, That I, Andrew J.Smith of Taylor Precinct, hereby claim the use of the waters of Smith Creek formed by the union of the waters of ... Creek and ... Creeks and also springs of ... Creek property to the extent of five cubic feet per second.

2nd. It is intended to divert said water at or near the point where a copy of this notice is posted and more definitely described as follows:

A point of said Creek about one mile above where the said Smiths Creek empties into Gibson Creek, said point being in the ... of Section ... unsurveyed Township 1 North,Range 40 E.B.M.

3rd. The purpose for which said water is intended to be used is for ... (over)

MICROFILMED
NOV 10 1992

A25-04110

IN THE MATTER OF:)
)
)
)
)
)
)

AFFIDAVIT

State of Idaho)
County of _____)

_____ being first duly sworn,

deposes and says: _____

We Moved to the ranch on Squaw Creek in April 1924 and I have been Acquainted with the ranch on Smith Creek since that time There was a dam on Smith Creek at that time but it was enlarged later on by Monroe Nance about 1944 or 45. They have used the water from Smith Creek to irrigate the ranch Property ~~time~~ before we Moved to the area and all the time since then.

Fred Pilkington
(Signature)

Subscribed and sworn to before me this 30th day of May, 1991.

Christine Brower
(Notary Public)

Residing at Shelley.
My Commission Expires 6-18-97.

IN THE MATTER OF:

AFFIDAVIT

State of Idaho
County of Bonneville

Keith & Brent Elkington being first duly sworn, deposes and says: Present owners of Rock Creek property water claim no. A 25-04110. We have owned property for since early 1970's and have lived on property next to it all our lives 44 years. The storage water and reservoir has been there as long as we can Remember back to 1954.

Book A of water page 9, records of Bonneville

being water location date January 16th 1886, recorded 1/17/1886 in Book A of water location page 9 - Clerks

Keith Elkington
Brent Elkington
(Signature)

Subscribed and sworn to before me this 16 day of May, 1991.

(Notary Public)

Residing at Idaho Falls Id.
My Commission Expires 22 Aug 1994

SCANNED
JUL 31 2006

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: **A25-04110**
Date Received: 9/11/1989
Receipt No: E010211
Received By: EMC

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name: ELKINGTON BROTHERS 208-523-2286
   Address: 5080 E. SUNNYSIDE RD.
   IDAHO FALLS, ID 83401

2. Date of Priority: JAN 17, 1886

3. Source: ROCK CREEK Trib. to: WILLOW CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
01N	40E	30	SW NE		BONNEVILLE

5. Description of diverting works:
   DAM & DITCHES TO FLOOD IRRIGATION

6. Water is used for the following purposes:

Purpose	From	To	C.F.S (or)	A.F.A.
IRRIGATION	05/01	11/01	5.000	
IRRIGATION STORAGE	01/01	12/31		40.00
IRRIGATION FROM STORAGE	05/01	11/01		40.00
STOCKWATER	01/01	12/31	0.020	

7. Total Quantity Appropriated is:
   5.000 C.F.S. (and/or) 40.00 A.F.A.

8. Total consumptive use is 92.5 Acre Feet Per Annum.

9. Non-irrigation uses:
   S/300 RANGE

MICROFILMED
NOV 10 1992

10. Place of Use:

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
01N	40E	30	NE	NE		IRR	21.0
			NW	NE		IRR	10.0
			SW	NE		IRR	3.0
			SE	NE		IRR	3.0
					Section Acres		37.0
					Total Acres		37.0

11. Place of use in counties: BONNEVILLE

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

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: STATUTORY CLAIM

MICROFILMED
NOV 1 0 1992

16. Signature(s)

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

Number of attachments: 1

For Organizations:

I do solemnly swear or affirm that I am Partner of Ellington Bros, that I have signed the foregoing document in the space below as Partner of Ellington Bros and that the statements contained in the foregoing document are true and correct.

Title

Organization

Title

Organization

Keith Ellington
Signature of Authorized Agent

Partner
Title and Organization

9/11/89
Date

State of Idaho)
) SS.
County of Bonneville.)

Subscribed and sworn (or affirmed) before me this 11 day of Sept. 19 89.

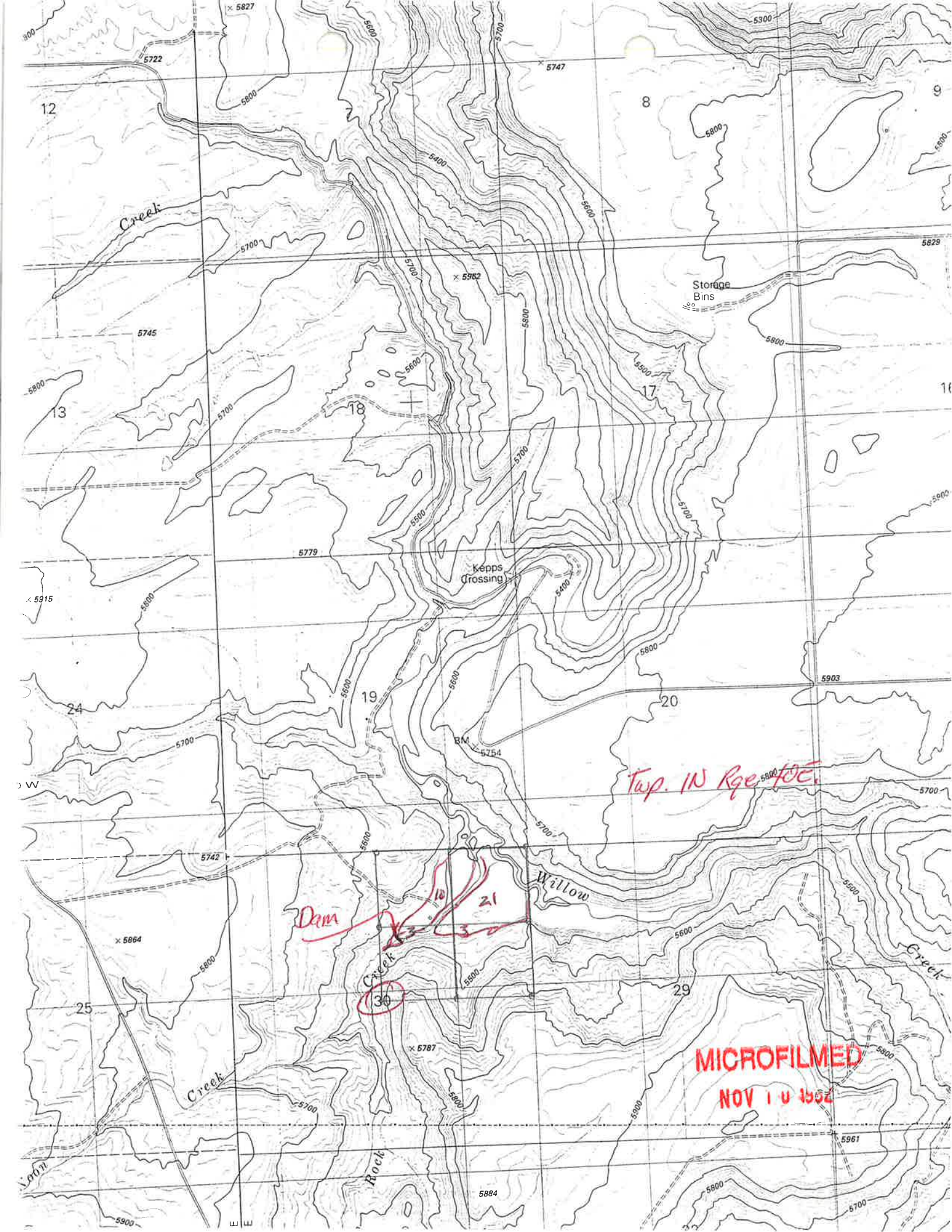
Ernest Carlsen.
Notary Public

Seal

Residing at Idaho Falls ID.

My Commission Expires 6-14-1994

MICROFILMED
NOV 10 1992


Storage Bins
Kepps Crossing
BM 5754
Twp. 1N Rge. 10E.
Dam
Willow Creek
Rock Creek
MICROFILMED
NOV 10 1992