

03/15/2004

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

RIGHT NUMBER: 25-13026
NAME AND ADDRESS: ALICE R SHURLIFF
PO BOX 2086
IDAHO FALLS ID 83403

REX S SHURLIFF
PO BOX 2086
IDAHO FALLS ID 83403

SOURCE: GROUND WATER TRIBUTARY:

QUANTITY: 0.040 CFS
7.400 AFY

PRIORITY DATE: 12/31/1957

POINT OF DIVERSION:

T02N R38E S9 NWNE Within BONNEVILLE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
COMMERCIAL	01/01 12/31	0.040 CFS 7.40 AFY

PLACE OF USE: COMMERCIAL Within BONNEVILLE County

T02N R38E S09 NWNE

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: Beneficial Use

Bryce Contor

Water Resources Field Services

General Comments

The field exam suggests more historical use of water than claimed, so I have invited the claimant to amend the claim. Please see the enclosed letter. Evidence of priority suggests a 1932 priority for the domestic portion of the claim and a 1957 priority for the commercial portion. I've suggested to the claimant that I would propose a 1957 priority, but if he wishes to enjoy the 1932 priority on the domestic portion he might consider a second claim.

Field notes are included as *.jpg images in the photos directory.

The commercial facility started out as an equipment shop (first Caterpillar and then UPS). Now it houses an RV sales lot, small tire store, restaurant/family activity center, and a cake decorating business.

Ownership

As claimed.

POD

One well, IDTM location 662,460 E 271,332 N. This is not a GPS location but is scaled off an aerial image using GIS. There is a location tag attached, number E0007626. The claimed legal description appears to be correct.

POU

As claimed/sketched in claim map. See also sketch in *.jpg of field notes.

Overlap

As noted above, the domestic use dates to 1932 and the commercial to 1957. If a separate domestic claim is filed, both rights will use this well.

Conflict

None noted.

SCANNED

AUG 18 2004

Priority

In an interview the owner affirms that he has personal knowledge of the commercial development in 1957. An affidavit in the file establishes 1932 for the domestic use. I propose 12/31/1957 for this water right.

Quantity

Attached calculations support a diversion rate of 0.04 domestic plus 0.09 commercial, total 0.13 cfs.

Current use appears to be 1.2 acre feet/year for domestic and 2.8 acre feet/year commercial (non-residential deminimus 2,500 gallons/day). Historical use is closer to $1.2 + 7.4 = 8.6$ acre feet/year. I propose recommending the higher volume based on the historical development of the right and the potential need to resume the original use of the building.

Water Use

Commercial and domestic. The current claim is only for commercial but the amended claim includes domestic. The owner may also file a separate domestic claim.

List of Photos

A25-13026_Field_Notes_1_2.jpg	Field notes.
A25-13026_Field_Notes_3_4.jpg	Field notes.
A25-13026_Field_Notes_5.jpg	Field notes.
A25-13026_1.jpg	RV business
A25-13026_2.jpg	Sugar-shell and North-40 businesses
A25-13026_3.jpg	Well



Bryce A. Contor



Date

Water Resources Field Services

1571 N. 1100 E.
Terreton, ID 83450
208-663-4667

January 21, 2004

Rex S. Shurtliff
PO Box 2086
Idaho Falls ID 83403

Re: Water Right Adjudication Claim A25-13026

Dear Mr. Shurtliff:

My calculations show that your water use is more than the claim requests. The enclosed amended claim adjusts the amounts of water to match the historical uses we talked about when I looked at your place. If you would like to claim this additional water, please return it to IDWR with a notarized signature and a check for nine (9.00) dollars.

Because the Caterpillar shop was built in 1957, I will propose to IDWR that the priority date of this water right be 1957. However, the affidavit in the file shows that the domestic use goes back to 1932. If you would like to retain the 1932 priority date for the domestic use, you may want to talk to IDWR about filing the domestic use as a separate claim. In that case you would have two water rights out of one well, one for the domestic use in the home and lawn, and one for the commercial use in the businesses. There will be a small additional fee.

Please call me if you have any questions. You may also call IDWR at 525-7161. Please mail the claim and check directly to IDWR, or take them to the office at the corner of Grandview and Skyline in Idaho Falls.

Sincerely,

Bryce A. Contor

August 18, 2003

Rex S. Shurtliff
PO Box 2086
Idaho Falls, ID 83403

Re: Water Right Adjudication Claim(s) A25-13026

Dear Water User:

Idaho Department of Water Resources (IDWR) is reviewing claims to water rights in the Snake River Basin Adjudication in your area. Water Resources Field Services has been retained to do field inspections to aid the Department in making correct recommendations to the court. In the next weeks and months I will be contacting you to make an appointment to look at your diversion works and uses of water.

I look forward to helping make sure your water right recommendation is correct. Please contact me if there is a particular time that would be convenient for you. You may call in the evenings, or leave a message on the answering machine.

Sincerely,

Bryce A. Contor

Water Resources
Field Services
208 663 4667

AAS-13024 Water-use calculation 1/31/04

This is the second time I've done these calculations. A slightly different version may come back w/ the awarded claim - I can't find any copy.

Division Rate
Home w/ lawn 0.04 g/s
Business - # fixtures

RV shop (sink only) 1
Sugar Shell Customer restroom 2
Sink 1
Tire recyclers North 40
Mens room 6
Drinking fountain 1
Employee restroom 5
Ladies room 2
Kitchen 3
Tool room 1

Total 22 fixtures

For field-examiners hand book exhibit 14

Miscellaneous stores = 1.3 gpm/fixture

Minimum 40 gpm. 40 gpm = 0.09 g/s

$$0.09 + 0.04 = 0.13 \text{ g/s}$$

A25-13026 Water-use calculations p2

Alternate diversion-rate calculation:

The shop use did not include the restaurant fixtures but did include a wash rack for washing equipment / vehicles. Mr. Shortliff states when UPS rented the shop they washed 25 trucks/night.
 $18 \text{ fixtures} \times 1.3 \text{ gpm} = 23 \text{ gpm}$
15 - 20 gpm estimate for wash rack points to the same $\approx 0.09 \text{ gfs}$ requirement.

Diversion Volume

Home w/ lawn 1.2 acre/foot

Commercial (based on Field Examiner's Handbook Table 3 except where noted).

Day workers @ 15 gallons/shift

RV store	1
Tire store	1
North 40	5
Sugar-shack	<u>1</u>

$$8 \times 15 = 120 \text{ gpd}$$

$$\times 250 \text{ days} = 30,000 \text{ gal.}$$

A25-13026 Water-use calculation p 3

4 short toilet rooms x 400 gallons
x 250 days

400,000 gallons

Restaurant 200 customers/day

x 3 gallons/person (see w/o)
restroom rate since restaurants
are considered above)

200 x 3 x 250 days

150,000 gallons

Total commercial

≈ 1.8 acre feet/yr.

This is less than the std. determinans
non-residential domestic

(2500 gal/day x 365 days) ≈ 2.8 acre feet

Alternate volume calculation

Shop use: 15 workers x 15 g/day

= 225 gallons/day

Customer restrooms (2) @ 400 = 800 gallons/day

Wash rack 20 gpm x 3 hrs/day

200 gal x 60 min x 3 hr = 3600 gallons/day

225 + 800 + 3600 = 8000 gallons/day

8000 gallons x 300 days = 2,400,000 gallons
= 7.4 acre feet.

Summary 1.2 domestic + 7.4 Commercial = 8.6 afa

A25-13026 water-use calculations p4

Theoretical check:

$$\text{Water hp} = \frac{(\text{TQH} \times \text{GPM})}{3960}$$

TQH estimate

$$\begin{aligned} \text{Discharge pressure 40 psi} &= 92.4 \text{ feet} \\ \text{lift} &\approx 100 - 200 \text{ feet} \\ \text{friction} &\approx 15 \text{ feet} \\ \text{TQH} &\approx 205 \text{ to } 305 \text{ feet} \end{aligned}$$

$$\text{Water HP} = \frac{(205)(40)}{(3960)} \text{ to } \frac{(305)(40)}{(3960)}$$

$$= 2.1 \text{ to } 3.1$$

assume 60% efficiency

$$\text{required motor hp } \frac{2.1}{.6} \text{ to } \frac{3.1}{.6} = 3.5 \text{ to } 5.2$$

Current motor is 3 hp & claimant states

Original was 5 hp. Therefore proposed rate of 0.09 + 0.04 = 0.13 g/s is not

unreasonable in light of diversion capacity.

$$40 \text{ gpm} \times \frac{60 \text{ min}}{\text{hr}} \times \frac{5 \text{ hrs}}{\text{day}} \times 365 \text{ days} \approx 13 \text{ acre feet.}$$

proposed volume is reasonably obtainable also.

A25-13026 Preview / Contact log 1/10/04

- 1) Evidence of priority - domestic. Accomplished a purpose should note. Need to calculate water use for RV business. Diversion rate is in line w/ domestic history
- 2) Claimant may wish to amend claim to receive better priority date.

1/16/04 12:30 522-1513 Mr. Shentliff -
please come later in the day - 1:PM,
Next door is another business, may share
use on well - New claim may be needed?

Field
exam
handbook { Day workers 15 gal/person/day
Stores 400 gal/day / Washrooms
diversion rate 1.3 gpm / fixture 40 gpm min

1/19/04 Mr. Shentliff not there - appointment 4 PM
Tomorrow



State of Idaho **SCANNED**
DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

MAY 31, 1991

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

REX S SHURTLIFF
PO BOX 2086
IDAHO FALLS ID 83403

RE: CHANGE OF OWNERSHIP/A25-13026

Dear Rex:

The request for Change in Ownership concerning Notice of Claim in the above reference has been processed and the Notice modified to reflect you as the new owner.

Enclosed is a typed Notice with your name shown as the current owner. Review the forms and if there are other corrections or questions, feel free to contact this office.

If there are no questions or corrections, please keep this Notice for your records.

Respectfully submitted,

Ernest Carlsen
Adjudication Supervisor

EC:jt

Enclosure: Printed Notice of Claim

File: "p"

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NOV 11 1992

A25-13024

May 22, 1991

REX S SHURTLIFF
PO BOX 2086
IDAHO FALLS ID 83403

RE: CHANGE OF OWNERSHIP FORM ENCLOSED

Dear Mr. Shurtliff:

Please find enclosed "Change of Ownership" form. We are returning this form to you. We need either a copy of "Proof of Ownership" or a signature by the former claimant to process this change of ownership.

Naturally feel free to contact this office if you have any questions regarding this matter.

Respectfully submitted,

Ernest Carlsen
Water Rights Supervisor, Adjudications

EC:sc

Enclosure

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CHANGE IN OWNERSHIP

Page 2

[] Signature of Former Claimant(s): _____

Date: _____

(Signature of former claimant(s) is not required if proof of ownership is attached.)

FOR IDWR USE ONLY:

Initial Review and Data-Entry

Date: _____ By: _____

Further Action Needed:

Further Action Taken

Date: _____ By: _____

Final Review and Data-Entry

Date: _____ By: _____

Claim Numbers of Split, if any:

After form has been completed, please return to the nearest IDWR office below:

WESTERN REGIONAL OFFICE

2735 AIRPORT WAY
BOISE, IDAHO 83705
(208) 334-2190

EASTERN REGIONAL OFFICE

150 SHOUP SUITE #15
IDAHO FALLS, IDAHO 83402
(208) 525-7161

STATE OFFICE

1301 N. ORCHARD ST.
STATEHOUSE MAIL
BOISE, IDAHO 83720
(208) 327-7906

SOUTHERN REGIONAL OFFICE

222 SHOSHONE STREET EAST
TWIN FALLS, ID 83301
(208) 734-3578

NORTHERN REGIONAL OFFICE

1910 NORTHWEST BLVD. SUITE 210
COEUR D'ALENE, IDAHO 83814
(208) 765-4639

May 21, 1991

To Whom it may concern:

My name is Alfred Moir Age 77

775 12th St.

Idaho Falls, Idaho 83404

I pledge my word that the well on the property of Rex's
R.V. Sales at 3195 No. Yellowstone Idaho Falls, now owned
by Alice and Rex Shurtliff was drilled and put into use in
1932/ by John W. Hogan. He was our next door neighbor and
I personally helped him building his home at that time. I
worked for at least two years for him, and was the caretaker
when they were away. Our home was on one side of the R.R.
tracks and theirs on the other. I drank the water of this well
as used it for all culinary purposes. Mr. Hogan is now deceased
but I state this to be fact.

Alfred Moir.

775-12th St.

Date May 21-1991

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NOV 11 1992

May 2, 1991

North Forty Ltd.
P.O. Box 2235
Idaho Falls, ID 83403

RE: Evidence of Priority

Dear Sir:

The Notice of Claim identified with the number shown at the end of this letter has been filed in the Snake River Basin Adjudication (SRBA). The Notice indicates the water usage is 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 Notice 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"**.

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 Notice have been or soon will be conducted by Department personnel. **But, the Department will not recommend the Notice be decreed by the court if no evidence of a priority date is submitted.**

Please submit the required evidence supporting the priority date by **June 3, 1991**, referencing all documents with the corresponding Notice number. If you have any questions not covered by this letter or the enclosed pamphlet, please contact this office.

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North Forty Ltd.

Page 2

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
Water right Supervisor, Adjudication

EC:sc

Enclosure: Brochure on "Evidence of Priority"
Proof Report

A25-13026
NORTH FORTY LTD
P.O. BOX 2235

IDAHO FALLS

ID 83403

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NOV 11 1992

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
MICHAEL D. CRAPO
GAYLE A. SORENSON
DONALD L. HARRIS
GREGOR S. CHVISUK
RANDALL B. REED
MARIE T. FEELEY
ROBERT M. FOLLETT

WEST ONE BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1988)

R. VERN KIDWELL, OF COUNSEL

August 23, 1990

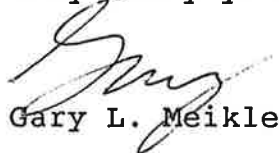
Mr. and Mrs. Rex S. Shurtliff
3575 Brookfield Lane
Idaho Falls, Idaho 83406

Dear Rex:

I am enclosing the original Title Insurance Policy and the Grant Deed, which has been recorded. You should keep both of these documents with your important papers. Also enclosed is the invoice on the title insurance, which you should pay directly to Bonneville Land & Title Company.

Best personal regards.

Very truly yours,



Gary L. Meikle

GLM:jah/0027h(30)
#6683.00

Enclosures

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NOV 11 1992

FSBO
Bonneville Land & Title Co.

497 N. Capital Ave., Suite 100 • P.O. Box 51690 • Idaho Falls, ID 83405-1690 • (208) 524-6600

TO
Gary Meikle
Holden, Kidwell, Hahn & Crapo
West One Bank Building
Idaho Falls, Idaho 83402

*WE CARE ABOUT
THE PEOPLE AND PROPERTY
OF BONNEVILLE*

RE: Rex S. Shurtliff	STATEMENT	DATE: 08/02/90
TITLE INSURANCE NO: T-6434	OWNERS \$ 230,000.00 \$ 869.50	
	STD. MTGEE. \$	
	ALTA MTGEE. \$	
	SIM. ISSUE	
	ENDORSEMENTS:	

RECORDING	Warranty Deed	Trust Deed	Reconveyance(B)28.00
OTHER	Grant Deed	15.00	

TOTAL	\$ 912.50
-------	-----------

PROPERTY DESCRIPTION:



TICOR TITLE INSURANCE

MICROFILMED
NOV 11 1992

BONNEVILLE COUNTY
CLERK

791040

GRANT DEED

90 AUG -2 PM 4:46

That The North Forty, an Idaho Limited Partnership, for good and valuable consideration does by these presents grant to Rex S. Shurtliff and Alice Shurtliff, husband and wife of 2195 N. Yellowstone, Idaho Falls, Idaho, the following described real property in Bonneville County, Idaho:

Beginning at a point that is South 89°43' West along the Section line 1440.17 feet and the ^{nce} South 49°07' West 47.70 feet along the West right of way line of the Yellowstone Highway from the Northeast corner of Section 9, Township 2 North, Range 38, East of the Boise Meridian, Bonneville County, Idaho, and running thence South 49°07' West 509.62 feet along the Northwesterly right of way line of the Yellowstone Highway to the Northeasterly right of way line of the O.S.L.R.R.; thence North 63°29' West along said railroad right of way line 735.57 feet; thence North 89°43' East 1043.50 feet to the point of beginning.

Shown of record to be:

Commencing at a point 1429 feet West of the Northeast Corner of Section 9, Township 2 North, Range 38, East of the Boise Meridian, Bonneville County, Idaho, thence running West along the North line of said section 1100 feet to the North line of the right of way of the Oregon Short Line Railway; thence running along said right of way 761 feet to the West side of U.S. Highway No. 191; thence running Northeasterly along said highway 539 feet to the place of beginning, LESS highway right of way heretofore conveyed to the State of Idaho.

INSTRUMENT NO.	791040
DATE	8-2-90
INST. CODE	352
FICHE NO.	6588-42
FEE	15.00
STATE OF IDAHO) COUNTY OF BONNEVILLE) ss	
I, County Clerk, do hereby certify that the within instrument was recorded.	
Donald Longmore, County Clerk	

The North Forty, an Idaho Limited Partnership

David L Bailey
David L Bailey

DATED: 8/1/90

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NOV 11 1992

Harvey L. Crandall DATED: Aug 1, 1990
Harvey L. Crandall

K. Lamar John DATED: Aug 1, 1990
K. Lamar John

Willard Price DATED: 8-2-90
Willard Price

Vernon O. Gaffner DATED: 8-1-90
Vernon O. Gaffner

B.C. Enterprise

By: Willard Price DATED: 8-2-90
Willard Price,
Authorized Agent

STATE OF IDAHO)
County of Bonneville)

On this 1st day of August, 1990, before me, the undersigned Notary Public, personally appeared David L. Bailey known to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same as for and on behalf of THE NORTH FORTY, an Idaho Limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year in this certificate first above written.

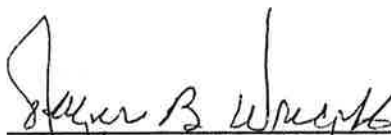
Jay B. Wright
Notary Public for Idaho
Residing at Idaho Falls
my commission expires: 2/28/92

MICROFILMED
NOV 11 1992

STATE OF IDAHO)
)
County of Bonneville)

On this 1st day of August, 1990, before me, the undersigned Notary Public, personally appeared Harvey C. Crandall known to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same as, for and on behalf of THE NORTH FORTY, an Idaho Limited Partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year in this certificate first above written.

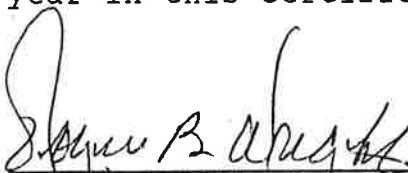


Notary Public for Idaho
Residing at Idaho Falls
My commission expires: 2/28/92

STATE OF IDAHO)
)
County of Bonneville)

On this 1st day of August, 1990, before me, the undersigned Notary Public, personally appeared K. Lamar John known to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same as, for and on behalf of THE NORTH FORTY, an Idaho Limited Partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year in this certificate first above written.



Notary Public for Idaho
Residing at Idaho Falls
My commission expires: 2/28/92

MICROFILMED

NOV 11 1992

STATE OF IDAHO)
)
County of Bonneville)

On this 2 day of August, 1990, before me, the undersigned Notary Public, personally appeared Willard Price known to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same as, for and on behalf of THE NORTH FORTY, an Idaho Limited Partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year in this certificate first above written.



Angie Thiel
Notary Public for Idaho
Residing at Idaho Falls, ID
My commission expires: 4/17/96

STATE OF IDAHO)
)
County of Bonneville)

On this 1 day of August, 1990, before me, the undersigned Notary Public, personally appeared Vernon O. Gaffner known to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same as, for and on behalf of THE NORTH FORTY, an Idaho Limited Partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year in this certificate first above written.



Barbara C. Olsen
Notary Public for Idaho
Residing at Idaho Falls, ID
My commission expires: 3-2-93

MICROFILMED

NOV 11 1992

STATE OF IDAHO)
)
County of Bonneville)

On this 2 day of August, 1990, before me, the undersigned Notary Public, personally appeared Willard Price, authorized agent for B. C. Enterprise, known to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same as, for and on behalf of THE NORTH FORTY, an Idaho Limited Partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year in this certificate first above written.



Angie Thiel
Notary Public for Idaho
Residing at
My commission expires: ~~4/96~~
4/17/96

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NOV 11 1992



Policy of Title Insurance

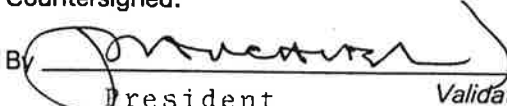
SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS CONTAINED IN SCHEDULE B AND THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS HEREOF, TICOR TITLE INSURANCE COMPANY (a Stock Company), a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs, attorneys' fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested otherwise than as stated therein;
2. Any defect in or lien or encumbrance on such title;
3. Lack of a right of access to and from the land; or
4. Unmarketability of such title.

This policy shall not be valid or binding until countersigned below by a validating signatory of the Company.
Rex S. Shurtliff
O-342642
T-6434



BONNEVILLE LAND & TITLE CO.
Countersigned:

By  President Validating Signatory

TICOR TITLE INSURANCE COMPANY

By



President

Attest

Secretary

MICROFILMED
NOV 11 1992

Schedule of Exclusions from Coverage

The following matters are expressly excluded from the coverage of this policy:

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

Conditions and Stipulations

1. Definition of Terms

The following terms when used in this policy mean:

- (a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company may have had against the named insured, those who succeed to the interest of such insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.
- (b) "insured claimant": an insured claiming loss or damage hereunder.
- (c) "knowledge": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records.
- (d) "land": the land described, specifically or by reference in Schedule A and improvements affixed thereto which by law constitute real property; provided, however, the term "land" does not include any property beyond the lines of the area specifically described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
- (e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (f) "public records": those records which by law impart constructive notice of matters relating to said land.

2. Continuation of Insurance after Conveyance of Title

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured so long as such insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from such insured, or so long as such insured shall have liability by reason of covenants of warranty made by such insured in any transfer or conveyance of such estate or interest; provided, however, this policy shall not continue in force in favor of any purchaser from such insured of either said estate or interest or the indebtedness secured by a purchase money mortgage given to such insured.

3. Defense and Prosecution of Actions — Notice of Claim to be Given by an Insured Claimant

- (a) The Company, at its own cost and without undue delay, shall provide for the defense of an insured in all litigation consisting of actions or proceedings commenced against such insured, or a defense interposed against an insured in an action to enforce a contract for a sale of the

estate or interest in said land, to the extent that such litigation is founded upon an alleged defect, lien, encumbrance, or other matter insured against by this policy.

- (b) The insured shall notify the Company promptly in writing (i) in case any action or proceeding is begun or defense is interposed as set forth in (a) above, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If such prompt notice shall not be given to the Company, then as to such insured all liability of the Company shall cease and terminate in regard to the matter or matters for which such prompt notice is required; provided, however, that failure to notify shall in no case prejudice the rights of any such insured under this policy unless the Company shall be prejudiced by such failure and then only to the extent of such prejudice.

- (c) The Company shall have the right at its own cost to institute and without undue delay prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as insured, and the Company may take any appropriate action under the terms of this policy, whether or not it shall be liable thereunder, and shall not thereby concede liability or waive any provision of this policy.

- (d) Whenever the Company shall have brought any action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any such litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

- (e) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured hereunder shall secure to the Company the right to so prosecute or provide defense in such action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for such purpose. Whenever requested by the Company, such insured shall give the Company all reasonable aid in any such action or proceeding, in effecting settlement, securing evidence, obtaining witnesses, or prosecuting or defending such action or proceeding, and the Company shall reimburse such insured for any expense so incurred.

4. Notice of Loss — Limitation of Action

In addition to the notices required under paragraph 3(b) of

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these Conditions and Stipulations, a statement in writing of any loss or damage for which it is claimed the Company is liable under this policy shall be furnished to the Company within 90 days after such loss or damage shall have been determined and no right of action shall accrue to an insured claimant until 30 days after such statement shall have been furnished. Failure to furnish such statement of loss or damage shall terminate any liability of the Company under this policy as to such loss or damage.

5. Options to Pay or Otherwise Settle Claims

The Company shall have the option to pay or otherwise settle for or in the name of an insured claimant any claim insured against or to terminate all liability and obligations of the Company hereunder by paying or tendering payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred up to the time of such payment or tender of payment, by the insured claimant and authorized by the Company.

6. Determination and Payment of Loss

(a) The liability of the Company under this policy shall in no case exceed the least of:

- (i) the actual loss of the insured claimant; or
- (ii) the amount of insurance stated in Schedule A.

(b) The Company will pay, in addition to any loss insured against by this policy, all costs imposed upon an insured in litigation carried on by the Company for such insured, and all costs, attorneys' fees and expenses in litigation carried on by such insured with the written authorization of the Company.

(c) When liability has been definitely fixed in accordance with the conditions of this policy, the loss or damage shall be payable within 30 days thereafter.

7. Limitation of Liability

No claim shall arise or be maintainable under this policy

(a) if the Company, after having received notice of an alleged defect, lien or encumbrance insured against hereunder, by litigation or otherwise, removes such defect, lien or encumbrance or establishes the title, as insured, within a reasonable time after receipt of such notice;

(b) in the event of litigation until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as insured, as provided in paragraph 3 hereof; or

(c) for liability voluntarily assumed by an insured in settling any claim or suit without prior written consent of the Company.

8. Reduction of Liability

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. No payment shall be made without producing this policy for endorsement of such payment unless the policy be lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

9. Liability Noncumulative

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring either (a) a mortgage shown or referred to in Schedule B hereof which is a lien on the estate or interest covered by this policy, or (b) a mortgage hereafter executed by an insured which is a charge or lien on the estate or interest described or referred to in Schedule A and the amount so paid shall be deemed a

payment under this policy. The Company shall have the option to apply to the payment of any such mortgages any amount that otherwise would be payable hereunder to the insured owner of the estate or interest covered by this policy and the amount so paid shall be deemed a payment under this policy to said insured owner.

10. Apportionment

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of said parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each such parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement herein or by an endorsement attached hereto.

11. Subrogation upon Payment or Settlement

Whenever the Company shall have settled a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant. The Company shall be subrogated to and be entitled to all rights and remedies which such insured claimant would have had against any person or property in respect to such claim had this policy not been issued, and if requested by the Company, such insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect such right of subrogation and shall permit the Company to use the name of such insured claimant in any transaction or litigation involving such rights or remedies. If the payment does not cover the loss of such insured claimant, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss. If loss should result from any act of such insured claimant, such act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against hereunder which shall exceed the amount, if any, lost to the Company by reason of the impairment of the right of subrogation.

12. Liability Limited to this Policy

This instrument together with all endorsements and other instruments, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or any action asserting such claim, shall be restricted to the provisions and conditions and stipulations of this policy. No amendment of or endorsement to this policy can be made except by writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

13. Notices, Where Sent

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to its Principal Office, Claims Department, 6300 Wilshire Boulevard, P.O. Box 92792, Los Angeles, California 90009.

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Schedule A

Agent's Order No.:

T-6434 bh

Number	Amount of Insurance	Date of Policy	Premium
OWNERS O 342642	\$ 230,000.00	August 2, 1990 at 4:46 p.m.	\$ 869.50

1. Name of Insured:

REX S. SHURTLIFF and ALICE SHURTLIFF, husband and wife.

2. Title to the estate or interest covered by this policy at the date hereof is vested in the insured.

3. The estate or interest in the land described or referred to in this Schedule covered by this policy is Fee Simple.

4. The land referred to in this policy is located in the County of Bonneville
State of Idaho and described as follows:

Beginning at a point that is S89°43'W along the Section line 1440.17 feet and thence S49°07'W 47.70 feet along the West right of way line of the Yellowstone Highway from the Northeast corner of Section 9, Township 2 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho, and running thence S49°07'W 509.62 feet along the Northwestern right of way line of the Yellowstone Highway to the Northeasterly right of way line of the O.S.L.R.R.; thence N63°29'W along said railroad right of way line 735.57 feet; thence N89°43'E 1043.50 feet to the point of beginning.

Shown of record to be:

Commenceing at a point 1429 feet West of the Northeast Corner of Section 9, Township 2 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho, thence running West along the North line of said section 1100 feet to the North line of the right of way of the Oregon Short Line Railway; thence running along said right of way 761 feet to the West side of U.S. Highway 191; thence running Northeasterly along said highway 539 feet to the place of beginning.

LESS AND EXCEPTING THEREFROM: Any highway right of way heretofore conveyed to the State of Idaho.

(Continued)

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Schedule B (Continued)

No.

0-342642

Legal Description (continued)

ALSO LESS AND EXCEPTING THEREFROM: Any highway or county road
right of ways.

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Schedule B

POLICY NO. 0-342642

This policy does not insure against loss or damage by reason of the following:

STANDARD EXCEPTIONS

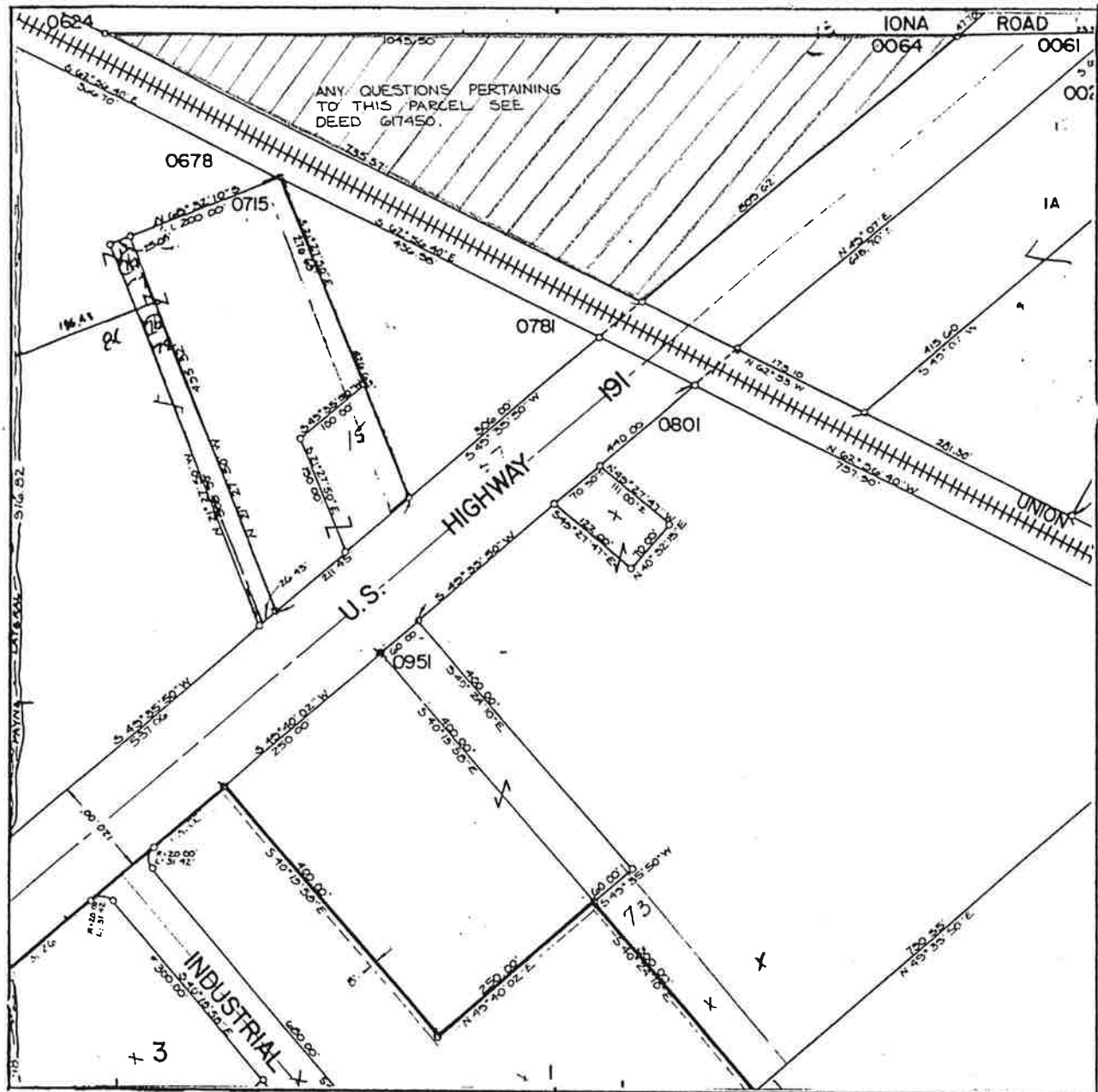
- (a) Rights or claims of parties in possession not shown by the public records.
- (b) Easements, or claims of easements, not shown by the public records.
- (c) Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of the premises.
- (d) Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
- (e) Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.
- (f) Taxes or assessments which are not shown as existing liens by the public records.

SPECIAL EXCEPTIONS

- (g) Taxes for the year 1989 and all prior taxes have been paid.
(Tax No. RP02N37E090604 \$3,345.44 full year, 1989).
Taxes for the year 1990 are an accruing lien, not yet due or payable.
Liability for added assessments and subsequent tax billings, if any, pursuant to Idaho Code Section 63-403.
- (h) Easements and right of ways for highways, roads, railroads, ditches, canals, gas, sewer, phone, water, storm, pole, power and transmission lines, buried or otherwise, as they may exist.

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SW 1/4 NE 1/4

S

Section 9 Township 2 N Range 38 E.B.M., Bonneville County, Idaho

Scale for Section - 800 feet = 1 inch

Scale for Quarter - 400 feet = 1 inch

☒ Scale for Quarter Quarter - 200 feet = 1 inch

This plat is made solely for the purpose of assisting in locating said land, and the company assumes no liability for variation, if any, with actual survey.



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RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	MAXIMUM DIVERSION	STAGE
A25-13026	NORTH FORTY LTD P.O. BOX 2235 IDAHO FALLS ID 83403	06/01/1953	COMMERCIAL	01-01 12-31	0.04 CFS	BENEFICIAL USE

0.04 CFS TOTAL
0.00 AFA TOTAL

SOURCE: GROUNDWATER
OTHER RIGHTS: NONE
CONDITIONS OF APPROVAL:

TRIBUTARY:

REMARKS: CONTACT PERSON IS KENNETH LAMAR JOHN

POINT OF DIVERSION:
T02N R38E S09 NWNE

PLACE OF USE: COMMERCIAL
T02N R38E S09 NWNE

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SCANNED

AUG 0 2001

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: A25-13026
Date Received: 9/14/1989
Receipt No: E010377
Received By: _____

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

1. Name: REX S. SHURTLIFF 208-522-1513
Address: P.O. BOX 2086
IDAHO FALLS, ID 83403

AND/OR

Name: ALICE R. SHURTLIFF 208-522-1513
Address: P.O. BOX 2086
IDAHO FALLS, ID 83403

2. Date of Priority: JUN 1, 1953

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
02N	38E	9	NW	NE			BONNEVILLE

5. Description of diverting works:
WELL AND PUMP TO COMMERCIAL BUILDING

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
COMMERCIAL	01/01	12/31	0.040		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
COMMERCIAL

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10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
02N	38E	9	NW NE		COMMER	

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:
NONE

14. Remarks:
CONTACT PERSON IS KENNETH LAMAR JOHN

15. Basis of Claim: BENEFICIAL USE

16. Signature(s)

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

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s): _____ Date: _____
_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

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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 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: A25-13026
Date Received: 9/14/1989
Receipt No: 200577
Received By: HWS

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: NORTH FORTY LTD
Address: P.O. BOX 2235
IDAHO FALLS, ID 83403 208-522-1412

2. Date of Priority: JUN 01, 1953

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
02N	38E	9	NW NE		BONNEVILLE

5. Description of diverting works:
WELL AND PUMP TO COMMERCIAL BUILDING

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
COMMERCIAL	01/01	12/31	0.040		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
COMMERCIAL

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
02N	38E	9	NW NE		COMMER	

11. Place of use in counties: BONNEVILLE

A25-13026

Page 1

Date: 09/14/89

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

13. Other Water Rights Used:
NONE

14. Remarks:
CONTACT PERSON IS KENNETH LAMAR JOHN

15. Basis of Claim: BENEFICIAL USE

16. Signature(s)

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

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s): K. Lamar John Date: 9-14-89
General Partner Date: _____

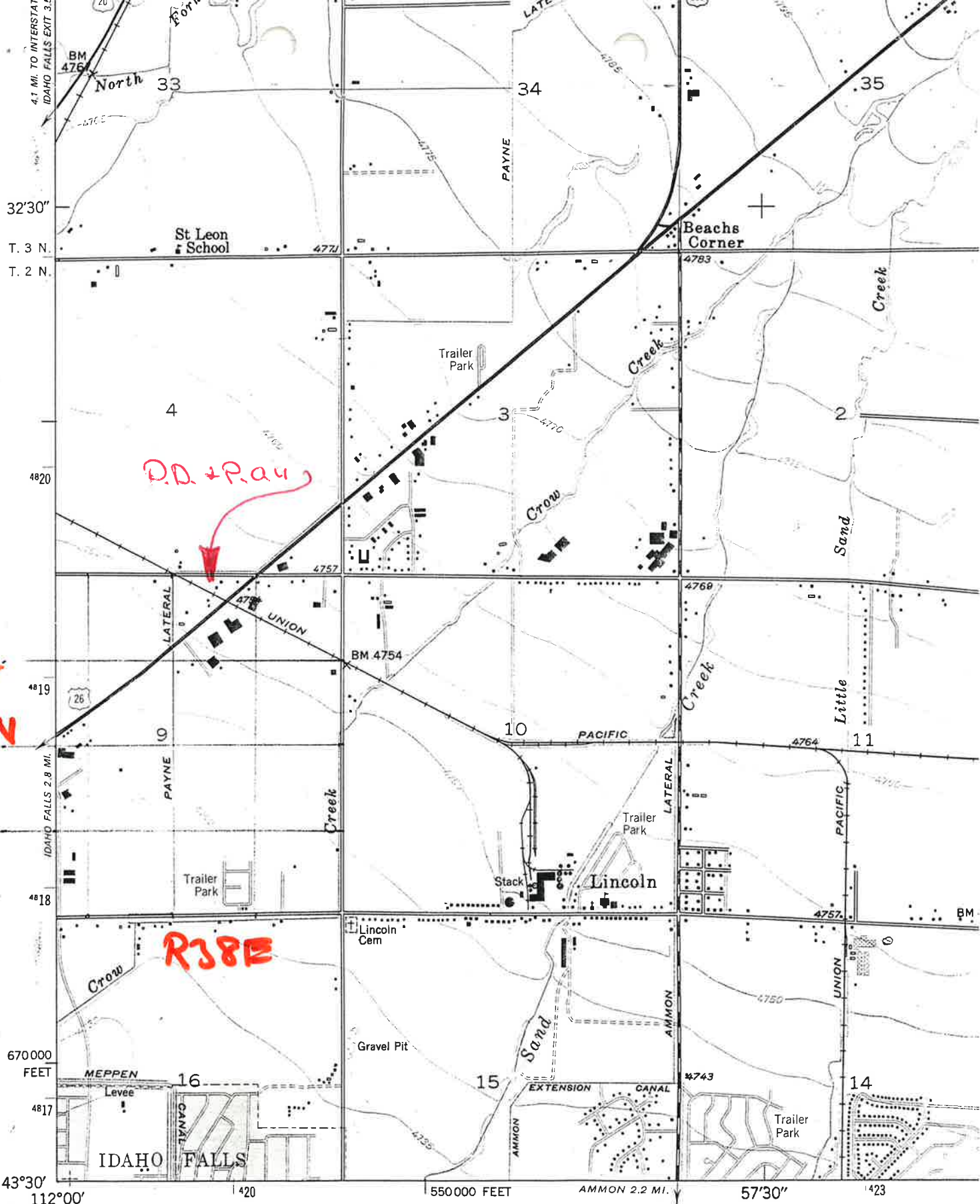
State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 14th day
of Sept 19 89

Betty J. Thompson
Notary Public

Seal

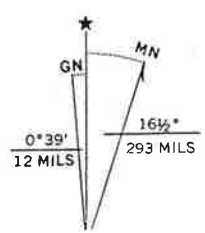
Residing at BETTY J. THOMPSON, NOTARY PUBLIC
RESIDING AT IDAHO FALLS, IDAHO
My Commission Expires MY COMMISSION EXPIRES: 6-30-94



Mapped, edited, and published by the Geological Survey
Control by USGS and NOS/NOAA

Culture and drainage compiled by multiplex methods,
from aerial photographs taken 1946
Topography by plane-table methods 1948

Polyconic projection. 1927 North American datum
10,000-foot grid based on Idaho coordinate system,
east zone
1000-meter Universal Transverse Mercator grid ticks,



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IDAHO FALLS SOUTH
3570' N.E.