

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: A63-00134
Date Received: 9/11/1989
Receipt No: W005863
Received By: EW

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: HART-DAVIS DITCH CO., INC. 208-939-0284
Address: C/O LORNA HIBBARD
1320 LINDER RD.
EAGLE, ID 83616

2. Date of Priority: JUN 01, 1864

3. Source: BOISE R. Trib. to: SNAKE R.

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	01E	18	NE	NE			ADA

5. Description of diverting works:
DIVERSION DAM, SLOUGH TO CULVERT, DITCH, GRAVITY FLOW

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	3.300		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	01E	7	SW	SW		IRR	8.0
Section Acres							8.0

10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
04N	01E	18	NW		NE		IRR	12.0
			NW		NW		IRR	35.0
			SW		NW		IRR	15.0
			NW		SW		IRR	40.0
			NW		SE		IRR	26.0
			Section Acres					128.0
	01W	12	SE		SE		IRR	0.5
			Section Acres					0.5
		13	NE		NE		IRR	23.0
			NW		NE		IRR	33.0
			SW		NE		IRR	40.0
			SE		NE		IRR	36.0
			NE		NW		IRR	15.0
			SW		NW		IRR	40.0
			SE		NW		IRR	40.0
			NE		SW		IRR	33.5
			NW		SW		IRR	36.0
			SW		SW		IRR	38.0
			SE		SW		IRR	31.0
			NE		SE		IRR	32.0
			NW		SE		IRR	40.0
			SW		SE		IRR	38.0
			SE		SE		IRR	10.0
			Section Acres					485.5
		14	NE		NE		IRR	5.0
			SE		NE		IRR	40.0
			NE		NW		IRR	11.0
			SE		NW		IRR	35.0
			NE		SW		IRR	40.0
			SE		SW		IRR	8.0
			NE		SE		IRR	40.0
			NW		SE		IRR	10.0
			SE		SE		IRR	20.0
			Section Acres					209.0
		24	NE		NE		IRR	8.0
			NW		NW		IRR	4.0
			Section Acres					12.0

10. Place of Use: Continued

Total Acres 843.0

11. Place of use in counties: ADA

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

13. Other Water Rights Used:
A63-00186

14. Remarks:

LANDS ON EAGLE ISLAND. P/D INCOMPLETE IN DECREE.
THERE MAY BE ADDITIONAL LANDS IRRIGATED.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

FARMERS CO-OP DITCH CO.

Decree Plaintiff

vs

RIVERSIDE IRR. DIST.

Decree Defendant

MICROFILMED

AUG 14 1992

MICROFILMED

200 1 7 10

16. Signature(s)

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

Number of attachments: 1

For Organizations:

I do solemnly swear or affirm that I am Secretary of Port Davis Nitel Co., Inc. that I have signed the foregoing document in the space below as Sec of Port Davis Nitel Co. and that the statements contained in the foregoing document are true and correct.

Linda A. Werner
Signature of Authorized Agent
Sec Port Davis Nitel
Title and Organization
9/11/89
Date

State of Idaho)
County of Ada) SS.

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

Seal

Residing at Linda A. Werner
Residing at Boise, Idaho
My Commission Expires December 8, 1994

MICROFILMED
AUG 14 1992

42' 30"

PLD

AG 3-00186
AG 3-00137

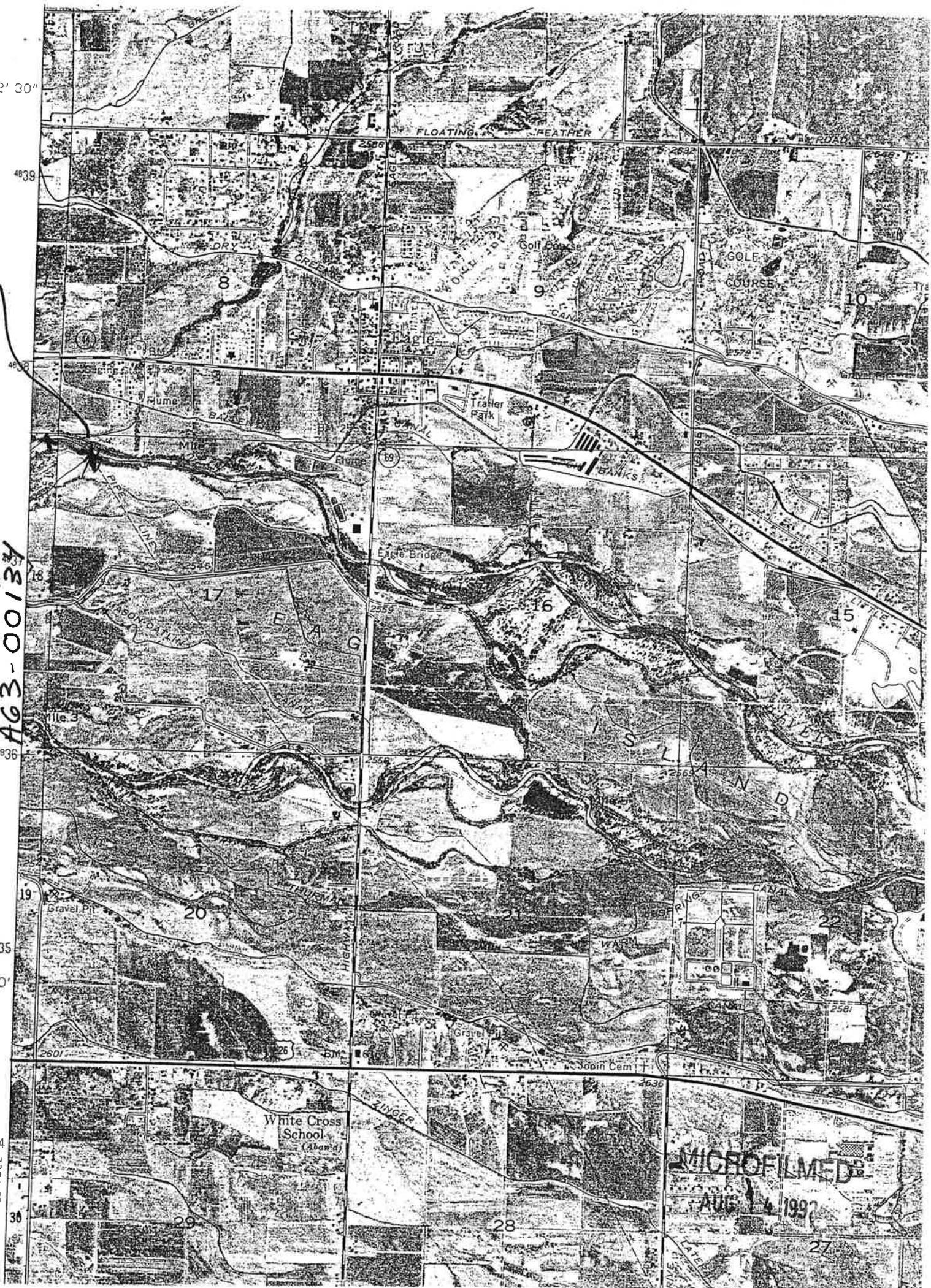
4836

4835

40'

4834

CALDWELL



MICROFILMED
AUG 14 1992

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

DISTRICT COURT - JREB
Fifth Judicial District
County of Twin Falls - State of Idaho

SEP 11 2009

By _____ Clerk
Deputy Clerk

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 63-00134

NAME AND ADDRESS: STATE OF IDAHO
DEPT OF PARKS & RECREATION
STATEHOUSE MAIL
PO BOX 83720
BOISE, ID 83720-0065

SOURCE: BOISE RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 3.30 CFS

This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and preceding to the earliest, shall be reduced to 60 percent of their decreed quantities.

PRIORITY DATE: 06/01/1864

POINT OF DIVERSION: T04N R01E S17 NWN Within Ada County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Irrigation 03-01 TO 11-15 3.30 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

PLACE OF USE: Irrigation Within Ada County
T04N R01E S18 LOT 5 (NWSW) 19.2 LOT 3 () 13.9
LOT 4 () 66.4
R01W S13 NESE 36.8 NWSE 35.8
SWSE 20.2 LOT 8 (SESE) 13.9
LOT 6 () 38.9 LOT 7 () 42.8

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

PLACE OF USE (continued)

287.9 Acres Total

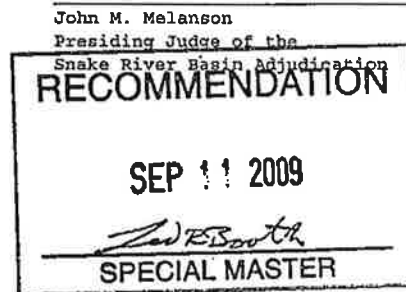
The rights listed below are limited to the irrigation of a combined total of 449 acres in a single irrigation season. Combined Right Nos.: 63-134, 63-33068, 63-33070.

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. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



RECEIVED

JUN 06 2008

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JUN - 4 2008	
By _____	Clerk
Deputy Clerk	

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

-) Subcases 63-00132, 63-00133, and 63-00134
-) (State of Idaho Dept. of Parks &
-) Recreation v. Hart-Davis Ditch Company
-) and Mace Catlin Mutual Ditch Company)
-)
-) Related Subcases 63-00134A, 63-00134B,
-) 63-00186A, 63-00186B, 63-17205,
-) and 63-31772
-)
-) MEMORANDUM DECISION AND
-) ORDER ON CROSS MOTIONS FOR
-) SUMMARY JUDGMENT
-)
-) REQUEST FOR AMENDED
-) DIRECTOR'S REPORTS FROM IDWR
-)
-) ORDER VACATING TRIAL AND
-) SETTING STATUS CONFERENCE

Summary of Ruling: The State of Idaho Department of Parks and Recreation, or its predecessors-in-interest, have not conveyed the subject water rights to either the Hart-Davis Ditch Co., Inc., or the Mace-Catlin Mutual Ditch Company. The State of Idaho is not estopped to assert ownership of the applicable portion of the water rights.

I. APPEARANCES

S. Bryce Farris, Ringert Clark Chartered, Boise, Idaho, for Hart-Davis Ditch Company, Inc.

Jon C. Gould, Ringert Clark Chartered, Boise, Idaho, for Mace-Catlin Mutual Ditch Company, Inc.

David Barber, Deputy Attorney General, Boise, Idaho, for the State of Idaho, Department of Parks and Recreation.

Michael C. Creamer, Givens Pursley, LLP, Boise, Idaho, for Ron Sali and Ron Sali Properties, Inc., Profit Sharing Plan.

II. PROCEDURAL BACKGROUND

63-132. A notice of claim for water right 63-132 was filed in the SRBA by the Mace-Catlin Ditch Company on August 25, 1989. The *Director's Report*, issued December 14, 2005, recommended water right 63-132 in the name of the Mace-Catlin Ditch Company, with the following elements:

Source:	Boise River
Quantity:	2.692 cfs [134.6 miner's inches]
Priority Date:	June 1, 1864
Point of Diversion:	T04N R01E Section 16 SESWSW
Purpose and Period of Use:	Stockwater, Irrigation 03/01 to 11/15
Place of Use:	Digital Boundary – 546 acres within the boundary of the Mace-Catlin Ditch Company.

Under "explanatory material," the *Director's Report* states that water right 63-132 is designated as right number 5 in the Stewart Decree.

63-133. A notice of claim for water right 63-133 was filed in the SRBA by the Mace-Catlin Ditch Company on August 25, 1989. The *Director's Report*, issued December 14, 2005, recommended water right 63-133 in the name of the Mace-Catlin Ditch Company, with the following elements:

Source:	Boise River
Quantity:	7.788 cfs [389.4 miner's inches]
Priority Date:	June 1, 1871
Point of Diversion:	T04N R01E Section 16 SESWSW
Purpose and Period of Use:	Irrigation 03/01 to 11/15
Place of Use:	Digital Boundary – 546 acres within the boundary of the Mace-Catlin Ditch Company.

Under “explanatory material,” the *Director’s Report* states that water right 63-133 is designated as right number 52 in the Stewart Decree.

63-134. A notice of claim for water right 63-134 was filed in the SRBA by the Hart-Davis Ditch Co., Inc., on September 11, 1989. The *Director’s Report*, issued December 14, 2005, recommended water right 63-134 in the name of the Hart-Davis Ditch Co., Inc., with the following elements:

Source:	Boise River
Quantity:	3.30 cfs [165 miner’s inches]
Priority Date:	June 1, 1864
Point of Diversion:	T04N R01E Section 17 NWNW
Purpose and Period of Use:	Irrigation 03/01 to 11/15
Place of Use:	Digital Boundary – 498 acres within the boundary of the Hart-Davis Ditch Company.

Under “explanatory material,” the *Director’s Report* states that water right 63-134 is designated as right number 6 in the Stewart Decree.

The Stewart Decree. The *Stewart Decree*, issued by Judge George Stewart on January 18, 1909, *Farmer’s Cooperative Ditch Co. v. Riverside Irrigating Dist., et al.*, *aff’d* 14 Idaho 450 (1908); *Order Denying Motion for a New Trial rev’d*, 16 Idaho 525 (1909), states in Paragraphs V and VI as follows:

V.

That the defendants T. C. CATLIN and POLETTE MACE be and they are hereby awarded the use of the waters of Boise River, diverted from a point on the south bank of said river, on Lot 5, Sec. 17, T. 4N. R. 1 E. B.M., for use on their lands on Eagle Island, Ada County, Idaho, in the following amounts from the following dates;

143 inches, from June 1, 1864; and hereby designated as Right No. 5. [63-132]
393 inches, from June 1, 1871; and hereby designated as Right No. 52. [63-133]
And adjudged to pay \$37.52 costs, in addition to the costs incurred by them.

VI.

That the defendant T.C. CATLIN be and hereby is awarded the use of waters of Boise River, diverted near the center of the NE ¼ of Sec. 18, T. 4N. R. 1E. B.M. through what is known as the Davis & Hart ditch, for use upon lands lying under said ditch on Eagle Island, Ada County, in the following amount from the following date: 165 inches, from June 1, 1864. [63-134]

And adjudged to pay \$11.55 costs, in addition to the costs incurred by him.

Objections in the SRBA. On April 21, 2006, the State of Idaho, Department of Parks and Recreation ("IDP&R"), through Deputy Attorney General David Barber, filed an objection to the *Director's Report* for water rights 63-132, 63-133 and 63-134, asserting that the IDP&R is the owner of a portion of Mace-Catlin's claimed rights 63-132 and 63-133, and the owner of all of water right 63-134.

Also on April 21, 2006, Ron Sali and Ron Sali Properties, Inc. Profit Sharing Plan (hereinafter "Ron Sali"), through his attorney Michael C. Creamer, filed an objection to the *Director's Report* for water right 63-134, asserting ownership of 0.825 cfs [41.25 miner's inches] of water right 63-134.¹

Motions for Summary Judgment. On March 14, 2008, the Mace-Catlin Mutual Ditch Company filed its *Motion for Summary Judgment*, together with a memorandum in support thereof, seeking an order dismissing the IDP&R objections in subcases 63-132 and 63-133. Also filed were the affidavits of Jon C. Gould and Mel Carlson. On April 14, 2008, the State of Idaho filed its response brief.

On March 14, 2008, Hart-Davis Ditch Co., Inc. filed its *Motion for Summary Judgment*, together with a memorandum in support thereof, seeking an order dismissing the IDP&R objection in subcase 63-134. Also filed were the affidavits of Ron Rippey and S. Bryce Farris in support thereof. On April 14, 2008, the State of Idaho filed its response brief. On April 14, 2008, Ron Sali and the Ron Sali Properties, Inc., Profit Sharing Plan filed a response to Hart-Davis Ditch Company's *Motion for Summary*

Judgment, which addressed the issue of the extent to which a ditch company can withhold consent to a shareholder's request to change or transfer the shareholder's water right delivered by the ditch company.

Also on March 14, 2008, the IDP&R filed its *Motion for Summary Judgment*, together with a memorandum in support thereof, seeking a judgment that IDP&R is the holder of legal title to the following water rights in the following amounts:

- a. water right number 63-132 in the amount of 1.52 cfs.
- b. water right 63-133 in the amount of 4.16 cfs.
- c. water right 63-134 in the amount of 3.3 cfs.

The IDP&R also filed the *State of Idaho Department of Parks and Recreation's List of Exhibits*. On April 11, 2008, the Hart-Davis Ditch Company and the Mace-Catlin Mutual Ditch Company filed response briefs. On April 25, 2008, the IDP&R filed its reply brief.

III. STATEMENT OF FACTS

For purposes of deciding the motions for summary judgment, the record reflects the following undisputed facts:

1. The record in these subcases does not contain any written documents, (i.e. deeds, contracts, minute entries, etc.) that would evidence an express conveyance of the water rights 63-132, 63-133, and 63-134, or any portions thereof, from the IDP&R, or its predecessors-in-interest, to either the Mace-Catlin Mutual Ditch Company or the Hart-Davis Ditch Co., Inc., (hereinafter collectively referred to as "Ditch Companies").
2. The water rights at issue herein were perfected on the following dates: 63-132 on June 1, 1864; 63-133 on June 1, 1871; and 63-134 on June 1, 1864.
3. The water rights at issue herein were decreed in the *Stewart Decree* on January 18, 1906.

¹ Ron Sali also filed claims in the SRBA for the portion of water right 63-134 to which he asserts ownership, as reflected in water right claims 63-134A and 63-134B, which were recommended disallowed for the reason that the rights were recommended to the Hart-Davis Ditch Co., Inc., under water right no. 63-134.

4. On November 20, 1929, the State of Idaho purchased real property from Karl Fischer. The decreed place of use for water rights 63-132, 63-133, and 63-134 includes the land so acquired by the State of Idaho.

5. Water right 63-134 has been delivered to the lands owned by the IDP&R via the water delivery system operated by the Hart-Davis Ditch Company.

6. The IDP&R has paid assessments to the Hart-Davis Ditch Company.

7. Water rights 63-132 and 63-133 have been delivered to the lands owned by the IDP&R via the water delivery system operated by the Mace-Catlin Mutual Ditch Company.

8. The IDP&R has paid assessments to the Mace-Catlin Mutual Ditch Company.

9. The IDP&R did not file a notice of claim in the SRBA for the subject water rights.

10. The Hart-Davis Ditch Company was founded in 1924.

11. The Mace-Catlin Mutual Ditch Company was not incorporated until 1999, but prior to incorporation it had been operating since 1960.

IV. ISSUES PRESENTED

The IDP&R's objection to the *Director's Report* for water right claims 63-132, 63-133, and 63-134 is essentially an action for quiet title. The IDP&R asserts that there has been no express conveyance of the subject water rights to the Ditch Companies, and accordingly the SRBA Court should decree the rights in the name of the IDP&R. The Ditch Companies, on the other hand, raise the following issues:

1. Despite the lack of an express conveyance of the subject water rights, has there been an implied conveyance upon formation of the respective Ditch Company?

2. Is the IDP&R barred from claiming ownership of the water rights through the doctrine of laches?

3. Is the IDP&R estopped to claim ownership by reason of the doctrines of equitable estoppel or quasi estoppel?

4. Has the IDP&R abandoned or waived its water rights?

The *Response* filed by Ron Sali raises an issue regarding the extent to which a ditch company can withhold consent to a shareholder's request to change or transfer the shareholder's water right delivered by a mutual ditch company and represented by ditch company shares.

V. MATTER DEEMED FULLY SUBMITTED FOR DECISION

Oral argument occurred in this matter on May 5, 2008. The parties have not requested an opportunity to submit additional briefing, nor does this Special Master require any additional briefing. Therefore, this matter is deemed fully submitted for decision the next business day, or May 6, 2008.

VI. STANDARD OF REVIEW ON SUMMARY JUDGMENT

A motion for summary judgment shall be rendered if 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); *Olsen v. J. A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990). All controverted facts are liberally construed in favor of the non-moving party. *Tusch Enterprises v. Coffin*, 113 Idaho 37, 740 P.2d 1022 (1987). The burden at all times is upon the moving party to prove the absence of a genuine issue of material fact. *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 452 P.2d 362 (1969). The moving party's case must be anchored on something more than speculation, and a mere scintilla of evidence is not enough to create a genuine issue. *R. G. Nelson, A.I.A. v. Steer*, 118 Idaho 409, 797 P.2d 117 (1990). All doubts are to be resolved against the moving party, and the motion must be denied if the evidence is such that conflicting inferences may be drawn therefrom and if reasonable people might reach different conclusions. *Doe v. Durtschi*, 101 Idaho 466, 716 P.2d 1238 (1986). The court is authorized to enter summary judgment in favor of non-moving parties. *Barlow's Inc. v. Bannock Cleaning Corp.*, 103 Idaho 310, 647 P.2d 766 (Ct. App. 1982).

In cases where opposing parties both file motions for summary judgment relying on the same facts, issues, and theories, the parties essentially stipulate that there is not

genuine issue of material fact precluding the court from entering summary judgment. *Eastern Idaho Agricultural Credit Assoc. v. Neibaur*, 130 Idaho 623, 626, 944 P.2d 1386, 1389 (1997)(citing *Brown v. Perkins*, 129 Idaho 189, 923 P.2d 434 (1996)). If however, the parties file cross motions for summary judgment based on different theories, the parties are not considered to have stipulated that there is no genuine issue of material fact. *Id.* (citing *Wells v. Williamson*, 118 Idaho at 40, 794 P.2d at 629).

VII. ANALYSIS

The objections to the *Director's Report* filed by the IDP&R essentially amount to an action for quiet title to portions of water rights 63-132 and 63-133, and all of water right 63-134. The undisputed facts set forth in the affidavits and pleadings on file in these subcases demonstrate that at no point in time did the IDP&R or its predecessors-in-interest convey the subject water rights, or any portions thereof, to either the Hart-Davis Ditch Company or the Mace-Catlin Mutual Ditch Company. The Ditch Companies do not argue that such a conveyance took place, but rather rely on certain equitable doctrines to argue that the IDP&R is now barred from claiming ownership of the water rights. For the reasons set forth herein, this Special Master holds that the applicable portions of the subject water rights have never been conveyed or transferred to the respective Ditch Companies, either expressly or impliedly, and further that equity does not now prevent the IDP&R from asserting its claims in the SRBA. Accordingly, this Special Master finds that the subject water rights should be split and the portions thereof owned by the IDP&R be decreed in its name.

Prior to discussing the Ditch Companies equitable theories, this Special Master makes the following observations that apply to all of the Ditch Companies' equitable theories. The water rights at issue herein predate the creation of both Ditch Companies, both in terms of when the water was appropriated, and in terms of the date they were decreed in the *Stewart Decree*. Prior to the formation of the Hart-Davis Ditch Company in 1924, and prior to the beginning of operations of the Mace-Catlin Ditch Company in 1960, the water rights were privately and separately owned. In the event that the IDP&R or its predecessors-in-interest have received shares of stock in either of these Ditch

Companies, such receipt of stock would have occurred at discrete point(s) in time and would have been pursuant to a contract between the Ditch Company and the shareholder. There can be no question that the shareholder would have given valuable consideration in exchange for shares of stock. With regard to the instant water rights, to the extent that the IDP&R is in fact a shareholder in either Ditch Company, the record does not contain any information about when the shares of stock were issued to the IDP&R or its predecessors-in-interest, nor is there any information regarding the nature of the consideration paid in exchange for the shares of stock.² The point here is that at some point in time when the shares of stock were acquired, there would have been a meeting of the minds between the Ditch Company and the shareholder. To the extent that such a meeting of the minds did not include a conveyance of water rights from the shareholder to the Ditch Company – and there certainly is nothing in the record which suggests that the consideration so paid was a water right – the use of an equitable argument to now supersede the prior contractual relationship of the parties is problematic.

A. The *prima facie* weight of the *Director's Report* is rebutted.

As a preliminary matter, it is necessary to determine whether the *prima facie* weight of the *Director's Report* has been rebutted. The IDP&R did not file claims in the SRBA for the water rights to which it asserts ownership; rather the claims were filed by the respective Ditch Companies, and the IDP&R filed an objection to the name and address element of the *Director's Report*. Therefore, when IDWR conducted its investigation of these water right claims, it had no reason to spend any investigative resources for purposes of determining ownership. Although the *Stewart Decree* has been in the possession of IDWR for many years, information regarding changes of ownership and division of land for the subject water rights has not been provided to IDWR.³

The IDP&R has conducted exhaustive research into its chain of title for the subject land, and has submitted the same to the Court in these proceedings. The chain of

² At oral argument on summary judgment, attorney Michael Creamer pointed out that the most likely consideration paid was the continuing obligation to pay the assessments of the Ditch Companies. This Special Master concurs in this assessment.

³ The statutory requirement found in Idaho Code § 42-228 that water right owners notify the Department of changes in ownership was not enacted until 1996.

title so submitted is perfect and is proven through mesne conveyances from the United States government. *Affidavit of Charles C. Smith*. The instruments in the record show no severance of ownership between the water rights and the land to which the rights are appurtenant.

In accordance with the foregoing, this Special Master finds that the evidentiary presumption of the *Director's Report* has been rebutted with respect to ownership of the subject water rights.

B. There has been no express conveyance of the subject water rights to either the Hart-Davis Ditch Company or the Mace-Catlin Mutual Ditch Company.

In Idaho, a water right is legally treated as an interest in real property and therefore can only be conveyed or transferred in the same manner as real property. *Hale v. McCammon Ditch Co.*, 72 Idaho 478, 488, 244 P.2d 151 (1952)(citing I.C. § 9-503; *Ada County Farmers' Irrigation Co. v. Farmers' Canal Co.*, 5 Idaho 793, 51 P. 990; *Burnham v. Freeman*, 11 Colo. 601, 19 P. 761). Title to real property may be transferred by contract or deed of the owners, adverse possession, condemnation, or operation of law. *Id.* Voluntary transfers of real property are required to be effectuated via written instrument. I.C. § 9-503. In the instant subcases, there is no dispute regarding the non-existence of any writing which would evidence a conveyance of the subject water rights. Neither the IDP&R nor its predecessors-in-interest have ever executed a written instrument of conveyance and delivered the same to either Ditch Company.

It is the contention of the Ditch Companies that the IDP&R or its predecessors-in-interest have impliedly conveyed the subject water rights, and further that the IDP&R is barred from claiming ownership under the doctrines of laches, estoppel, and waiver/abandonment. In support of their arguments, the Ditch Companies argue that ditch company law in Idaho is such that ditch companies are formed for the purpose of conveying water to shareholder, with the individual shareholders pooling their assets and conveying their water rights to the ditch company. The Ditch Companies cite to *Jacobucci v. District Court*, 541 P.2d 667, 671 (Colo. 1975) in support of this proposition. While this Special Master does not doubt that there are likely ditch

companies in Idaho that hold legal title to water rights, there certainly is no hard and fast rule that a ditch company must hold legal title to the water rights which are delivered through its conveyance system. The consideration paid by a shareholder in exchange for shares of stock in a ditch company certainly could be a water right, but such consideration could also be money, labor, easements or rights of way, or the obligation to pay yearly assessments. As stated by the Idaho Supreme Court in *Swank v. Sweetwater Irrigation and Power Company, Ltd.*, 15 Idaho 353, 98 P. 297 (1908): "Ownership of a ditch and the water right for waters to flow through the ditch may, and often do, exist in different parties. The existence of the one right does not necessarily imply the existence of the other right in the same party." *Id.* at 360 (citing *Ada County Farmers' Irrigation Co. v. Farmers' Canal Co.*, 5 Idaho 793, 51 P. 990; *Stocker v. Kirtley*, 6 Idaho 795, 59 P. 891; *Parke v. Boulware*, 7 Idaho 490, 63 P. 1045).

C. There has been no implied conveyance of the subject water rights to either the Hart Davis Ditch Company or the Mace-Catlin Mutual Ditch Company.

The Ditch Companies make the argument that "any lack of an express conveyance is rebutted by implied conveyance to the ditch company when Hart Davis [or Mace Catlin] was formed and the longstanding treatment of the State as a shareholder of Hart Davis [or Mace Catlin], subject to the assessments and rules and regulations of Hart Davis [or Mace Catlin]". *Hart-Davis Memo in Support at 3*. This argument is premised upon the Ditch Companies' argument that under the law governing ditch companies, it is the ditch company that owns the water right.

There are several problems with this argument. First, as set forth in the preceding section, there is nothing in Idaho law that requires the shareholders of a ditch company to surrender their water rights to the company, and there are numerous examples in Idaho where the ownership of the ditch and the ownership of the right to the use of the water in the ditch are not vested in the same person or entity. *See e.g. Johnson v. Strong Arm Reservoir Irrigation District*, 82 Idaho 478, 356 P.2d 67 (1960), where the Court recites the following from the trial transcript:

On cross-examination by appellants' attorney, the witness Kofoed testified:

'A. My understanding from Mr. Johnson's father, Julius Johnson, Shulldberg and George Condie, those old-timers in there, at the time they formed this Strongarm Irrigation district out there, those fellows with the decreed water put their water in the reservoir for their share of stock. The other fellows that got stock in the reservoir furnished the money for doing the work and raising the reservoir,- they did the work and like that for stock in the reservoir. That is why they acquired stock over in Banida, some of those fellows over there.

'Q. Who told you that?

'A. Julius Johnson, William Shulldberg and George Condie.

'Q. They traded their water rights for stock?

'A. Yes, sir.'

Id., at 483-84, 356 P.2d at 70.⁴ Again, in Idaho there are no statutory or common law requirements that the shareholders in a mutual ditch company convey their water rights to such company. Accordingly, the founders of such a company are free to set up a company that owns the water rights, a company that does not own the water rights, and a company that is a hybrid.

Another problem with the Ditch Companies' argument is that there is no common law or statutory doctrine in Idaho that allows an implied conveyance of title to real property. As set forth above, the Statue of Frauds requires such conveyances to be made in writing. I.C. § 9-503.

D. The IDP&R is not barred from claiming ownership of the water rights by the doctrine of laches.

The Ditch Companies argue that the doctrine of laches bars the IDP&R from claiming ownership of the subject water rights, or any portion thereof. For the reasons set forth below, this Special Master holds that the IDP&R is not barred by laches from asserting its claim to ownership.

In *Sears v. Berryman*, 101 Idaho 843, 847, 623 P.2d 455, 459 (1981), the Idaho Supreme Court described the doctrine of laches:

The doctrine of laches is a creation of equity and is a species of equitable estoppel. "Long and continuous knowing acquiescence in another's use and enjoyment of a property or privilege may preclude one from

⁴ Although the entity had the words "Irrigation District" in its name, the Strongarm Court pointed out that it was really a mutual ditch company.

subsequently asserting his claim.” However, “(l)apse of time is not alone sufficient to defeat a right on the ground of laches. It must be shown that the (claimant) has been misled, to his injury, by the failure of the (holder of the right) to assert its right earlier.”

Id., at 848, 623 P.2d at 460 (internal citations omitted).

In their briefing, the Ditch Companies assert the following facts demonstrate the “long and continuous knowing acquiescence” element of laches: 1) the State of Idaho did not claim ownership of the water rights until it filed an objection in April of 2006; 2) the State of Idaho acknowledged it was a shareholder of each Ditch Company and paid assessments thereto; and 3) the State of Idaho did not file a notice of claim in the SRBA to the water rights. Assuming *arguendo* that these facts amount to “long and continued knowing acquiescence,” they do not demonstrate the second required element: reliance to the Ditch Companies’ detriment upon the State’s continued relinquishment of its rights. Accordingly, this Special Master holds that the doctrine of laches does not apply in these subcases.

Additionally, as pointed out by the IDP&R in its *Response Brief*:

The delivery of water by the Hart-Davis and Mace-Catlin to the lands owned by the IDP&R and its predecessors and the payment of assessments by the IDP&R and its predecessors to Hart-Davis and Mace Catlin was not acquiescence in the Hart-Davis ownership of the water right no. 63-00134 or in the Mace-Catlin’s ownership of water right nos. 63-00132 and 63-00133. Such delivery of water and payment of assessment is equally consistent with ownership of the water right by the entities that receive the water.

State’s Response Brief at 9. This Special Master agrees with the IDP&R. Furthermore, this Special Master disagrees with the Ditch Companies’ assertion that the State’s failure to file a notice of claim supports acquiescence. It is not uncommon for a claimant to fail to timely file a claim to a water right. The SRBA Court employs a commonly used procedure for processing late claims. The State of Idaho cannot be held to a higher standard than that of a private claimant with respect to the timeliness of asserting a claim of ownership. Additionally, addressing ownership through an objection is equally valid to addressing the issue through competing notices of claim.

E. The IDP&R is not estopped to claim ownership by reason of the doctrines of equitable estoppel or quasi estoppel.

The Ditch Companies argue that the IDP&R is estopped to claim ownership of the subject water rights, or any portion thereof by reason of equitable estoppel or quasi-estoppel. For the reasons set forth below, this Special Master holds that the IDP&R is not estopped to assert its claim to ownership.

In *Willig v. State Dept of Health & Welfare*, 127 Idaho 259, 899 P.2d 969, the Idaho Supreme Court stated:

Equitable estoppel requires (1) a false representation or concealment of a material fact made with actual or constructive knowledge of the truth; (2) that the party asserting estoppel did not and could not have discovered the truth; (3) an intent that the misrepresentation be relied upon; and (4) that the party asserting estoppel relied on the misrepresentation or concealment to his or her prejudice. . . . Quasi estoppel is distinguished from equitable estoppel 'in that no concealment or misrepresentation of existing facts on the one side, no ignorance or reliance on the other is a necessary ingredient.' . . . The doctrine of quasi estoppel applies when it would be unconscionable to allow a party to assert a right which is inconsistent with a prior position.

Id., 127 Idaho at 260, 899 P.2d at 970 (internal citations omitted). The undisputed facts in the record do not support a theory of equitable estoppel. Specifically, there are no facts in the record showing a false representation or concealment, and no facts showing detrimental reliance. Accordingly, this Special Master holds that the IDP&R is not estopped to assert its claim to ownership of the subject water rights.

Regarding the assertion that quasi-estoppel applies for the reason of unconscionability, this Special Master holds that there is nothing unconscionable about the IDP&R's claim to ownership. There are simply no facts in the record which supports a conclusion that the IDP&R and its predecessors-in-interest have ever done anything that could be considered inconsistent with ownership of the water rights. The water was delivered, through the Ditch Companies, to the respective places of use. The IDP&R and its predecessors-in-interest paid assessments to the Ditch Companies. The IDP&R is now properly asserting its claim in a general stream adjudication. Prior to asserting its claims in the SRBA, the IDP&R was not required to somehow reaffirm its claim of ownership to

the Ditch Companies. Accordingly, this Special Master holds that the IDP&R is not estopped through quasi-estoppel to assert ownership of the subject claims.

F. The IDP&R has not abandoned or waived its water rights.

The Ditch Companies argue that the IDP&R has waived and/or abandoned its water rights. "Waiver requires a voluntary, intentional relinquishment of a known right that is relied upon by an adverse party and which alters their position." *Cowles Publishing Co., v. Kootenai County Board of County Commissioners*, 144 Idaho 259, ___, 159 P.3d 896, 903 n. 5 (2007). The undisputed facts in the record do not establish waiver of the subject water right claims. The delivery of water through a ditch company and the payment of assessments in no way evidences a voluntary relinquishment of the right.

The elements of abandonment of a water right in Idaho are (1) an intent to abandon and (2) actual relinquishment or surrender of the water right. *Jenkins v. State, Dept. of Water Resources*, 103 Idaho 384, 388, 647 P.2d 1256, 1260 (1982). Abandonments are disfavored. *Sagewillow, Inc. v. Idaho Dept. of Water Resources*, 138 Idaho 831, 836, 70 P.3d 669, 674 (2003). The undisputed facts in the record are that the subject water rights have been continuously used on IDP&R's place of use, and therefore there has been no actual surrender of the water rights. Additionally, nothing in the record indicates an intent by the IDP&R to abandon its rights.

G. Practical implications of the IDP&R holding legal title.

The Ditch Companies bring up several issues that they assert the Court should consider in deciding ownership: 1) that separate ownership will wreak havoc on the water users; 2) that the IDP&R cannot change the elements of its water rights if such changes would cause injury to other water users; 3) that separate ownership of the water rights will cause a significant administrative burden; and 4) that the IDP&R will still be liable to pay Ditch Company operations and maintenance assessments. Each of these issues is briefly addressed below.

1. The Issue of Havoc. The Ditch Companies argue that havoc would ensue if every shareholder in the corporation were to attempt to govern the corporate affairs, and that the Ditch Companies could well be destroyed by complete changes in diversion points or water use. While pointing out that Idaho Code sections 42-108 and 42-222, as well as the no-injury rule, would apply to any changes sought to be made by any person(s) owning water delivered through either Ditch Company, it is the opinion of this Special Master that the issue of any havoc as foreseen by the Ditch Companies cannot properly be considered in determining ownership. If the IDP&R owns the water rights, then the chips will have to fall where they may. The only possible remedy available in the SRBA to cure potential havoc would be the inclusion of a remark in the partial decree for the water rights pursuant to I.C. § 42-1411(2)(j). The Ditch Companies have not requested any such remark.

2. The Issue of Changes or Transfer of Water Rights. The Ditch Companies argue that even if the IDP&R holds legal title to the water rights, it cannot change the elements of the rights if such a change would injure other water rights. Ron Sali has submitted a brief on this issue, concluding: "Any order the Court issues on the State's or Hart-Davis' cross-motions for summary judgment should not suggest that a ditch company's consent could be withheld where no injury to other water rights owners will occur or where reasonable conditions can be imposed to prevent injury."

It is the opinion of this Special Master that the issue of the extent to which a ditch company can withhold consent to a shareholder's request to change or transfer the shareholder's water right is premature. This issue would be properly addressed in an administrative proceeding before IDWR in the event that such a shareholder sought such a transfer. Again, the only possible remedy available in the SRBA regarding such future transfer applications would be a remark in the partial decree pursuant to I.C. § 42-1411(2)(j). No party has requested such a remark.

3. The Issue of Administrative Burden.

The Ditch Companies argue that allowing each and every shareholder to be issued a separate water right, and the ensuing administrative proceedings that would necessarily occur upon subdivision of land, would create an unnecessary burden on IDWR. In the

opinion of this Special Master this issue cannot properly be considered in determining ownership.

4. The Issue of Liability for Operation and Maintenance Assessments.

The Ditch Companies argue that if the IDP&R is the owner of the water rights which it claims, the IDP&R will continue to be liable for Ditch Company assessments. The issue of IDP&R's liability to pay Ditch Company assessment is a matter of the contractual relationship between the parties. This issue is not relevant in determining ownership.

VIII. ORDER

In accordance with the foregoing, the *Motion for Summary Judgment* filed by the IDP&R is **granted**. The *Motion for Summary Judgment* filed by the Hart-Davis Ditch Co., Inc., is **denied**. The *Motion for Summary Judgment* filed by the Mace-Catlin mutual Ditch Company is **denied**.

**IX. REQUEST FOR AMENDED DIRECTOR'S REPORTS
AND OBJECTION DEADLINES**

It is requested that IDWR re-examine water right claims 63-132, 63-133, and 63-134, and issue amended director's reports for these rights in accordance with this *Memorandum Decision* and the file and record herein. Additionally, IDWR may, if necessary, re-examine and issue amended director's reports for any other related water right claims that need to be revised as a result of such additional investigation.

The amended director's reports are due no later than Friday, August 29, 2008. The amended director's reports will be published on the Court's Docket Sheet in September, 2008. **Objections to the amended director's reports shall be filed no later than Monday, September 29, 2008. Responses to objections shall be filed no later than Tuesday, October 14, 2008.**

The currently filed objections in any subcase in which an amended director's report is filed will not survive the filing of the amended director's report. Parties to the

subcases are required to file new objections should that party disagree with the elements of the water rights as recommended by the Department in the amended director's reports.

X. ORDER VACATING TRIAL AND SETTING STATUS CONFERENCE

The pretrial conference previously scheduled for June 30, 2008, and the trial previously scheduled to begin on August 6, 2008 are **vacated**. A status conference will be held on **Tuesday, October 28, 2008, at 9:30 A.M. Mountain Time**. Parties may participate by telephone by dialing 225-383-1099 and when prompted entering the code 675342.

Dated June 4, 2008



THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION & ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT; REQUEST FOR AMENDED DIR. RPT; VACATE TRIAL was mailed on June 04, 2008, with sufficient first-class postage to the following:

MACE CATLIN DITCH CO

Represented by:

JON C GOULD

RINGERT CLARK CHARTERED

PO BOX 2773

BOISE, ID 83701

RON SALI

RON SALI & RON SALI PROPERTIES

RON SALI PROPERTIES INC

Represented by:

MICHAEL C CREAMER

601 W BANNOCK ST

PO BOX 2720

BOISE, ID 83701-2720

Phone: 208-388-1200

STATE OF IDAHO DEPARTMENT OF

Represented by:

NATURAL RESOURCES DIV CHIEF

STATE OF IDAHO

ATTORNEY GENERAL'S OFFICE

PO BOX 44449

BOISE, ID 83711-4449

HART-DAVIS DITCH CO INC

Represented by:

S. BRYCE FARRIS

455 S THIRD ST

PO BOX 2773

BOISE, ID 83701-2773

Phone: 208-342-4591

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

RON SALI PROPERTIES INC

PROFIT SHARING PLAN

100 N 9TH STE 200

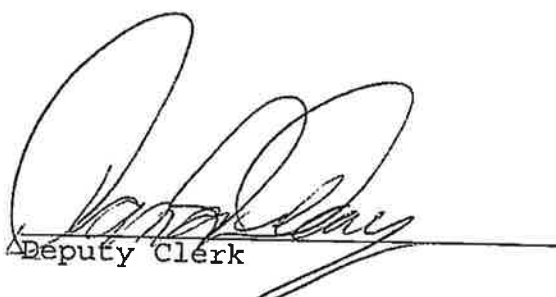
BOISE, ID 83702-5700

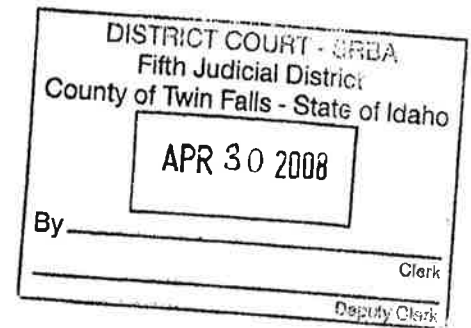
Phone: 208-344-4224

RON SALI

919 S LINDER RD

EAGLE, ID 83616-5513





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	)	SUBCASES: 63-132, 63-133, 63-134, 63-134A,
	)	63-134B, 63-186A, 63-186B, 63-17205, and
	)	63-31772
Case No. 39576	)	
		SETTLEMENT CONFERENCE REPORT

Special Master Ted Booth ordered the parties to the above-referenced subcases to participate in a Mandatory Settlement Conference. *See Order Setting Mandatory Settlement Conference and Appointing Special Master Bilyeu as Settlement Moderator* (April 9, 2008).

A Mandatory Settlement Conference was held on April 24, 2008, at the Idaho Department of Water Resource's Western Region Office in Boise, Idaho. The parties attended with legal counsel and participated in settlement discussions. The attendance sheet for the conference is attached hereto.

Prior to the Mandatory Settlement Conference, the State of Idaho Department of Parks and Recreation conferred an offer to Mace Catlin Ditch Co. and Hart-Davis Ditch Co. Inc. The Ditch Companies had not had an opportunity to review the offer in detail prior to the Settlement Conference. The parties spent some time discussing the details of that offer.

The Ditch Companies, Ron Sali, and the State of Idaho Department of Parks and Recreation spent considerable time discussing their potential evidence and legal arguments. The parties were able to convey new settlement proposals at the end of the Settlement Conference.

The parties requested additional time to consider the offers made at the Mandatory Settlement Conference. The Settlement Conference was then adjourned. This Settlement Moderator reports that the parties negotiated in good faith and were productive in their efforts. However, no settlement was reached at the conclusion of the conference.

DATED April 29, 2008.



Brigitte Bilyeu
Settlement Moderator

Attendance Sheet

April 24, 2008

Subcases:

63-132, 63-133, 63-134, 63-134A,
63-134B, 63-186A, 63-186B,
63-17205, 63-31772

<u>Party Name</u>	<u>Individuals</u>	<u>Attorneys</u>
Ronald Rippey	Ron Rippey	
HART DAVIS	Dave Rickes	
IDPR	Gery Shelley	
" "	Mary Luckchick	
" "	Josh Liddell	
Hart Davis	Ray Williams	
IDWR	Ron Sali	
Landowners		
IDWR		Andrea Courtney
IDWR	Don Staff	
CONSULTANT	Ron Howerton	
IDPR/IOAR	David S. Barber →	
Ron Sali	Michael Greener-Green	Portley LLP
~~Jon Gould~~		
Mace Catlin		Jon Gould
Hart Davis		Bryce Farris

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SETTLEMENT CONFERENCE REPORT was mailed on April 30, 2008, with sufficient first-class postage to the following:

MACE CATLIN DITCH CO

Represented by:

JON C GOULD

RINGERT CLARK CHARTERED

PO BOX 2773

BOISE, ID 83701

RON SALI

RON SALI & RON SALI PROPERTIES

RON SALI PROPERTIES INC

Represented by:

MICHAEL C CREAMER

601 W BANNOCK ST

PO BOX 2720

BOISE, ID 83701-2720

Phone: 208-388-1200

STATE OF IDAHO DEPARTMENT OF

Represented by:

NATURAL RESOURCES DIV CHIEF

STATE OF IDAHO

ATTORNEY GENERAL'S OFFICE

PO BOX 44449

BOISE, ID 83711-4449

HART-DAVIS DITCH CO INC

Represented by:

S. BRYCE FARRIS

455 S THIRD ST

PO BOX 2773

BOISE, ID 83701-2773

Phone: 208-342-4591

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

RON SALI PROPERTIES INC

PROFIT SHARING PLAN

100 N 9TH STE 200

BOISE, ID 83702-5700

Phone: 208-344-4224

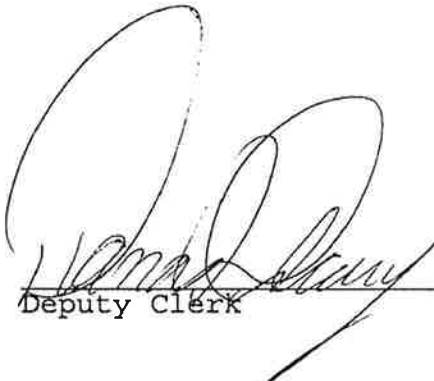
RON SALI

919 S LINDER RD

EAGLE, ID 83616-5513

SETTLEMENT CONFERENCE REPORT

Page 1 4/30/08 FILE COPY FOR 00209


Deputy Clerk

Shurte, Jan

From: Courtney, Andrea
Sent: Thursday, May 01, 2008 3:54 PM
To: Harris, Lori; Shurte, Jan
Cc: Williams, Ray; Shaff, Don
Subject: FW: Mace-Catlin

Attachments: mace catlin.tif

Lori and Jan~

Right after the settlement conference, I turned my attention to initial hearings in Basin 01-Part 2 in Idaho Falls and just back to everything else today. Sorry for the delay in the update on the settlement conference in Mace-Catlin, et al. Attached below is the Special Master's settlement report (thanks Ray).

My impressions/notes include the following:

David Barber presented settlement proposals to both Mace-Catlin (MC) and Hart-Davis (HD) before the settlement conference. At the conference, MC did not have a representative present with settlement authority as did the other players. The State of Idaho Parks & Rec (PR) wants ownership of parts of 63-132 and -133, and all of -134 (currently -132 and -133 are in MC's name and -134 to HD). MC and HD seem to be worried about guaranteeing PR continues to pay its assessments and doesn't move the water out of MC and HD's boundaries. PR seemed amenable to those considerations, but still wanted ownership. Seems the ownership element really boils down to control.

And control is what Ron Sali (RS) emphasized at the conference. He is trying to lump himself in the same boat as PR, arguing if PR can take individual ownership then so should he, but he hasn't conducted a massive search of chain of title. One of the differences is that RS doesn't seem willing to agree to continue paying assessments and certainly doesn't seem keen on pledging the water won't be moved out of the boundaries.

Surprising to me was that Bryce Farris (on behalf of HD) seemed more interested in working out a deal with RS than he did with PR. I don't know if it's a matter of style difference between David Barber and Bryce or what, but that was interesting, especially since RS' interests are seemingly more opposed to HD's than are PR's.

SMBilyeu listened to the parties and indicated that these subcases were an odd mixture of lacking evidence versus lacking evidence. There is nothing that shows PR retained ownership of the water rights and there is no evidence showing how the PR's predecessors conveyed the water rights to MC and HD. Given that IDWR's Directors Reports are given a prima facie presumption, PR might have a difficult hill to climb, but I think SMB made it clear to all sides that trial was ridiculous given the lack of evidence. Ron Rippey (a HD boardmember) explicitly said that this dispute was going to shortly bankrupt HD. In its big chain of title and other research, PR uncovered some evidence that MC is a ditch co that delivers others' water rights, too, besides merely owning the water rights for its members. Evidently, the Rochin/Wrottens (?) have two rights that are recommended (partially decreed?) in their names, not in MC's, and MC has been delivering their water for years. And MC didn't object to their water rights. None of the parties knew whether the Rochin/Wrottens paid assessments to MC, but Don found some indication that they do.

Between RS and PR, they have the majority of shares in the two ditch cos so they could easily elect a new board and get their way as to certain things, though I am not sure PR has thought of that. RS certainly has, and is considering it, but said he didn't want to cause more waves amongst neighbors. He has proposed as part of settlement with HD that they work on putting together some bylaws so that water users know their rights and responsibilities and so that the scope of the ditch co's power is explained (specifically, that the ditch company cannot unreasonably withhold its consent to Sali's eventual transfer of water).

The parties considered joint ownership for these rights and splitting and maybe even adding some remarks akin to the Pioneer Irrigation case (Idaho Supreme Court provided a remark for insertion in the BOR rights explaining that legal and equitable title were split up and that the end users had equitable title while the BOR had bare legal title).

When asked by SMBilyeu, Don indicated that IDWR would not change its recommendation for these subcases given what had been discovered and discussed.

So, in the end, nothing settled, but hopefully the parties have new options to consider.

Don and Ray, please feel free to add your comments, too. Lori said that both she and Jan were curious what happened at the settlement conf.

The hearing on summary judgment for these subcases is 5/5 at 1:30pm. I think I'll call in and listen. Given the briefing, I'll be surprised if SMBooth grants any party's motion because there appear distinct and critical disputes as to facts, which negates a summary judgment motion. I'll keep you posted.

Andrea

From: Williams, Ray
Sent: Thursday, May 01, 2008 2:59 PM

To: Courtney, Andrea
Subject: Mace-Catlin

Fyi - Brigitte filed this yesterday.



mace catlin.tif (113
KB)

RECEIVED

APR 28 2008

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

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	)	Subcase Nos. 63-00132, 63-00133 & 63-00134
	)	
	)	STATE OF IDAHO, DEPARTMENT OF PARKS AND
	)	RECREATION'S BRIEF IN REPLY TO MACE-
Case No. 39576	)	CATLIN MUTUAL DITCH COMPANY'S RESPONSE
	)	TO STATE OF IDAHO, DEPARTMENT OF PARKS
	)	AND RECREATION'S MOTION FOR SUMMARY
	)	JUDGMENT

COMES NOW the State of Idaho, Department of Parks and Recreation (hereinafter the "IDP&R"), by and through the undersigned deputy attorney general, and submits the STATE OF IDAHO, DEPARTMENT OF PARKS AND RECREATION'S BRIEF IN REPLY TO MACE-CATLIN MUTUAL DITCH COMPANY'S RESPONSE TO STATE OF IDAHO, DEPARTMENT OF PARKS AND RECREATION'S MOTION FOR SUMMARY

STATE OF IDAHO DEPARTMENT OF PARKS AND RECREATION'S BRIEF
IN REPLY TO MACE-CATLIN MUTUAL DITCH COMPANY'S RESPONSE TO
STATE OF IDAHO, DEPARTMENT OF PARKS AND RECREATION'S MOTION
FOR SUMMARY JUDGMENT

COPY

JUDGMENT in accordance with the SECOND SUPPLEMENTAL TRIAL SCHEDULING ORDER entered on December 21, 2007.

I. ADDITIONAL STATEMENT OF THE CASE

ii. Additional Course of the Proceedings

The Director's Recommendation for water right no. 63-132 states, in part, as follows:

EXPLANATORY MATERIAL: BASIS OF CLAIM – Decreed
WATER IS DELIVERED THROUGH THE MASON-CATLIN
[SIC] CANAL THE FOLLOWING RIGHTS ARE ALSO
DIVERTED THROUGH POINT OF DIVERSION DESCRIBED
ABOVE: 63-133, 63-382b, 63-31312, 63-31313. . . .

Affidavit of Jon C. Gould In Support Of Motion For Summary Judgment, at Exhibit E (Emphasis Added).

The Director's Recommendation for water right no. 63-133 states, in part, as follows:

EXPLANATORY MATERIAL: BASIS OF CLAIM – Decreed
WATER IS DELIVERED THROUGH THE MASON-CATLIN
[SIC] CANAL THE FOLLOWING RIGHTS ARE ALSO
DIVERTED THROUGH POINT OF DIVERSION DESCRIBED
ABOVE: 63-132, 63-382b, 63-31312, 63-31313. . . .

Affidavit of Jon C. Gould In Support Of Motion For Summary Judgment, at Exhibit F (Emphasis Added).

iii. Additional Statement of Facts

g. Diversions for Water Rights in the Mace-Catlin ditch.

The point of diversion for water right no. 63-31312 is the Mace-Catlin Ditch. The owner of water right no. 63-31312 is as follows:

JON W WROTEN
PO BOX 686
799 W SOUTH CHANNEL RD
EAGLE ID 83616

IDP&R Exhibit 50: True and correct copy of the Director's Recommendation for water right no. 63-31312.

The point of diversion for water right no. 63-31312 is the Mace-Catlin Ditch. The owner of water right no. 63-31313 is as follows:

MARIETTA WROTEN
PO BOX 686
799 W SOUTH CHANNEL RD
EAGLE ID 83616

JAMES L WROTEN
2305 S CHANNEL RD
EAGLE ID 83616

IDP&R Exhibit 51: True and correct copy of the Director's Recommendation for water right no. 63-31313.

////

////

////

////

////

////

////

////

////

////

////

FURTHER ARGUMENT

I. THE DETERMINATION THAT THE IDP&R OWNS PORTIONS OF WATER RIGHT NOS. 63-00132 AND 63-00133 WILL NOT CAUSE ANY PROBLEMS FOR MACE-CATLIN MUTUAL DITCH COMPANY, INCORPORATED SINCE IT ALREADY DELIVERS WATER RIGHTS THAT IT DOES NOT OWN.

Presently, the Mace-Catlin Ditch delivers water right no. 63-31312 to owner Jon Wroten and water right no. 63-31313 to owners Marieta Wroten and James L. Wroten. Additional Statement of Facts at 2. The Mace-Catlin Mutual Ditch Company, Incorporated has not identified any actual problems with this delivery of water rights owned by other persons.

CONCLUSION

For all the reasons stated in the IDP&R's briefs, the district court should determine that the IDP&R owns a portion of water right numbers 63-00132 and 63-00133, and all of water right no. 63-00134.¹

RESPECTFULLY SUBMITTED this 25th day of April 2008.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO



DAVID J. BARBER
Deputy Attorney General

¹ The *State Of Idaho Department Of Parks And Recreation's Brief In Support Of Its Motion For Summary Judgment* describes on page 11 that the IDP&R is a successor to 1.52 c.f.s. of water right no. 63-00132 and to 4.16 c.f.s. of water right no. 63-133 and 3.3 c.f.s. of water right no. 63-00134. Since the amount of water right no. 63-00132 is 2.692 c.f.s. and the amount of water right no. 63-00133 is 7.788 c.f.s., each of those two water rights will need to be split. The *State Of Idaho Department Of Parks And Recreation's Brief In Support Of Its Motion For Summary Judgment* incorrectly stated in its Conclusion on page 12 that IDP&R claimed all of water nos. 63-132 and 63-133.

CERTIFICATE OF SERVICE

I certify that on this 25th day of April 2008, I caused to be served the original and/or copy of the STATE OF IDAHO, DEPARTMENT OF PARKS AND RECREATION'S BRIEF IN REPLY TO MACE-CATLIN MUTUAL DITCH COMPANY'S RESPONSE TO STATE OF IDAHO, DEPARTMENT OF PARKS AND RECREATION'S MOTION FOR SUMMARY JUDGMENT on each of the following persons by the indicated method:

1. Original to:

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

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to the following persons:

Special Master Theodore Booth
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: 345-8800
- ☐ Statehouse Mail

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Mace Catlin Mutual Ditch Company
Incorporated
Represented by:
Jon C. Gould
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
PO Box 488
Boise, ID 83701-0488

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali Properties, Inc.
Profit Sharing Plan
919 S. Linder Rd
Eagle, ID 83616-5513

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
919 S. Linder Rd.
Eagle, ID 83616-5513

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

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

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Idaho Department of Parks and
Recreation
5657 Warm Springs Avenue
Boise, ID 83716

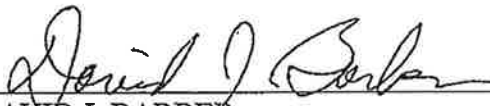
- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☒ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail

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

Not Applicable



DAVID J. BARBER
Deputy Attorney General

JON C. GOULD (ISB #6709)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

RECEIVED

APR 24 2008

DEPARTMENT OF
WATER RESOURCES

Attorneys for Mace-Catlin Mutual Ditch Company, Inc.

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. 63-134, 63-132, 63-133,
) 63-134A, 63-134B, 63-186A, 63-186B,
) 63-17205 and 63-31772
)
) MACE-CATLIN MUTUAL DITCH
) COMPANY'S RESPONSE TO STATE OF
) IDAHO, DEPARTMENT OF PARKS AND
) RECREATION'S BRIEF IN RESPONSE
)
)

COMES NOW Mace-Catlin Mutual Ditch Company (hereinafter "Mace-Catlin"), by and through its counsel of record, Ringert Clark, Chartered, submits to this Court, pursuant to Rule 56 of the Idaho Rules of Civil Procedure and pursuant to the Second Supplemental Trial Scheduling Order filed December 21, 2007, its *Reply to State of Idaho, Department of Parks Recreation's Brief In Response to the Motion for Summary Judgment by Hart Davis Ditch Company and Mace-Catlin Mutual ditch Company, Incorporated.*

I. The State Ignores Mace-Catlin's Long Standing Claim of Ownership

The State inaccurately states that "a ditch company may not have any ownership interest of the water rights held by its members." *State of Idaho Department of Parks and Recreation's Brief in*

MACE-CATLIN MUTUAL DITCH COMPANY'S RESPONSE TO STATE OF IDAHO, DEPARTMENT OF PARKS AND RECREATION'S BRIEF IN RESPONSE - Page 1

21

Response to the Motion for Summary Judgment by Hart Davis Ditch Company and Mace-Catlin Mutual Ditch Company, Incorporated (State's Response)" at 9. From the turn of the century to the recent Idaho Supreme Court case *United States of America v. Pioneer Irrigation Dist., et al.*, 144 Idaho 106, 113, 157 P.3d 600, 607 (2007), irrigation organizations have been recognized as the owner of water rights for its members. The Idaho Supreme Court recently addressed this very issue in *United States of America v. Pioneer Irrigation Dist., et al.*, 144 Idaho 106, 113, 157 P.3d 600, 607 (2007). The case involved, *inter alia*, the question of whether ownership of the water rights should be listed in the name of the United States Bureau of Reclamation ("BOR"), even though the BOR does not "use the water", or the irrigation entities that have contracts with the BOR for the storage and delivery of storage water. *Id.* at 109. The Court held that "[t]he name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this partial decree. However, as a matter of Idaho constitutional and statutory law title to the use of the water is held by the consumers or users of the water." *Id.* at 115, P.3d at 609. By holding that the BOR owns the water rights at issue, the Court recognized there will not be a reduction of the irrigation entities' rights to use the water as they have for nearly a century, it will merely preserve the status quo. *Id.* In this matter, the State, as the water user, is not harmed by listing the ditch company as the legal owner, because there will not be a reduction of the water user's right to use the water.

The Idaho Supreme Court in *Ireton v. Idaho Irrigation Co., Ltd.*, 30 Idaho 310, 317 (1917) noted that a mutual irrigation company, not organized for profit, but for the convenience of its members in the management of the irrigation system and in the distribution to them of water for the use upon their lands in proportion to their respective interests. ..." Listing the ditch company as the owner of the water rights originally held by its members is simply a tool for effective management and

administration of the water rights in question and merely preserves the status quo.

Mutual ditch companies, including Mace-Catlin, were formed by individual water right holders who pooled assets, created a ditch company, and conveyed their water rights to it in return for stock. Idaho courts and courts from other prior appropriation states have recognized the purpose and role mutual ditch companies like Mace-Catlin. The shares of stock in a mutual ditch corporation represent the "consumer's interest in the reservoir, canal, and water rights." *Beaty v. Board of County Comm'rs. of Otero County*, 101 Colo. 346, 73 P.2d 982 (1937). As a mutual ditch company, Mace-Catlin is "merely the vehicle by which its owners operate and manage its affairs." See *Billings Ditch Co. v. Industrial Comm'n.*, supra. In *Jacobucci*, the Court noted that "the shares of stock owned by [a mutual ditch company's] shareholders represent a definite and specific water right, as well as a corresponding interest in the ditch, canal, reservoir, and other works by which the water right is utilized." *Jacobucci v. Dist. Court of Jefferson*, 189 Colo. 380, 388, 541 P.2d 667, 672.

Since at least 1960, Mace-Catlin, as an unincorporated ditch company to 1999, and then as Mace-Catlin Mutual Ditch Company, Inc. to present, has claimed ownership of water right nos. 63-132 and 63-133. The State of Idaho, since at least 1960, has paid its annual assessments to Mace-Catlin for the delivery of water under water right nos. 63-132 and 63-133. *Affidavit of Mel Carlson* at 3. Furthermore, the State has been the largest single shareholder in Mace-Catlin and as such has more votes than any other Mace-Catlin shareholder. As a member, the State has enjoyed the right to participate in the management of Mace-Catlin, including voting at regular or special meetings. The State had never questioned Mace-Catlin's claim of ownership of water right nos. 63-132 and 63-133 nor did the State object to Mace-Catlin's filing its Notice of Claim in the SRBA. *Id.* at 4.

II. The State's Acquiescence Prevents It From Now Claiming Ownership

The State argues that the Doctrine of Laches is not applicable to this case because “[t]he IDP&R has continued to use water right nos. 63-132, 63-133, and 63-134 on its Eagle Island real property, and the two ditch companies have delivered the water to the IDP&R. Thus, there has not been “another’s use” of this water.” *State’s Response* at 12. However, the issue facing this court is whether Mace-Catlin should be listed on the partial decree as the owner for water right nos. 63-132 and 63-133.

Mace-Catlin supplies water to its members. Mace-Catlin does not use the water. The States’ argument that “there has not been “another’s use” of this water” is irrelevant. The question of use and enjoyment goes merely to the listed ownership on the decree. Since at least 1960, the State has been a member of Mace-Catlin. Since at least 1960, Mace -Catlin has claimed ownership of water right nos. 63-132 and 63-133. In 1989, Mace-Catlin filed it Notice of Claim to water right nos. 63-132 and 653-133 with the SRBA. It was not until 2006, that the State has objected to Mace-Catlin’s claim of ownership. The period from at least 1960 to 2006 represents the State’s long and continuous acquiescence to Mace-Catlin’s claim of ownership of the water rights.

Dating back to at least 1960, Mace-Catlin, then an unincorporated ditch company, claimed ownership of the water rights which provide water to its members. The State, the largest single shareholder in Mace-Catlin, has always paid its assessments to Mace-Catlin. The State had never questioned Mace-Catlin’s claim of ownership until 2006. While the State has continued to use the water, it has also acquiesced to the ditch companies ownership of the water rights in question. Most demonstrative of this, the State, as the largest single shareholder, did not objet with the Board decided to filed a Notice of Claim to water right nos. 63-132 and 63-133 in Mace-Catlin’s name. *Affidavit of*

Mel Carlson at 4.

III. Changing the Status Quo Would Be Unconscionable

The State alleges that its claim to the water rights is not unconscionable. *State's Response* at 13. However, the members of Mace-Catlin have relied and continue to rely upon Mace-Catlin to manage the water rights and deliver the water in a consistent, dependable manner. Granting the State's objection to Mace-Catlin's claim of ownership will fatally compromise the integrity of Mace-Catlin to the detriment of its members. Such a result would be unconscionable.

IV. As a Member of Mace-Catlin the State Waived Its Right of Ownership

The State relies on its "use of the water" to support its position that it has not waived its claim of ownership to the water rights in question. *See State's Response* at 15 ("Indeed, it is impossible to find a relinquishment of ownership given the IDP&R's continued use of its water at Eagle Island."). The State, by becoming a member or shareholder of Mace-Catlin, transferred its water rights to Mace-Catlin for shares of Mace-Catlin stock. The shares represent Mace-Catlin's interest in those water rights. This is true for every member of Mace-Catlin. There is no question that the State is a member of Mace-Catlin. Since at least 1960, the State has been assessed as a member and the State has always paid those assessments. The State has never challenged its status as a member or shareholder in Mace-Catlin. For over 40 years, the State, as the majority shareholder, never challenged Mace-Catlin's claim of ownership of the water rights. Therefore the State has waived or abandoned any claim of ownership to the water rights in question.

V. Implied Grant

The State is a member and shareholder of Mace-Catlin. By becoming a member of Mace-Catlin, the State implicitly agreed to grant nominal legal title to Mace-Catlin. This is true of every

member of Mace-Catlin.

VI. Havoc Will Result

Mace-Catlin currently holds two water rights for approximately twenty parties. If the water rights were to be split so that the listed name reflects the landowner of the land where the water is put to beneficial use then there would be approximately twenty water rights. With each ownership change or property subdivision there would be an administrative process to change the owner and/or further split the water rights.

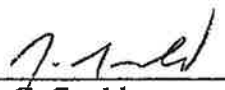
More importantly, Mace-Catlin was formed by individual water right holders who pooled assets, created the ditch company, and conveyed their water rights to it in return for stock so that the asset could be managed and delivered in a reliable manner. The State is seeking to reverse the actions of all the parties that formed Mace-Catlin. The potential for havoc resulting if the State's objection is granted is real.

VII. CONCLUSION

For the foregoing reasons, this Court should deny State of Idaho's Motion for Summary Judgment.

DATED this 23rd day of April, 2008.

RINGERT CLARK, CHARTERED

By: 
Jon C. Gould
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April, 2008, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

United States Department of Justice
Environment and Natural Resource Div.
550 West Fort Street, MSC 033
Boise, Idaho 83724

David J. Barber
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

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

Idaho Department of Parks
and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
Givens Pursley
P.O. Box 2720
Boise, Idaho 83701-2720

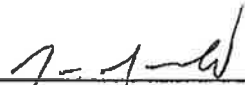
Ron Sali
P.O. Box 448
Boise, Idaho 83701-0488

Ron Sali
919 South Linden Road
Eagle, Idaho 83616

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

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

Hart Daivs Ditch Company
c/o S. Bryce Farris
P.O. Box 2773
Boise, Idaho 83701



Jon C. Gould

COPY

RECEIVED

APR 24 2008

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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	)	Subcase Nos. 63-00132, 63-00133, & 63-00134
	)	
	)	NOTICE OF HEARING FOR STATE OF IDAHO,
	)	DEPARTMENT OF PARKS AND RECREATION'S
Case No. 39576	)	MOTION FOR SUMMARY JUDGMENT
	)	
	)	

PLEASE TAKE NOTICE that the hearing for State of Idaho, Department of Parks and
Recreations' Motion for Summary Judgment will be held on Monday, the 5th day of May, 2008,
at 1:30 o'clock p.m. before Special Master Theodore R. Booth, held at the Idaho Supreme Court
Building, 451 West State Street, Boise, Idaho.

////

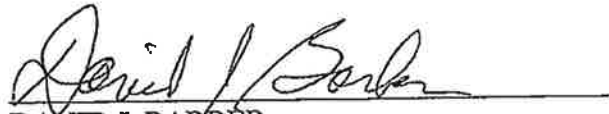
////

////

DATED this 23rd day of April, 2008.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO



DAVID J. BARBER
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on this 23rd day of April 2008, I caused to be served the original and copies of this NOTICE OF HEARING FOR STATE OF IDAHO, DEPARTMENT OF PARKS AND RECREATION'S MOTION FOR SUMMARY JUDGMENT on the following persons by the indicated methods:

1. Original to:

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

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to the following persons:

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

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

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail

Mace Catlin Mutual Ditch Company
Incorporated
Represented by:
Jon C. Gould
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Idaho Department of Parks and
Recreation
5657 Warms Springs Avenue
Boise, ID 83716

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☒ Statehouse Mail

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
PO Box 488
Boise, ID 83701-0488

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali Properties, Inc.
Profit Sharing Plan
919 S. Linder Rd
Eagle, ID 83616-5513

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
919 S. Linder Rd.
Eagle, ID 83616-5513

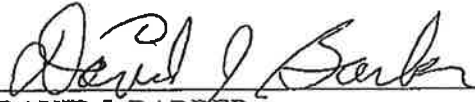
- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Special Master Theodore Booth
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: 345-8800
- ☐ Statehouse Mail

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

Not Applicable



DAVID J. BARBER
Deputy Attorney General

Hart Dave Ditch Co. & Mace Catlin Ditch Co Meeting
3-24-07

A meeting between the above ditch companies and the Department was held at Western Region on 3-24-07.

The meeting was to go over the overlapping acres recommended to Hart Davis and Mace Catlin ditch companies. These acres are those in the east portion of the Hart Davis place of use and the east portion of the Mace Catlin place of use.

In short, the meeting resulted in the fact that both ditch companies deliver shares to those owners of these overlapping lands and the owners use both ditch company's water on their lands. It is a true overlap and that is why the acres were shown on both of these company's water rights.

This meeting was conducted per a request from Bryce Ferris in conjunction with an objection filed by Ron Sali. The idea was to see if the overlapping acres were true overlaps or if there may be some additional shares that the Hart Davis ditch company had among the overlapping acres, not being used, that could be used by another user - Ron Sali.

It appears this is not the case.

10/2/07
Ron Rippey showed concerning
the total # of acres irrigated
by Dept. of Parks & Rec - calculated
344 + 01 - acres from the POU digitized
place of use used in calculating
the 625 acres noted in Mel Schulte's
memo of 5/31/05. Note: 498 acres
recommended per # of shares
distributed. J

COPY

RECEIVED
SEP 10 2007
DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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	)	Subcase No. 63-134
	)	
	)	NOTICE OF SERVICE AND CERTIFICATE OF
	)	SERVICE
Case No. 39576	)	
	)	
	)	
	)	

NOTICE OF SERVICE

The State of Idaho served on the 7th day of September, 2007, a copy of the STATE OF IDAHO'S FIRST SET OF DISCOVERY REQUESTS TO HART-DAVIS DITCH COMPANY, on the Hart-Davis Ditch Company by U.S. Mail postage prepaid, addressed to the following person at the following address:

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

The State of Idaho retained the original of the STATE OF IDAHO'S FIRST SET OF DISCOVERY REQUESTS TO HART-DAVIS DITCH COMPANY in its files in accordance with the Idaho Rules of Civil Procedure.

DATED this 7th day of September 2007.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division


DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I certify that on this 7th day of September 2007, I caused to be served the original and/or copy of this NOTICE OF SERVICE AND CERTIFICATE OF SERVICE on each of the following persons by the indicated method:

1. Original to:

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

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to the following persons:

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

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

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail

Idaho Department of Parks and
Recreation
5657 Warm Springs Avenue
Boise, ID 83716

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☒ Statehouse Mail

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
PO Box 488
Boise, ID 83701-0488

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N 9th St. Ste 200
Boise, Idaho 83702-5700

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
100 N 9th St. Ste 200
Boise, Idaho 83702-5700

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Mace Catlin Ditch Company
c/o Bob Kell
1820 Mace Rd.
Eagle, ID 83616

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

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

Not Applicable


DAVID J. BARBER
Deputy Attorney General

COPY

RECEIVED
JUL 21 2006
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)

A. Subcase Number: 63-00134

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: State of Idaho, Department of Parks and Recreation
Address: 5657 Warm Springs Avenue
Boise, Idaho 83716
Daytime Phone: (208) 334-2400

Name and Address of Attorney, if any:

Attorney Name: LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID J. BARBER (ISB # 2597)
Deputy Attorney General
Attorney Address: Office of the Attorney General
700 W. Jefferson, Room 210
P.O. Box 44449
Boise, ID 83711-4449
Attorney Phone No. (208) 334-2400

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

Name: HART-DAVIS DITCH CO INC
Address: c/o Jim Breszinsky
1111 Trout Rd
Eagle, ID 83616

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: State of Idaho, Department of Parks and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Points of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: Not applicable.
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: The IDP&R lands need to be described as the place of use.

11. 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):

The State of Idaho acquired the real property on Eagle Island for a prison farm in 1929. When the State of Idaho closed the prison farm, the Idaho Department of Parks and Recreation, (hereinafter "IDP&R"), and the Idaho Department of Fish and Game, (hereinafter "IDF&G"), acquired most of the old prison farm.

William E. Welsh, Watermaster for the Boise River, prepared a "Statement of Water Rights for Eagle Island Penitentiary Farm on Boise River," which summarized the water rights acquired by the State of Idaho on Eagle Island. A copy of this Statement is attached. Water Right No. 63-134 was originally designated as right no. 6 in the Stewart Decree. The State of Idaho owned the entire 3.30 c.f.s. of water right no. 6. The IDP&R has not found any transfer of the water right to the Hart-Davis Ditch Co.

F.

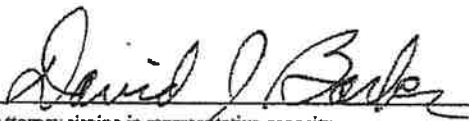
VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

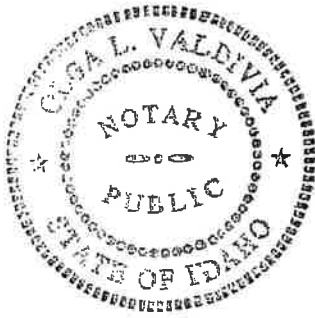
DAVID J. BARBER, Deputy Attorney General, duly sworn, upon oath, deposes and says:

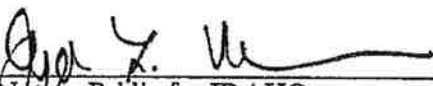
That the State of Idaho, Department of Parks & Recreation, in its proprietary capacity is filing this objection and that I am a Deputy Attorney General authorized to represent the State of Idaho, Department of Parks & Recreation which is a party/claimant in this proceeding, as defined by IC. § 42-1401A(1) and (7), and I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID J. BARBER
Deputy Attorney General


By Attorney signing in representative capacity

Subscribed and sworn to before me on: April 20, 2006
(Insert Date)




Notary Public for IDAHO
Residing at: BOISE, ID
My commission expires: 2/8/2012

INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on April 20, 2006, I caused the original and the copies of this objection, including all attachments, to be served on the following persons by the method designated:

1. Original to:

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

FEDERAL EXPRESS
OVERNIGHT DELIVERY

2. One copy to the owner of the water right at the following address:

HART-DAVIS DITCH CO. INC.
c/o Jim Breszinsky
1111 Trout Rd
Eagle, ID 83616

U.S. MAIL

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

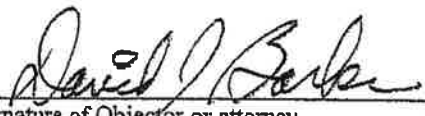
STATEHOUSE MAIL

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

U.S. MAIL

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

(not applicable)



Signature of Objector or attorney
Mailing on Objector's behalf

2 A

STATEMENT OF WATER RIGHTS FOR EAGLE ISLAND PENITENTIARY FARM ON BOISE RIVER

By Wm. E. Welsh, Watermaster, Boise River

In the case of the Farmers' Cooperative Ditch Company vs. the Riverside Irrigation District, Ltd., et al, commonly referred to as the Stewart Decree, are found the following awards:

Number	Date	Name	Amount Decreed Second Feet	Inches
5	6-1-64	Catlin & Mace	2.86	143
6	6-1-64	T. G. Catlin	3.30	165
52	6-1-71	Catlin & Mace	7.86	393

Upon examining an agreement now on file in the office of the Secretary of State which was entered into by the various parties of interest in the Catlin & Mace Ditch just immediately prior to the time of the purchase of the Penitentiary Farm by the State of Idaho, I find that rights numbers 5 and 52 were divided among these various users as follows: Also right Number 6.

Name	Inches	Date of Priority	Number
Charles P. Mace and Mary Mace	8.03	June 1, 1864	5
Charles P. Mace and Mary Mace	22.05	June 1, 1871	52
Frank Mace and Josie A. Mace	10.70	June 1, 1864	5
Frank Mace and Josie A. Mace	29.38	June 1, 1871	52
Benjamin Mace and Grace J. Mace	6.33	June 1, 1864	5
Benjamin Mace and Grace J. Mace	22.91	June 1, 1871	52
Wesley Mace and Rosa Mace	11.00	June 1, 1864	5
Wesley Mace and Rosa Mace	30.26	June 1, 1871	52
Grover Mace and Cora B. Mace	8.84	June 1, 1864	5
Grover Mace and Cora B. Mace	24.30	June 1, 1871	52
A. G. Coker and Margaret C. Coker	5.35	June 1, 1864	5
A. G. Coker and Margaret C. Coker	14.65	June 1, 1871	52
Karl Pischer, a Bachelor	90.75	June 1, 1864	5

Name	Inches	Date of Priority	Number
Karl Fischer, A Bachelor	249.45	June 1, 1871	52
Karl Fischer, A Bachelor	165.00	June 1, 1864	6

It is also noted that there is in this same file a stock certificate issued to the State of Idaho by the Hart-Davis Ditch Company for 165 shares which covers the 165 inches of water represented in right number 6. The abstract on file in the office of the Secretary of State shows that the State of Idaho purchased the T. C. Catlin Farm as described in the agreement referred to above from Karl Fischer, together with all water rights appurtenant thereto.

Therefore, the water rights now belonging to the State of Idaho for the Eagle Island Penitentiary Farm are as follows:

Number	Date	Name	Amount Decreed Second Feet	Inches
5	June 1, 1864	Catlin & Mace	1.815	90.75 ✓
6	June 1, 1864	T. C. Catlin	3.30	165.00
52	June 1, 1871	Catlin & Mace	<u>4.99</u>	<u>249.5</u>
		TOTAL	10.105	505.25

COPY

Michael C. Creamer (ISB# 4030)
Brad V. Sneed (ISB# 6254)
GIVENS PURSLEY LLP
601 West Bannock Street
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: (208) 388-1200
Facsimile: (208) 388-1300
S:\Clients\4419\54\Objection 63-134.doc

Attorneys for Objectors

RECEIVED
OCT 21 2006
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

A. Subcase 63-134

**STANDARD FORM 1
OBJECTION**

Please **print or type** the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Ron Sali and Ron Sali Properties, Inc. Profit Sharing Plan
Address: 100 North 9th, Suite 200
P.O. Box 488
Boise, Idaho 83701-0488
Daytime Phone: (208) 344-4224

Name & Address of Attorney, if any:

Michael C. Creamer
Brad V. Sneed
Givens Pursley LLP
601 W. Bannock
P.O. Box 2720
Boise, Idaho 83702

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

Name: Hart-Davis Ditch Co., Inc. c/o Jim Breszinsky
Address: 1111 Trout Rd.; Eagle, Idaho 83616

**SCANNED
OCT 10 2006**

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: Ron Sali / Ron Sali Properties, Inc. Profit Sharing Plan (*)
100 North 9th, Suite 200
P.O. Box 488
Boise, Idaho 83701-0488
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: 2.475 cfs to Claimant; 0.825 cfs to Objectors Ron Sali and
Ron Sali Properties, Inc. Profit Sharing Plan
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
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):** Objectors Ron Sali and Ron Sali Properties, Inc. Profit Sharing Plan beneficially use 0.825 cfs of Water Right No. 63-134 as described in SRBA Claims A63-134A and A63-134B.

(*) = As to that portion of Water Right No. 63-134 described in Claims A63-134A and A63-134B.

F. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

Brad V. Sneed, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

20th day of April, 2007

Lisa A. Hughes
Notary Public for Idaho
Residing at: Boise, ID
My Commission Expires: 3-22-2007



INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on April 20, 2006, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

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

2. One copy to the claimant of the water right at the following address:

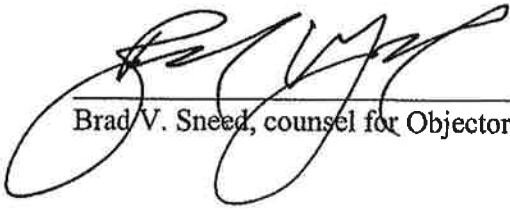
Name: Hart-Davis Ditch Co., Inc. c/o Jim Breszinsky
Address: 1111 Trout Rd.
Eagle, Idaho 83616

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

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



Brad V. Sneed, counsel for Objector

05/31/2005

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

RIGHT NUMBER: 63-134
NAME AND ADDRESS: HART-DAVIS DITCH CO INC
C/O JIM BRESZINSKY
1111 TROUT RD
EAGLE ID 83616

SOURCE: BOISE RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 3.300 CFS

This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and preceding to the earliest, shall be reduced to 60 percent of their decreed quantities.

PRIORITY DATE: 06/01/1864

POINT OF DIVERSION:
T04N R01E S17 NWNW Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/01 11/15	3.300 CFS
Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.		

PLACE OF USE:

498 ACRES TOTAL

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 498 ACRES WITHIN THE BOUNDARY OF HART-DAVIS DITCH COMPANY.

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: BASIS OF CLAIM - Decreed

THIS RIGHT IS DESIGNATED AS RIGHT NO. 6 IN THE STEWART DECREE AND THE BOISE RIVER WATER MASTERS RECORDS.

RIGHT NO. 63-31772 IS ALSO DIVERTED THROUGH THE POINT OF DIVERSION DESCRIBED ABOVE.

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.

WATER IS DELIVERED THROUGH THE HARTON DAVIS CANAL.

HART – DAVIS DITCH COMPANY

ADDITIONAL INFORMATION

DATE: MAY 31, 2005

BY: MEL SCHULTE

The main contact for Hart-Davis Ditch has been Ron Rippey (939-6712). He assisted in a field review of the POD, delivery system and a review of the boundary/place of use map.

There are no major issues relating to the Hart-Davis claims but there could be some interest outside of the company in our recommendations. First, Ron Sali filed some competing claims to some of Hart-Davis rights. His claims will be disallowed because Mr. Sali is a shareholder of Hart-Davis and his water rights are included in the company's rights.

Another matter that might be of concern to the State of Idaho, Parks Department is an overlap of the boundary between Hart-Davis Ditch and Mace Catlin Ditch along the east side of the Hart-Davis boundary. The Parks Dept. is a shareholder in both ditch companies and they may want to review both boundary maps.

The POD was located using GPS. The company's main POD in section 17 was added many years ago according to Ron Rippey and has been used for at least 40 years. Access to this newest POD is through the property of Mrs. Leonard Mace on Mace Road.

The company claimed 843 acres, the digitized place of use equals 625 acres and the water master's records indicate a place of use of 453 acres. The recommended acre limitation of 498 acres is based on an inch per acre for 9.96 cfs. Because the land is all river bottomland the standard of 1.1 inch could be applied which would limit the number of acres to 453.

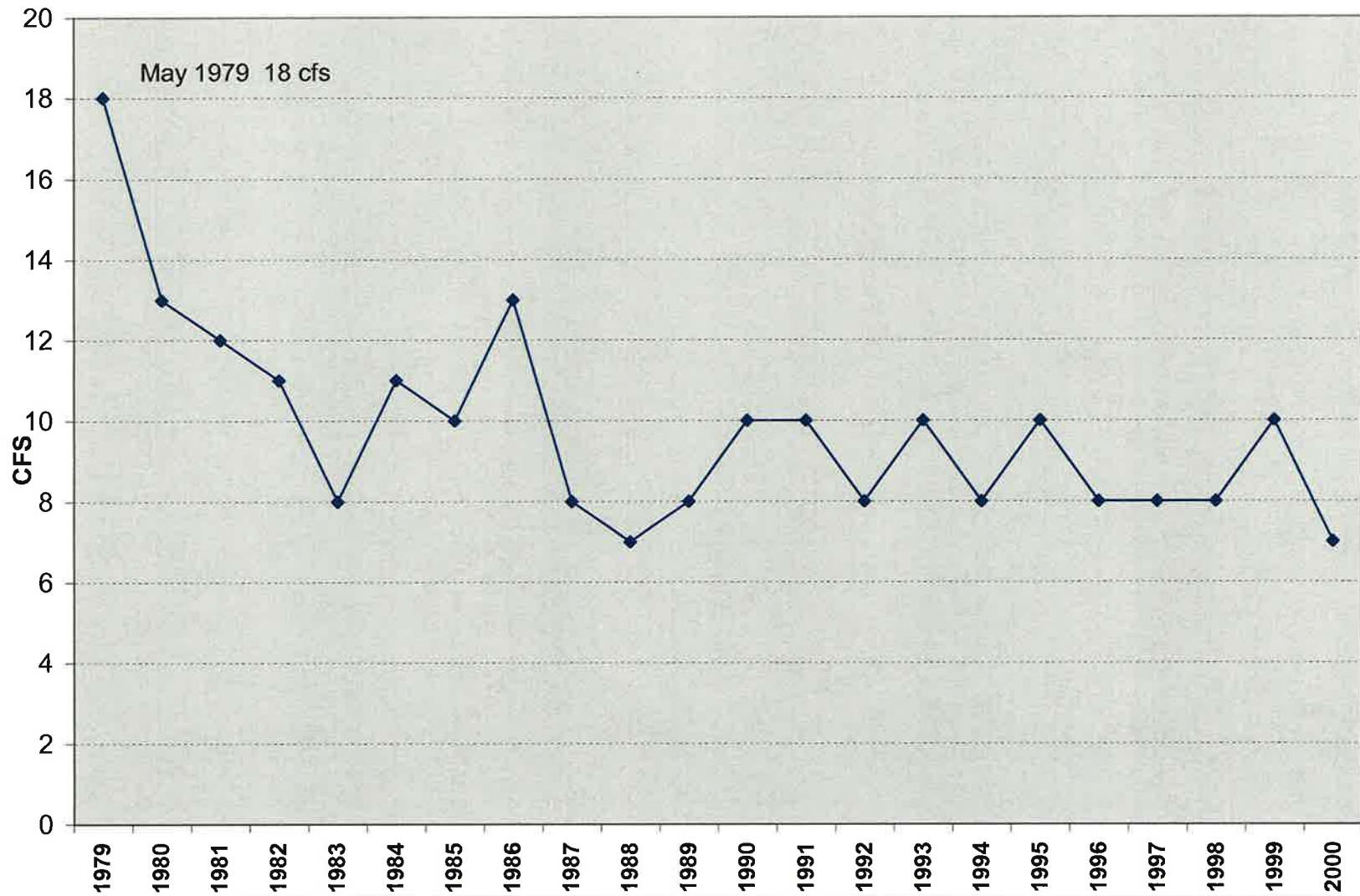
The preliminary recommendation was reviewed on 5/26/2005 at the home of Ron Rippey and several board members. They expressed concern about the 498 acre limitation but decided that number was the most defensible. After discussing the two POD's in our first recommendation it was decided the lower POD was only a regulatory structure because river water was not actually diverted at this site. The board made several changes in the boundary and place of use map that have been incorporated into the final map.

MTS

13208450	HISTORIC DIVERSION OF HART-DAVIS CANAL						(CFS)							
W-YR	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	ANN	
1979	2	0	0	0	0	0	0	18	13	8	10	7	58	
1980	3	0	0	0	0	0	3	11	10	13	10	10	61	
1981	5	0	0	0	0	0	3	11	12	10	10	8	59	
1982	2	0	0	0	0	0	0	11	10	8	8	7	46	
1983	0	0	0	0	0	0	0	3	8	5	8	7	31	
1984	2	0	0	0	0	0	0	11	10	8	10	7	48	
1985	0	0	0	0	0	0	3	8	8	10	8	3	41	
1986	2	0	0	0	0	0	2	7	13	11	11	7	53	
1987	0	0	0	0	0	0	7	8	7	8	8	7	45	
1988	0	0	0	0	0	0	3	5	5	7	5	5	30	
1989	2	0	0	0	0	0	3	7	8	8	8	5	41	
1990	2	0	0	0	0	0	7	10	8	10	8	8	53	
1991	3	0	0	0	0	0	5	8	8	10	7	5	46	
1992	2	0	0	0	0	0	8	8	7	8	8	8	50	
1993	5	0	0	0	0	0	0	8	8	10	8	8	48	
1994	7	0	0	0	0	0	7	8	8	8	8	7	53	
1995	7	0	0	0	0	0	5	7	8	10	8	7	51	
1996	5	0	0	0	0	0	2	7	8	8	8	7	44	
1997	5	0	0	0	0	0	3	7	7	8	8	7	44	
1998	3	0	0	0	0	0	3	8	8	8	7	7	45	
1999	3	0	0	0	0	0	2	7	8	10	8	5	43	
2000	2	0	0	0	0	0	5	7	7	7	7	5	38	
AVERAGE:														
1979-2000	3	0	0	0	0	0	3	8	9	9	8	7	47	

MAXIMUM MONTHLY DIVERSION 1979-2000

13208450 HART-DAVIS CANAL



STEWART AND BRYAN DECREES GROUPED UNDER CANAL HEADINGS

CHART NO. 3

NAME OF CANAL	CHANGE IN P. OF D.	TRANSFER	PRIORITY		AMOUNT DECREED				TOTAL SEC. FT.
			NO.	DATE	INTERVENORS			INCHES	
					STEWART DECREE	STEWART DECREE	BRYAN DECREE		
HAAS DITCH	176		39	6-1-1868	8.54			427	17.34
			70	6-1-1878	8.80			440	
HART & DAVIS			6	6-1-1864	3.30			165	9.96
			57	6-1-1872	4.40			220	
			58	6-1-1872	3.30			165	
	38*)		57	6-1-1872	.54*			27*	
	39*)		58	6-1-1872	.50*			25*	
ISLAND HIGH LINE			71-A	4-1-1879		3.00		150	20.00
			137-A	4-1-1910		7.00		350	
			139	4-1-1915		10.00		500	
LEMP DITCH			8-C	1865		6.00		300	6.00
LITTLE PIONEER			49	6-1-1870	25.72			1286	26.82
	1575		31-C	6-1-1866		1.10		55	
LOWER CENTER POINT			19	6-1-1865	2.88			144	19.60
			20	6-1-1865	6.40			320	
			21	6-1-1865	2.90			145	
			22	6-1-1865	3.20			160	
			38	6-1-1868	3.20			160	
			43	6-1-1869	3.60			180	
			73	6-1-1879	4.00			200	
	50*		19	6-1-1865	2.88*			144*	
	51*		20	6-1-1865	6.40*			320*	
	131		89	11-9-1883	.70			35	
	245		89	11-9-1883	.60			30	
	287		89	11-9-1883	1.40			70	

*SUBTRACT

BOISE VALLEY CANALS AND ACREAGE

CHART NO. 12

AIKEN	236 ACRES	ISLAND HIGH LINE	945 ACRES
ANDREWS	1068 "	LEMP DITCH	300 "
BALLENTYNE	763 "	LITTLE PIONEER	1336 "
BAXTER	200 "	LOWER CENTER POINT.....	880 "
BOISE CITY	1828 "	MACE & CATLIN	536 "
BOISE PROJECT BOARD OF CONTROL		MACE & MACE	80 "
BIG BEND IRRIG. DIST.....	1724 "	MAMMON	468 "
BOISE-KUNA IRRIG. DIST.....	48,629 "	MCCONNEL ISLAND	1600 "
NAMPA & MERIDIAN IRRIG. DIST....	40,304 "	MCMAHUS & TEATER	168 "
NEW YORK IRRIG. DIST.....	17,728 "	MIDDLETON MILL	4400 "
WILDER IRRIG. DIST.....	56,535 "	MIDDLETON WATER.....	5180 " } 9580
TOTAL - BOARD OF CONTROL.....	164,920 "	MISCELLANEOUS	838 "
BOISE VALLEY	2729 "	NEW DRY CREEK	3059 "
BOONE	517 "	NEW UNION	688 "
BOWMAN-SWISHER.....	424 "	PARMA DITCH	602 "
BUBB (SOUTH BOISE MUTUAL).....	1057 "	PENITENTIARY	321 "
*CALDWELL HIGH LINE.....	11,917 "	PIONEER IRRIG. DIST.....	23,974 "
CAMPBELL (CANYON DITCH).....	802 "	PIONEER DIXIE.....	3000 "
CANYON COUNTY	3957 "	RIDENBAUGH	26,877 "
CAPITAL VIEW	600 "	RIVERSIDE IRRIG. DIST.....	10,645 "
CONWAY-HAMMING.....	259 "	ROEDEL	160 "
DAVIS & LITTLE DAVIS	634 "	ROSSI MILL	512 "
EUREKA WATER CO. #1	1300 "	SEBREE.....	15,500 "
EUREKA DITCH CO. #2	2625 "	SEVEN SUCKERS	70 "
FARMERS UNION	8372 "	SETTLERS	12,322 "
GRAHAM-GILBERT	200 "	SIEBENBERG	646 "
HAAS.....	367 "	THURMAN MILL	1719 "
HART-DAVIS	453 "	UPPER CENTER POINT.....	641 "
		WARM SPRINGS DITCH	494 "

TOTAL 324,239 ACRES

DRAINAGE WATER (NOT DIVERTED FROM BOISE RIVER)

BLACK CANYON IRRIGATION DISTRICT	6,894 ACRES
CALDWELL IRRIGATION DISTRICT	755 "
MORELAND & VIAL (DIXIE DRAIN)	640 "
	8,289 ACRES

GRAND TOTAL 332,528 ACRES

THIS ACREAGE IS BASED, IN SOME INSTANCES, UPON ACTUAL SURVEYS, AND IN OTHER CASES UPON THE ACREAGE AS DETERMINED AT THE TIME OF THE STEWART DECREE, AND IS THE BEST INFORMATION AVAILABLE AT THE PRESENT TIME. IT WAS ORIGINALLY COMPUTED FEBRUARY 14, 1941, BUT HAS BEEN REVISED SEVERAL TIMES, PARTICULARLY TO REDUCE RIVER BOTTOM ACREAGES TO CONFORM TO STEWART DECREE ACREAGES AS DETERMINED BY SPECIAL COMMITTEE, AND TO ACCOMMODATE TRANSFERS FROM ONE CANAL OR USER TO ANOTHER.

RIDENBAUGH REPRESENTS OLD LANDS WITHIN THE NAMPA & MERIDIAN IRRIGATION DISTRICT THAT ARE WATERED BY THE OLD RIDENBAUGH RIGHTS IN THE STEWART DECREE. THE BALANCE OF THE NAMPA & MERIDIAN IRRIGATION DISTRICT LANDS ARE INCLUDED UNDER THE BOARD OF CONTROL.

*3960 ACRES ARE WATERED WITH LIVE WATER. THE BALANCE OF THE WATER COMES FROM SEVERAL DRAINS.

Basin	Sequence	Suffix	Basis	Status	Priority Date	Rate(cfs)	Volume(af)	Source	Water Use(s)
63	134		Decreed	Active	1864-06-01	3.3		BOISE RIVER	IRRIGATION
63	134	A	Decreed	Active	1864-06-01	1.68	378	BOISE RIVER	IRRIGATION
63	31772		Decreed	Active	1872-06-01	6.66		BOISE RIVER	IRRIGATION

9.96 cfs @ .02 = 498 acres

Ron Rippey, Pres
1401 Trout Rd.
Eagle 83616

939-6712

Hart-Davis

7-4-02 @ 1:30 at
Eagle Island St. Park.

1. How many users? about 30
2. Officers? Ron ^{Rippen} Lepp, Pres. 7 Jim Breszensky, Sec-treas 939-6712
3. Who can review the boundary and POU map? (gave maps to Ron ^{Rippen} Lepp 7-4-02 to outline POU + boundary)
4. Why did Ron Sali claim ~~land~~ separately (he is only a shareholder)
5. Land south of ~~slough~~ ^{drain ditch} in S14 (Sali claims probably wasn't irrigated from the Hart-Davis ditch (186B & 134B) - Yes it was - a culvert was used to cross the drain ditch)
6. Land historically irrigated? -
7. Is some water delivered through the Seven Suckers ditch? No! not used by Hart-Davis

308900 } Hart-Davis POP
290520 }

4N, 1E, 17, NW NW = POP into

$$63-186 = 6.66$$

$$63-134 = 3.30$$

$$\hline 9.96 \text{ cfs}$$

XLIX.

That the defendant MARY G. DAVIS be, and she is hereby awarded the use of the waters of Boise River, diverted at a point about the center of the NE $\frac{1}{4}$ of Sec. 18, T. 4 N. R. 1 E. B.M., for use upon lots 3 and 4 and the SW $\frac{1}{4}$ of Sec. 13, and lots 3 and 4 of Sec. 24, all in T. 4 N. R. 1 W. B.M., in the following amount and from the following date;

3 0186 220 inches, from June 1, 1872; and hereby designated as Right No. 57.
 P.D. 39

And be adjudged to pay \$15.40 costs in addition to the costs incurred by her.

L.

That the defendant EDWARD N. HART be, and he is hereby awarded the use of the waters of Boise River, diverted at a point about the center of the NE $\frac{1}{4}$ of Sec. 18, T. 4 N. R. 1 E. B.M., for use upon the following described lands; beginning at SW corner of Sec. 13, T. 4 N. R. 1 W. B.M., and running thence east 517 feet, thence north 3960 feet, thence west 517 feet, thence south to place of beginning; also lots 9, 10, 11 and 12, and E $\frac{1}{2}$ of SE $\frac{1}{4}$, Sec. 14, all in T. 4 N. R. 1 W. B.M. in the following amount and from the following date;

3 0187 165 inches, from June 1, 1872; hereby designated as Right No. 58.

P.D. 39
 And be adjudged to pay \$11.55 costs in addition to the costs incurred by him.

LI.

That the plaintiff, the FARMERS' COOPERATIVE DITCH COMPANY, a corporation, be and it is hereby awarded the use of the waters of Boise River, diverted at a point on the north side of said river, near what is known as the Caldwell bridge in Canyon County, Idaho, for use upon the lands lying under its canal system, in the following amounts from the following dates;

3 0188 500 inches, from June 1, 1875; and hereby designated as Right No. 60.

3 0189 1000 inches, from June 1, 1883; and hereby designated as Right No. 86.

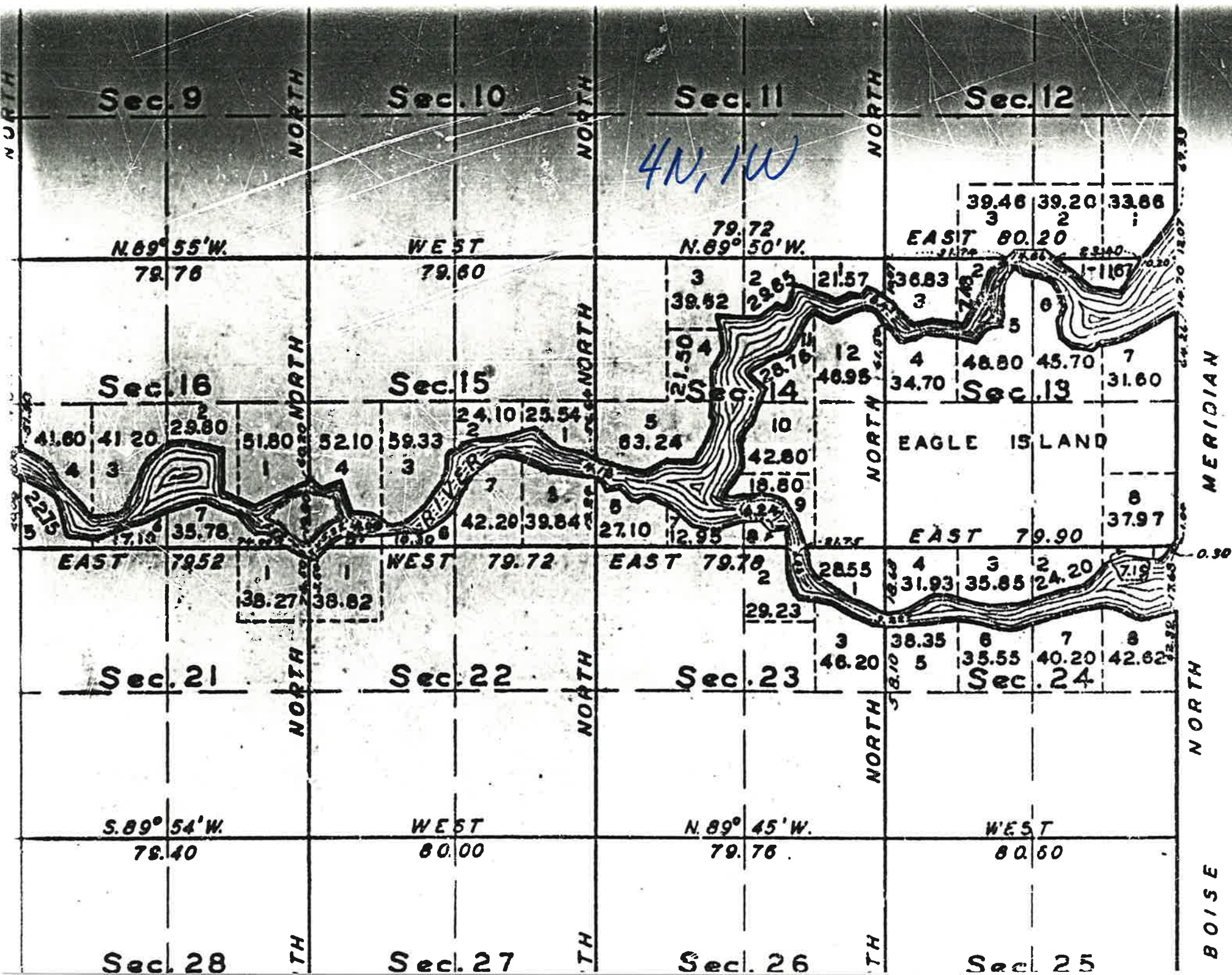
3 0190 2600 inches, from July 1, 1883; and hereby designated as Right No. 105.

3 0191 4175 inches, from July 1, 1896; and hereby designated as Right No. 129.

And be adjudged to pay \$572.25 costs in addition to the costs incurred by it.

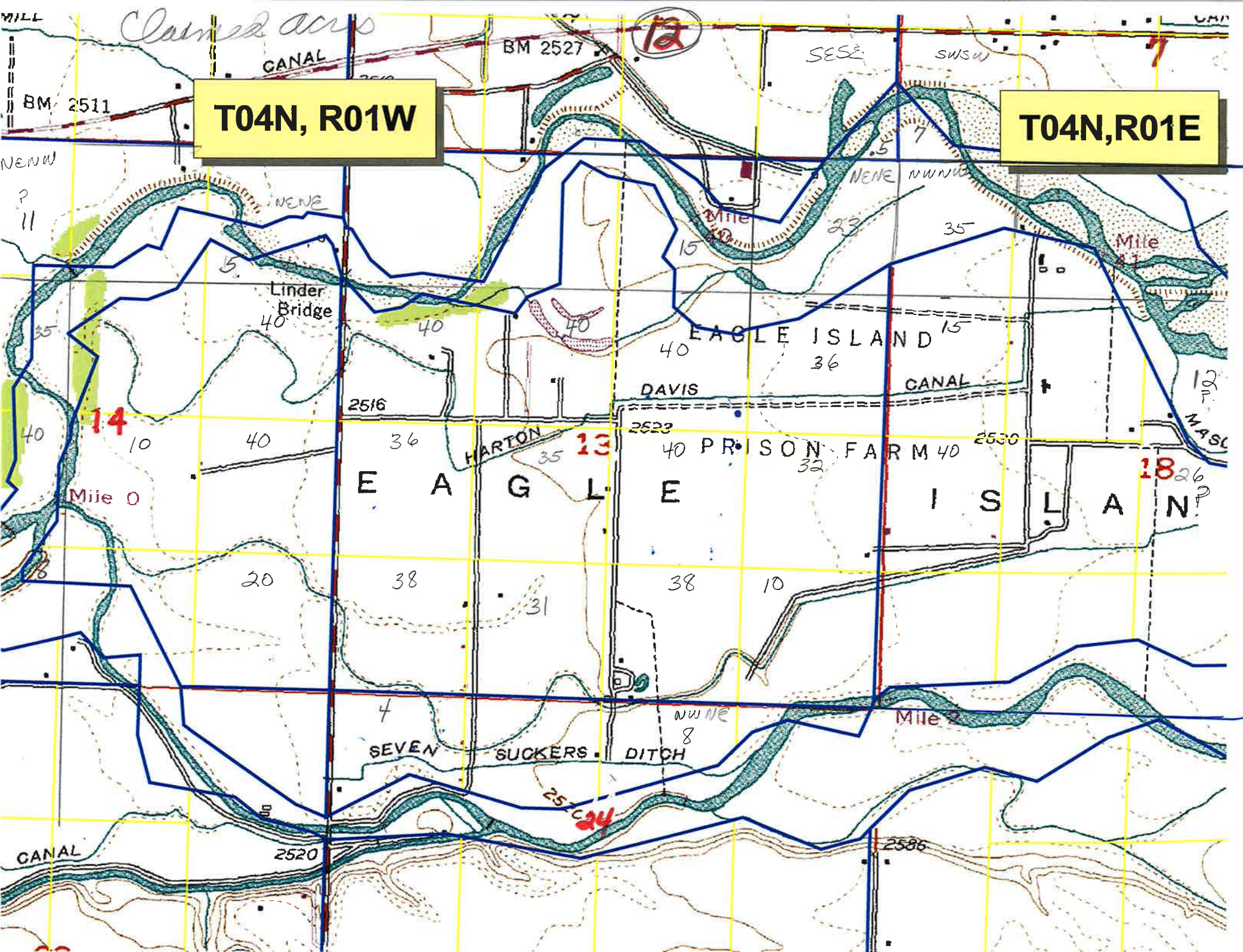
MICROFILMED

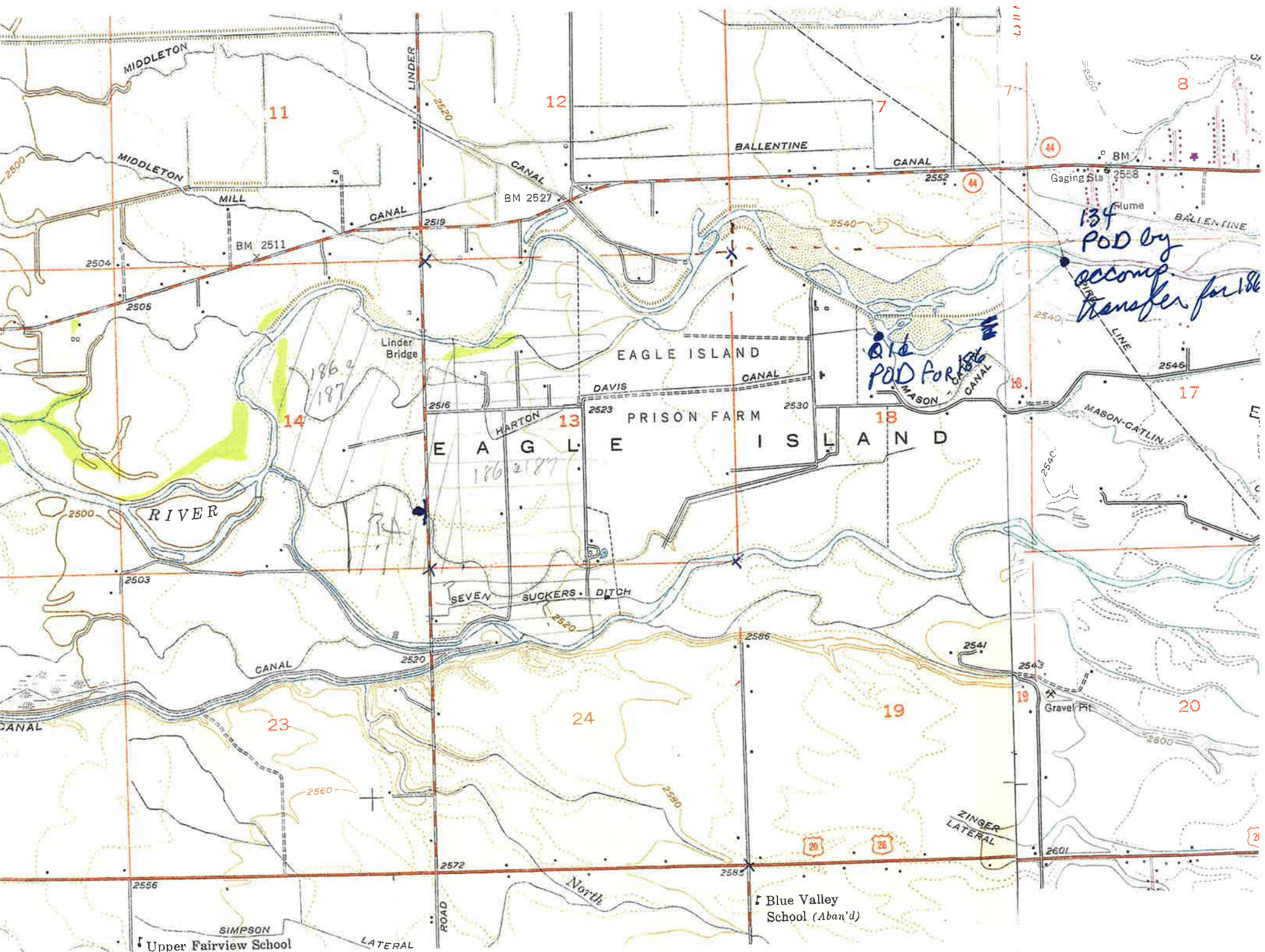
JUN 21 1996



T04N, R01W

T04N,R01E





T04N, R01W

T04N, R01E

14

13

18

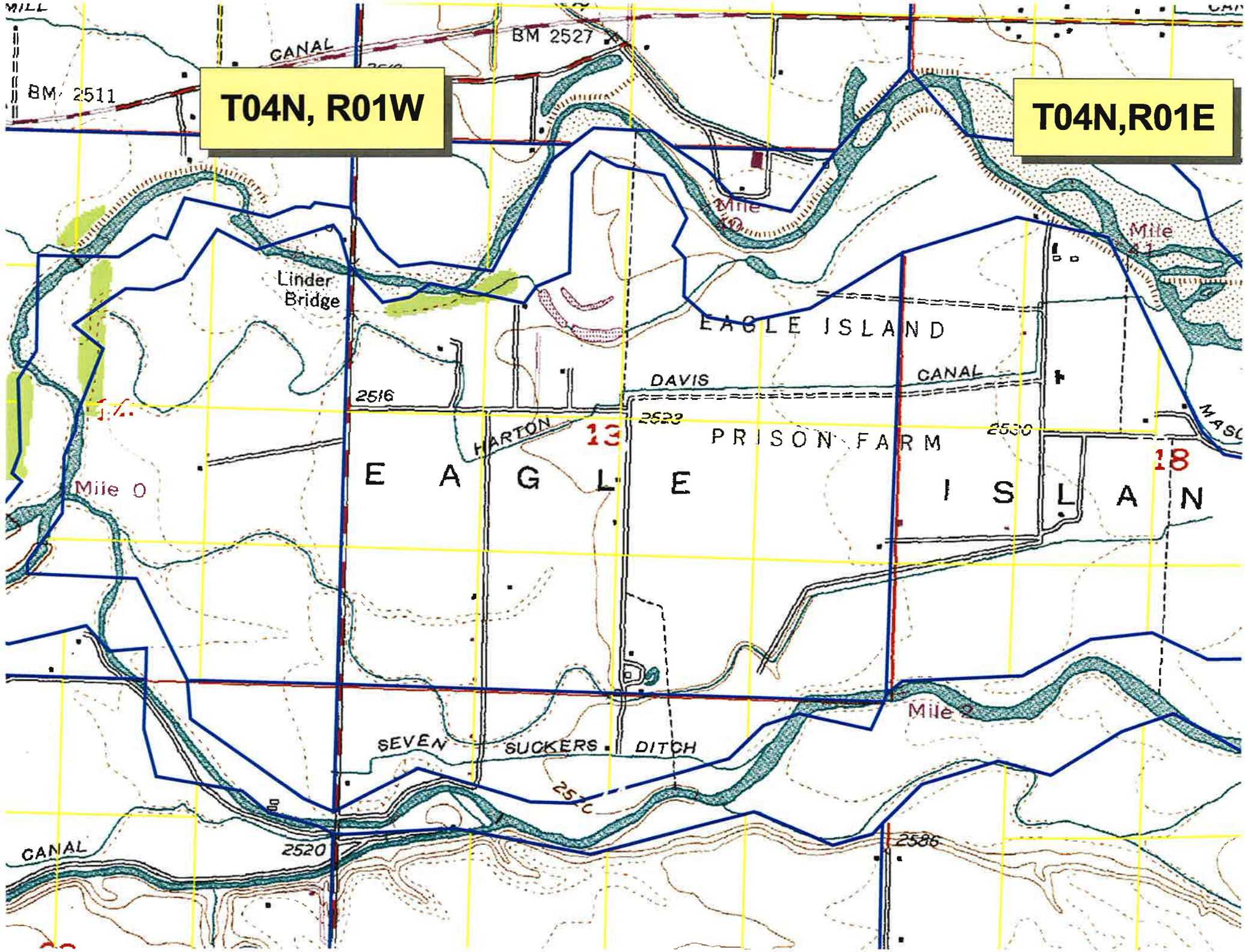
Hart-Davis Ditch Co
— = Boundary

24



T04N, R01W

T04N, R01E



T04N, R01W

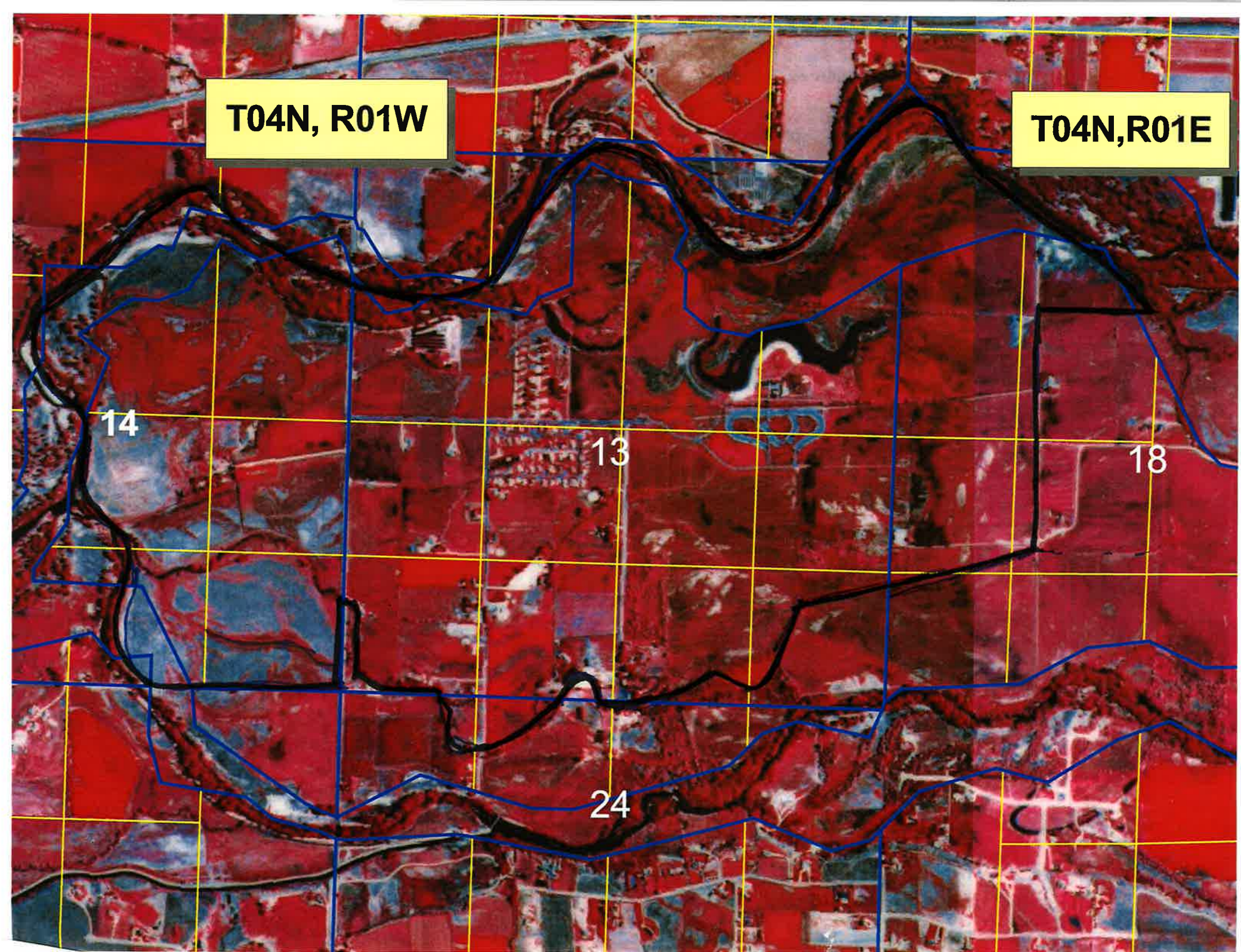
T04N, R01E

14

13

18

24



IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-11381

WATER RIGHT NUMBER: 63-11381

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	RON SALI PROPERTIES INC PROFIT SHARING PLAN 100 N 9TH SUITE 200 BOISE, ID 83702-5700 (208) 344-4224

Priority Date: 02/21/1990

Basis: License

Status: Active

<u>Source</u>	<u>Tributary</u>
UNNAMED DRAIN	BOISE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	3/15 to 11/15	1.020 CFS	230.40 AF
<u>Total Diversion:</u>		1.020 CFS	230.40 AF

Location of Point(s) of Diversion

UNNAMED DRAIN	SE1/4SE1/4	Sec. 14, Twp 04N, Rge 01W, B.M.
ADA County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	01W	14															18.0	33.2	51.2
																	L 9		

Total Acres: 51.2

Conditions of Approval:

1. R02 A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
2. R04 Use of water under this water right will be regulated by the watermaster of State Water District No. &DISTRICT.
3. R32 This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.5 afa per acre for irrigation of the lands above.

Remarks:Comments:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-134A

WATER RIGHT NUMBER: 63-134A

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	STATE OF IDAHO DEPT OF FISH & GAME PO BOX 25 BOISE, ID 83707 (208)334-2920
Current Owner	RON SALI 100 N 9TH ST STE 200 BOISE, ID 83702
Original Owner	T C CATLIN
Original Owner	, ZZ HART-DAVIS DITCH CO INC C/O LORNA HIBBARD 1320 LINDER RD EAGLE, ID 83616 (208)939-0284

Priority Date: 06/01/1864

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BOISE RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	3/15 to 11/15	1.680 CFS	378.00 AF
	<u>Total Diversion:</u>	1.680 CFS	378.00 AF

Location of Point(s) of Diversion

BOISE RIVER	NE1/4NE1/4	Sec. 14, Twp 04N, Rge 01E, B.M.
ADA County		

Place of UseIRRIGATION Within ADA County

T04N R01W S14 Lot 11 SWNE	45.2	T04N R01W S14 Lot 12 SENE	47.0
T04N R01W S14 NESE	39.0	T04N R01W S14 Lot 10 NWSE	42.8
Total Acres: 174			

Conditions of Approval:Remarks:

- General THE BALANCE OF THE ACREAGE IRRIGATED HAS BEEN CLAIMED UNDER THE HART-DAVIS DITCH FOR RIGHTS 63-00186 AND 63-00134. THIS LAND IS PART OF THE "POSSIBLE ADDITIONAL ACRES IRRIGATED" DISCUSSED ON THE HART-DAVIS CLAIMS. ADDRESS CHANGED BY LH 5/19/95.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-134A

Comments:

Dates and Other Information:

Claim Received Date: 2/22/1990

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

State or Federal: S

Owner Name Connector:

Water District Number: 63

Generic Max Rate Per Acre:

Generic Max Volume Per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Carey Act Number:

Mitigation Plan: False

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-134B

WATER RIGHT NUMBER: 63-134B

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	RON SALI PROPERTIES INC PROFIT SHARING PLAN 100 N 9TH SUITE 200 BOISE, ID 83702-5700 (208) 344-4224

Priority Date: 06/01/1864

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BOISE RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	3/15 to 11/15	0.810 CFS	183.00 AF
	<u>Total Diversion:</u>	0.810 CFS	183.00 AF

Location of Point(s) of Diversion

BOISE RIVER	NE1/4NE1/4	Sec. 18, Twp 04N, Rge 01E, B.M.
ADA County		
BOISE RIVER	NE1/4SE1/4SE1/4	Sec. 14, Twp 04N, Rge 01W, B.M.
ADA County		

Place of UseIRRIGATION Within ADA County

T04N R01W S14 Lot 9 SWSE 22.6 T04N R01W S14 SESE 38.0

Total Acres: 60.6

Conditions of Approval:Remarks:

1. General THE BALANCE OF THE ACREAGE IRRIGATED HAS BEEN CLAIMED UNDER THE HART-DAVIS DITCH FOR RIGHTS 63-00186 AND 63-00134. THIS LAND IS PART OF THE "POSSIBLE ADDITIONAL ACRES IRRIGATED" DISCUSSED ON THE HART-DAVIS CLAIMS.
2. General Address change per claimant letter. DH 7/15/2002

Comments:Dates and Other Information:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-134B

Dates and Other Information:

Claim Received Date: 2/22/1990
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal: S
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
----------------	---------------------------	-----------------	---------------------------	-----------------	---------------

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
----------------	------------------------	-----------------	-----------------

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-186B

WATER RIGHT NUMBER: 63-186B

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	RON SALI PROPERTIES INC PROFIT SHARING PLAN 100 N 9TH SUITE 200 BOISE, ID 83702-5700 (208) 344-4224

Priority Date: 06/01/1872

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BOISE RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	3/15 to 11/15	0.810 CFS	183.00 AF
	<u>Total Diversion:</u>	0.810 CFS	183.00 AF

Location of Point(s) of Diversion

BOISE RIVER	NE1/4SE1/4SE1/4	Sec. 14, Twp 04N, Rge 01W, B.M.
ADA County		
BOISE RIVER	NE1/4NE1/4	Sec. 18, Twp 04N, Rge 01E, B.M.
ADA County		

Place of UseIRRIGATION Within ADA County

T04N R01W S14 Lot 9 SWSE 22.6 T04N R01W S14 SESE 38.0
Total Acres: 60.6

Conditions of Approval:Remarks:

1. General THE BALANCE OF THE ACREAGE IRRIGATED HAS BEEN CLAIMED UNDER THE HART-DAVIS DITCH FOR RIGHTS 63-00186 AND 63-00134. THIS LAND IS PART OF THE "POSSIBLE ADDITIONAL ACRES IRRIGATED" DISCUSSED ON THE HART-DAVIS CLAIMS.
2. General Address change per claimant letter. DH 7/15/2002

Comments:Dates and Other Information:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-186B

Dates and Other Information:

Claim Received Date: 2/22/1990
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal: S
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
----------------	---------------------------	-----------------	---------------------------	-----------------	---------------

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
----------------	------------------------	-----------------	-----------------

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-186A

WATER RIGHT NUMBER: 63-186A

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	RON SALI 100 N 9TH ST STE 200 BOISE, ID 83702

Priority Date: 06/01/1872

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BOISE RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	3/15 to 11/15	1.680 CFS	378.00 AF
	<u>Total Diversion:</u>	1.680 CFS	378.00 AF

Location of Point(s) of Diversion

BOISE RIVER	NE1/4NE1/4	Sec. 18, Twp 04N, Rge 01E, B.M.
ADA County		

Place of UseIRRIGATION Within ADA County

T04N R01W S14 Lot 11 SWNE	45.2	T04N R01W S14 Lot 12 SENE	47.0
T04N R01W S14 NESE	39.0	T04N R01W S14 Lot 10 NWSE	42.8
Total Acres: 174			

Conditions of Approval:Remarks:

- General THE BALANCE OF THE ACREAGE IRRIGATED HAS BEEN CLAIMED UNDER THE HART-DAVIS DITCH FOR RIGHTS 63-00186 AND 63-00134. THIS LAND IS PART OF THE "POSSIBLE ADDITIONAL ACRES IRRIGATED" DISCUSSED ON THE HART-DAVIS CLAIMS. ADDRESS CHANGED BY LH 5/19/95.

Comments:Dates and Other Information:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-186A

Dates and Other Information:

Claim Received Date: 2/22/1990
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal: S
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
----------------	---------------------------	-----------------	---------------------------	-----------------	---------------

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
----------------	------------------------	-----------------	-----------------

63-134

III.

That the defendant THE MIDDLETON MILL DITCH COMPANY, a corporation, be and it is hereby awarded the use of the waters of Boise River, diverted from said river at a point near the farm of Davis & Hart, Sec 13, T. 4 N. R. 1 W. E.M., for use upon the lands lying under its canal system, in the following amounts from the following dates;

63 0123 ^{T 300, 301, 347, 349, 350, 391, 393} 1640 inches, from June 1, 1864; and hereby designated as Right No. 3
 3 0125 ^{T 300, 301, 391, 393} 1885 inches, from June 1, 1871; and hereby designated as Right No. 54.
 63 0126 850 inches, from June 1, 1891; and hereby designated as Right No. 120.

And adjudged to pay \$222.25 costs, in addition to the costs incurred by it.

IV.

That the defendant THOMAS ANDREWS be and he is hereby awarded the use of the waters of Boise River, diverted from said river at a point in SE $\frac{1}{4}$ of Sec. 25 and in SW $\frac{1}{4}$ of Sec. 30, T. 5 N. R. 5 W. B.M., for use upon the SE $\frac{1}{4}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of NW $\frac{1}{4}$, Sec. 23, E. $\frac{1}{2}$ of SE $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of SW $\frac{1}{4}$, E. $\frac{1}{2}$ of NW $\frac{1}{4}$, and lot 2, Sec. 22, all in T. 5 N. R. 5 W. B.M., in the following amounts from the following dates;

63 0127 165 inches, from June 1, 1864; and hereby designated as Right No. 4.
 63 0128 300 inches, from June 1, 1865; and hereby designated as Right No. 29.
 63 0129 65 inches, from June 1, 1870; and hereby designated as Right No. 31.
 63 0130 45 inches, from June 1, 1889; and hereby designated as Right No. 104.
 63 0131 175 inches, from June 1, 1891; and hereby designated as Right No. 121.
 And adjudged to pay \$52.50 costs, in addition to the costs incurred by him.

V.

That the defendants T. C. CATLIN and POLETTE MACE be and they are hereby awarded the use of the waters of Boise River, diverted from a point on the south bank of said river, on Lot 5, Sec. 17, T. 4 N. R. 1 E. B.M., for use on their lands on Eagle Island, Ada County, Idaho, in the following amounts from the following dates;

63 0132 ^{T 143, 179} 143 inches, from June 1, 1864; and hereby designated as Right NO. 5.
 63 0133 323 inches, from June 1, 1871; and hereby designated as Right No. 52.
 And adjudged to pay \$37.52 costs, in addition to the costs incurred by them.

VI.

That the defendant T. C. CATLIN be and he is hereby awarded the use of the waters of Boise River, diverted near the center of the NE $\frac{1}{4}$ of Sec. 18, T. 4 N. R. 1 E. B.M., through what is known as the Davis & Hart ditch, for use upon lands lying under said ditch on Eagle Island, Ada County, Idaho, in the following amount from the following date;

63 0134 165 inches, from June 1, 1864.
 And adjudged to pay \$11.55 costs, in addition to the costs incurred by him.

JUN 21 1996

IDAHO STATE HISTORICAL SOCIETY

REFERENCE SERIES

EAGLE ISLAND DITCHES

Number 507

1974

1. Mace Catlin Ditch. Begins on south bank of Boise River in Lot 5, Section 17, T4N, R1E, and runs through Sections, 13, 17, 18, 19, and 24 in T4N, R1E, for a distance of 3.5 miles. The ditch was constructed in 1864 by T. C. Catlin, J. E. Wood, J. C. Wilson, G. W. Paul, C. R. Barnes, John Johnson, and M. M. Johnson. As originally built, the ditch measured two-and-one-half feet in width and eighteen inches in depth. In 1864, 150 inches of water was diverted through the ditch. It was enlarged annually until 1872. From 1872 to 1905, the size of the ditch remained at six feet on the bottom, ten feet at the top, and two feet deep. Also during this time, 500 inches of water were appropriated and diverted. Two headgates serve this ditch, one being three feet wide and eighteen inches deep and the other two-and-one-half feet wide and eighteen inches deep. Polette Mace and T. C. Catlin each irrigated about 350 acres from this ditch. In 1864, Catlin first utilized water from this ditch to raise forty acres of hay. In 1906, the ditch received water rights (4 and 51) of 536 inches.

2. Davis and Hart Ditch. Received water from a slough that connected with the Boise River. The headgate for the ditch is located in the NE 1/4 of Section 18, T4N, R1E. The ditch extends westerly through lands originally belonging to E. N. Hart, Mary G. Davis, and T. C. Catlin. These lands were located in the center of the NE 1/4 of Section 18, T4N, R1E, the SW corner of Section 13, T4N, R1W, lots 9, 10, 11, and 12 and the E 1/2, SE 1/4 of Section 14, T4N, R1W.

This ditch was constructed in 1863 by Edward N. Hart. It was enlarged in 1864, and again in 1865. In 1865, it measured six feet at the top and four feet on the bottom. Hart at this time appropriated and diverted twelve cubic feet of water under a four-inch pressure. The ditch irrigated 575 acres. In 1906, the Davis and Hart ditch received water rights (6, 57, and 58) of 165 inches.

3. Thomas Aiken Ditch. The Thomas Aiken Ditch begins in Section 16, T4N, R1E, about sixty rods from the west line of said Section 16 and near its southern line. In 1876, Thomas Aiken filed on 250 acres in section 17, T4N, R1E. The same year he

05/09/2005

NOTICE OF ERROR
REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: June 24, 2005

Water right number: 63-31772 + 63-134

HART-DAVIS DITCH CO INC
C/O JIM BRESZINSKY
1111 TROUT RD
EAGLE ID 83616

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

2. Describe the changes you wish to make in the proposed recommendation:

Delete the POD described as 4N, 1E, S18, S10NE
on all recommendations jz

3. Give a brief explanation as to why you disagree with these portions:

Change the boundary map as described on the map jz

☐ I AGREE with this proposed recommendation: no changes need to be made.

DATE:

May 26, 05

SIGNATURE:

Ronald Rippey

Please print your name:

Ronald Rippey

IDWR Regional Office, 2735 Airport Wy, Boise, ID 83705, 2083342190

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-134 V1

WATER RIGHT NUMBER: 63-134 V1

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	STATE OF IDAHO DEPT OF FISH & GAME PO BOX 25 BOISE, ID 83707 (208)334-2920
Current Owner	HART-DAVIS DITCH CO INC C/O JIM BRESZINSKY 1111 TROUT RD EAGLE, ID 83616
Original Owner	T C CATLIN

, ZZ

Priority Date: 06/01/1864

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BOISE RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	03/01 to 11/15	3.300 CFS	
	<u>Total Diversion:</u>	3.300 CFS	

Location of Point(s) of Diversion

BOISE RIVER	NW1/4NW1/4	Sec. 17, Twp 04N, Rge 01E, B.M.
ADA County		
BOISE RIVER	L6 (SW1/4NE1/4)	Sec. 18, Twp 04N, Rge 01E, B.M.
ADA County		

← deleted
per Notice
of Error

Place of UseConditions of Approval:

1. 135 The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-134 V1

2. 155 This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and preceding to the earliest, shall be reduced to 60 percent of their decreed quantities.
3. C03 RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.
4. C18 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.
5. S45 Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

Remarks:

1. General THIS RIGHT IS DESIGNATED AS RIGHT NO. 6 IN THE STEWART DECREE AND THE BOISE RIVER WATER MASTERS RECORDS.
2. Quantity THIS RIGHT WHEN COMBINED WITH ALL OTHER RIGHTS SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE AT THE FIELD HEADGATE.
3. Explanatory WATER IS DELIVERED THROUGH THE HARTON DAVIS CANAL.
4. Explanatory RIGHT NO. 63-31772 IS ALSO DIVERTED THROUGH THE POINTS OF DIVERSION DESCRIBED ABOVE.
5. Place of Use - Irrigation THIS RIGHT IS LIMITED TO THE IRRIGATION OF 498 ACRES WITHIN THE BOUNDARY OF HART-DAVIS DITCH COMPANY.

Comments:

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION FIELD REPORT**

Prior to Field Exam

- ☒ Copy of Claim, claim has been signed, sealed, and dated by notary?
- ☒ Check fees paid
- ☐ Well logs (if needed) *NA*
- ☒ Copy of topo or NAPP
- ☒ Check of Govt. Lots, if needed, Govt. Plat/Tax lot information
- ☒ Check POD & POU overlap, see below – include overlapping right for exam
- ☐ Evidence of Priority – if none, talk with claimant *NA*

CLAIMANT INFORMATION – verify contact information is completeClaim No(s) 63-134Owner: Hart-Davis Ditch Co. Phone No. 939-6712 = Ron Rippey, Pres.Current Address: ~~401 Trout Rd. C/O Breszinski~~, 1111 Trout Rd., Eagle 83616

- ☒ No change NAME IS THE SAME
- ☐ NEW OWNER
- ☐ No change Address
- ☒ NEW ADDRESS
- ☐ How long owned property?

Accompanied by: Ron Rippey**PRIORITY DATE**

- ☒ No change – Complete evidence submitted or not necessary
- ☐ Incomplete – Claimant should be asked when water was first used and submit proof of date.
- ☐ Priority date is acceptable/within mandatory filing dates?

Priority date, per claimant, is: 6-1-1864 = decreed priority

(If priority date, based on your exam, seems questionable, explain below.)

Source: Boise River Tributary to _____

- ☒ No Change – SAME SOURCE
- ☐ Source found is different than claimed:

POINT OF DIVERSION

- ☐ No change
- ☒ POD found is different than claimed: new second POD in S17 was added.
- ☐ If different, when did POD change? 40+ years – two PODs used now. MTS

DIVERSION AND DELIVERY SYSTEM

Points of Diversion:

ID #	Govt Lot #	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks GPS ID
			NW	NW	17	4N	1E	Ada	GPS
			~~SW~~	~~NE~~	~~18~~	~~"~~	~~"~~	~~Ada~~	~~"~~ deleted per notice of error

Description of diverting works

A diversion dam and headgate structure at ^{the} both POD sites

OVERLAP REVIEW

Other water rights with the same point of diversion: _____

Does overlap add acres or uses to existing system, increase rate of flow or volume, or other? Explain:

WATER USES☒ No change☐ Different Uses

Use _____ From _____ To _____ Amount _____ CFS _____ AFA

Use _____ From _____ To _____ Amount _____ CFS _____ AFA

Use _____ From _____ To _____ Amount _____ CFS _____ AFA

TOTAL VOLUME – Groundwater only *NA*

- ☐ Incomplete on claim, the total is, Amount _____ CFS _____ AFA
- ☐ Changes found, the new total is, Amount _____ CFS _____ AFA
- ☐ More than 1" per Acre? Yes _____ (claimant must complete excess flow sheet)

NON-IRRIGATION USES:☒ No change☐ Changes Exam found: Domestic # of homes _____ Stock # _____

Types _____ Additional comments: _____

PLACE OF USE:☒ No Change☐ Changes shown below:

498

625 acres within the boundary of Hart-Davis Ditch Co.			NE				NW				SW				SE				Totals
Place of Use																			
TWP	RGE	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Overlap with other water rights: 63-186 = Hart-Davis Partial overlap
 in 4N, 1E, 18 and 4N, 1W, 13 with Mace-Catlin rights 63-132, 133 & 382B
 Does overlap increase rate of flow, volume, additional acres, different source for same acres? Explain:

Delivery System Narrative: The POD in S17 delivers water to a ditch that flows into a backwater slough of the Boise River. The slough also receives excess Mace-Catlin ditch water. A second structure POD in S18 diverts water to the Hart-Davis ditch and the place of use.

Well or Diversion Identification No GPS ID	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge size

FLOW MEASUREMENTS: None.

Attach appropriate documents

NARRATIVE/REMARKS/COMMENTS

According to Ron Ripsey the current POD and delivery system has been used for 35-40 years.
 The Mace-Catlin Ditch Co. boundary overlaps the East boundary of Hart-Davis boundary because the land in S18 & S13 receives water from both ditches.
 The digitized POD equals 666 acres.
 The competing claims filed by Ron Loh should be disallowed. He is a shareholder of Hart-Davis.

Remarks: Limited to .02 cfs/acre when combined
with Mace-Catten wants 6B-132, 133 & 382B, 186
Limited to 498 acres within the boundary of Hart-Davis
Comp. C03 $996 \text{ cfs} \div .02 = 498$
Officers: Ron Ripsey, Pres. & Jim Breszowski, Sec-Treas.
POU & boundary map reviewed with Ron Ripsey
The 498 acre limitation is based on one acre per inch of
water

AFTER EXAM THE FILE SHOULD CONTAIN:

- ☐ Completed claim checklist
- ☐ Photographs of POD's and POU
- ☐ GPS readings
- ☐ Completed map and or GIS layout showing POD's and POU

DATE EXAM CONDUCTED: 9-4-02

FIELD EXAMINER: Mel Schulte

Notice of Error completed 5-26-05 during a
meeting with Ron Ripsey and several board
members at the Ripsey residence

HART-DAVIS DITCH COMPANY
PHOTOGRAPHS DATED 9/4/2002

PHOTO #1



POINT OF DIVERSION
AND HEADGATE IN
T04N, R01E, S17, NWNW.

PHOTO #2



POINT OF DIVERSION
AND HEADGATE IN
T04N, R01E, S18, SWNE

BOISE VALLEY CANALS AND ACREAGE

63-134

CHART NO. 12

AIKEN	236 ACRES	ISLAND HIGH LINE	945 ACRES
ANDREWS	1068 "	LEMP DITCH	300 "
BALLENTYNE	763 "	LITTLE PIONEER	1336 "
BAXTER	200 "	LOWER CENTER POINT.....	880 "
BOISE CITY	1828 "	MACE & CATLIN	536 "
BOISE PROJECT BOARD OF CONTROL		MACE & MACE	80 "
BIG BEND IRRIG. DIST.....	1724 "	MAMMON	468 "
BOISE-KUNA IRRIG. DIST.....	48,629 "	MCCONNEL ISLAND	1600 "
NAMPA & MERIDIAN IRRIG. DIST....	40,304 "	MCMANUS & TEATER	168 "
NEW YORK IRRIG. DIST.....	17,728 "	MIDDLETON MILL	4400 "
WILDER IRRIG. DIST.....	56,535 "	MIDDLETON WATER.....	5180 "
TOTAL - BOARD OF CONTROL.....	164,920 "	MISCELLANEOUS	838 "
BOISE VALLEY	2729 "	NEW DRY CREEK	3059 "
BOONE	517 "	NEW UNION	688 "
BOWMAN-SWISHER.....	424 "	PARMA DITCH	602 "
BUBB (SOUTH BOISE MUTUAL).....	1057 "	PENITENTIARY	321 "
*CALDWELL HIGH LINE.....	11,917 "	PIONEER IRRIG. DIST.....	23,974 "
CAMPBELL (CANYON DITCH).....	802 "	PIONEER DIXIE.....	3000 "
CANYON COUNTY	3957 "	RIDENBAUGH	26,877 "
CAITAL VIEW	600 "	RIVERSIDE IRRIG. DIST.....	10,645 "
CONWAY-HAMMING.....	259 "	ROEDEL	160 "
DAVIS & LITTLE DAVIS	634 "	ROSSI MILL	512 "
EUREKA WATER CO. #1	1300 "	SEBREE.....	15,500 "
EUREKA DITCH CO. #2	2625 "	SEVEN SUCKERS	70 "
FARMERS UNION	8372 "	SETTLERS	12,322 "
GRAHAM-GILBERT	200 "	SIEBENBERG	646 "
HAAS.....	367 "	THURMAN MILL	1719 "
HART-DAVIS	453 "	UPPER CENTER POINT.....	641 "
		WARM SPRINGS DITCH	454 "
		TOTAL	324,239 ACRES

DRAINAGE WATER (NOT DIVERTED FROM BOISE RIVER)

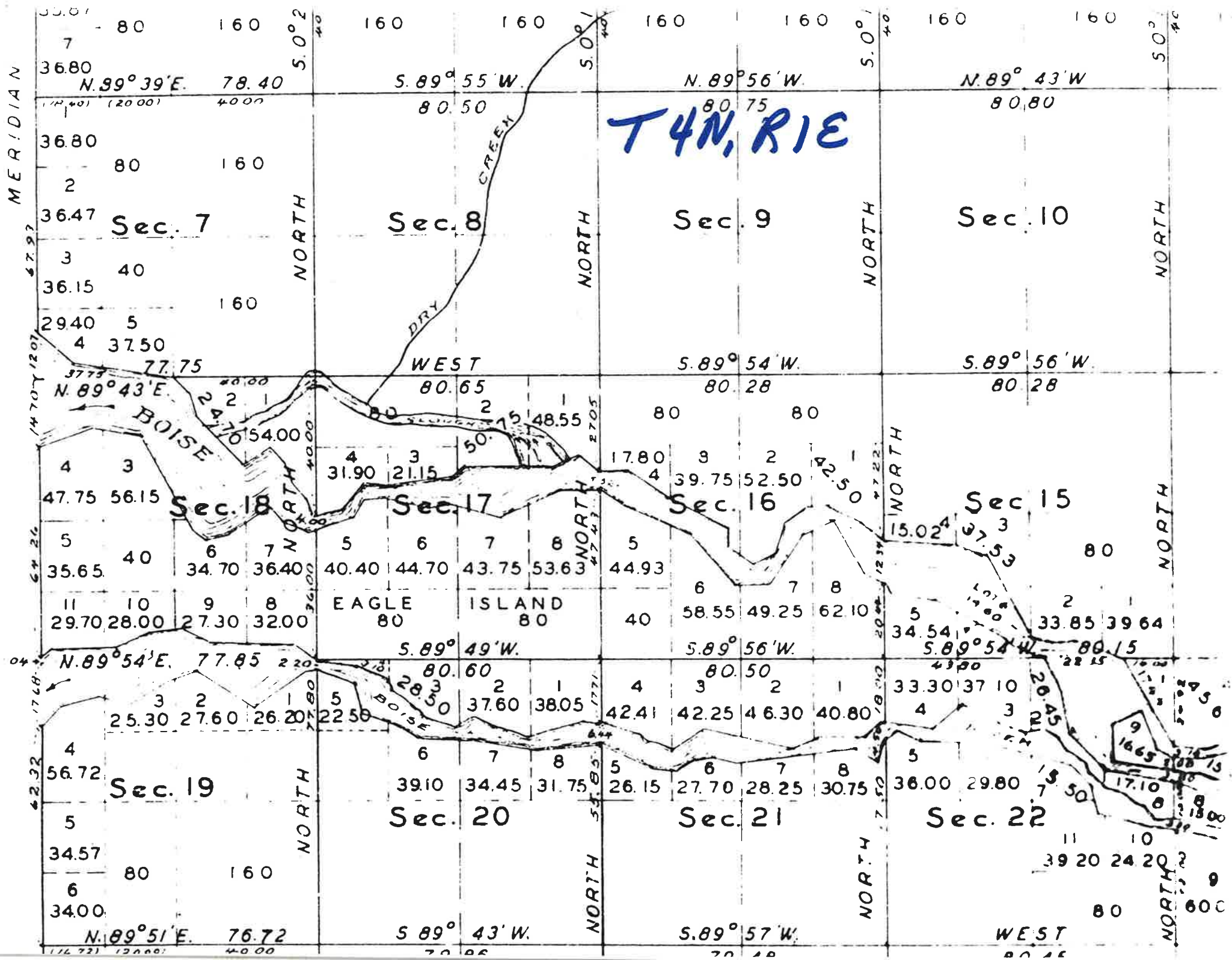
BLACK CANYON IRRIGATION DISTRICT	6,894 ACRES
CALDWELL IRRIGATION DISTRICT	755 "
MORELAND & VIAL (DIXIE DRAIN)	640 "
	8,289 ACRES

GRAND TOTAL 332,528 ACRES

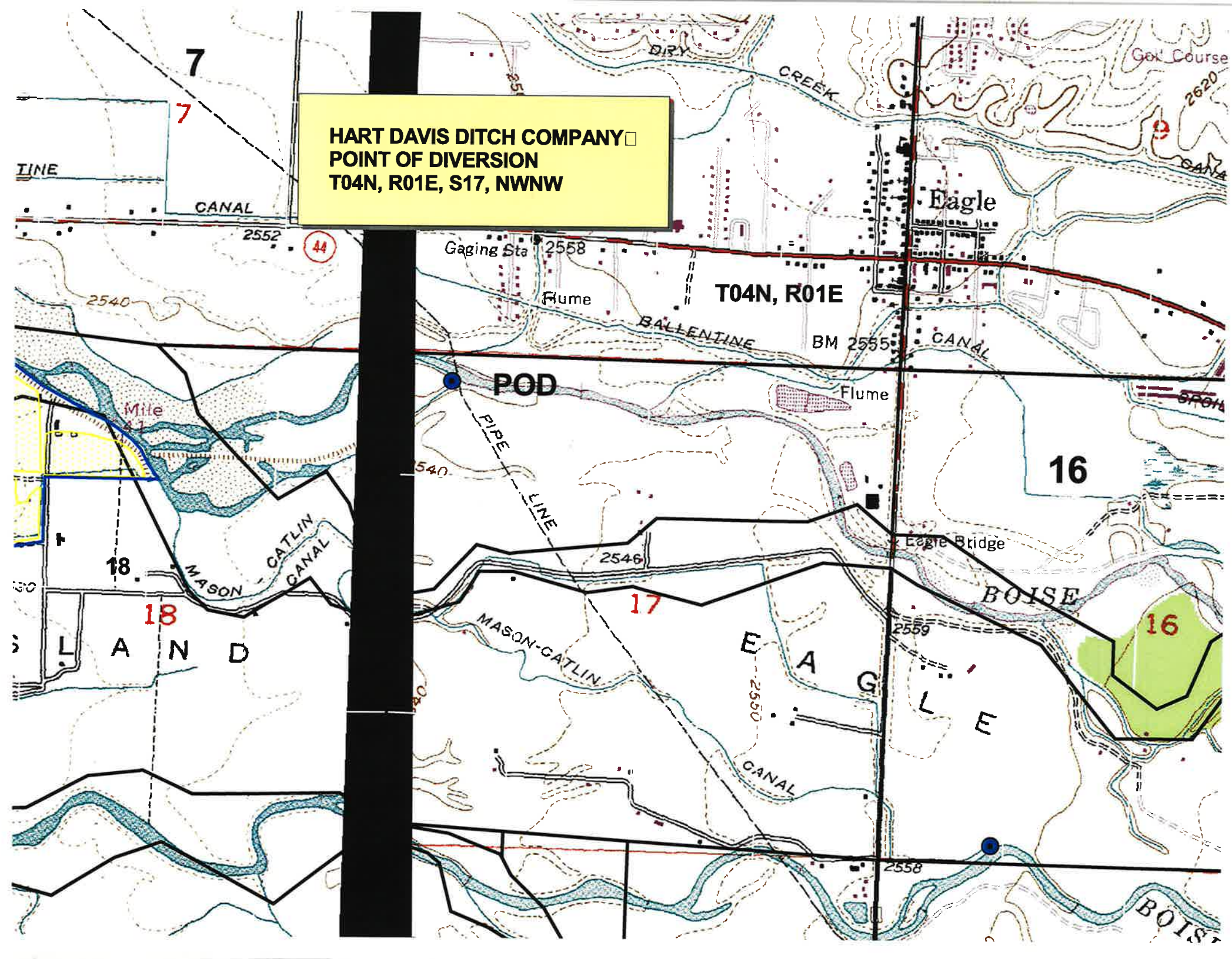
THIS ACREAGE IS BASED, IN SOME INSTANCES, UPON ACTUAL SURVEYS, AND IN OTHER CASES UPON THE ACREAGE AS DETERMINED AT THE TIME OF THE STEWART DECREE, AND IS THE BEST INFORMATION AVAILABLE AT THE PRESENT TIME. IT WAS ORIGINALLY COMPUTED FEBRUARY 14, 1941, BUT HAS BEEN REVISED SEVERAL TIMES, PARTICULARLY TO REDUCE RIVER BOTTOM ACREAGES TO CONFORM TO STEWART DECREE ACREAGES AS DETERMINED BY SPECIAL COMMITTEE, AND TO ACCOMMODATE TRANSFERS FROM ONE CANAL OR USER TO ANOTHER.

RIDENBAUGH REPRESENTS OLD LANDS WITHIN THE NAMPA & MERIDIAN IRRIGATION DISTRICT THAT ARE WATERED BY THE OLD RIDENBAUGH RIGHTS IN THE STEWART DECREE. THE BALANCE OF THE NAMPA & MERIDIAN IRRIGATION DISTRICT LANDS ARE INCLUDED UNDER THE BOARD OF CONTROL.

*3960 ACRES ARE WATERED WITH LIVE WATER. THE BALANCE OF THE WATER COMES FROM SEVERAL DRAINS.



HART DAVIS DITCH COMPANY
POINT OF DIVERSION
T04N, R01E, S17, NWNW



**HART DAVIS DITCH COMPANY
AMENDED BOUNDARY AND PLACE OF USE**

T04N, R01W

T04N, R01E

14

13

18



**HART DAVIS DITCH COMPANY
AMENDED BOUNDARY AND PLACE OF USE**

T04N, R01W

T04N, R01E

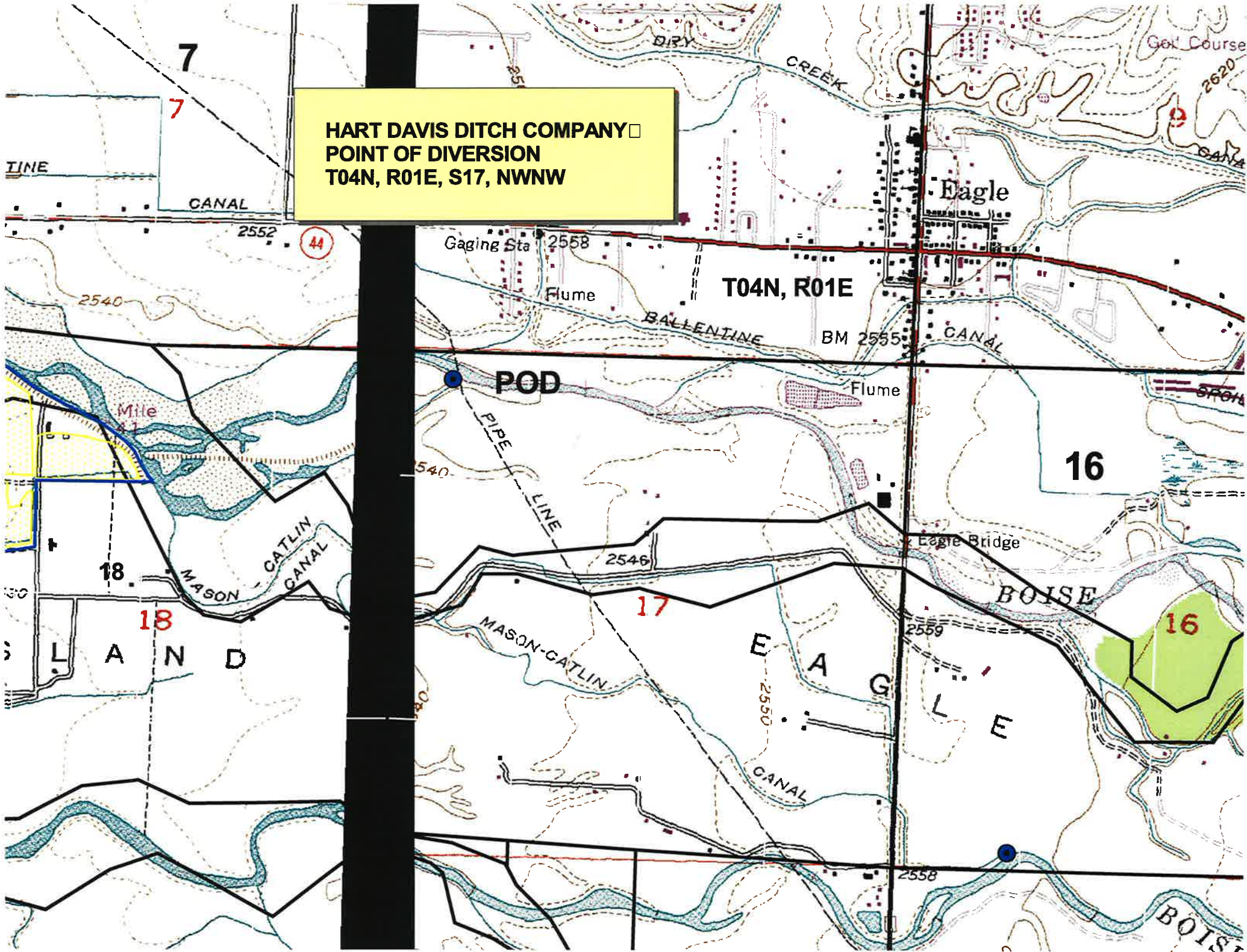
14

13

18



HART DAVIS DITCH COMPANY
POINT OF DIVERSION
T04N, R01E, S17, NWNW



Mel.

SORRY I WAS SO SLOW
GETTING THIS BACK TO YOU.

I COULDN'T SEE WELL ENOUGH
TO PUT ON FIELDS ALSO, SO
THIS IS PRETTY WELL THE BELLYS
OF HART DAVIS DITCH

Ronald Rupp

RECEIVED

NOV 05 2002

WATER RESOURCES
WESTERN REGION



9/9/2003

Idaho Dept. of Water Resources
Place of Use Comparison Report

Page1

[illegible]

[illegible]

**Idaho Dept. of Water Resources
Place of Use Comparison Report**

Type	WR #	Owner	Source	TRS	NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	Total
Claim	63 120G	FARMERS UNION DITCH CO LTD,	BOISE RIVER	04N01E7	15	30															45
Claim	63 123C	FARMERS UNION DITCH CO LTD,	BOISE RIVER	04N01E7	15	30															45
Claim	63 124Q	FARMERS UNION DITCH CO LTD,	BOISE RIVER	04N01E7	15	30															45
Claim	63 125B	NEW DRY CREEK DITCH CO,	BOISE RIVER	04N01E7	25	36	39	39	38	39	40	40	36			25	38	40	38	39	512
Claim	63 125J	FARMERS UNION DITCH CO LTD,	BOISE RIVER	04N01E7	15	30															45
Claim	63 126B	NEW DRY CREEK DITCH CO,	BOISE RIVER	04N01E7	25	36	39	39	38	39	40	40	36			25	38	40	38	39	512
Claim	63 126F	FARMERS UNION DITCH CO LTD,	BOISE RIVER	04N01E7	15	30															45
Claim	63 134	HART-DAVIS DITCH CO INC,	BOISE RIVER	04N01E7											8						8
Claim	63 15238	BALLENTYNE DITCH CO LTD,	BOISE RIVER	04N01E7							40		40	40	20	25					165
Claim	63 161L	NEW DRY CREEK DITCH CO,	BOISE RIVER	04N01E7	25	36	39	39	38	39	40	40	36			25	38	40	38	39	512
Claim	63 164E	FARMERS UNION DITCH CO LTD,	BOISE RIVER	04N01E7	15	30															45
Claim	63 165M	FARMERS UNION DITCH CO LTD,	BOISE RIVER	04N01E7	15	30															45
Claim	63 17468	NEW DRY CREEK DITCH CO,	BOISE RIVER	04N01E7	25	36	39	39	38	39	40	40	36			25	38	40	38	39	512
Claim	63 186	HART-DAVIS DITCH CO INC,	BOISE RIVER	04N01E7											8						8
Claim	63 195	BALLENTYNE DITCH CO LTD,	BOISE RIVER	04N01E7							40		40	40	20	25					165
Claim	63 198AA	BALLENTYNE DITCH CO LTD,	BOISE RIVER	04N01E7							40		40	40	20	25					165
Claim	63 198AG	FARMERS UNION DITCH CO LTD,	BOISE RIVER	04N01E7	15	30															45
Claim	63 205	NEW DRY CREEK DITCH CO,	BOISE RIVER	04N01E7	25	36	39	39	38	39	40	40	36			25	38	40	38	39	512
Claim	63 206	NEW DRY CREEK DITCH CO,	BOISE RIVER	04N01E7	25	36	39	39	38	39	40	40	36			25	38	40	38	39	512
Claim	63 207	NEW DRY CREEK DITCH CO,	BOISE RIVER	04N01E7	25	36	39	39	38	39	40	40	36			25	38	40	38	39	512
Claim	63 234	BALLENTYNE DITCH CO LTD,	BOISE RIVER	04N01E7							40		40	40	20	25					165
Claim	63 248	FARMERS UNION DITCH CO LTD,	BOISE RIVER	04N01E7	15	30															45
Claim	63 258A	BALLENTYNE DITCH CO LTD,	BOISE RIVER	04N01E7							40		40	40	20	25					165
Claim	63 258B	NEW DRY CREEK DITCH CO,	BOISE RIVER	04N01E7	25	36	39	39	38	39	40	40	36			25	38	40	38	39	512
Claim	63 259	NEW DRY CREEK DITCH CO,	BOISE RIVER	04N01E7	25	36	39	39	38	39	40	40	36			25	38	40	38	39	512
Claim	63 260B	BALLENTYNE DITCH CO LTD,	BOISE RIVER	04N01E7							40		40	40	20	25					165
Claim	63 263	NEW DRY CREEK DITCH CO,	BOISE RIVER	04N01E7	25	36	39	39	38	39	40	40	36			25	38	40	38	39	512
Claim	63 264	BALLENTYNE DITCH CO LTD,	BOISE RIVER	04N01E7							40		40	40	20	25					165
Claim	63 285	BALLENTYNE DITCH CO LTD,	BOISE RIVER	04N01E7							40		40	40	20	25					165
Claim	63 286	NEW DRY CREEK DITCH CO,	BOISE RIVER	04N01E7	25	36	39	39	38	39	40	40	36			25	38	40	38	39	512
Claim	63 288B	NEW DRY CREEK DITCH CO,	BOISE RIVER	04N01E7	25	36	39	39	38	39	40	40	36			25	38	40	38	39	512
Claim	63 28977	NEW DRY CREEK DITCH CO,	BOISE RIVER	04N01E7	25	36	39	39	38	39	40	40	36			25	38	40	38	39	512
Claim	63 297	FARMERS UNION DITCH CO LTD,	BOISE RIVER	04N01E7	15	30															45
Claim	63 8497	LORICE QUONG, WILLIAM QUONG,	GROUND WATER	04N01E7												16			10		26
Claim	63 21729	FARMERS UNION DITCH CO LTD,	UNNAMED DRAINS	04N01E7	15	30															45
Claim	63 21730	FARMERS UNION DITCH CO LTD,	UNNAMED DRAINS	04N01E7	15	30															45
Claim	63 2406	DRAINAGE DIST NO 2,	WASTE WATER	04N01E7	38	39	39	39	39	36	36	40	40	36	19	23	39	39	30	33	565

[illegible]

[illegible]

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-134

WATER RIGHT NUMBER: 63-134

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	STATE OF IDAHO DEPT OF FISH & GAME PO BOX 25 BOISE, ID 83707 (208)334-2920
Current Owner	HART-DAVIS DITCH CO INC C/O LORNA HIBBARD 1320 LINDER RD EAGLE, ID 83616 (208)939-0284
Original Owner	T C CATLIN

, ZZ

Priority Date: 06/01/1864

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BOISE RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	3/15 to 11/15	3.300 CFS	
	<u>Total Diversion:</u>	3.300 CFS	

Location of Point(s) of Diversion

BOISE RIVER	NE1/4NE1/4	Sec. 18, Twp 04N, Rge 01E, B.M.
ADA County		

Place of UseIRRIGATION Within ADA County

T04N R01E S07	SWSW	8.0	T04N R01E S18	NWNE	12.0
T04N R01E S18	NWNW	35.0	T04N R01E S18	SWNW	15.0
T04N R01E S18	NWSW	40.0	T04N R01E S18	NWSE	26.0
T04N R01W S12	SESE	0.5	T04N R01W S13	NENE	23.0
T04N R01W S13	NWNE	33.0	T04N R01W S13	SWNE	40.0
T04N R01W S13	SENE	36.0	T04N R01W S13	NENW	15.0
T04N R01W S13	SWNW	40.0	T04N R01W S13	SENE	40.0
T04N R01W S13	NESW	33.5	T04N R01W S13	NWSW	36.0
T04N R01W S13	SWSW	38.0	T04N R01W S13	SESW	31.0
T04N R01W S13	NESE	32.0	T04N R01W S13	NWSE	40.0
T04N R01W S13	SWSE	38.0	T04N R01W S13	SESE	10.0
T04N R01W S14	NENE	5.0	T04N R01W S14	SENE	40.0
T04N R01W S14	NENW	11.0	T04N R01W S14	SENE	35.0
T04N R01W S14	NESW	40.0	T04N R01W S14	SESW	8.0
T04N R01W S14	NESE	40.0	T04N R01W S14	NWSE	10.0
T04N R01W S14	SESE	20.0	T04N R01W S24	NENE	8.0
T04N R01W S24	NWNW	4.0			

Total Acres: 843

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Claim Report 63-134

Conditions of Approval:

Remarks:

1. General LANDS ON EAGLE ISLAND. P/D INCOMPLETE IN DECREE.
THERE MAY BE ADDITIONAL LANDS IRRIGATED.

Comments:

Dates and Other Information:

Claim Received Date: 9/11/1989
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal: S
Owner Name Connector:
Water District Number: 63
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-134

WATER RIGHT NUMBER: 63-134

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	STATE OF IDAHO DEPT OF FISH & GAME PO BOX 25 BOISE, ID 83707 (208)334-2920

Original Owner	T C CATLIN
----------------	------------

	, ZZ
Current Owner	STATE OF IDAHO BOISE, ID (801)261-8006

Priority Date: 06/01/1864

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BOISE RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	/ to /	3.300 CFS	
	<u>Total Diversion:</u>	3.300 CFS	

Location of Point(s) of DiversionBOISE RIVER
ADA County

Sec. 18, Twp 04N, Rge 01E, B.M.

Place of UseConditions of Approval:Remarks:

1. General LANDS ON EAGLE ISLAND. P/D INCOMPLETE IN DECREE.

Comments:Dates and Other Information:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-134

Dates and Other Information:

Licensed Date:
Decreed Date: 1/18/1906
Water Supply Bank Enrollment Accepted:
Water Supply Bank Enrollment Removed:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal:
Owner Name Connector:
Water District Number: 63
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Decree Defendant:
Decree Plaintiff:
Civil Case Number:
Judicial District:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

August 30, 1989

A63-00134
A63-00186

Mr. Glen O. Sawyer
Hart-Davis Ditch Company, Inc.
c/o Jerry Hibbard
1320 Linder Road
Eagle, ID 83616

RE: Snake River Basin Adjudication (SRBA)
Ada County

Dear Mr. Sawyer:

In response to our discussion on August 28, 1989, and due to the fact that Hart-Davis Ditch Company, Inc. was not served with a commencement notice, this letter is an extension of time for the filing of Notice of Claims to a Water Right. The original filing deadline for these claims was September 8, 1989. The extension is granted until September 23, 1989. Please keep this extension of time with your other legal documents.

This extension is granted under the authority of §42-1409 (10), Idaho Code.

Signed this 30th day of August, 1989.



David B. Shaw
Adjudication Bureau Chief

DBS;dms

MICROFILMED

AUG 14 1992

5/88

Date Received

RECEIVED
AUG 22 1989RECEIVED
AUG 21 1989State of Idaho
Department of Water ResourcesREQUEST FOR EXTENSION OF TIME
TO FILE ADJUDICATION CLAIM(S)

Department of Water Resources

Department of Water Resources

Western Regional Office

The Idaho Department of Water Resources will consider this form as a request that the claimant be granted an additional period of time in which to file claim(s) beyond the 90 days allowed by Section 42-1409(10), Idaho Code.

HART-DAVIS DITCH CO. INC JO JERRY HIBBARD
Name of Claimant

1320 LINDER ROAD
Post Office Address

EAGLE ID 83616
City, State, Zip Code

AUG 28 1989

Department of Water Resources
Western Regional Office

County(s) where Place of Use is located

ADA
SEP 8 1989
Date Claim Originally Due

HART-DAVIS DITCH
Identify water right(s) for which extension is requested

State reason(s) why an extension of time is requested:

DUE TO CONDITIONS BEYOND MY CONTROL I
AM UNABLE TO COLLECT ALL THE PERTINENT DATA
FROM EACH PATRON OF THE DITCH TO COMPLETE THE
ADJUDICATION FILING IN THE ALLOTTED TIME.
Claimant requests an extension to NOV 15, 1989

Glen O. Sawyer
Signature

President
Title

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

The above request for extension of time is hereby

granted X denied,
and the filing deadline extended to _____, 19__

Signed this 24 day of August, 1989.

Need to show that diligent
effort has been made to meet
deadline in order to obtain extension.
Director or his designated agent
DAVID B. SHAW

See Dave Shaw's letter of 8-30-89 approving this extension.

MICROFILMED

AUG 14 1992

#6

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT CLAIMS PROOF READING REPORT
(REGIONAL)

09/01/89 16:07:43
Page 1

Water Right Number - 63-00134 Adj. Flag Translation: Standard Water Right Number Old (D) Number -

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

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
06/01/1864 14 D - DECREED

+ - - - - Source - - - - - + + - - - - - Tributary - - - - - +
BOISE RIVER SNAKE RIVER

+ - - - - Point of Diversion - - - - - +
TwN Rng Sec Tract Lot RFlg County
04N 01E 18 NE, NE (1) ADA

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
01 - IRRIGATION 3.300

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - +
3.300

+ - - - - Place of Use - - - - - +
TwN Rng Sec Tract Lot Acres Code Description County

Total Acres:

+ - - Diversion Means -
+ - - Non-Irrigation Use -
+ - - Other Rights for Same Use -

+ - - - - Remarks - - - - - +
LANDS ON EAGLE ISLAND. P/D INCOMPLETE IN DECREE.

+ - - - - Conditions of Approval - - - - - +
No Conditions of Approval found.

+ - - - - Decree Plaintiff - - - + + - - - - Decree Defendant - - - + + - Decree Date - +
FARMERS CO-OP DITCH CO. RIVERSIDE IRR. DIST. 01/18/1906

+ - - Audit Fields -

+ - - - - Water Rights Dates and Flags Area - - - - - +

MICROFILMED
AUG 14 1992

Proof Due Date - 00/00/0000	Field Exam Made - 00/00/0000	Field Exam Fee -
Approved/Denied - 00/00/0000	Protested Date - 00/00/0000	Swan Falls -
Proof Made Date - 00/00/0000	Hearing Date - 00/00/0000	Temporary Right - P

Adj. flag translation: Standard Water Right Number

Start Work Date	- 00/00/0000	Verified Date	- 06/18/1985	DLE/Carey Act	-
Order Show Cause	- 00/00/0000	Receipt Number	-	Water District	- 63
Licensed Date	- 00/00/0000	Appl Received	- 00/00/0000	Transfer/Amended	-
Decree Date	- 01/18/1906				

MICROFILMED
AUG 14 1992