

IDAHO DEPARTMENT OF WATER RESOURCES 11/29/2001
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

NAME AND ADDRESS: BENNETT FARMS
3590 E RICHARDS RD
DOWNEY ID 83234

SOURCE: UNNAMED STREAM TRIBUTARY: PECK CREEK

QUANTITY: 0.16 CFS

PRIORITY DATE: 06/01/1930

POINT OF DIVERSION:

T11S R37E S6 SWNE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 10/31	0.160 CFS

PLACE OF USE: IRRIGATION Within BANNOCK County

T11S R37E S06	SWNE	19.0	T11S R37E S06	SENE	1.0
T11S R37E S06	NESE	17.0	T11S R37E S06	NWSE	1.0

38 ACRES TOTAL

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 38 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 29-02319B, 29-04039

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 8 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

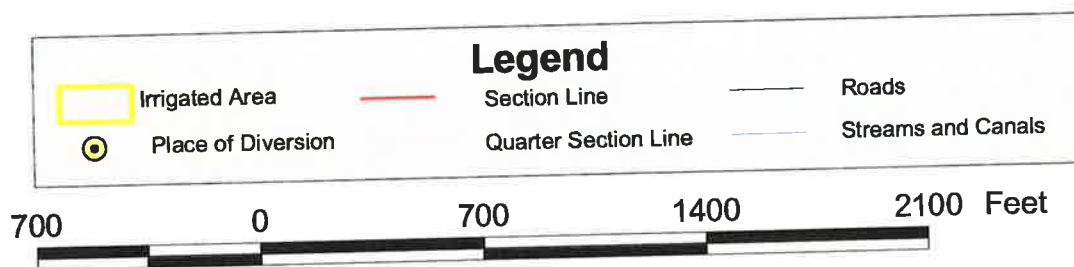
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

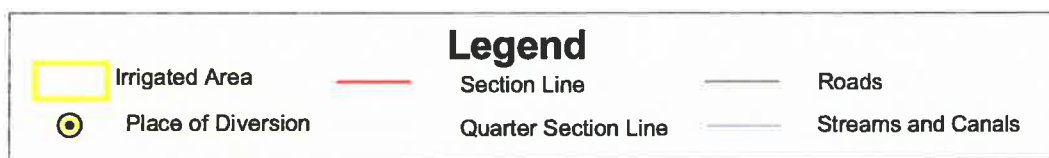
EXPLANATORY MATERIAL: Beneficial Use

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

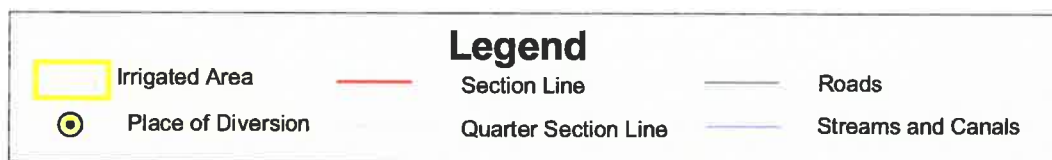
Township , 11S37E



Township , 11S37E



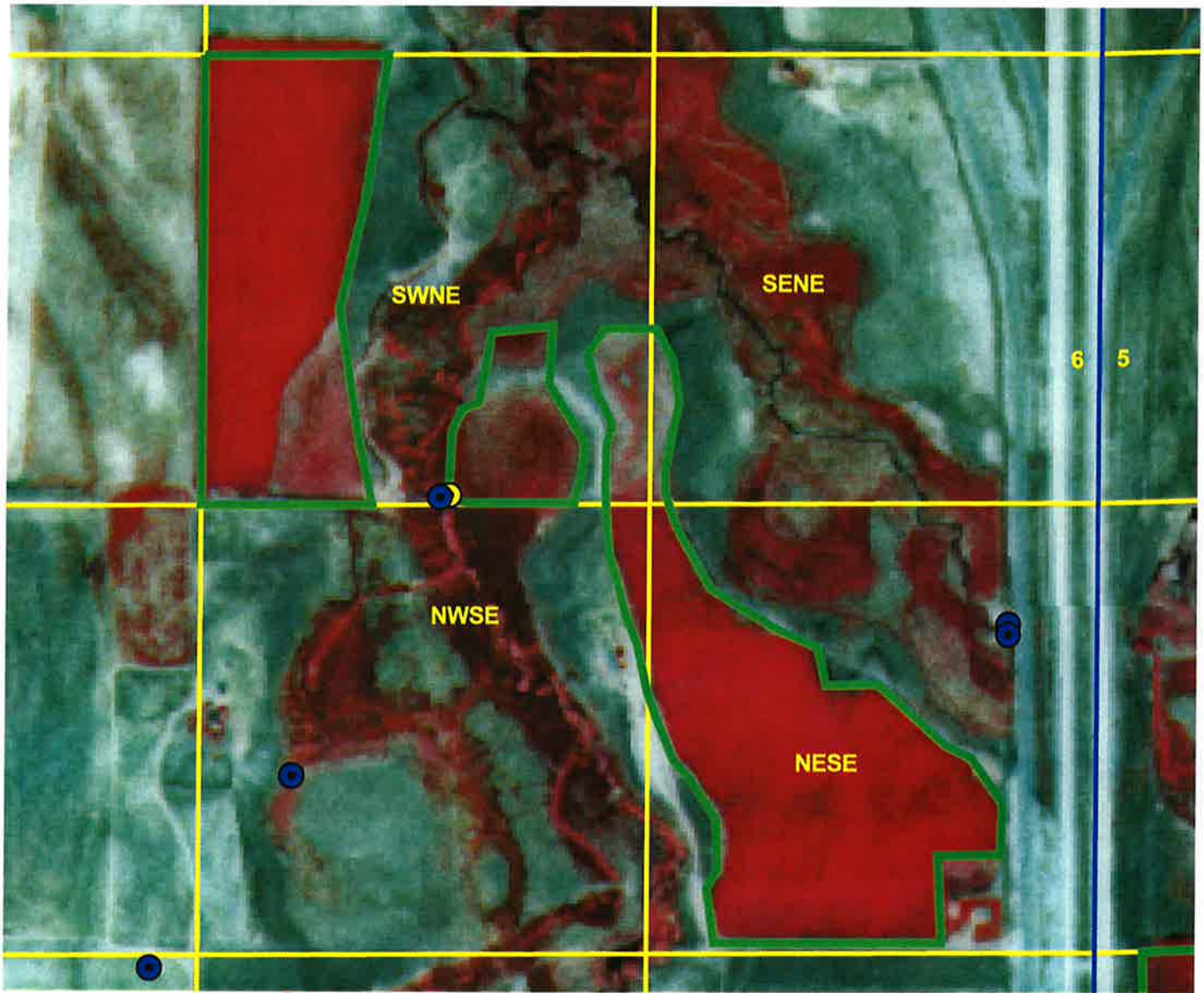
Township , 11S37E



IDAHO DEPARTMENT OF WATER RESOURCES

29-02319B, 29-04039

T11S, R37E SEC. 6



SCANNED
MAR 01 2006

ACRES IRRIGATED- 38



POINT OF DIVERSION



PLACE OF USE

PROFILED

**GIS: PLACE OF USE
POINT OF DIVERSION
1987/1988 NAPP PHOTOS
DAVE CARLSON**

02/18/2003

Dave

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: April 21, 2003

Water right number: 29-4039

BENNETT FARMS
3670 E RICHARDS RD
DOWNEY ID 83234

Telephone Number: (208) 897-~~5891~~ *5598*

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

Source

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

Source: Peck Creek

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

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

DATE: *April 21/03*

SIGNATURE: *Mark Bennett*

Please print your name: *Mark Bennett*

IDWR Regional Office, 900 N Skyline Dr Ste A, Idaho Falls, ID 83402, 2085257161

PROFILED

SCANNED

MAR 01 2006

RECEIVED
MAY 05 2003
Department of Water Resources
Eastern Region

RECEIVED
MAY 05 2003
Department of Water Resources
Eastern Region





MAY 31 2001

Log for claim A29-04039

Spatial Dynamics TWB

5/18/00

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
11s37e	6	SWNE	21	14	
11s37e	6	NESE	16	17	
11s37e	6	NWSE	2	0.8	nws in database should be nwse
Totals:			39	31.8	

HP 30 motor Berkley
pump & 30hp
US Electrical

(8) Remarks: Claim based on cancelled permit No. 1337

RANGE 37E											
TOWNSHIP 11S											

Scales: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
) ss.
County of BONNEVILLE)

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiants knowledge.

Sworn to before me this 26th day of AUGUST, 19 74.

Keith M. Bennett
(Claimant)

Ronald D. Carlson
Notary Public

Residing at FIRTH, IDAHO

My commission expires 2/14/78

For Department Use Only

Received by MB Date 8-26-74
Prelim. check by RDC Date 8/26/74
\$10.00 fee received by MB Date 8-26-74
Approved for publication by MB 9/2/74 # 13051
Published in Snake River Journal
Dates September 5-12, 1974

Exception filed by:

Forwarded to
claimant by:

Date

1 Name of applicant: **Thomas W. Bennett**

Postoffice address: **Virginia**

County: **Blaine** State: **Idaho**

II If applicant is a corporation, give

a Date and place of incorporation.

b The amount of capital stock.

(c) The amount paid in.

d Names and addresses of directors.

III The financial resources of the applicant are: (a) Cash on hand.

b Treasury stock.

(c) Bonds to be issued.

d Other resources.

2 The quantity of water claimed is **4/5** the of **one** cubic feet per second

3 Source of water supply: **Unrated spring.**

4 Location of point of diversion: **NW 1/4 Sec 6, Township 11 N., Range 12 E., Blaine Co., Idaho**

County of **Blaine**

5 To be used for: **Irrigation and domestic.**

I Irrigation and domestic use: (a) Amount of land to be irrigated:

b In the following legal subdivisions: **SW 1/4, Sec 6, T. 11 N., R. 12 E., Blaine Co., Idaho.**

27 ac., Boise Meridian.

II Mining, milling, power, manufacturing, transportation or other purposes.

(a) At what point:

b Amount of power to be generated:

H. P. under **1** ft. head

c Is water to be returned to any stream?
return:

d If so, name stream and locate point of return.

6 Estimated cost of works: **\$50.00**

7 Description of works for diversion:

I Kind of works: **ditch.**

II Dimensions of works:

a Height of dam

feet, length of dam at top

feet

length of dam at bottom

feet Material used in construction

b Capacity of reservoir

acre feet

(c) Size of headgate, width

feet

Height

feet

d Conduit

feet

width at bottom

feet

width at water line

feet

feet, depth of water

feet diameter

inches; average grade per mile is

3

feet. Length of conduit is

miles

and it crosses the following quarter sections:

SW 1/4, Sec 6, T. 11 N., R. 12 E., Blaine Co., Idaho.

8 The time required for the completion of the construction of such work is

9 Time required for the complete application of the water to the proposed use is
additional years.

BE IT KNOWN That the undersigned hereby makes application for a permit to appropriate the public waters of the State of Idaho as herein set forth.

Thomas W. Bennett Applicant

By

Agent

Certificate of Completion of Works

Permit No. 8869

Form 12

29-2154

Given this

To All Whom It May Concern:

This is to certify that Thomas W. Bennett

of Virginia, County of Hancock, State of Idaho, for irrigation and domestic purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use one-half of one second-foot of the waters of an unnamed spring

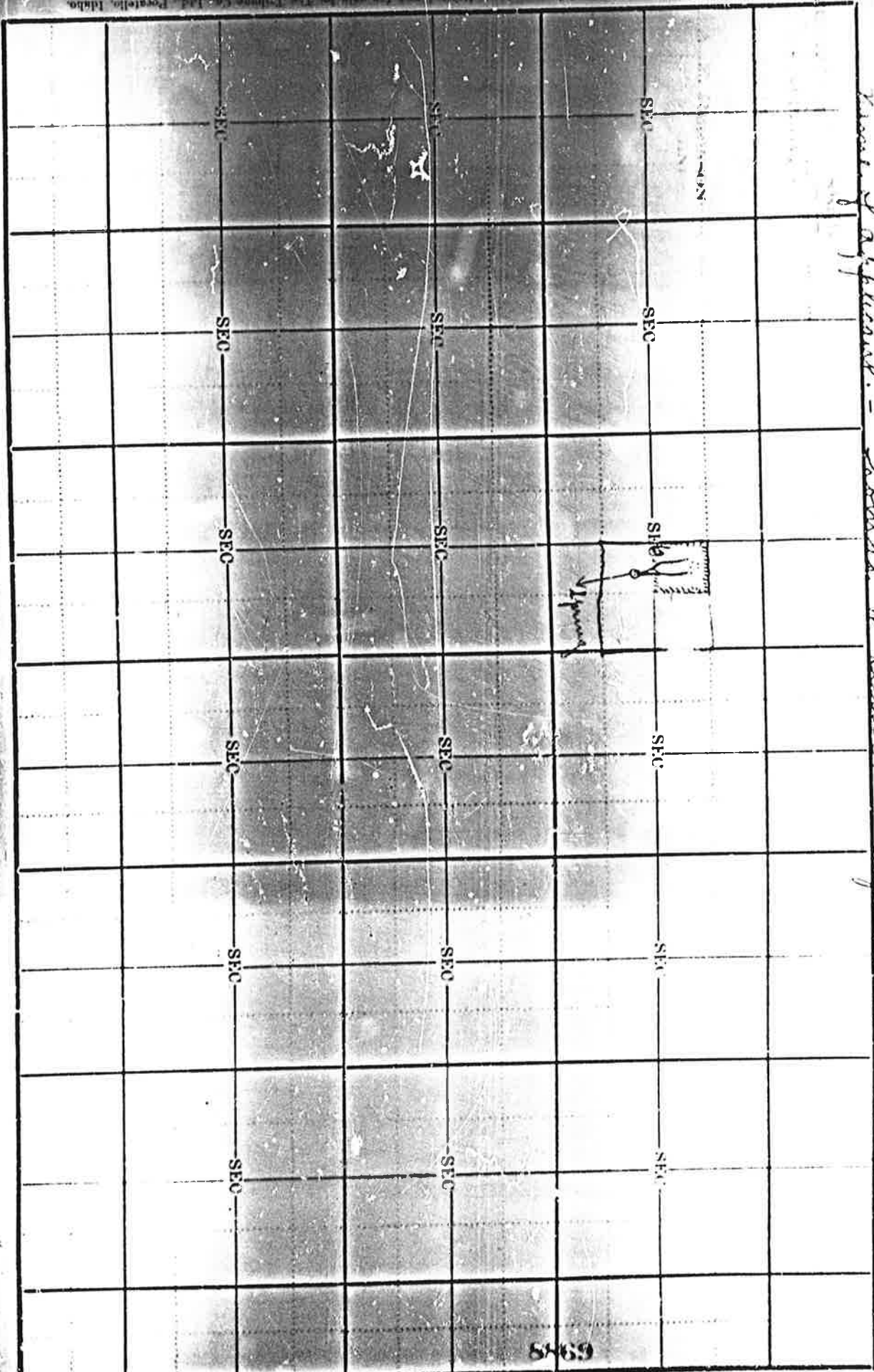
County of Hancock, State of Idaho, for irrigation and domestic purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use one-half of one second-foot of the waters of an unnamed spring

that the point of diversion of said waters is at a point in the NW 1/4 Section 6 T. 11 S. R. 27 E. H. M. and that the lands proposed to be irrigated by the use of said water are described as follows, to-wit: NW 1/4 Sec. 6, Tp. 11 S. R. 27 E. H. M., containing 40 acres.

Witness my hand this 8th day of December, A. D. 1913.

State Engineer of the State of Idaho.

House of Representatives - Canada - Council - House of Commons - 1911



Proof of Completion of Works

Affidavit of Holder

STATE OF IDAHO

County of Blaine

Thos. W. Bennett

being first duly sworn upon his oath deposes and says:

First: That he is the holder and owner of Permit to appropriate the Public Waters of the State of Idaho, No. 8869 and that his postoffice address is Virginia
State of Idaho

Second: That under the terms and conditions of said permit, construction thereunder was required to be completed by November 25th 1913

Third: That the use for which said water is intended is Irrigation and Domestic

Fourth: That on the date above mentioned, the works constructed under said permit were (or were not) fully completed and consisted of the following:

I. Kind of works: One ditch, two flumes

(Ditch, dam, ditch, flume, pipe or otherwise.)

II. Dimensions of work: 8 x 14 inches ditch, 10 x 10 inch flumes

(a) Height of dam _____ feet, length of dam at top _____ feet, length of dam at bottom _____ feet. Material used in construction Earth and wood

(b) Capacity of reservoir _____ feet.

(c) Size of headgate: Width _____ feet, height _____ feet.

(d) Conduit _____ feet, depth of water _____ feet; diameter of pipe _____ inches; average grade per mile is _____ feet. Length of conduit is _____ miles.

Fifth: That said works are capable of conducting to the place of intended use one half second feet of water.

Sixth: That water appropriated under said permit is available for 30 acres of land described as follows: North West quarter of South West quarter, Section 22, Township Eleven, Range 37 East, Boise Meridian.

Seventh: Remarks: That the water is raising on my own land in the nature of a spring and is used on my own land.

Thos. W. Bennett
Sign here.

Subscribed and sworn to before me this 29th day of November, 1913

My commission expires Jan 28th 1915
Thos. T. Johnson
Notary Public.

AJ5809NP
No. A29-04039

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 04/24/00
PAGE: 93

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	BENNETT FARMS 3590 E RICHARDS RD DOWNEY ID 83234 (208) 897-5791	10/29/1912	IRRIGATION	04-01 11-01	0.780 CFS	
TOTAL DIVERSION: CONSUMPTIVE USE:					0.780 CFS	97.50 AFA

Water Source: PECK CREEK

Tributary to: MARSH CREEK

Stage: STATUTORY CLAIM

Point(s) of Diversion: T11S R37E S06 SWNE

BANNOCK County

Place of use Legal Description for: IRRIGATION

				NE				NW				SW				SE										
T	R	S	:	NENE	NWNE	SWNE	SENE	:	NENW	NWNW	SWNW	SENW	:	NESW	NWSW	SWSW	SESW	:	NESE	NWSE	SWSE	SESE	:	SUM		
				Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	:	
11S	37E	6	:			21		:					:		02			:		16				:	39.0	
TOTAL ACRES																							39.0			

POU County: BANNOCK

Non-Irrigation Uses: NONE

Other Rights: A29-04320 IS ADJACENT

Other Water Rights Listing Overlapping Place(s) of Use:
A29-04111 A29-04112 A29-04320

Dates:	Exam Made Date:	Verified Date:	Objection Filed Date:
Misc:	Water District Number:	Field Inspection Flag:	
		Presumption Flag:	
Audit:	04/11/90 JONES	07/15/94 THOMPSON	03/29/95 POST-STD

Claim No. 29 9

IN THE MATTER OF: Water Right)

Keith Bennett)

Downey, Idaho 83234)

State of Idaho)

County of Bannock)

RECEIVED

DEC 13 1974

AFFIDAVIT

Department of Water Resources
Eastern District Office

I, Levere Juchau

being first duly sworn,

deposes and says: That water from Lock Creek tributary to Marsh Creek has been used in the southwest quarter, northeast quarter, section six (6), township eleven (11) South Range 37 east Boise meridian Bannock County since 1912, point of diversion in northwest quarter, southeast quarter, and southwest quarter, northeast quarter, section six (6), township eleven (11) South Range 37 east Boise meridian Bannock County. This property is now owned by Keith W. Bennett, Downey, Idaho; former owner when water was first diverted was Thomas W. Bennett, now deceased.

Lever Juchau
(signature)

Subscribed and sworn to before me this 9th day of September 19 74.

Arthur R. Hollister
(notary public)

Residing at Logan, Utah
My commission expires November 29, 1976.

Claim No. 29 4039

IN THE MATTER OF: Water Right)

Keith W. Bennett)
Downey, Idaho 83234)

State of Idaho)

County of Bannock)

RECEIVED

DEC 19 1974

AFFIDAVIT
Department of Water Resources
Eastern District Office

I, Ettna E. Gilbert

being first duly sworn,

deposes and says: That water from Leek Creek tributary to Marsh Creek has been used in the southwest quarter, northeast quarter, section six (6), township eleven (11) South Range 32 east Boise meridian Bannock County since 1912, point of diversion in northwest quarter, southeast quarter, and southwest quarter, northeast quarter, section six (6), township eleven (11) South Range 32 east Boise meridian Bannock County. This property is now owned by Keith W. Bennett, Downey, Idaho; former owner when water was first diverted was Thomas W. Bennett, now deceased.

Ettna E. Gilbert
(signature)

Subscribed and sworn to before me this 5 day of December 1974.

C. Dale Boam
(notary public)

Residing at Lawrence IdahoMy commission expires 8-20-76

Claim No. 29 4039

POOR ORIGINAL

IN THE MATTER OF: Water Right)

Keith Bennett)

Downey, Idaho 83234)

State of Idaho)

County of Bannock)

RECEIVED

DEC 19 1974

AFFIDAVIT
Department of Water Resources
Eastern District Office

I, Loyde T. Bennett being first duly sworn,
deposes and says: That water from Peck creek tributary to Marsh creek has been
used in the southwest quarter, northeast quarter, section six (6), township
eleven (11) south range 37 east Boise meridian Bannock County since 1912, point of
diversion in northwest quarter, southeast quarter, and southwest quarter, northeast
quarter, section six (6), township eleven (11) south, range 37 east Boise meridian
Bannock County. This property is now owned by Keith W. Bennett, Downey, Idaho;
former owner when water was first diverted was Thomas W. Bennett, now deceased.

Loyde T. Bennett
(signature)

Subscribed and sworn to before me this 9 day of November 1974.

T. Dail Boam
(notary public)

Residing at

Downey Bannock Idaho

My commission expires

11-8-76

Claim No. 20

POOR ORIGINAL

IN THE MATTER OF: Water Right

Keith W. Bennett
Downey, Idaho 83274

State of Idaho

County of Bannock

RECEIVED
DEC 13 1974

AFFIDAVIT
Department of Water Resources
Eastern District Office

I, Elwood Dahlke being first duly sworn,
deposes and says: That water from Lack Creek tributary to Marsh Creek has been used
in the southwest quarter, northeast quarter, section six (6), township eleven (11)
South Range 37 east Boise meridian Bannock County since 1912, point of diversion in
northwest quarter, southeast quarter, and southwest quarter, northeast quarter,
section six (6), township eleven (11) South Range 37 east Boise meridian Bannock
County. This property is now owned by Keith W. Bennett, Downey, Idaho; former
owner when water was first diverted was Thomas W. Bennett, now deceased.

Elwood Dahlke
(signature)

Subscribed and sworn to before me this 5 day of December 19 74

F. Dail Boan
(notary public)

Residing at Downey, Ida.
My commission expires 8-20-76

BEFORE THE LOCAL GROUND-WATER BOARD FOR BANNOCK COUNTY

STATE OF IDAHO

RECEIVED

AUG 15 1979

Department of Water Resources
Eastern District Office

HERMAN REISNER, THELMA REISNER,
JOHN HART, FRED HART, KEITH BENNETT,
ALICE DENNY, AND JULIA BLANCHARD

Claimants

v.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

REID STEWART

Respondent

This matter came on regularly for hearing on January 29, 1969, before the Local Ground-Water Board for Bannock County, consisting of Mr. Jack A. Barnett, Deputy State Reclamation Engineer, Chairman; Mr. Marshall K. Corbett, a geologist appointed by the Judge of the District Court; and Mr. Boyd Gunter, a resident irrigation farmer of Bannock County, who was selected by the other two Board members.

Claimants were represented by their attorneys, Merrill K. Gee and Howard L. Armstrong. Respondent was represented by attorney R. D. Merrill. The hearing was held in the afternoon of January 29 and the morning of January 30. It was intended to continue with the hearing in the afternoon of January 30. However, during the noon recess, attorney R. D. Merrill was unexpectedly taken seriously ill. The remainder of the hearing was continued until March 28, 1969. Upon reconvening the hearing, the Board was informed that at this and future hearings, the respondent, Reid S. Stewart, would be represented by himself and his engineer, Frank W. Haws.

At the conclusion of the hearing on March 23, 1969, a request was made by claimants' counsel that the names Alice Denny and Julia Blanchard be added to the names of the claimants in this case. With the stipulation that the claimants' case would stand with the data and facts already submitted and additional testimony would not be required to represent the additional claimants' position, and hearing no objections, the two names were added to the list of claimants.

Following the hearing, the Board found that the claimants and respondents had failed to provide the Board with enough facts and data to decide the case. With this in mind and following the urging of both parties, the Board requested by letter of April 4, 1969, that the Idaho Department of Reclamation conduct an investigation to determine the ground-water hydrology of the area and the use made of the spring waters and ground waters by the claimants and respondents. A subsequent hearing was held on December 16, 1969, for the Board to hear the results of the requested investigation.

Having heard and reviewed all the evidence presented to the Board and having consulted all of the County, State and Federal Government records that the Board felt necessary, as agreed to by the parties, and having reviewed the transcript of a previous court action on the matter which has been designated Civil No. 23583, as agreed to by the parties, the Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

A. WATER RIGHTS

The Ground-Water Board finds that there are three types of rights to water from the spring referred to in the hearing as the Reisner Spring. The first type (I) is surface flood irrigation rights; the second type (II) is domestic rights; and the third type (III) is pumped sprinkler irrigation rights. The Board also finds ground-water rights (IV) to pump from two wells.

I. Surface Flood Irrigation Rights

The Board finds that all of the surface flood irrigation using spring water was initiated in about 1930. The diversion of water is from the spring area that was referred to as the Reisner Springs at the Board's hearings, and is located in the NW 1/4 of Section 6, T. 11 S., R. 37 E. The water is diverted from the natural spring stream channel in the above-described area near the spring issuance. The Board finds that all right holders to this type of right have an equal priority dating 1930. The Board also finds that individuals holding this type of right are entitled to as much as an inch to the acre for irrigation and additional waters for conveyance loss in the long canal used to deliver the water. Testimony was given that as much as another inch to the acre is required to deliver the water to the end of the two-mile-long canal. With this in mind, the Board finds that the individuals are

entitled to conveyance water in proportion to the distance down the canal from the springs that their diversion occurs. That is to say that an individual diverting one-half mile down the canal would be entitled to one-fourth inch per acre of additional conveyance water. The Board then finds that the rights to divert out of the Reisner Spring by gravity means with a 1930 priority are listed as follows in order of their diversion:

a. T. Levere Juchao, c/o Keith Bennett, 7.1 acres of irrigation in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T. 11 S., R. 37 E.; 7.1 inches irrigation water plus 1.4 inches conveyance water make a total diversion at the spring of 8.5 inches (.16 c.f.s.).

b. Ettna E. Gilbert (not a party of the Ground-Water Board), 10.2 acres of irrigation in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T. 11 S., R. 37 E.; 10.2 inches irrigation water plus 3.0 inches of conveyance water make a total diversion at the spring of 13.2 inches (.26 c.f.s.).

c. Herman Reisner, 20.4 acres of irrigation in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6, T. 11 S., R. 37 E.; 20.4 inches irrigation water plus 14.2 inches of conveyance water make a total diversion at the spring of 34.6 inches (.69 c.f.s.).

d. H. Vance Polk, c/o Richard Butmaster (not a party of the Ground-Water Board), 5.3 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31, T. 10 S., R. 37 E.; 5.3 inches irrigation water plus 4.2 inches of conveyance water, making a total of 9.5 inches (.19 c.f.s.).

e. Herman Reisner, 12.8 acres of irrigation in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31, T. 10 S., R. 37 E.; 12.8 inches irrigation water plus 12.8 inches of conveyance water, making a total of 25.6 inches (.51 c.f.s.).

Total surface flood irrigation rights: 1.81 c.f.s.

II. Domestic Rights

The Board finds that Thelma Reisner Ramey (widow of Wilford Reisner) is entitled to a total of .06 c.f.s. (25 gallons per minute) to be pumped from the head of the spring with a 1932 priority, to be used for a home

(.69 cfs) (20.4 ac)

51 cfs (12.8 ac)

located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, T. 11 S., R. 37 E. Said water is also to be used for incidental yard irrigation, including up to one-fourth acre of garden.

Total domestic rights: .06 c.f.s.

III. Sprinkler Irrigation

The Board finds that individuals have been using waters from the springs for pumping and sprinkler irrigation since 1953 and such rights have a priority as of that year. The Board finds that the pump diversion, located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, is sufficiently close to the spring area that conveyance waters are not required, and the Board determines that irrigation practices require no more than .8 inches of water per acre. With this in mind, the Board finds the following rights:

- (36.0 AC)
- (16)
- 15.4
- 20.0
- a. Herman Reisner, 35.7 acres of irrigation in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 6, T. 11 S., R. 37 E.; total diversion of 28.6 inches (.47 c.f.s.).
 - b. Herman Reisner, 15.6 acres of irrigation in the S $\frac{1}{2}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6, T. 11 S., R. 37 E.; total diversion of 12.5 inches (.25 c.f.s.).
 - c. Thelma Reisner Ramey, 15.4 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, T. 11 S., R. 37 E.; total diversion of 12.3 inches (.25 c.f.s.).
 - d. Thelma Reisner Ramey, 20.0 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, T. 11 S., R. 37 E.; total diversion of 16.0 inches (.30 c.f.s.).
- Total pumped diversion: 1.27 c.f.s.

The Board therefore finds that there is a total right of 3.14 c.f.s. from the Reisner Springs.

IV. Ground-Water Rights

- a. The Board finds that the claimants Julia Blanchard and Alice Denny are entitled to the licensed right issued in the name of Edward Denny by virtue of their ownership of Lots 3 and 4 in Section 7, T. 11 S., R. 37 E. This licensed right has been designated by the number 23673 (29-2330) in the records of the Idaho Department of Reclamation. It has a priority of

February 27, 1953, to divert 1.2 c.f.s. from a well located in Lot 3 of said Section 7. The right is to irrigate up to 90 acres of ground in Lots 3 and 4 of the Section (W $\frac{1}{2}$ SW $\frac{1}{4}$).

b. The Ground-Water Board finds that Reid Stewart has a licensed right, which has been given the number 25728 (29-2366), to divert water from a well located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, T. 11 S., R. 37 E., (referred to as Stewart Well #1). This right was originally in the name of Mark Dunford Weston and Lois L. Weston. Mr. Stewart has a right to use these waters by virtue of his ownership of the lands upon which the well is located and the lands that are irrigated from it. This licensed right has a priority of May 26, 1955, to irrigate 120 acres from the well. The lands to be irrigated are in the E $\frac{1}{2}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 7.

* c. The Board finds that Application No. 30723 (29-2466), filed with the Idaho Department of Reclamation to pump water from the well before-mentioned (Stewart Well #1) in Section 7, is in the name of Reid Stewart; that, in fact, a water right has been established to irrigate up to as much as 200 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 18, T. 11 S., R. 37 E. This established right is to divert up to as much as an additional 4.0 c.f.s. from this well. The license for this right has not been issued, pending the decision of the Ground-Water Board.

The Board finds that this license, when issued, should be limited to the actual amount diverted and used prior to the time that the proof of beneficial use of the waters was submitted and the lands irrigated should likewise be limited. The priority date of this second right on the well, referred to in the Ground-Water Board hearing as the Reid Stewart Well #1, should be September 14, 1962.

- 6 -

B. GROUND-WATER HYDROLOGY

The Board finds that the ground water in the area of the Reisner Spring, the Alice Denny Well and the Stewart Well is of a common source. Hydrologic data, dye tests, and the testimony by scientists studying the occurrence and movement of the water has led the Board to conclude that this is a common source. The water is flowing from the southeast to the northwest, and the aquifers encountered in the Stewart Well and the Alice Denny Well, and other wells in the general area, are the same aquifers that carry the water that issues at the Reisner Springs. The Reisner Spring area represents a natural overflow to the ground-water system and the amount of discharge from the springs is very sensitive to small water-level changes in the aquifer.

The Ground-Water Board finds from evidence and testimony that the flow of the Reisner Springs has decreased over the years. The Ground-Water Board determines that the decrease in flow has been brought about by at least three factors:

I. The flow of the springs varies to a certain extent seasonally and from season to season, as precipitation varies. Precipitation is one of the sources of recharge to the aquifer and therefore to the springs.

II. The spring flow has decreased because of reduction in surface-water irrigations in the area, starting back at least as early as 1941 and continuing to the present. Most of the surface water irrigation on the bench lands above the spring level has been with waters imported into the area from the Portneuf River by the Portneuf-Marsh Valley Canal. Some of the water from this source percolated down to the aquifer and recharged the aquifer, hence adding to the flow of the spring. Stopping of this irrigation practice has thereby decreased the flow of the spring. Both the claimants and the respondents, as well as others in the area, have stopped their use of these surface waters over the years.

III. The Ground-Water Board finds that the pumping of the Stewart Well and several other wells in the immediate region has taken water from the aquifer and thereby reduced the discharge of the spring. The Board further finds, however, that there was not sufficient evidence introduced by the claimants in the case, nor was there sufficient evidence presented at a later date by the Idaho Department of Reclamation, for the Board to determine whether the effect of the Stewart Well alone was appreciable and could be measured.

The Ground-Water Board finds that the testimony given demonstrates that the pumping of the Stewart Well has, to some undetermined extent, lowered the water in the Alice Denny Well and thereby reduced the production of the well owned by claimants Alice Denny and Julia Blanchard. Both of these wells are diverting water from the same aquifer system. The Board further finds, however, that the construction of the well referred to as the Alice Denny Well is such that only the top few feet of water in this aquifer are available to the pump. Lowering of the water levels in the aquifer only a portion of a foot can affect this well, and minimum drawdown caused by pumping of the Alice Denny Well itself is significant to the production of the well.

CONCLUSIONS OF LAW

The Ground-Water Board finds that, in the case of the alleged interference of the Stewart Well with the Reisner Spring, the burden of proof of the interference must rest with the accusing party. The Ground-Water Board finds that, with the data submitted to it by the parties and the additional data supplied by the Idaho Department of Reclamation, it is not able to determine whether or not the damages alleged by the claimants are significant and real; therefore, the Board is not able to award any relief to the claimants. Because of this, the Board finds that the claimants have failed to make the showing to the Board that is required of them as accusing parties, if they are to prevail in the matter.

The Board also finds that the development of the well by the claimants Alice Denny and Julia Blanchard does not represent a reasonable effort to develop the ground-water resources of the aquifer. With respect to the claim of the well owners, the Board wishes to cite a portion of Section 42-226 of the Idaho Code:

"...and, while the doctrine of 'first in time is first in right' is recognized, a reasonable exercise of this right shall not block full economic development of underground water resources, but early appropriators of underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the state reclamation engineer as herein provided."

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters herein its order as follows:

1. That the respondent Reid Stewart be allowed to continue to pump his well within the rights set forth in the Findings of Fact, without regard to interference with the Reisner Springs until such time as the right holders in the spring have conclusively demonstrated the extent of the alleged interference with their rights specified in these findings before a court of law or a Local Ground-Water Board, and/or until the claimants Julia Blanchard and Alice Denny have proceeded with reasonable diligence and effort to develop the ground-water resources under their property and demonstrated this before a court of law or a Local Ground-Water Board.

2. That the respondent Reid Stewart immediately proceed with the installation of a measuring device on his system that will allow the Idaho Department of Reclamation within the next 60 days to measure the total discharge of his well and observe the irrigation from this well. The water rights established under Water License No. 25728 and Application No. 30723 should be limited to the amount of water actually being produced, and that he should not be allowed to irrigate lands in addition to those described in his licensed right or in addition to land actually irrigated prior to the submission of proof under the pending license. The measuring device is to be accessible for inspection by the Idaho Department of Reclamation at any reasonable time.

3. That within 90 days the claimants, Herman Reisner, Thelma Reisner Ramey, John Hart, Fred Hart, and Keith Bennett, proceed to install a measuring device on the springs that is of a standard type to be approved by the Department of Reclamation, and which can measure the amount of water issuing from the springs. Said measuring device is to be accessible for inspection by the Idaho Department of Reclamation at any reasonable time.

4. That Alice Denny and Julia Blanchard be allowed to continue to pump their well in a manner that they see fit, within the rights set forth here, but should not be allowed to produce water from a deepened or improved well until such time as a measuring device approved by the Idaho Department of Reclamation is installed so that the actual production of their improved well can be monitored.

Dated this 1st day of July, 1970.

LOCAL GROUND-WATER BOARD FOR BANNOCK COUNTY

Jack A. Barnett

Jack A. Barnett

Marshall K. Corbett

Marshall K. Corbett

Boyd Gunter

Boyd Gunter

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: A29-04039
Date Received: 4/09/1990
Receipt No: 12012950
Received By: HWJ

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: BENNETT FARMS 208-897-5791
Address: 3590 E. RICHARDS RD.
DOWNEY, ID 83234

2. Date of Priority: OCT 29, 1912

3. Source: PECK CREEK Trib. to: MARSH CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
11S	37E	6	SW	NE			BANNOCK

5. Description of diverting works:
PUMP IN CREEK TO SPRINKLERS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.780		

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

8. Total consumptive use is 97.5 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
11S	37E	6	SW	NE		IRR	21.0
			NW	SW NWSE		IRR	2.0
			NE	SE		IRR	16.0

Section Acres 39.0

A29-04039

Page 1

Date: 04/09/90

MICROFILMED
NOV 13 1992

A2904039



10. Place of Use: Continued

Total Acres 39.0

11. Place of use in counties: BANNOCK

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

13. Other Water Rights Used:
 A29-04320 IS ADJACENT

14. Remarks:

15. Basis of Claim: STATUTORY CLAIM

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16. Signature(s)

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

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s): x Keith Bennett Date: 4/9/90

Date: _____

State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 9th day

of apr 19 90

Seal

Betty J. Thompson
Notary Public

Residing at BETTY J. THOMPSON, NOTARY PUBLIC
RESIDING AT 1420 S. 14TH, IDAHO
My Commission Expires MY COMMISSION EXPIRES: 6-30-94

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP. RGE.	SEC.	1/4	1/4	1/4	LOT	POD FLAG	COUNTY	DIVERSION NAME	DIVERSION NUMBER
A29-04039	11S 37E	6		SW	NE			BANNOCK		

OTHER AJ CLAIMS WITH SAME AJ POD
A PREFIX R PREFIX
NONE NONE

WR RECORDS IN SAME 40 ACRE TRACT
NONE

SOURCE: PECK CREEK

TRIB: MARSH CREEK

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP. RGE.	SEC.	1/4	1/4	1/4	LOT	POD FLAG	COUNTY	DIVERSION NAME	DIVERSION NUMBER
29-04039	11S 37E	6		NW	SE			BANNOCK		
29-04039	11S 37E	6		NW	NE			BANNOCK		
29-04039	11S 37E	6		SW	NE			BANNOCK		

OTHER WR RECORDS WITH SAME WR POD

AJ CLAIMS IN SAME 40 ACRE TRACT
A PREFIX R PREFIX

29-04054
29-04111
29-04112

A29-04030 29-11198
A29-04053
A29-04054
A29-04111
A29-04112
A29-11198

SOURCE: PECK CREEK

TRIB: MARSH CREEK

C. IS THE CLAIMED POD WITHIN THE SAME 40 ACRE TRACT THAT IS DESCRIBED IN THE WATER RIGHT FILE? N/A() Y() N()

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN POD, DESCRIBE THE INJURY
ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

D. CAN THE CLAIMED POD BE VERIFIED USING THE WATER RIGHT FILE OR GPS DATA? N/A() Y() N()

E. SHOULD THE CLAIMED POD BE VERIFIED BY FIELD EXAM? Y() N()

F. IS THE CLAIMED SOURCE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A() Y() N()

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN SOURCE, DESCRIBE THE INJURY
ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

G. CAN THE CLAIMED SOURCE BE VERIFIED USING THE WATER RIGHT FILE? Y() N()

H. SHOULD THE CLAIMED SOURCE BE VERIFIED BY FIELD EXAM? Y() N()

I. HOW WAS THE POD AND SOURCE VERIFIED?

LICENSING FIELD EXAM (DATE OF FIELD EXAM _____) Y(____) N(____)

AJ FIELD EXAM (DATE OF FIELD EXAM _____ NAME OF EXAMINER _____) Y(____) N(____)

OTHER (DESCRIBE IN NOTES BELOW)

NOTES: _____

=====

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE: CHECK HERE IF RECOMMENDED AS CLAIMED (____)

TWP. 11S	RGE. 37E	SEC. 6	1/4	1/4 SW	1/4 NE	LOT	POD FLAG	COUNTY BANNOCK	DIVERSION NAME	DIVERSION NBR
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____

SOURCE: PECK CREEK

TRIB: MARSH CREEK

REVIEWED BY: _____ DATE: _____

=====

SYSTEM DESCRIPTION: DESCRIBED BELOW (____), SEE LICENSE FILE (____), OR SEE ATTACHMENT (____)

A. ROOT WATER RIGHT NUMBERS: A29-04039

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
11S	37E	6	SW	NE		BENNETT FARMS	A29-04039 / 21.0	29-04039 / 40.0	39.0		
			SW	NE		HART, JOHN WILLIAM	A29-04112 / 7.0	29-04112 / 7.0			
			SW	NE		BENNETT FARMS	A29-04320 / 5.0	29-04320 / 5.0			
11S	37E	6	NW	SW		BENNETT FARMS	A29-04039 / 2.0	- /			
			NW	SW		HART, JENNIE	A29-04111 / 40.0	29-04111 / 20.0			
			NW	SW	6	HART, JOHN W	A29-07183 / 53.0	29-07183 / 53.0			
11S	37E	6	NE	SE		BENNETT FARMS	A29-04039 / 16.0	- /	29.0		
			NE	SE		BENNETT FARMS	A29-04320 / 3.0	29-04320 / 3.0			
			NE	SE		GEPPORD, JAY D	29-04296 /	- /			
			NE	SE		BLOXHAM, DEVON	A29-11918 /	- /			
			NE	SE		GEPPORD, JAY D	A29-04296 /	- /			
			NE	SE		BLOXHAM, DENISE	29-11918 /	- /			
			NE	SE		BENNETT, KEITH W.		29-02319 / 18.0			

ADDITIONAL POU FOUND

TOTAL ACRES	A29-04039	39.00	40.00	68.00
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POU COUNTY: BANNOCK

C. IS WATER USAGE FOUND IN TRACTS OTHER THAN THOSE CLAIMED?

Y() N()

* IF YES, ARE THESE TRACTS LISTED ABOVE (), OR ARE THEY LISTED ON AN ATTACHED SHEET ()

LIST OF ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE

CLAIM NO.	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A29-04039	PECK CREEK	BENNETT FARMS	0.780	0.020		
A29-04111	SPRING	HART, JENNIE	2.800	0.016		
A29-04112	SPRING	HART, JOHN WILLIAM	0.500	0.029		
A29-04320	UNNAMED STREAM	BENNETT FARMS	0.500	0.020		
A29-07183	GROUNDWATER	HART, JOHN W	1.920	0.009	714.00	3.58

LIST ALL RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION.

CLAIM NO.	PURPOSES	NAME	MONTH/DAY	RATE	VOLUME
29-04296	STOCKWATER	GEPFORD, JAY D	FROM 01-01 TO 12-31	0.050 CFS	
A29-11918	DOMESTIC	BLOXHAM, DEVON	FROM 01-01 TO 12-31	0.040 CFS	
A29-11918	STOCKWATER	BLOXHAM, DEVON	FROM 01-01 TO 12-31	0.020 CFS	
A29-04296	STOCKWATER	GEPFORD, JAY D	FROM 01-01 TO 12-31	0.050 CFS	
29-11918	DOMESTIC	BLOXHAM, DENISE	FROM 01-01 TO 12-31	0.040 CFS	
29-11918	STOCKWATER	BLOXHAM, DENISE	FROM 01-01 TO 12-31	0.020 CFS	

D. ARE OTHER WATER RIGHTS USED FOR THE SAME PURPOSE?

Y() N()

* IF YES, COMPLETE OVERLAP REVIEW:

OTHER RIGHTS LISTED IN CLAIM: A29-04320 IS ADJACENT

E. IS THE CLAIMED POU THE SAME AS DESCRIBED IN THE WATER RIGHT FILE?

N/A() Y() N()

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN POU, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

F. CAN THE CLAIMED POU BE VERIFIED USING THE WATER RIGHT FILE AND AVAILABLE AERIAL PHOTOS?

N/A() Y() N()

G. SHOULD THE CLAIMED POU BE VERIFIED BY FIELD EXAM?

Y() N()

H. IS THERE ANY INDICATION THAT THERE HAS BEEN A FIVE YEAR PERIOD OF CONTINUOUS NONUSE OF THIS RIGHT, OR ANY PORTION OF THIS RIGHT?

Y() N()

SEE J17

A 29-04039

ERVIN GILBERT
#248 CN#127
CAP 26-96
F-23 76.4

ERVIN GILBERT
#248 CN#127
CAP 26-96
F-23 60.6

R37E

T
11S

18
62.4

19
59.9

T643
Harold H. H. H. H.
#322

21
5.5

T310
Mark B. H. H.
#342

1
11.3

2
22.4

P.D.

3

21.2

23.3

J18

JOHN HART
187-26-94
7400 0400
5515A 28.0

28.7

JOHN HART
187-26-94
7400 0400
5515A 28.0

11.1

2
2.4

3
19.7

4
20.1

5
28.5

6
8.2

MICROFILMED Mark Bennett

NOV 13 1992

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