

04/23/2003

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

RIGHT NUMBER: 29-4220

NAME AND ADDRESS: KATHLEEN A ZAUSCH
8083 W POCATELLO CREEK RD
POCATELLO ID 83201

ROBERT F ZAUSCH
8083 W POCATELLO CREEK RD
POCATELLO ID 83201

SOURCE: NORTH FORK POCATELLO CREEK

TRIBUTARY: POCATELLO CREEK

QUANTITY: 0.070 CFS

USE OF THIS RIGHT FOR IRRIGATION PURPOSES WITH RIGHT NO. 29-10888 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 0.05 CFS.

PRIORITY DATE: 11/24/1965

POINT OF DIVERSION:

T06S R35E S20 SENENE Within BANNOCK County Source: POCATELLO CREEK

T06S R35E S21 SWNNWN Within BANNOCK County Source: POCATELLO CREEK

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	01/01 12/31	0.020 CFS
IRRIGATION	04/01 10/31	0.050 CFS

PLACE OF USE: IRRIGATION Within BANNOCK County

T06S R35E S20 NENE 1.5

STOCKWATER same as IRRIGATION

1.5 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 29-10888 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 3.7 ACRES IN A SINGLE IRRIGATION SEASON.

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

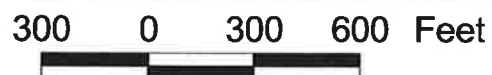
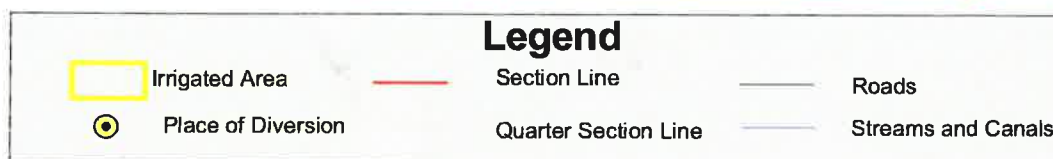
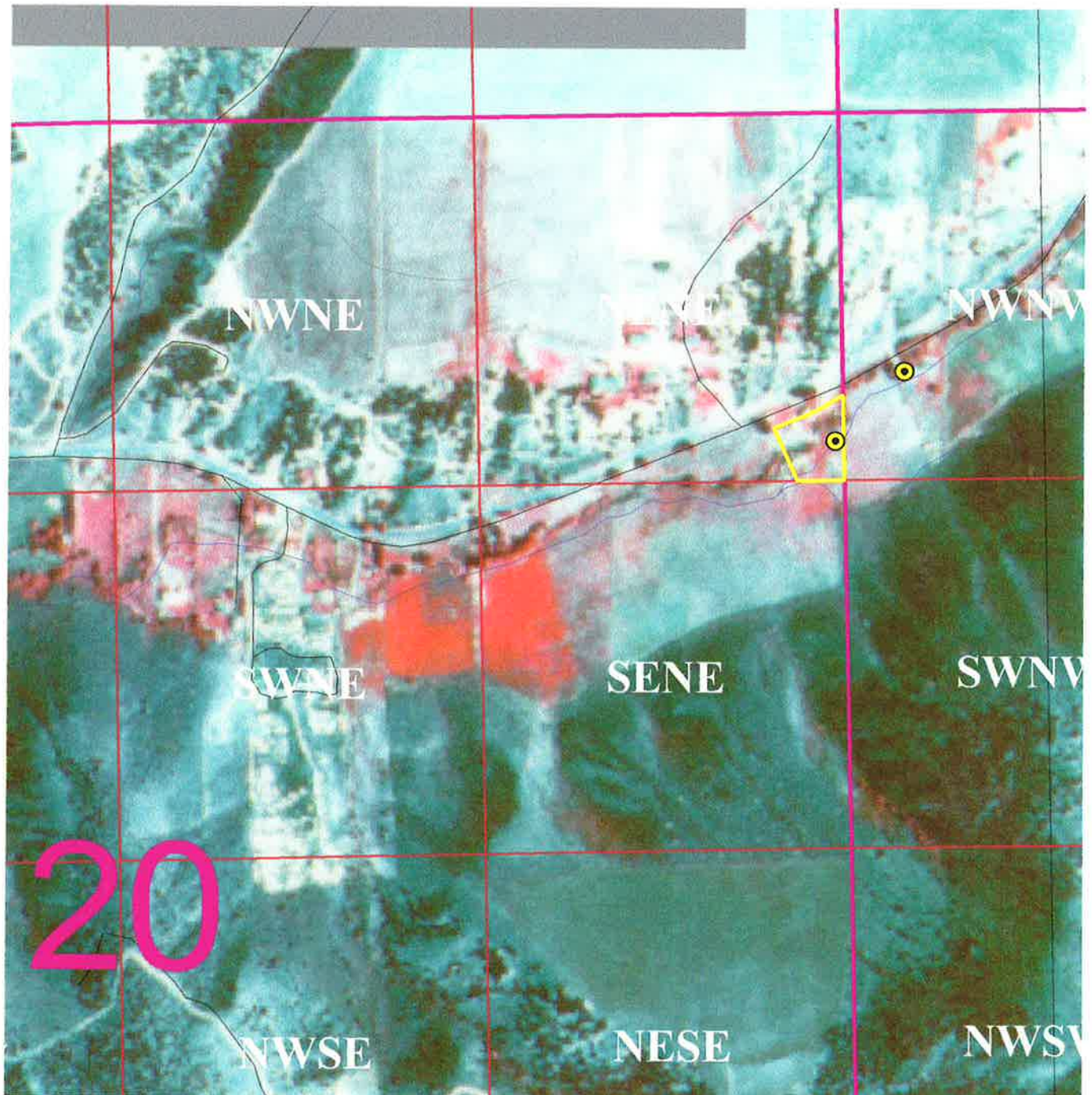
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

EXPLANATORY MATERIAL: Beneficial Use

RIGHT NO. 29-10888 IS AN ENLARGEMENT OF THIS RIGHT PURSUANT TO SECTION 42-1426, IDAHO CODE.

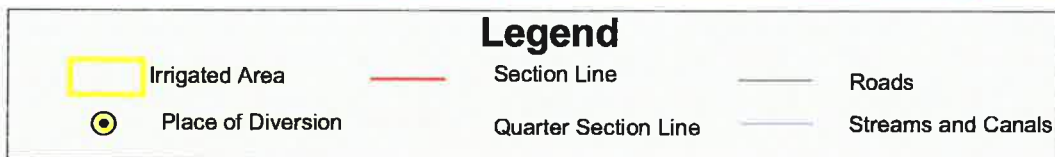
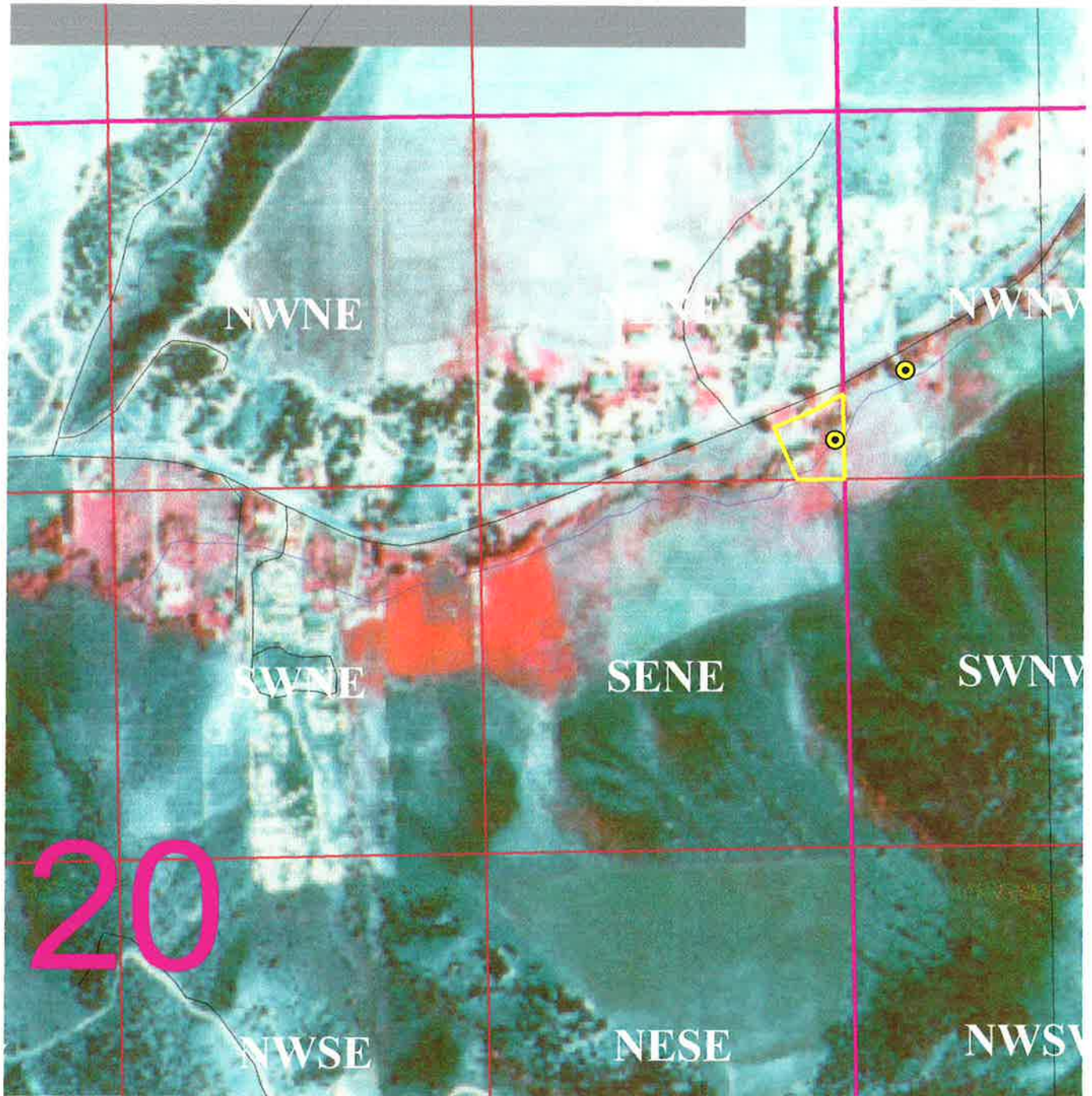
Water Right Claim Number A29-04220
Township , 6S35E

09/20/2000



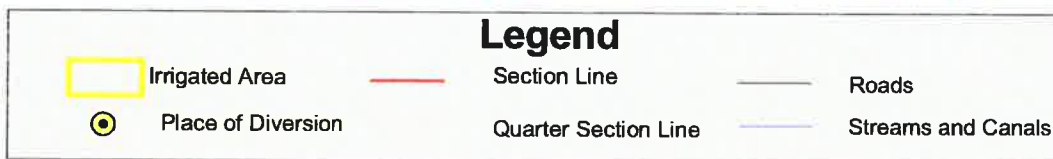
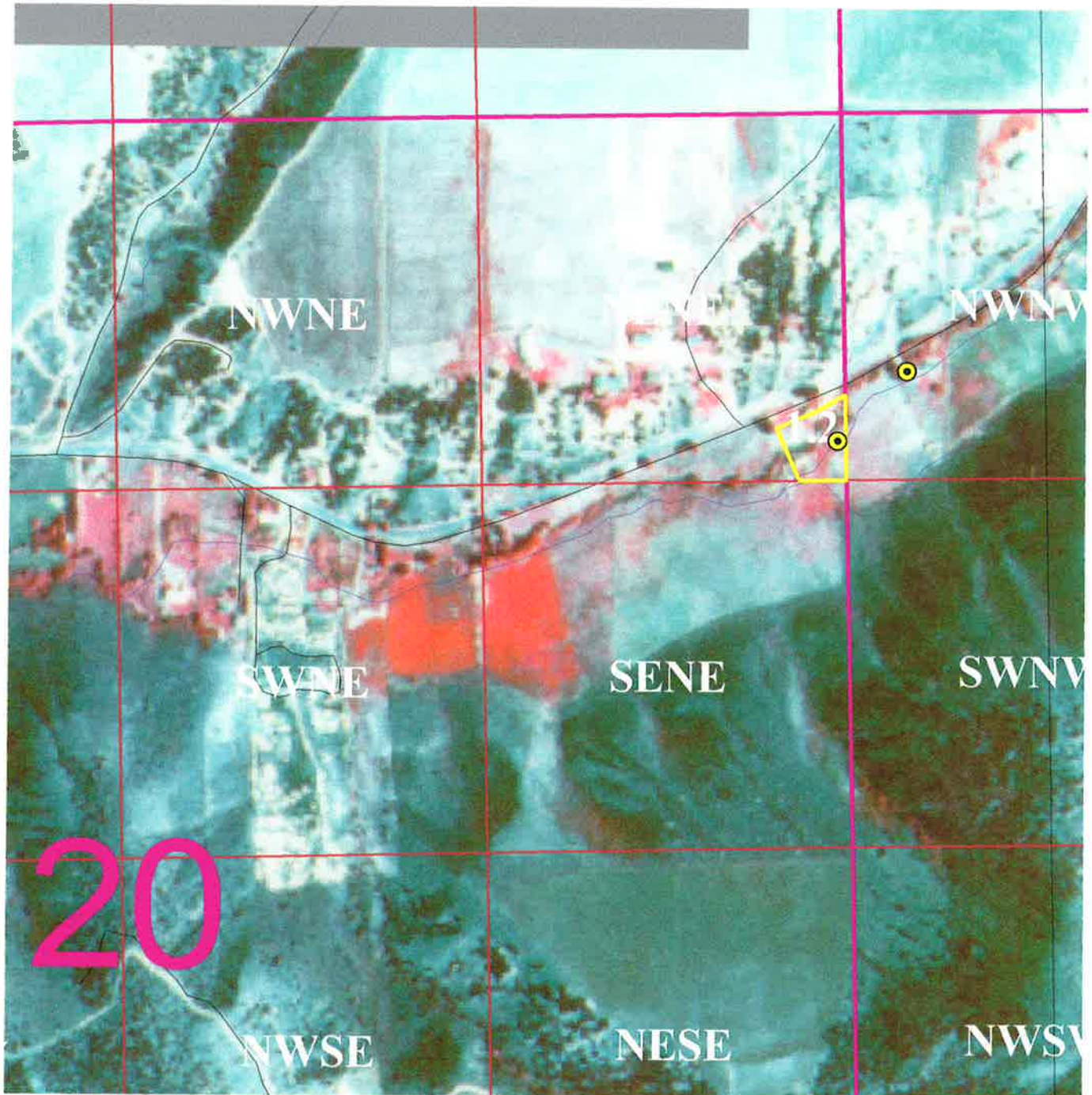
Water Right Claim Number A29-04220
Township , 6S35E

09/20/2000



Water Right Claim Number A29-04220
Township , 6S35E

09/20/2000



IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 29-4220 V1

WATER RIGHT NUMBER: 29-4220 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	KATHLEEN A ZAUSCH 8083 W POCA TELLO CREEK RD POCA TELLO, ID 83201 (208)233-2358
Current Owner	ROBERT F ZAUSCH 8083 W POCA TELLO CREEK RD POCA TELLO, ID 83201 (208)233-2358

Priority Date: 11/24/1965

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
NORTH FORK POCA TELLO CREEK	POCA TELLO CREEK

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
STOCKWATER	01/01 to 12/31	0.020 CFS	
IRRIGATION	04/01 to 10/31	0.050 CFS	
	<u>Total Diversion:</u>	0.070 CFS	

Location of Point(s) of Diversion

NORTH FORK POCA TELLO CREEK BANNOCK County	SE1/4NE1/4NE1/4	Sec. 20, Twp 06S, Rge 35E, B.M.
NORTH FORK POCA TELLO CREEK BANNOCK County	SW1/4NW1/4NW1/4	Sec. 21, Twp 06S, Rge 35E, B.M.

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	
06S	35E	20	1.5																1.5

Total Acres: 1.5

STOCKWATER same as IRRIGATIONConditions of Approval:

1. 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.

Remarks:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 29-4220 V1

1. Quantity USE OF THIS RIGHT FOR IRRIGATION PURPOSES WITH RIGHT NO. 29-10888 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 0.05 CFS.
2. Place of Use - Irrigation USE OF THIS RIGHT WITH RIGHT NO. 29-10888 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 3.7 ACRES IN A SINGLE IRRIGATION SEASON.
3. Explanatory RIGHT NO. 29-10888 IS AN ENLARGEMENT OF THIS RIGHT PURSUANT TO SECTION 42-1426, IDAHO CODE.

Comments:

1. csaxton 12/5/2001 Memo
Comment: See Memo in file regarding recommendation.
2. csaxton 12/5/2001 POD
Comment: POD in SENENE of Sect. 20 is accomplished transfer based on the fact that claimant stated that the mentioned POD used for the South pasture which was irrigated in 1987 according to NAPP.
3. csaxton 12/5/2001 Stockwater SOU
Comment: Stock water SOU set at irrigation SOU since no evidence of diversion for stockwater outside SOU
4. csaxton 12/5/2001 Enlargement
Comment: Right 29-10888 is and enlargement of this right.
5. csaxton 4/23/2003 NOE
Comment: Recommendation amended to increase diversion rate per amended claim. This right is based on Beneficial use.

Dates and Other Information:

Decreed Date:
 Enlargement Use Priority Date:
 Enlargement Statute Priority Date:
 Defendant:
 Plaintiff:
 Civil Case Number:
 Judicial District:
 Notice of Error Flag:
 State or Federal: S
 Owner Name Connector: AND
 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>
Priority Date	12/5/2001 10:23:06 AM	csaxton			Active
POD	12/5/2001 10:24:09 AM	csaxton			Active
Source	12/5/2001 2:48:41 PM	csaxton			Active
POU	12/5/2001 2:50:09 PM	csaxton			Active
Use	12/5/2001 3:21:26 PM	csaxton			Active
Season	12/5/2001 3:22:07 PM	csaxton			Active
Quantity	12/5/2001 3:24:08 PM	csaxton			Active

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 29-4220 V1

Summary

12/05/2001

csaxton

Active

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
Use	12/5/2001 3:21:28 PM	csaxton	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (No) 6. Is there evidence that there has been a change in the Purpose of Use? (Yes) 11. Does the file contain all the necessary information to verify the Water Use? (No) 13. Is a Purpose of Use remark and/or condition required? Description for Question 10,11,12 - Field Exam 7/26/01
Season	12/5/2001 3:22:09 PM	csaxton	(No) 1. Is the basis of claim decree or license? (No) 2. Is the basis of claim a Application or Permit? (No) 6. Is there evidence that there has been a change in the Period of Use? (Yes) 12. Does the file contain all the necessary information to verify the Period of Use? (No) 13. Is the basis of claim a decree, license, or a transferred beneficial use right that has had the Period of Use administratively determined? (Yes) 15. Is irrigation claimed as a Purpose of Use? (No) 18. Is a Period of Use remark and/or condition required?
POD	12/5/2001 3:24:11 PM	csaxton	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (No) 6. Is the basis of claim a posted notice? (No) 7. Is a flow measurement required? (No) 9. Is the source Groundwater and does the purpose of use require a diversion volume limit? (No) 11. Has a diversion volume limit been established by a decree, license or transfer for this water use? (Yes) 12. Is a Quantity remark or condition required? Description for Question 7 - Per David Tuthill, claims under 0.20 cfs do not require measurement.
Summary	12/5/2001 3:31:34 PM	csaxton	(No) 1. Is the basis of this claim a Decree, License, Permit, Application or Posted Notice? (Yes) 3. Is the water being used for all of the purposes claimed and to the extent claimed? (Yes) 5. Is an additional remark and/or condition required? (Yes) 6. Would you like to view the recommended right? (No) 7. Is this a split or combined right? (No) 8. Do you have documents you would like to attach or link to the file? (Yes) 9. Would you like to set the verification date?

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 29-4220 V1

Contacts	12/5/2001 10:19:24 AM	csaxton	(No) 1. Do you want to schedule an appointment? Comment for 1: Field Exam 7/26/01
POD	12/5/2001 10:25:08 AM	csaxton	Edited point location
POD	12/5/2001 10:24:10 AM	csaxton	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (Yes) 6. Is there evidence that there has been a change in the POD? (Yes) 7. Can the change be verified as an accomplished transfer? (Yes) 8. Does the file contain all the necessary information to verify the POD? (No) 10. Is a POD remark and/or condition required? Description for Question 6 - See comment field.
POD	12/5/2001 10:25:52 AM	csaxton	Edited point location
Source	12/5/2001 2:48:44 PM	csaxton	(No) 1. Is the basis of claim decree or license? (No) 2. Is the basis of claim an Application or Permit? (No) 6. Is the basis of claim a Posted Notice? (No) 7. Is there evidence that there has been a change in the source? (Yes) 10. Does the file contain all the necessary information to verify the source? (No) 11. Is a Source remark and/or condition required? Description for Question 10 - Field Exam 7/26/01
POU	12/5/2001 2:51:19 PM	csaxton	Edited shape boundary
POU	12/5/2001 2:51:36 PM	csaxton	Edited PLS
POU	12/5/2001 3:10:00 PM	csaxton	Edited shape boundary
POU	12/5/2001 3:10:25 PM	csaxton	Edited PLS
Priority Date	12/5/2001 10:23:08 AM	csaxton	(No) 1. Should this water use have been included in a later court decree of the water rights from this source? (No) 4. Is the basis of claim decree or license? (No) 7. Is the basis of claim a Application or Permit? (No) 8. Is the basis of claim a posted notice? (No) 9. Is the Priority Date claimed after the date a permit is required for the source and the water use? (Yes) 12. Does the claim file contain sufficient evidence of Priority Date? (Yes) 15. Is the basis of claim coded correctly? (No) 16. Is a Priority Date remark and/or condition required? Description for Question 12/13 - Claimant provided a hand written deed dated 11/24/1965 which speaks of 0.03 cfs on claimed property.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 29-4220 V1

POU

12/5/2001 2:50:11 PM

csaxton

(No) 1. Is the basis of this claim a Decree or License?

(Yes) 2b. Is the POU required?

(No) 3. Is the basis of claim a Application or Permit?

(No) 7. Is there evidence that there has been a change in the POU?

(Yes) 13. Does the file contain all the necessary information to verify the POU?

(Yes) 14. Is a POU remark and/or condition required?

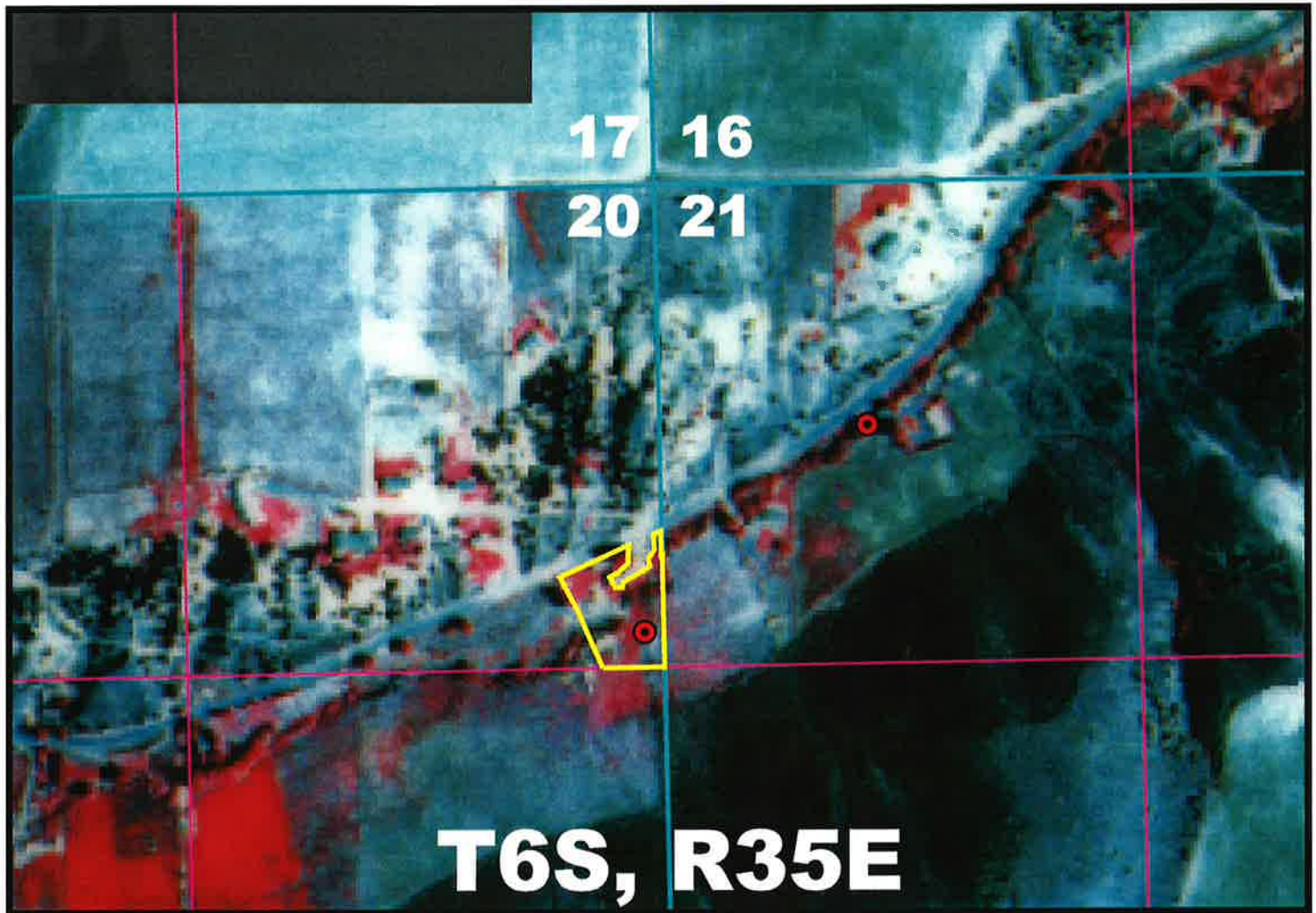
Description for Question 13 - 1987 NAPP photography and priority evidence meets-and-bounds description.



STATE OF IDAHO

Department of Water Resources
Eastern Region

Water Right(s): 29-04220



1320 0 1320 Feet

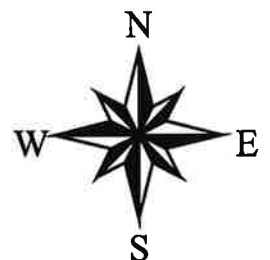
Total Irrigated Acres: 1.5

● Point(s) of Diversion

□ Place of Use

□ Quarter Quarter Lines

□ Section Lines



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MAR 07 2005

PROFILE

GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by: C. Saxton
Date: December 2001

3-19-03: Robert Zausch called and feels he should have a portion of The Tanny/Anderson Right.

I told him I would speak with the legal staff about an accomplished change in POW.

He does have a hand written agreement from Dwaine & Elwin Andersson giving Robert $1\frac{1}{2}$ " of water.

3-20-03: Spoke with Candice and Ernie.

Letter speaking of $1\frac{1}{2}$ inch of water in 1965 is not enough to show a accomplished A in POW.

However Document hold him to $1\frac{1}{2}$ inches for B-use.

Treat as Posted Notice. Need Deced trail from Anderson to Zausch to see if any mention of Water rights. Also needs to show accomplished transfer - what was dried up to irrigate his Ground in 1965.

3-28-03 : Sent letter and amended Claim to Claimant.

: Claimants Work Phone 234-6603

4-9-03 : Spoke with Bob and he is going to sign the amended Claim and send it in.

4-23-03 : IT: Was established that this claim is not for a portion of decreed Right in Pocahontas Ck. Treat as B-use claim. Amended claim for increased diversion Rate. Rec stock for year round use.

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State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 23, 2003

ROBERT F ZAUSCH
KATHLEEN A ZAUSCH
8083 W POCATELLO CK RD
POCATELLO ID 83201

RE: Recommendation for Snake River Basin Adjudication (SRBA) claim 29-04220 and 29-10888.

Dear Mr. and Ms. Zausch,

Per your submittal of a signed amended claim and Notice of Error reply, I have amended SRBA recommendations for 29-04220 and 10888 (enclosed).

If everything looks satisfactory, no further action is required. You will be notified by the SRBA court at the time the director's report is issued.

Please feel free to contact me with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Craig L. Saxton', with a long, sweeping horizontal line extending to the right.

Craig L. Saxton
Sr. Water Resource Agent
Adjudication Bureau

Enclosure(s)

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02/18/2003

Craig

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.

RECEIVED

APR 21 2003

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: April 21, 2003

Water right number: 29-4220

KATHLEEN A ZAUSCH
8083 W POCATELLO CREEK RD
POCATELLO ID 83201
Telephone Number: (208)233-2358

ROBERT F ZAUSCH
8083 W POCATELLO CREEK RD
POCATELLO ID 83201
Telephone Number: (208)233-2358

RECEIVED
APR 17 2003
WATER RESOURCES
WESTERN REGION
Department of Water Resources
Eastern Region

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:

Change Amount to Total 0.070 CFS as
Recommended Claim.

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: 4-9-03

SIGNATURE:

Robert F. Zausch

Please print your name:

Robert F. Zausch

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

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MAR 07 2005



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 28, 2003

ROBERT F ZAUSCH
KATHLEEN A ZAUSCH
8083 W POCATELLO CK RD
POCATELLO ID 83201

RE: Recommendation for Snake River Basin Adjudication (SRBA) claim 29-04220

Dear Mr. and Ms. Zausch,

I spoke with my supervisor and a member of our legal staff regarding your question about the recommended priority date for claim 29-04220.

Your claim filed based on a statutory claim or beneficial use. It was recommended this way because your property is not part of the originally decreed place of use. In addition, the letter you provided by Dwain and Elwin Anderson does not indicate that the 1 ½ inches of water is from a decreed right.

Additional evidence that initially supports that the 1 ½ inches of water spoke about in the letter of agreement you provided is not part of the decreed water is an affidavit submitted by Dwain Anderson in 1982 objecting to your filing of the original statutory claim 29-04420. Mr. Anderson states in the affidavit that, "...I am the original owner of this ground and the water was never used on it. We sold this piece of ground in 1965." (enclosed). Also note that you did not claim the decreed priority date of June 1, 1887 that would fit with the historical Taney right.

Thus, the evidence I have now is that use of water could have started being used on this ground in 1965, but not before. Thus we recommended the right as a beneficial use claim with a 1965 priority date.

That being said, you said you had the letter speaking of the 1 ½ inches recorded into your deed. IDWR would need the chain of title from Dwain and Elwin Anderson, to Elden and Donna Martindale, then to yourself to see if there is any mention of decreed water with priority dates or water right numbers.

In order to recommend your water right as an accomplished change in place of use, you not only need to prove that you were deeded 1 ½ inches of decreed water, but show where it was moved from. So the question would be, "What land in the decreed place of use was dried up in 1965 so your land could be irrigated with the decreed water?" This

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evidence would have to be provided for the recommendation to be changes to reflect a decreed priority date.

However, since at this time IDWR's legal staff feels that the written agreement from Dwain Anderson is not enough to support that a portion of the decreed right is on your property, it also is probably not enough to hold your right to 1 ½ inches.

Thus, I feel it would be in your best interest to amend your claim for a greater diversion rate. With the evidence I have currently, I feel I could probably recommend a total diversion rate of 0.07 cfs with the 1965 priority date for irrigation and stockwater.

I am enclosing an amended claim for your convenience. Please look over the claim and initial any changes you wish to make. When satisfied, sign the claim in front of a notary and return it to this office.

Please feel free to contact me with any questions.

Respectfully submitted,



Craig L. Saxton
Sr. Water Resource Agent
Adjudication Bureau

Enclosure(s)

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State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Memorandum

Date: November 19, 2001

From: Craig L. Saxton

Subject: SRBA claims 29-04220 and 29-10888

29-04220: Recommend claim based on Beneficial use with a priority of November 24, 1965 based on letter from Dwain and Elwin Anderson. Since claimed POU is not in decreed POU and priority evidence doesn't indicate that it was a portion of a decreed right meant to be transferred to the claimed POU, evidence only supports a beneficial use claim. In addition, this evidence supports irrigation on only the parcel spoke about in the contract agreement.

29-10888: Property claimed under this right not spoken about in the priority evidence provided for 29-04220. 1987 NAPP shows some signs of possibly limited irrigation. Recommend a portion of right as an enlargement claim.

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November 19, 2001

ROBERT ZAUSCH
KATHLEEN ZAUCH
8083 W POCATELLO CK RD
POCATELLO ID 83201

RE: Snake River Basin Adjudication (SRBA) claims 29-04220 and 29-10888

Dear Mr. and Mrs. Zausch,

I am close to finishing my review of the SRBA claims for irrigation use from the North Fork of Pocatello Creek. You filed two claims both claiming a 1904 priority date. From the evidence you provided I can support irrigation claim 29-04220 claiming use on the parcel around your home dating back to November 24, 1965.

However the priority evidence you provided does not support irrigation of the lands claimed south of the creek under 29-10888 prior to 1971. Since my NAPP photography does indicate some irrigation south of the creek before 1987, I am planning on recommending a portion of that claim as an enlargement. This would allow for some additional acres under this right, but no additional water.

If you feel my assessment is inaccurate you will need to provide additional information that the lands claimed under right 29-10888 were irrigated prior to May 20, 1971 and will need to provide evidence of the extent of the irrigation. Please feel free to contact me at 525-7161.

Respectfully submitted,



Craig L. Saxton
Water Resource Agent
Adjudication Bureau

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MAR 07 2005

8-13-01

Hi Craig,

Here is The copy of The Letter
from Duane and Elwin Anderson, granting
a portion of Their Water Rights to
Elden and Donna Martindale. As I
Told you, I There had This
recorded as a part of My
Deed for The Property.

Thanks
Bob Fausch

RECEIVED

AUG 14 2001

Department of Water Resources
Eastern Region

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MAR 07 2005

THE ROCKY MOUNTAIN ALL STAR DAIRY

POCATELLO CREEK ROAD & JEFFERSON STREET
POCATELLO, IDAHO

Nov. 24 1965

Contract of this date to
 Elden & Donna Martindale
 from ~~Barney & Elwin Underberg~~
 for the purchase of land.
 located in Bannock County
 on the Pocatello Creek Road.
 with the description more or
 less following.

That portion of land lying
 on the South side of Pocatello
 Creek Road T 6 S Range 35
 E.B.M. Section 20.

The point of beginning where
 Pocatello Creek Road meets Section
 21 South to property line of
 William Butts & J. B. Middleton
 & United States property. Thence
 West 167 feet then north to
 Pocatello Creek Road then East
 running parallel along Pocatello
 Creek Road 275 feet to

PRODUCED

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MAR 07 2005

THE ROCKY MOUNTAIN ALL STAR DAIRY

POCATELLO CREEK ROAD & JEFFERSON STREET

POCATELLO, IDAHO

II

point of beginning. a
 1/2 inch
 from Pocatello Creek.

The terms of this contract
 is \$2000⁰⁰ full purchase price.
 One thousand dollars as down
 payment and the balance of
 1000⁰⁰ to be paid with 6%
 interest. Five hundred dollars.

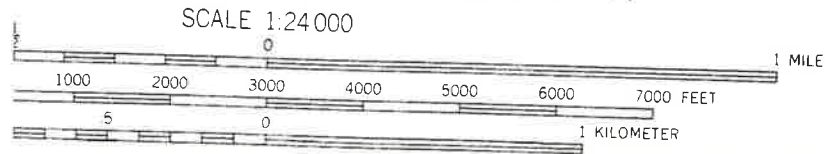
June 14, 1966 and the balance
 of five hundred dollars plus
 the interest January 14, 1967
 at which time a Title Insurance
 and Guarantee Deed
 will be furnished to purchaser
 by the Seller. No penalty if
 Contract is paid earlier than
 date specified.

Elwin H. Anderson
 Duane H. Anderson

PROFILED

SCANNED

MAR 07 2005



MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
 U.S. GEOLOGICAL SURVEY, MENLO PARK, CALIF. 94025



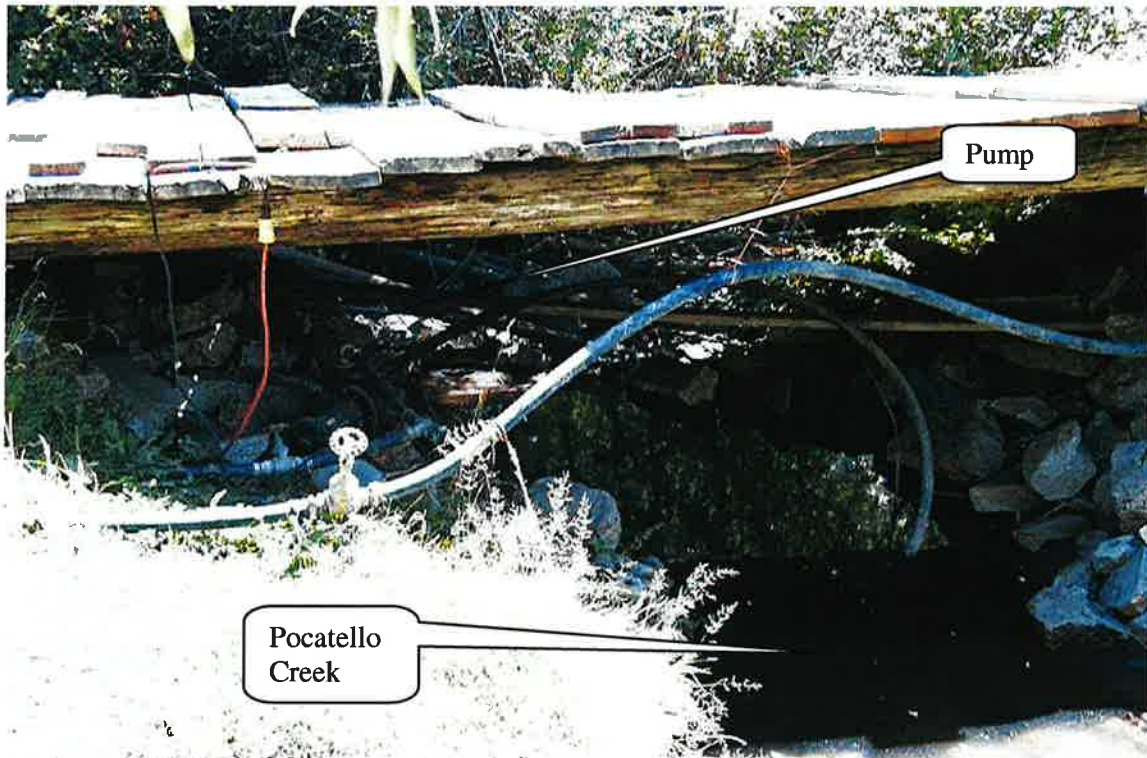
POCATELLO NORTH, ID.
 N4252.5 - W11222.5/7.5

1985

es Of These Maps Can Be Obtained

29-10888 and 29-10889

Date: 7/26/01



POD. Looking South. Pump set under bridge and supplies water to Roberts back pasture and Matts pasture.

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29-10888 and 29-10889

Date: 7/26/01



POD. Looking South. Pump set under bridge and supplies water to Roberts back pasture and Matt's pasture (csaxton).

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MAR 07 2005

29-04220

Date: 7/26/01



Looking South. Pocatello creek water enters pipe to left of picture and flows into a couple of clean out boxes before it enters an underground pipeline and flows to Zausch's property.

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SCANNED
MAR 07 2005

29-04220

Date: 7/26/01



Looking SE. Portneuf River in foreground. Pump. Irrigated field behind me in the picture. Portneuf straight ahead (csaxton).

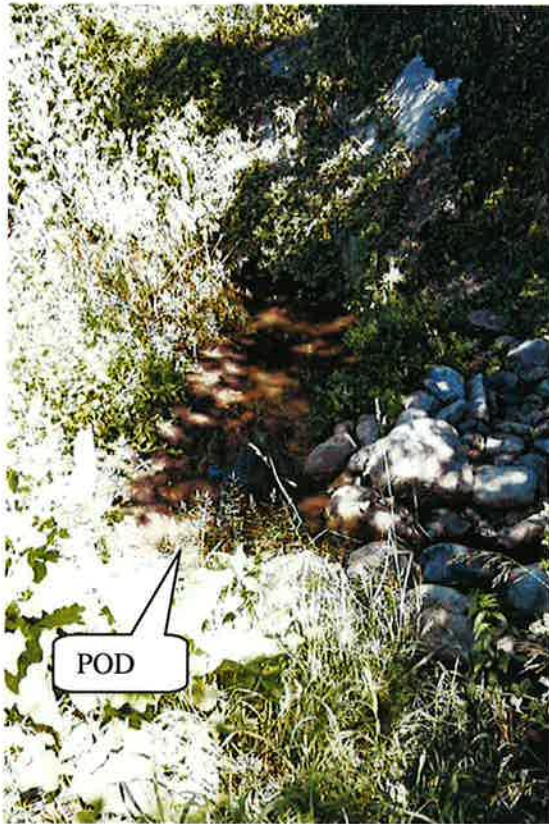
PROFILED

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MAR 07 2005

29-04220

Date: 7/26/01



Looking East. This picture shows where the natural flow of the North Fork of Pocatello creek enters a pipe system to flow to Robert Zausch's property.

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MAR 07 2005

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Memorandum

Date: July 6, 2001

From: Craig L. Saxton

Subject: Robert and Matt Zausch Claims

Claim No(s): 29-04220, 29-10888, 29-10889

No priority evidence submitted. Conversation with Robert on 5/10/01, he stated that before he purchased the property it was owned by Martindale who bought the property in 1969, and prior to that Mr. Anderson owned the property. Robert also says the he thinks the right is based on and old Decree.

All three claims claim an April 1, 1904 priority date. This priority date does not match any of the Decreed rights in 29-N-1, Tandy Vs. AL, signed 4-1-1925. The claimed POU does not fall in any of the decreed Places of use described in Decree 29-N-1, Tandy Vs. AL, signed 4-1-1925. In addition, an objection to Statutory claim 29-04220 filed on Feb 3, 1982, was filed by Dwaine W Anderson on 6/15/1985. In Mr. Anderson's objection it states, "I am one of the original owners of this ground and the water was never used on it. We sold this piece of ground in 1965."

At this time, I have no evidence to recommend the above rights. It seems the best option is for the claimant to find evidence of beneficial use after 1965 and before 1971.

The second option would be to file a permit on the water of proof can be made that use took place prior to 1987.

7/11/01 | Tried to call - not Home

7/26/01 | Field Exam with Bob. He is providing Priority Evidence that gets him around the mid '60's.

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MAR 07 2005

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JUN 13 2001

Log for claim A29-04220

Spatial Dynamics LTD

9/20/00

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
06s35e	20	NENE	2	1.2	
Totals:			2	1.2	

4/3/01 Needs Priority Evidence

CS

- Domestic 29-10887 PO'd

29-10888

4/10/01 microfilm Evidence against Priority

4/17/01 - POU not in 29-N decree.

- Priority date doesn't match unclaim Decreed Right
- Send letter Requesting Priority Evidence
- Priority date not earlier than April 1 1925
unless Evidence is provided to show otherwise
This includes 29-10888 and 29-10889

April 25, 2001

29-04220, 29-10888
ROBERT ZAUSCH
KATHLEEN ZAUSCH
8083 W POCATELLO CR RD
POCATELLO ID 83201

RE: EVIDENCE OF PRIORITY

Dear Claimant (s):

The Idaho Department of Water Resources has recently begun its water right review in Basin 29. The Notice(s) of Claim identified with the number shown **above in the "address" label and at the "end" of this letter** has been filed in the Snake River Basin Adjudication (SRBA). The Notice indicates water usage is based on "Beneficial Use". Water rights of this type are established by the historical use of water, dating back to when water was first used for the purpose claimed, at or on the place of use identified on the Notice. The date the water was first put to use, known as the priority date, has not been confirmed by a license, Decree, or Permit. For this reason, proof must be provided supporting the priority date. **As the claimant, you are responsible for submitting the necessary proof to support the priority date.**

It is important that each element of the Notice be substantiated. For instance, regarding claims for irrigation, the evidence should tend to show that diversion works were in place, that they were capable of diverting the claimed diversion rate, and that the diverted water was beneficially used on the entire claimed place of use on or before the claimed priority date.

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

It is our goal to recommend historical water rights within the Snake River Basin as accurately as possible. Field exams to verify other items of the Notice have been or soon will be conducted by Department personnel.

.....
The Department can not recommend the Notice be decreed by the court if no evidence of a priority date is submitted.
.....

Please submit the documentation supporting the priority date by May 11, 2001, **referencing all documents with the corresponding Notice number.** If you have any questions not covered by this letter or the enclosed pamphlet, please feel free to contact me at 525-7161.

Respectfully submitted,

Craig L. Saxton
Water Resource Agent
Adjudication Bureau

Enclosure: Brochure on "Evidence of Priority"
 Notice of Claim 29-04220, 29-10888

IN THE MATTER OF:

Claim to a Water
Right No. 29-4220
Robert F. Zausch

State of Idaho
County of Bonneville

Elwin

AFFIDAVIT FEB 24 1982

Department of Agriculture
Eastern District Office

I, Dwaine W. Anderson

being first duly sworn,

deposes and says: I object to the above mentioned claim to
a water right on Pocatello Creek made by Robert F. Zausch. All
available water in the streams of Pocatello Creek are now being
used under decreed rights, so there is no water available to
supply Mr. Zausch with water from the Creek. He has a well
for his stock and garden water.

I am one of the original owners of this ground and the
water was never used on it. We sold this piece of ground
in 1965.

(Signature)

Subscribed and sworn to before me this 24th day of February, 1982

(Notary Public)

Residing at Idaho Falls, ID
My Commission Expires 6/15/85

March 8, 1992

RE: Claim to a Water Right No. 29-4220

Robert F. Zausch
Pocatello Creek Road
Pocatello, Idaho 83201

Dear Mr. Zausch:

Enclosed please find a copy of the exception filed in connection with the above referenced claim. The following is a quote from the provisions of the Idaho Code under which this claim has been filed:

"2-2110. Recording of claims by department-----Corrections.-----
.....
At any time after filing a claim under the provisions of this section, any person who disavows that a right has been established as set forth in said claim may, file an exception thereto in duplicate, in affidavit form, accompanied by such proof as said person deems appropriate. An exception filed shall be made a part of the file of the claim in the Department of Water Administration (renamed Department of Water Resources July 1, 1974) and shall be considered the same as other evidence in said file. A copy of an exception filed shall be forwarded to the claimant by the Department of Water Resources. Such claims may be corrected by the claimant only by filing of an amended claim in the same form as the original which shall be recorded and numbered by the department the same as the original and for which no additional filing fee shall be required.

Only the above action has been contemplated by the Idaho Legislature and we are not authorized to hold hearings or evaluate for confirmation or final responsibility of the rights involved.

If you have any questions regarding this matter, please contact us.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:ew

Enclosure

March 8, 1982

RE: Claim to a Water Right No. 29-4220 ZAUSCH

Dwaine W. Anderson
Pocatello Creek Road
Pocatello, Idaho 83201

Dear Mr. Anderson:

We have received the exception dated February 24, 1982, filed against the above referenced claim to a water right. The following is a quote from the provisions of the Idaho Code under which this claim has been filed:

42-225b. Recording of claims by department----Corrections.----

.....
At any time after filing a claim under the provisions of this section, any person who disagrees that a right has been established as set forth in said claim may file an exception thereto in duplicate, in affidavit form, accompanied by such proof as said person deems appropriate. An exception filed shall be made a part of the file of the claim in the Department of Water Administration (renamed Department of Water Resources, July 1, 1974) and shall be considered the same as other evidence in said file. A copy of an exception filed shall be forwarded to the claimant by the Department of Water Resources. Such claims may be corrected by the claimant only by filing of an amended claim in the same form as the original which shall be recorded and numbered by the department the same as the original and for which no additional filing fee shall be required.

Only the above action has been contemplated by the Idaho Legislature and we are not authorized to hold hearings or evaluate for conformation or final censorship of the described rights.

If you have any questions regarding this matter, please contact us.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

AJ5809NP
No. A29-04220

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 05/24/00
PAGE: 71

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	KATHLEEN A ZAUSCH	04/01/1904	IRRIGATION	04-01 11-01	0.020 CFS	
C	ROBERT F ZAUSCH		STOCKWATER	01-01 12-31	0.010 CFS	
	8083 W POCATELLO CREEK RD					
	POCATELLO ID 83201					
	(208) 233-2358					
				TOTAL DIVERSION:	0.030 CFS	
				CONSUMPTIVE USE:		5.00 AFA
	Water Source: POCATELLO CREEK, NORTH FORK		Tributary to: POCATELLO CREEK			Stage: STATUTORY CLAIM

AJ5809NP
No. A29-04220

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 05/24/00
PAGE: 72

Point(s) of Diversion:

T06S R35E S20

SENE

BANNOCK County

AJ5809NP
No. A29-04220

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 05/24/00
PAGE: 73

Point(s) of Diversion: T06S R35E S21 SWNWNW 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	:	
06S	35E	20	:	02				:					:					:							:	2.0
																							TOTAL ACRES	:	2.0	

Place of use Legal Description for: STOCKWATER

				NE				NW				SW				SE										
T	R	S	:	NENE	NWNE	SWNE	SENE	:	NENW	NWNW	SWNW	SENW	:	NESW	NWSW	SWSW	SESW	:	NESE	NWSE	SWSE	SESE	:			
			:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	:	
06S	35E	20	:	S				:					:					:							:	

POU County: BANNOCK

Non-Irrigation Uses: STOCKWATER, 16 HORSES AND CATTLE

Other Rights: A29-10887

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):

29-10085	29-10709	29-10710	29-10887	29-11064	29-11359	29-11651	29-12072	A29-10085	A29-10709
A29-10710	A29-10887	A29-10888	A29-10889	A29-10890	A29-11064	A29-11359	A29-11651	A29-12072	

Remarks: GEN SHARES DIVERSION SYSTEM WITH WATER RIGHTS A29-10888 & A29-10889.

Dates: Exam Made Date: Verified Date: Objection Filed Date:

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

Audit: 03/30/90 MOBILE2 07/20/94 THOMPSON 03/29/95 POST-STD

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CLAIM TO A WATER RIGHT

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

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

Notice is hereby given that ROBERT F. ZAUSCH

(Name of Claimant)

Pocatello Creek Rd., Pocatello Id. 83201

(Mailing Address)

Telephone No. 233-2358

(Zip Code)

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

- (1) Date of priority: (When was the water first applied to a beneficial use) April 1, 1904

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

- (2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

POCATELLO CREEK

tributary to

SNAKE RIVER

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

	(cfs, af)	(Domestic, Irrigation, Stock, Etc.)	(Both dates inclusive)	
			(Mo., Day)	(Mo., Day)
Quantity	<u>.02cfs</u>	Use <u>Irrigation</u>	Period of Use From <u>4/1</u>	To <u>11/1</u>
Quantity	<u>.01cfs</u>	Use <u>Stockwater</u>	Period of Use From <u>1/1</u>	To <u>12/31</u>
Quantity		Use	Period of Use From	To
Quantity		Use	Period of Use From	To
Quantity		Use	Period of Use From	To

- (4) .03cfs TOTAL QUANTITY USED.

(cfs, af)

- (5) A) Point of diversion: (Location of point where water is diverted from its source)

SW ¼ NE ¼, Sec. 20 Twp. 6S Rge. 35E B.M., County of Bannock

Additional points of diversion:

372.0 432.0 - 009.0 - 001.0 344.6 0.6

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. Pump and pipeline. Also ditch 288' long. Pump is 3/4HP and pipe is 1½" dia. approx. 400' long.

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

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
6S	35E	20			2														2

No. of acres 2

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

NOTE: Include here the type and number of stock watered: 3 head horses and 5 head cattle

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

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 29-4220
Date Received: 3/30/1990
Receipt No: M006437
Received By:

AMENDED

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

KATHLEEN A ZAUSCH Phone: (208)233-2358

8083 W POCA TELLO CREEK RD
POCA TELLO ID USA 83201

ROBERT F ZAUSCH Phone: (208)233-2358

8083 W POCA TELLO CREEK RD
POCA TELLO ID USA 83201

RECEIVED
APR 17 2003
Department of Water Resources
Eastern Region

2. Date of Priority: 04/01/1904

3. Source: POCA TELLO CREEK NORTH FORK Trib. to: POCA TELLO CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
06S	35E	20	SE NE NE	BANNOCK	
06S	35E	21	SW NW NW	BANNOCK	

5. Description of diverting works:

HEADGATE AND DITCH, PUMP AND PIPELINE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	4/01	11/01	0.05	
STOCKWATER	1/01	12/31	0.02	

7. Total Quantity Appropriated is:
0.07 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

PROFILED

SCANNED
MAR 07 2005

10. Place of use:

Township	Range	Section	1/4	of 1/4	Lot	Use	Acres
06S	35E	20	NE	NE		IRRIGATION STOCKWATER	2
			NE	NE			
						Section Acres	2
						Total Acres	2

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:

14. Remarks:

SHARES DIVERSION SYSTEM WITH WATER RIGHTS A29-10888 & A29-10889.

15. Basis of Claim: Beneficial Use

16. Signature(s)

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

PROFILED

SCANNED
MAR 07 2005

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):

[Signature]

Date: 4-9-03

Date:

State of Idaho)

County of

Bannock

) SS.

Subscribed and sworn (or affirmed) before me this

9th

of April 2003

[Signature]
Notary Public

Residing at

Jon Hall, Id

My commission Expires

09-18-07



PROFILED

**SCANNED
MAR 07 2005**

JUN 13 2001

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A29-04220

Date Received: 3/30/1990

Receipt No: MOO 6437

Received By: CA

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: ROBERT F. ZAUSCH 208-233-2358
Address: 8083 W. POCA TELLO CREEK RD.
POCA TELLO, ID 83201

AND/OR

Name: KATHLEEN A. ZAUSCH 208-233-2358
Address: 8083 W. POCA TELLO CREEK RD.
POCA TELLO, ID 83201

2. Date of Priority: APR 01, 1904

3. Source: POCA TELLO CREEK, NORTH FORK Trib. to: POCA TELLO CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
06S	35E	20	SE	NE	NE		BANNOCK
		21	SW	NW	NW		BANNOCK

5. Description of diverting works:
HEADGATE AND DITCH, PUMP AND PIPELINE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.020		
STOCKWATER	01/01	12/31	0.010		

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

8. Total consumptive use is 5.0 Acre Feet Per Annum.

9. Non-irrigation uses:
STOCKWATER, 16 HORSES AND CATTLE

A29-04220

Page 1

Date: 03/30/90

MICROFILMED
NOV 13 1992

A2904220



16. Signature(s)

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

Number of attachments: -1-

For Individuals:

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

Signature of Claimant(s): [Signature] Date: 3-30-90
Date: _____

State of Idaho)
County of Bannock) SS.

Subscribed and sworn (or affirmed) before me this 30th day
of March 19 90

[Signature]
Notary Public

Seal

Residing at Carter Fritschle, Notary Public
Residing at Eagle, Idaho
My Commission Expires March 21, 1994

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