

12/09/2006

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

RIGHT NUMBER: 75-4471

NAME AND ADDRESS: SILVER PEAK RANCH TRUST
C/O MYRTHUS AUSTIN/RON AUSTIN
63 HWY 93 N
SALMON ID 83467-5292

SOURCE: WASTE WATER

TRIBUTARY: SALMON RIVER

QUANTITY: 2.500 CFS

PRIORITY DATE: 04/01/1941

POINT OF DIVERSION:

T22N R22E S31 SESW Within LEMHI County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	4/01 11/01	2.500 CFS

PLACE OF USE: IRRIGATION in LEMHI County

T22N R22E S31	SENE	35.00	T22N R22E S31	NESE	11.00
T22N R22E S32	SWNW	5.10	T22N R22E S32 Lot 3	SWNW	33.00
T22N R22E S32 Lot 4	SWNW	1.80	T22N R22E S32	SENE	10.00
T22N R22E S32 Lot 3	SENE	8.00	T22N R22E S32 Lot 4	SENE	7.30
T22N R22E S32 Lot 7	NESW	4.50	T22N R22E S32	NWSW	3.30
T22N R22E S32 Lot 6	NWSW	8.40	T22N R22E S32 Lot 7	NWSW	3.00

130.4 ACRES TOTAL

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

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

This right remains subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place or manner of wasting it, or to recapture it.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

07/09/2008

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T22N R22E S32 Lot 4	SWNW	1.80	T22N R22E S32	SENE	10.00
T22N R22E S32 Lot 3	SENE	8.00	T22N R22E S32 Lot 4	SENE	7.30
T22N R22E S32 Lot 7	NESW	4.50	T22N R22E S32	NWSW	3.30
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EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

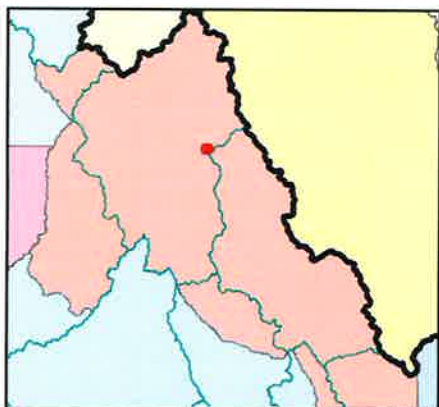


Idaho Department of Water Resources

SRBA Recommendation
75-4471
(IRRIGATION)

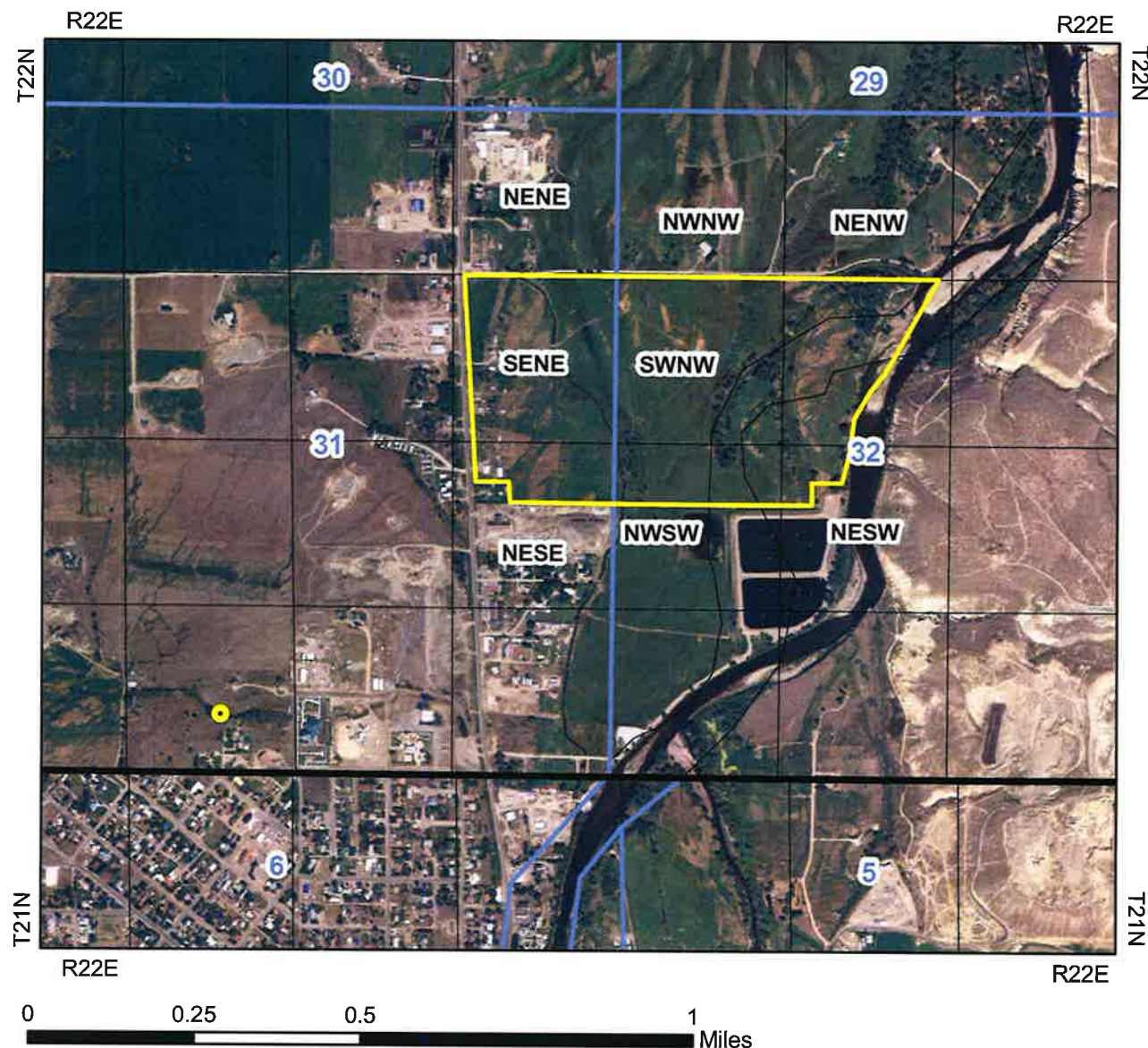
Legend

- Point of Diversion
- Place of Use
- State Outline
- Townships
- PLS Sections
- Quarter Quarters



Lemhi County
IDWR Basin 75

Prepared by Zach Maillard
On July 11, 2008
2004 Aerial Photography





Idaho Department of Water Resources

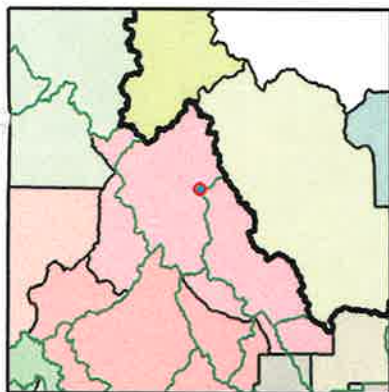
SRBA Recommendation:

75-4471

(Irrigation)

Legend

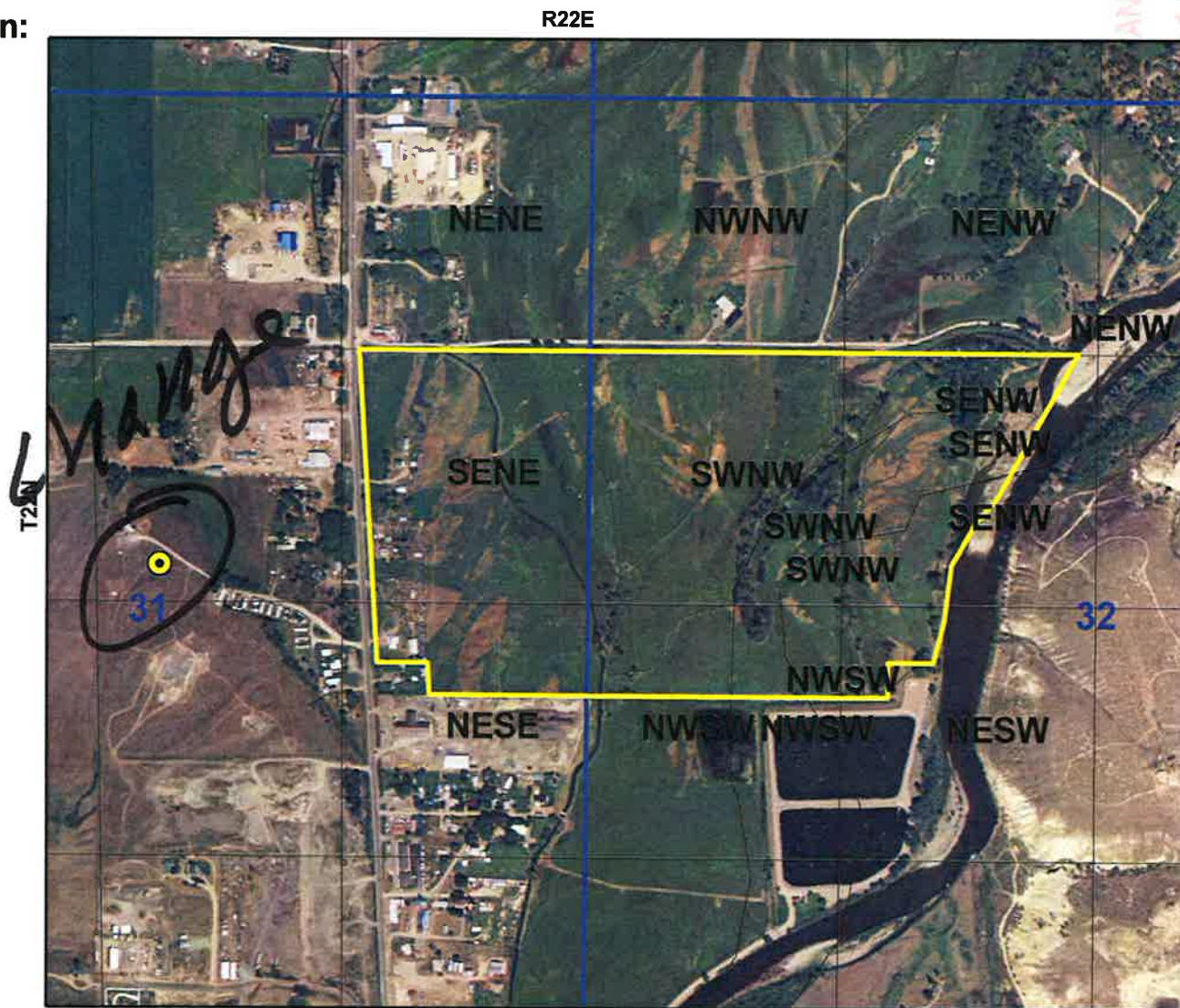
- Point of Diversion
- Place of Use
- Townships
- PLS Sections
- Quarter Quarters



Lemhi County
IDWR Basin 75



Prepared by M. Ciscell
On Monday, November 20, 2006
2004 Aerial Photography



0 0.4 0.8 Miles

Disregard POD

ANNEXED
15-2003



Idaho Department of Water Resources

SRBA Claim:

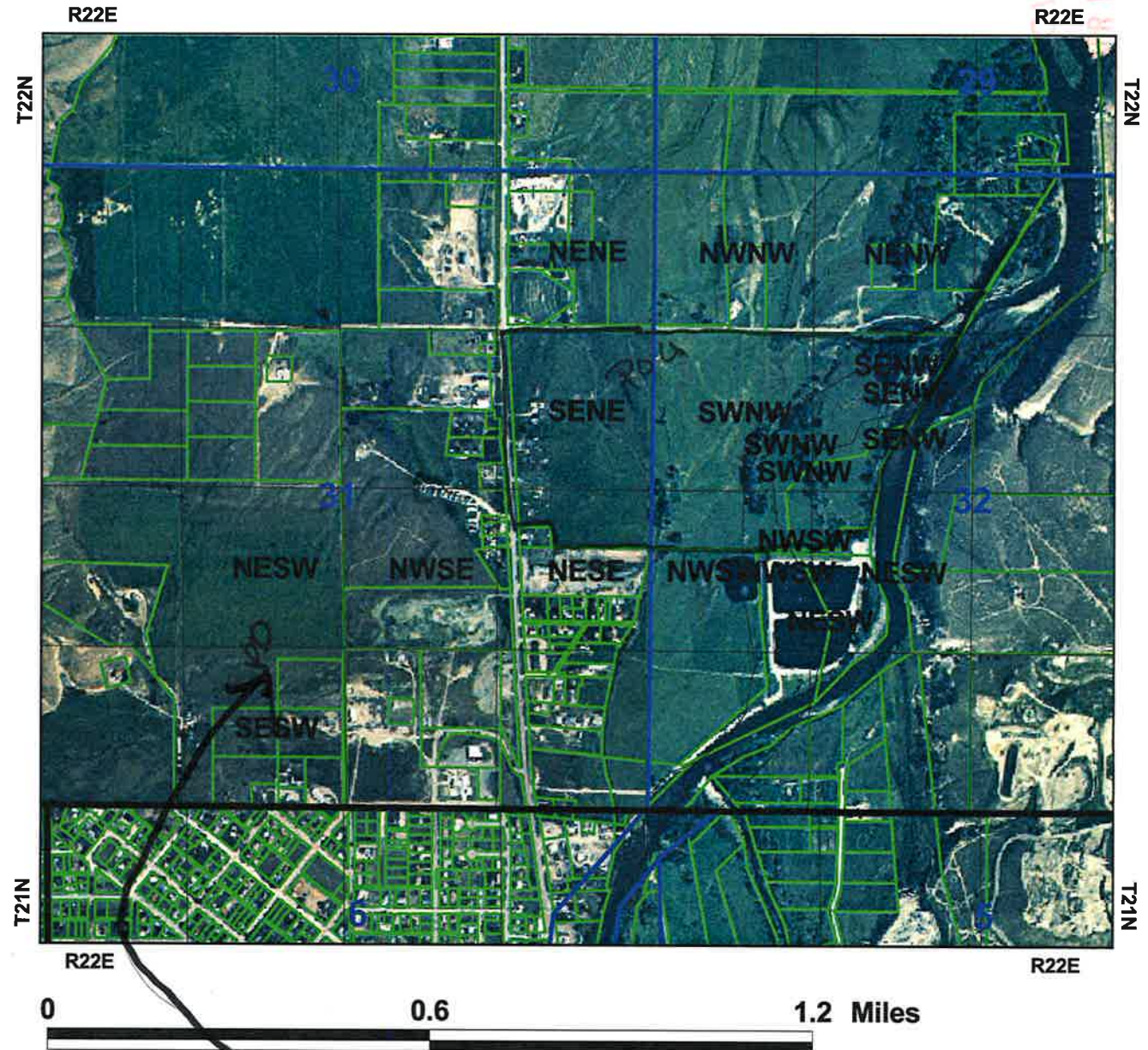
75-4471

Legend

-  Point of Diversion
-  Place of Use
-  Townships
-  PLS Sections
-  Quarter Quarters
-  Parcels



Lemhi County
IDWR Basin 75

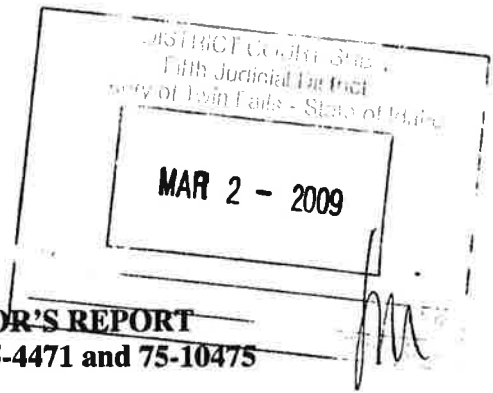


Prepared by R. Brown
On Tuesday, May 16, 2006
1987/88 Aerial Photography

Correct POD

UNFILED
2002 5 15 2006

240
2933



**SUPPLEMENTAL DIRECTOR'S REPORT
REGARDING SUBCASE NOS. 75-4471 and 75-10475**

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Director
Donald V. Shaff, Adjudication Bureau Chief

February 27, 2009

I. INTRODUCTION

In accordance with Idaho Code § 42-1412(4), Administrative Order 1, and Special Master Dolan's December 17, 2008, *Order for 706 Report*, the Director of the Idaho Department of Water Resources ("Department") submits this Supplemental Director's Report ("Report") regarding subcase numbers 75-4471 and 75-10475. This report was prepared under the supervision of David R. Tuthill, Jr., Director, and Donald V. Shaff, Adjudication Bureau Chief.

The following Department employee has knowledge of the information contained in the Report: Monica Van Bussum, Senior Water Resource Agent, State Office in Boise ("Agent Van Bussum").

II. SUMMARY

At issue are the Department's recommendations for 75-4471 and 75-10475, a beneficial use waste water right and a decreed right from Jesse Creek, respectively. In its Basin 75 Director's Report for Irrigation and Other Uses, filed with the Snake River Basin Adjudication ("SRBA") District Court on January 11, 2007, the Department recommended these water rights to Silver Peak Ranch Trust, care of Myrthus Austin and Ron Austin.¹ On October 19, 2007, Bob Blackadar filed timely objections to both 75-4471 and 75-10475.² In his objection to 75-4471, Mr. Blackadar stated that the point of diversion and place of use are incorrect, but also stated that the water right should not exist. In his objection to 75-10475, Mr. Blackadar simply stated that this water right should not exist.

After further review, the Department partially agrees with Mr. Blackadar and concludes that its original recommendations should be modified. This report outlines the basis for the Department's amended recommendations for these water rights.

¹ Copies of the Department's original recommendations are attached as Attachment A.

² Copies of Mr. Blackadar's objections are attached as Attachment B.

III. SRBA CLAIM NO. 75-10475

1. Background

75-10475 is a combined claim for two decreed rights: 75-3 and 75-9. These rights were decreed in the *Miller v. Long* decree entered June 26, 1925. 75-3 was decreed to William Boomer. 75-9 was decreed to the Gilmore & Pittsburg Railroad Company. Both 75-3 and 75-9 were decreed with an April 1, 1894, priority date. 75-3 was decreed for 1.44 cfs and 75-9 was decreed for 1.5 cfs, for a total of 2.94 cfs. The two rights were combined into one claim in the SRBA. 75-10475 was claimed by the Silver Peak Ranch Trust for 1.94 cfs with an April 1, 1894, priority date, for irrigation. The Department recommended the right as claimed.

2. Prior Litigation in SRBA

Bob Blackadar objected to the Department's recommendation for 75-10475, stating that the right should not exist. In support of his objection, Mr. Blackadar referenced a summary judgment order from the SRBA District Court in SRBA Subcase No. 94-00004. SRBA Subcase No. 94-00004 arose from a lawsuit filed by Mr. Blackadar against Myrthus Austin for damaged allegedly done to Mr. Blackadar's property through ditch maintenance activity. The case was first filed in Washington County District Court, but was later transferred to the SRBA District Court in 1995 because the Washington County court construed *Young Harvey Walker v. Big Lost River Irrigation District*, 124 Idaho 78, 856 P.2d 868 (1993) as divesting the court of jurisdiction. While the lawsuit was not filed to determine the elements of Austin's water rights, the SRBA District Court did have cause to examine the validity of 75-3. In the SRBA District Court's order on summary judgment, the Court held that:

Matthias Austin, [predecessor of Myrthus Austin and Silver Creek Ranch Trust] however, received no right to the use of water from the deed which conveyed land to him from the Gilmore & Pittsburgh [sic] Railroad. . . . The deed conveying that particular property to Matthias Austin specifically reserves all decreed water rights from Jesse Creek. Myrthus Austin can possess no Jesse Creek water right by his successive interest in the land. This court finds water right no. 75-00009 to have been reserved by deed.

Memorandum Decision and Order Granting Partial Summary Judgment and Order Denying Motion to Suppress Evidence, July 7, 1995, SRBA Subcase No. 94-00004, at 6.

Ultimately, the Court concluded “because of the Railroad’s reservation, water right no. 75-00009 is not appurtenant to the Austin land, and has most likely been forfeited by the Railroad.” *Id.* at 7. The Court found insufficient evidence existed to determine the status of 75-3. *Id.*

The Department agrees with Mr. Blackadar that the decision in SRBA Subcase 94-00004 is applicable. The Department also agrees the portion of this claim linked to decreed right 75-9 should be disallowed because of the SRBA Court’s decision on summary judgment. However, the Court’s order leaves open the question of the validity of 75-3. Thus, the Department examines 75-3 in greater detail below.

Validity of 75-3.

As discussed above, 75-3 was decreed to William Boomer in the *Miller v. Long* decree. The decreed place of use for the water right is described as the S1/2NE and the N1/2SE Section 31, Township 22 North, Range 22 East, B.M., excepting three parcels of land. Mr. Blackadar stated the place of use recommended to Silver Peak Ranch Trust by the Department puts the place of use on the three excepted parcels described in the *Miller v. Long* decree. Mr. Blackadar

argues because the place of use is on the land exempted, this means 75-3 should not be recommended to Silver Peak Ranch Trust.³

The Department finds that most of the Silver Peak Ranch Trust property falls within the excepted parcels listed in the decree. However, this does not mean Silver Peak Ranch Trust cannot have an ownership interest in 75-3. The Department's delivery records support the claim that there has been a transfer of this water right from the place of use described in the *Miller v. Long* decree to the Silver Peak Ranch Trust property.

As part of its investigation into Mr. Blackadar's objection, the Department has reviewed the water master records for this area. The records vary in the amount of information they contain, but they do show that prior to 1944, the water master delivered W.D. Boomer water with a 1894 priority date. The 1945 record shows both Matt Austin and W.D. Boomer as receiving 1894 water. The 1946 records are not clear, but it does appear that Boomer is listed as receiving water in this year. However, starting in 1947, Boomer disappears from the records and the records show that Matt Austin and his successors continue to receive 1894 water. The following is a summary of just some of the records in the Department's possession:⁴

- 1944 water master delivery record listing W.D. Boomer as a present owner and the priority date next to his name is 1894. The quantity of water delivered is not listed.
- 1945 water master delivery record listing W.D Boomer as a present owner with a 1894 priority date. Matt Austin appears for the first time as a present owner, also with a 1894 priority date.
- 1946 water master delivery record listing Boomer's name. The name Boomer appears towards the bottom and is very hard to read. No other information is visible as the copy quality is very poor.

³ This argument does not appear in Mr. Blackadar's objection but was raised by Mr. Blackadar at the initial hearing and in subsequent discussions with Mr. Blackadar.

⁴ Copies of the water master records are attached as Exhibit C.

- 1947 water master delivery record does not list Boomer. Matt Austin is shown as receiving 75 inches (1.5 cfs) of 1894 water.
- 1948 water master document listing Matt Austin as a current owner receiving 1.5 cfs of 1894 water. Again, no listing of Boomer.

Additional water master documents show the water was historically delivered to the Austins. This is just a sampling of documents available regarding this water right:

- A 1969 water master document listing 1.5 cfs of water being delivered to M. Austin.
- A 1970 water master document listing 1.5 cfs of water being delivered to M. "Auston."
- A 1973 book of decrees maintained by the Department, listing William Boomer as the original owner of 75-3 and the current owner as "Murphus" Austin. The document shows 72 inches (1.44 cfs) being delivered with a 4/1/1894 priority date to Austin.
- A 1977 assessment log for water users in Water District 75-A showing that "Marthus" Austin as being assessed \$27.48 for delivery of water.
- A 1987 water master document showing 75-3 being delivered to Emerson Hill (0.15 cfs) and Myrthus Austin (1.44 cfs).
- A 1992 water master document showing 75-3 and 75-9 being delivered to Myrthus Austin, but a handwritten note next to 75-9 reads, "May be forfeited."

Normally, the Department requires a claimant to submit deeds showing proof of ownership or unity of title before the Department will recommend an accomplished transfer from decreed property to property that was not included in the decree. However, in this case, there are extensive historical records showing this right has been delivered to the predecessors of Silver Creek Ranch Trust. These records, coupled with the fact that no one contested the historic delivery of this water right for decades, no one else claimed this water right for themselves and the decreed place of use is no longer irrigated, leads the Department to conclude this portion of the water right should be recommended as valid to Silver Peak Ranch Trust.

Mr. Blackadar raised one more argument in opposition to this water right. Mr. Blackadar suggested that Silver Peak Ranch Trust cannot be owners of 75-3 because William Boomer sold the water right to the City of Salmon. To support his assertion of the water right sale, Mr. Blackadar supplied a deed between William and Della Boomer and the City of Salmon dated November 6, 1937.⁵ The deed states the Boomers sold the City of Salmon a water right for \$4,400, with the description,

All the right title and interest of the parties of the first part [the Boomers] in and to the water of Jesse Creek, Lemhi County, State of Idaho, and herein warranted to be not less than 22 inches, said waters having been decreed by the District Court of the State of Idaho and recorded in Book A of Judgments on Page 251, and the land on which this water has been used for irrigation purposes being a part of the S1/2NE1/4 and the N1/2SE1/4 of Section 31 in Township 22 North Range 22 East of the Boise Meridian, Lemhi County, State of Idaho. This is first right water.

The Department agrees the legal description in the deed matches the legal description provided in the decree and the deed appears to convey the decreed water to the City of Salmon. However, the Boomer deed is problematic in several respects. First, the deed says the water right is first right water, but 75-3 is actually eighth right water from Jesse Creek. Second, the deed also states the water right was recorded in Book A of Judgments on Page 251. This description is the location of the first Jesse Creek decree, of which the 75-3 was not part. 75-3 was recorded as part of the second Jesse Creek decree in Book C of Judgments on pages 294-297. Third, the deed states that the water right was not less than 22 inches. 75-3 is, in fact, 72 inches. It is odd that a deed would not more fully describe the amount of the water right when it had only 12 years previously been decreed to the owners and conveyors. Finally, as described above, the Department has records showing 75-3 being delivered to the Austin family for many decades. The City of Salmon has never requested delivery of 75-3, even though water masters

⁵ A copy of the deed is attached at Exhibit D.

for the last 25 years have also been City employees. Thus, given the ambiguities surrounding the deed and the fact that this water has historically been delivered to the Austin family, the Department believes that this water right should be recommended to Silver Creek Ranch Trust.

Conclusion Regarding SRBA Claim 75-10475

75-10475 is a combined claim for two decreed rights: 75-3 and 75-9. The Department agrees that the portion of the right linked to 75-9 should not be recommended. However, the Department believes that the weight of the evidence presented suggests that Silver Peak Ranch Trust is the owner of 75-3 and that there has been an accomplished change in place of use pursuant to Idaho Code § 42-1425 for the historically delivered and decreed amount of 1.44 cfs. A copy of the Department's revised recommendation is attached to this report as Exhibit E.

IV. SRBA CLAIM NO. 75-4471

1. Background

75-4471 was claimed by the Silver Peak Ranch Trust with the elements:

- Priority date: 4/1/1941
- Basis: Statutory Claim
- Source: Waste water tributary to Salmon River
- Diversion rate: 2.5 cfs
- Place of Use (POU): Same as 75-10475

75-4471 was recommended with these elements by the Department in its Basin 75 Director's Report of January 11, 2007. Mr. Blackadar filed an objection, stating the point of diversion should be SWSESW Section 31, Township 22 North, Range 22 East, B.M. The point of diversion issue is being addressed in subcases 75-14 et al., being heard by the Court separately. Mr. Blackadar's objection for 75-4471 also stated that the place of use should be, "Limited to property South and West of the North Ditch About 15 acres." For reasons supporting his objection, Mr. Blackadar wrote, "Waste Water is Not Subject to Demand; since

the Norton Ditch bisects the property, it constrains area of use; This water right has the potential to be a liability for the public and I would encourage the State of Idaho, Dept. of Transportation to intervene on behalf of the public.”

There are several issues to be addressed from Mr. Blackadar’s objection: waste water being subject to demand, limiting the place of use to that constrained by the Norton Ditch, and the water right posing a liability for the public.

2. Waste Water

The Department recommended the source of this water right as waste water. In his objection, Mr. Blackadar seemingly suggests that the fact that this water right has a source of waste water means that the water right should be disallowed. The Department disagrees. It is true that in Idaho, the original appropriator of the water is entitled to capture the waste for reuse in certain circumstances. See *A & B Irrigation Dist. v. Aberdeen-American Falls Ground Water Dist.*, 141 Idaho 746, 752, 118 P.3d 78, 84 (2005). However, this does not mean a waste water right cannot be decreed in the SRBA. This court regularly decrees water rights with waste water as the source.

Agent Van Bussum met with Ron Austin, the representative for Silver Peak Ranch Trust, at the Basin 75 initial hearings in September 2008 and again at the Department’s Salmon Field Office in November 2008. During those meetings, Mr. Austin stated that he understood that the wasting of water feeding the ditch to his property can stop at any time. As such, the Department sees no reason to modify its recommendation to address this issue.

3. Place of Use

Mr. Blackadar objected to the place of use description, suggesting that Mr. Austin irrigates property south and west of the Norton Ditch. In his meetings with Agent Van Bussum,

Mr. Austin agreed that he does not irrigate land east of the Norton Ditch with Jesse Creek water. Agent Van Bussum subsequently met with Mr. Austin on November 6, 2008, to alter the POU for 75-4471 to reflect property to the west of the Norton Ditch. The Department has prepared a revised recommendation with the place of use.

4. Liability Regarding Ditch

The issue of ditch safety, while always important, is outside the scope of this adjudication and must be addressed outside the SRBA. The Department sees no reason to modify its recommendation to address this issue.

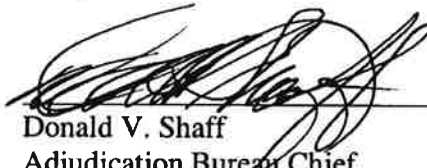
5. Conclusion Regarding 75-4471

Given the additional evidence uncovered through subsequent meetings with Mr. Austin, the Department now recommends 75-4471 as appurtenant to Silver Peak Ranch Trust land west of the Norton Ditch for a total of 29.7 acres. 75-4471 would now be recommended for 0.6 cfs to cover the 29.7 acres west of the Norton Ditch irrigated by Silver Peak Ranch Trust. A copy of the Department's revised recommendation is attached to this report as Exhibit F.

V. CONCLUSION

Based upon additional information provided to the Department, the Department agrees its recommendations should be modified. Revised recommendations are attached to this report as Exhibits E and F. The Department recommends the Court issue decrees consistent with these revised recommendations.

Submitted this 27th day of February, 2009.


Donald V. Shaff
Adjudication Bureau Chief,
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described document on the persons listed below by United States mail with the correct postage affixed thereto on this 27 day of February.

Document Served: Supplemental Director's Report Regarding SRBA Subcase Nos. 75-4471 and 75-10475

Persons Served:

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

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

2. Copies to:

SILVER PEAK RANCH TRUST
C/O MYRTHUS AUSTIN/RON AUSTIN
63 HWY 93 N
SALMON, ID 83467-5292

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

ROBERT L BLACKADAR
10 N CHEROKEE RD
SALMON, ID 83467



Idaho Department of Water Resources

ATTACHMENTS TO
SUPPLEMENTAL
DIRECTOR'S REPORT

ON FILE WITH THE

COURT

To request a copy, (\$1.00 per page) please contact
Clerk of the Court at 208-736-3011.

MEMORANDUM

TO: Files 75-4471 and 75-10475

FROM: Monica Van Bussum

DATE: November 21, 2008

RE: Discussion of Austin rights from Jesse Creek

I met with Ron Austin of Silver Peak Ranch Trust on November 6, 2008, and with Bob Blackadar on November 7, 2008. Bob Blackadar filed objections to IDWR's recommendations for Silver Peak Ranch Trust's water rights 75-4471 and 75-10475. This memo serves to document my current understanding of how water has been used on the Silver Peak Ranch land, and to better analyze if and how the recommendations for 75-4471 and 75-10475 should change.

75-10475

75-10475 is a combined claim for decreed rights 75-3 and 75-9. 75-3 is known as the Boomer right and 75-9 is known as the Gilmore & Pittsburg (G&P) Railroad right. For clarity, both 75-3 and 75-9 had an April 1, 1894, priority date. 75-3 was decreed for 1.44 cfs (72 inches) and 75-9 was decreed for 1.5 cfs (75 inches).

Bob Blackadar objected to IDWR's recommendation for 75-10475 stating 75-10475 should be disallowed. Mr. Blackadar's reason supporting the objection was: "Case No. 94-00004 In the District Court of the Fifth Judicial District of the State of Idaho, In and for the County of Twin Falls Memorandum Decision and Order Granting Partial Summary Judgment."

Case No. 94-00004

Case No. 94-00004 came about when Bob Blackadar sued Myrthus Austin when Mr. Austin allegedly damaged Blackadar's property through ditch maintenance activity. While the scope of the case was not to determine the state of the Austins' water rights, it did address 75-3 and 75-9. The Memorandum Decision and Order Granting Partial Summary Judgment and Order Denying Motion to Suppress Evidence of July 7, 1995, stated, "Matthias Austin, however, received no right to the use of water from the deed which conveyed land to him from the Gilmore & Pittsburgh [sic] Railroad...The deed conveying that particular property to Matthias Austin specifically reserves all decreed water rights from Jesse Creek. Myrthus Austin can possess no Jesse Creek water right by his successive interest in the land. This court finds water right no. 75-00009 to have been reserved by deed."

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DEC - 4 2008

Thus, the court found “because of the Railroad’s reservation, water right no. 75-00009 is not appurtenant to the Austin land, and has most likely been forfeited by the Railroad.” However, the court found insufficient evidence existed to determine the status of 75-3.

It appears IDWR reached this understanding sometime in 1994, as evidenced by a letter from Tim Luke to Myrthus Austin from August 2, 1994, which stated, “We find that our records do not show that you have had any interest and/or use of water right 75-0009 prior to 1992...The watermaster’s daily log books do not indicate that more than 1.5 cfs was delivered under your name in that year.”

A subsequent letter from Tim Luke dated December 23, 1994, stated, “IDWR records indicate that you have used right 75-0003 and that you do have a possessory interest in this same right. Past water district records show that up to 1.44 cfs of water has been delivered to you under right 75-0003.”

Boomer right

It seems clear 75-10475 should be considered a claim solely for 75-3, at least in terms of SRBA review. 75-3 was decreed to William Boomer for the S1/2NE and the N1/2SE Section 31, Township 22 North, Range 22 East of the Boise Meridian, excepting three parcels of land. A cursory examination of this legal description shows the decreed place of use (POU) covers the current Austin property east of Highway 93, as well as ground west of the highway. It is Mr. Blackadar’s contention that Boomer only owned land west of the highway and, as such, the Boomer right was not appurtenant to the current Austin/Silver Peak Ranch Trust property. It is also Mr. Blackadar’s contention that Mr. Boomer sold the water right before selling his property.

To support his assertion of the water right sale, Mr. Blackadar supplied a deed between William and Della Boomer and the City of Salmon dated November 6, 1937. The deed states the Boomers sold the City of Salmon a water right for \$4,400. The deed states, “All the right title and interest of the parties of the first part in and to the water of Jesse Creek, Lemhi County, State of Idaho, and herein warranted to be not less than 22 inches, said waters having been decreed by the District Court of the State of Idaho and recorded in Book A of Judgments on Page 251, and the land on which this water has been used for irrigation purposes being a part of the S1/2NE1/4 and the N1/2SE1/4 of Section 31 in Township 22 North Range 22 East of the Boise Meridian, Lemhi County, State of Idaho. This is first right water.”

The Boomer deed is problematic in several respects.

- The Boomer right 75-3 is actually 8th right water, not first right, from Jesse Creek. 75-3 has been delivered as 8th right water historically, per a 1992 Jesse Creek watermaster document.
- Per 1973, 1987 and 1992 Jesse Creek watermaster records, 75-3 has been assessed and delivered to the Austin/Silver Peak Ranch property. The 1973 document showed 72 inches under 75-3 being delivered to Myrthus Austin, and listed 75-9

SCANNED

DEC - 4 2008

but did not list a recipient. The 1987 document showed 75-3 being delivered to Emerson Hill (7.5 inches) and Myrthus Austin (72 inches). The 1992 document showed 75-3 and 75-9 being delivered to Myrthus Austin, but a handwritten note next to 75-9 read, "May be forfeited." We have records from three decades showing 75-3 being delivered to the Austin/Silver Peak Ranch property.

- The Boomer deed states the water right was not less than 22 inches. The Boomer right was, in fact, 72 inches. It seems odd a deed would not more fully describe the amount of the water right when it had only 12 years previous been decreed to the owners and conveyors.
- The Boomer deed states the water right was recorded in Book A of Judgments on Page 251. This description is the location of the first Jesse Creek decree, of which this water right was not part. The Boomer right was recorded as part of the second Jesse Creek decree in Book C of Judgments on pages 294-297.
- The City of Salmon has not claimed 75-3 in any respect. There is no historical record of delivery of 75-3 to the City of Salmon.

Conclusions relevant to 75-3

Based on the memorandum decision of 1994 and IDWR records cited by Tim Luke, 75-9 appears to have been forfeited by the Gilmore and Pittsburg Railroad. We now take up 75-3. Three decades of watermaster records and IDWR correspondence show delivery and use of 75-3 by the Austins. If possible, I would recommend renumbering 75-10475 to 75-3 to preserve the water right record and recommending 75-3 to the Austin/Silver Peak Ranch property.

Mr. Blackadar's assertion that the Boomer right was not appurtenant to the current Austin property but was only appurtenant to lands west of Highway 93 is an ambiguous area. The decree only gave a standard legal description and made no mention of exceptions for the highway. The Austin/Silver Peak Ranch claim to 75-3 would be strengthened by the existence of a deed between Boomer and Matthias Austin, or Matthias Austin's predecessor. However, evidence of delivery to the Austin/Silver Peak Ranch property does support transfer of the right under the accomplished transfer statute.

75-4471

75-4471 is a claim by Austin/Silver Peak Ranch Trust with the elements:

- Priority date: 4/1/1941
- Basis: Statutory Claim
- Source: Waster water tributary to Salmon River
- Diversion rate: 2.5 cfs
- Place of use: Same as 75-10475

75-4471 was recommended much the same way in the Basin 75 Director's Report. Mr. Blackadar filed an objection, stating the POD should be SWSESW Section 31, T22N, R22E, B.M. This relates to what is known as the "Blackadar source issue" and will be addressed separately from the validity of the Austin rights. In short, Mr. Blackadar is

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DEC -- 4 2008

trying to establish the point of diversion for what is historically known as Farmer's Ditch as the actual natural conveyance of Jesse Creek.

Mr. Blackadar's objection also stated, the POU should be, "Limited to property South and West of the Norton Ditch About 15 acres." For reasons supporting objection, Mr. Blackadar wrote, "Waste Water is Not Subject to Demand; Since the Norton Ditch bisects the property, it constrains area of use; This water right has the potential to be a liability for the public and I would encourage the State of Idaho, Dept. of Transportation to intervene on behalf of the public."

There are several issues to be addressed from Mr. Blackadar's objection:

- Waste water being subject to demand
- Limiting the POU to that constrained by the Norton Ditch
- The water right posing a liability for the public

Aside from Mr. Blackadar's objection, priority date also needs to be addressed.

Mr. Blackadar is correct – waste water is not subject to demand. During my meeting with him, Ron Austin, Myrthus Austin's successor, agrees and has a clear understanding that Mr. Blackadar can stop wasting water at any time. However, waste water rights are still considered valid and have been recommended by IDWR and partially decreed by the SRBA District Court previously.

During initial hearings in September 2008, Ron Austin agreed he does not irrigate land east of the Norton Ditch with Jesse Creek water. I subsequently met with Mr. Austin on November 6, 2008, and we redrew the POU to be recommended for 75-10475 (or 75-3) and 75-4471. It is now satisfactory to Mr. Austin and myself.

The issue of the water right posing a liability for the public is more problematic. During my meeting with Mr. Blackadar on November 7, 2008, he showed me a video he took in the early 1990s of the ditch conveying Mr. Austin's water. Mr. Blackadar also drove me along the path of the ditch, showing me it runs in front of a preschool building. Mr. Blackadar is concerned with the safety of having a ditch running so close to a highway and businesses, particularly a preschool. I understand Mr. Blackadar's concern, but I do not believe the SRBA Court is the appropriate venue for such a contention and suggested Mr. Blackadar speak to the Idaho Department of Transportation about his grievance. Mr. Blackadar stated he intended to bring this matter before the SRBA Court.

75-4471 was also addressed in case 94-0004. In that case, Austin stated he irrigated under 75-4471 from 1941 or 1942 to June 1989. Myrthus Austin is no longer alive, but per his testimony in 94-0004, we can establish evidence of priority to 1941 or 1942. Per usual procedures, barring additional evidence, priority date in cases like this is the first day of the irrigation season in the later year – in this case, the recommended priority date would be April 1, 1942.

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DEC - 4 2008

Priority Date Data Entry Form

Claim Number 75-4471

Claimed Priority Date: 4/1/1941

Claimed Basis: Statutory Claim

☐ Use Claimed Priority Date and Basis as Recommended Priority Date and Basis

Water Right Priority Date: 4/1/1941

Water Right Basis: Statutory Claim

Recommended Priority Date Recommended Basis Beneficial Use

Document the evidence submitted/reviewed for the priority date claimed, include your analysis of the evidence:

really vague affidavit in file from Myrthus
Austin says water use since 1941

This is a waste water claim. How long
has this ditch been in use? Is it
the green or the red?

would like to have some corroborating eop

Is this an exact overlap w/ same POD as 75-10475?
May be able to recommend a priority date
based on that. — not same POD

Reviewer: MVBDate: 5/28/2008

Point of Diversion and Source Data Entry Form

Claim Number 75-4471

Claimed Point of Diversion and Source

T22N R22E S31 NESW Within LEMHI County Source: WASTE WATER SALMON RIVER

T22N R22E S31 SESW Within LEMHI County Source: WASTE WATER SALMON RIVER

T22N R22E S31 NWSE Within LEMHI County Source: WASTE WATER SALMON RIVER

☐ Use Claimed POD and Source as Recommended POD and Source

Water Right Point of Diversion and Source

T22N R22E S31 NESW Within LEMHI County

T22N R22E S31 SESW Within LEMHI County

T22N R22E S31 NWSE Within LEMHI County

Recommended Point of Diversion and Source

Source Information

Source

Tributary To

Twp	Rge	Sec	Gov Lot	QQQ of QQ of Q	County	Source

Other rights from this POD? none (other PODs in this QQ are for ground water)

Document how the POD and Source were verified:

objection to POD from Blackadar says POD
should be T22N R22E Sec 31 SW, SE, SW
& mentions Norton Ditch - where is Norton Ditch
in relation to POD? - looks like it runs N/S through property
need GPS & FE to confirm POD(s)
ask Blackadar to explain what he wants w/objection
need to confirm source & conveyance to property
- recommended POD is on a natural stream

Reviewer:

MVB

Date:

5/28/2008

Place Of Use Data Entry Form

Claim Number 75-4471

Claimed Place Of Use

T22N R22E S31	NENE	4.00	T22N R22E S31	SENE	40.00
T22N R22E S31	NESE	10.00	T22N R22E S32	NENW	4.00
T22N R22E S32	NWNW	4.00	T22N R22E S32	SWNW	40.00
T22N R22E S32	SENW	17.00	T22N R22E S32	NESW	3.00
T22N R22E S32	NWSW	12.00			

Total Acres 134

☐ Use Claimed POU as Recommended POU

Water Right Place Of Use

T22N R22E S31	NENE	4.00	T22N R22E S31	SENE	40.00
T22N R22E S31	NESE	10.00	T22N R22E S32	NENW	4.00
T22N R22E S32	NWNW	4.00	T22N R22E S32	SWNW	40.00
T22N R22E S32	SENW	17.00	T22N R22E S32	NESW	3.00
T22N R22E S32	NWSW	12.00			

Total Acres 134

Recommended Place of Use

☐ See corrections to claimed POU above

Twp	Rge	Sec	QQ	Q	County	Lot Num	Acres	Purpose of Use

Total Acres _____

Document how the POU was verified:

property is irrigated, but not all of it appears
 actively irrigated - significant # of buildings on
 property
 looks like intent was to claim same acres as 75-10475
 so recommend both w/ same shape (not how we
 originally did it)
 have Austin draw POU on map

Reviewer: MVB

Date: 5/28/2008

Purpose of Use Data Entry Form

Claim Number 75-4471

Claimed Purpose of Use

Water Use	Number of Homes	Number of Stock	Acre Limit
IRRIGATION			

☐ Use Claimed Purpose of Use as Recommended Purpose of Use

Water Right Purpose of Use

Water Use	Number of Homes	Number of Stock	Acre Limit
IRRIGATION			

Recommended Purpose of Use

Water Use	Number of Homes	Number of Stock	Acre Limit	Number of Other
Irrigation				

Document how the Purpose of Use was verified:

property looks irrigated

most of this POU was decreed for irrigation
under 75-3 & 75-9

confirm irrigation during field exam
use for stock?

Reviewer: MVBDate: 5/28/2008

Period of Use and Quantity Data Entry Form

Claim Number 75-4471

Claimed Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
IRRIGATION	4/01	11/01	2.5	
Overall Diversion Rate	2.5	Overall Diversion Volume		

☐ Use Claimed Period of Use and Quantity as Recommended Period of Use and Quantity

Water Right Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
IRRIGATION	4/01	11/01	2.5	
Overall Diversion Rate	2.5	Overall Diversion Volume		

Recommended Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
Irrigation	4/1	10/31		surface water (waste water)
	standard season for this PLS			

Overall Diversion Rate _____ Overall Diversion Volume _____

Document how the Period of Use and/or Diversion Rate were verified:

can not verify quantity - WMs do not keep records of
or deliver waste water

may need limiting condition for 1" flow w/
75-10475 → do we do this w/ waste
water?

from 75-10475 - capacity 1.44cfs
may need (probably needs) measurement
to confirm capacity - if capacity ample,
recommend 1"/ac.

Reviewer: MVB

Date: 5/28/2008

Contacts Data Entry Form

Claim Number: 75-4471

Owner Type	Full Name	Address	City	State	Zip	Phone
Current Owner	SILVER PEAK RANCH TRUST	C/O MYRTHUS AUSTIN/RON AUSTIN 63 HWY 93 N	SALMON	ID	83467-529 2	(208)756-3368
Original Owner	JOHN W AUSTIN	63 HIGHWAY 93 N	SALMON	ID	83467-529 2	(208)756-3368

Date of Field Exam: _____ Time: _____

Accompanied By: _____ Phone Number: _____

Relationship to Claimant: _____

Directions to Property (if different from above) and/or update owner information:

per NOE process, Myrthus has passed away
Ron is current contact

Reviewer: MVBDate: 5/28/2008

2
RECEIVED
OCT 19 2007
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)

A.

Subcase

75 - 4471

(Insert water right number)

Case No. 39576)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name:

Robert L. Blackadar

Address:

10 N Cherokee Rd

Salmon, ID 83467

Daytime Phone: 208-756-4967

Name & Address of Attorney, if any:

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

Name:

Silver Peak Ranch Trust

Address:

90 Myrthus Austin / Ron Austin

63 Hwy 93 N

Salmon, ID 83467-5292

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: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☒ **Point of Diversion**
Should be: SW 1/4, SE 1/4, SW 1/4 Section 31,
T. 22 N, R. 22 E, Boise meridian
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: Limited to property ~~North~~ South
and west of the Norton Ditch About
10. ☒ **I object because:** 15 acres
☒ This water right Should not exist.

☐ This water right was not recommended, but Should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTIONS(S):** Waste Water is Not
Subject to Demand, since the Norton Ditch bisects the
property, it constrains area of use; This water right
has the potential to be a liability for the public and
I would encourage the State of Idaho, Dept. of Transportation
to intervene on behalf of the public.

F.

VERIFICATION (must be completed)

State of Idaho)
County of Lemhi)ss.

Robert L. Blackadar, 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 objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Robert L. Blackadar
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

10-15-2007



Natalie Stenersen
Notary Public for East Idaho C U
Residing at: Salmon, ID
My Commission Expires: 5-18-2010

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 October 15, 2007, I mailed the original and copies of this objection, 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: Silver Peak Ranch Trust
Address: % Myrthos Austin / Ron Austin
63 Hwy 93 N
Salmon ID 83467

3. Copies to:

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

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

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

Signature of objector or attorney
mailing on Objector's behalf

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION SECTION
CLAIM VERIFICATION FIELD EXAM SHEET
(Use with the ECVR)

CLAIM NO(s). 75-4471

1. ☒ No Change NAME IS SAME
☐ NEW OWNER: _____
☒ No Change ADDRESS
☐ NEW ADDRESS: _____

2. ☐ No Change - DATE OF PRIORITY: Completed evidence submitted
☐ Incomplete - Claimant should be asked during the exam when was water first used and submit proof of date of priority.

Priority date, per claimant, is: _____
(If the priority date, based on your exam, seems questionable, explain below.)

3. ☒ No Change — SAME SOURCE
☐ Source is different than that claimed:

Source found: _____

4. ☐ No Change — POINT OF DIVERSION
☒ Point of diversion is different than the claim and/or new P/D's:
GPS Site Tag No.: A0017240

Township 22N Range 22E Section 31 1/4 NE 1/4 SE 1/4 SW
Township _____ Range _____ Section _____ 1/4 _____ 1/4 _____

5. ☒ No Change - DESCRIPTION OF DIVERTING WORKS
☐ Incomplete description, list below:

wastewater ditch to pole

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APR 15 2003

6. ☒ No Change - WATER USES
☐ Different uses, (list uses found):

Use _____	From _____	To _____	Amount _____	CFS _____	AFA _____
Use _____	From _____	To _____	Amount _____	CFS _____	AFA _____
Use _____	From _____	To _____	Amount _____	CFS _____	AFA _____

7. ☒ No Change - TOTAL VOLUME

☐ Incomplete on claim, the total is, Amount _____ CFS _____ AFA

☐ Changes found, the new total is, Amount _____ CFS _____ AFA

8. ☒ No Change - NON-IRRIGATION USES:

☐ Changes Exam found:

Domestic # of homes: _____ Stock # _____ List types: _____

Additional comments: _____

9. ☒ No Change — PLACE OF USE: (If changed, list below.)

Use: _____	Township _____	Range _____	Section _____	1/4 _____	1/4 _____
Use: _____	Township _____	Range _____	Section _____	1/4 _____	1/4 _____
Use: _____	Township _____	Range _____	Section _____	1/4 _____	1/4 _____
Use: _____	Township _____	Range _____	Section _____	1/4 _____	1/4 _____

Remarks: (Comments pertinent to field examination) ☐ See additional attachment

only one point of diversion for wastewater

☐ SYSTEM DIAGRAM INCLUDED

☐ NA

☒ Shown on GIS Layout

☐ CK IF IN OFFICE EXAM

DATE EXAM CONDUCTED: 10-18-06

FIELD EXAMINER: Bob Foster

Print Name

Bob Foster

Signature



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 Mineral Drive, Suite 100, Coeur d'Alene, Idaho 83815

Phone: (208) 762-2800

Fax: (208) 762-2819

Web Site: www.idwr.idaho.gov

JAMES E. RISCH
Governor

KARL J. DREHER
Director

December 9, 2006

Silver Creek Ranch Trust
C/o Ron Austin
63 Hwy 93 N
Salmon, Idaho 83467-5292

Re: Claim 75-4471

Dear Mr. Austin:

Enclosed is a new map and a preliminary recommendation reflecting the comments you made on the Notice of Error Reply. Please contact me if the changes are incorrect.

Sincerely,

Keith E. Franklin
Water Resources Agent

Encl/kf

SCANNED
APR 15 2008

11/20/2006

**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: 12/13/2006

Water right number: 75-4471

SILVER PEAK RANCH TRUST
C/O MYRTHUS AUSTIN/RON AUSTIN
63 HWY 93 N
SALMON ID 83467-5292
Telephone Number: (208)756-3368

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

Point of Diversion

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

Relocate as per map in file

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.

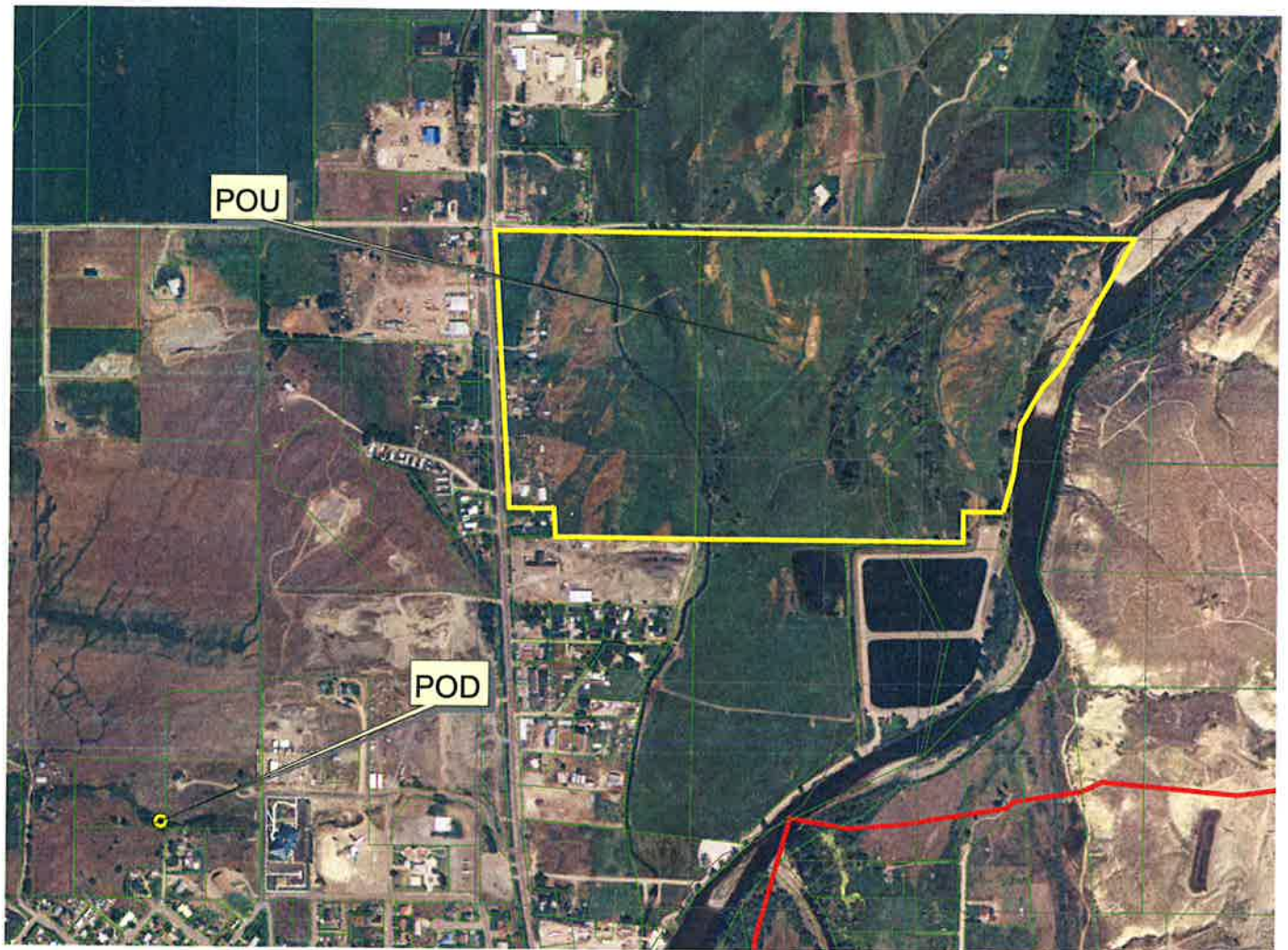
DATE: *12-06-06* SIGNATURE: *Ron Austin*
Please print your name: *Ron Austin*

IDWR Regional Office, 7600 Mineral Drive, Suite 100, Coeur D' Alene, ID 83815, 2087622800

SCANNED
APR 15 2008

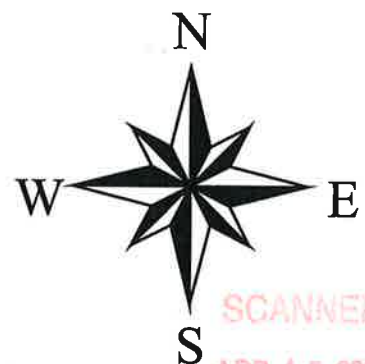


75-4471



0.3 0 0.3 0.6 Miles

-  Theme11.shp
-  Lemhi taxlots
-  GCDB22N22E GCDB
-  Pod.shp
-  Administrative BasinsAdminbas.shp



SCANNED
APR 15 2003

75-4471

RECEIVED

JUL 15 2005

DEPARTMENT OF
WATER RESOURCES

Dear Roxanne:

Enclosed are copies of some of the papers I found in regards to our water Rights from Jesse creek. My father who has been the owner of this ranch, passed away a little over a year ago and I am not up on what papers all need to be sent. Looking through papers these are some of what I found. There are papers showing water rights dating back to 1894 for Gilmore Pittsburg railroad which this ranch is now a part of. My uncle bought the property from the railroad co. in 1944, and in 1947 my father bought a portion of it from my uncle and has been using water from it every since then. I also found a paper having water right #A75-10475 showing priority date 04/01/1894 besides the claim #75-04471. I know that my father has been receiving water from said ditch since owning the property in 1947. I also know that in a court hearing a couple of years ago between my father and Bob Blackadar that the priority date of 1941 was mentioned I hope you find the information needed in what I have sent.

Thank You Ron Austin

Rm AustinSTATE OF IDAHO
COUNTY OF LEMHI

Subscribed and sworn to/affirmed before

me this 13 day of July 20 05*Lynn L. Pilkerton*

NOTARY PUBLIC

My Commission Expires on 02/28/07

SCANNED

JUL 21 2005

George O. Miller

V.S.

Ernest Long et al

Defendants

WATER DIST

JUDICIAL DIST.

DATE OF DECREE June 19, 1925

COUNTY Blaine

JUDGE George W. Edgier

RECORDED IN BOOK NO. AT PAGE NO.

TITLE
OF
CASE

DN.	DECREED OWNER	NAME	PRESENT OWNER	AMT. INCHES SEC. FT.	PRIORITY	DIVERSION				REMARKS, LAND TO BE IRRIGATED, ETC.
						SUBDIV.	SEC.	TWR.	RG.	
0001	George G. Miller			35	4- 1-1894	Jesse	Creek			W $\frac{1}{2}$ SW $\frac{1}{4}$ - Sec. 31, T22N, R22E
-0113	Estate of John Long			0 (100)	4- 1-1894	Jesse	Creek			NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Lots 2,3, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ - Sec. 30, T22N, R22E
	Trans. 1090 - Walter L. Blackadar			100						Lots 3,4, E $\frac{1}{2}$ SW $\frac{1}{4}$ - Sec. 31, T22N, R22E
-0002	Guv Edwards			85	4- 1-1894	Jesse	Creek			Lots 3,4, E $\frac{1}{2}$ SW $\frac{1}{4}$ - Sec. 31, T22N, R
-0003	William Boomer			72	4- 1-1894	Jesse	Creek			S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ - Sec. 31, T22N, R22E (Exce decided to Gilmore & Pittsburg RR & G. W.
-0004	Harry Kelly			60	4- 1-1894	Jesse	Creek			Property in Manhattan Addition, Salmon C
5-0005	George Oliver			250	4- 1-1894	Jesse	Creek			SW $\frac{1}{4}$ & SE $\frac{1}{4}$ - Sec. 1; SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$
5-0114	Bertha N. Rose			25	4- 1-1894	Jesse	Creek			Lots 1 & 10 - Sec. 6, T21N, R22E. (Exce Lots 1 & 10 described in decree.)
5-0008	Edson A. Morris			13	4- 1-1894	Jesse	Creek			Portion of Sec. 1, in Arlington Heights Idaho
5-0007	Citizens National Bank			200	4- 1-1894	Jesse	Creek			SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, Lot 4 - Sec. 30; NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, Lots 1,2 - Sec. 31, T22N, R22E
75-0003	Emerson Hill			7.5	4- 1-1894	Jesse	Creek			Lots in North Salmon Addition, Grandvi and McCardell's Addition, Salmon City,

JUL 21 2005
SCANNED

ng et al

Defendants

WATER DIST

JUDICIAL DIST.

DATE OF DECREE

June 19, 1925

COUNTY

JUDGE George W. Edgington

RECORDED

IN BOOK NO. AT PAGE NO. FILE NO.

NAME	PRESENT OWNER	AMT INCHES SEC. FT.	PRIORITY	DIVERSION				REMARKS, LAND TO BE IRRIGATED, ETC.	O.T.
				SUBDIV.	SEC.	TWR	RB.		
r		35	4- 1-1894	Jesse	Creek			W $\frac{1}{2}$ SW $\frac{1}{4}$ - Sec. 31, T22N, R22E	
Long		0 (100)	4- 1-1894	Jesse	Creek			NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{2}$ SW $\frac{1}{4}$, Lots 2,3, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, Parts NE $\frac{1}{4}$ NW $\frac{1}{4}$, & NW $\frac{1}{4}$ NE $\frac{1}{4}$ - Sec. 30, T22N, R22E	
Walter L. Blackadar		100						Lots 3,4, E $\frac{1}{2}$ SW $\frac{1}{4}$ - Sec. 31, T22N, R22E	
		85	4- 1-1894	Jesse	Creek			Lots 3,4, E $\frac{1}{2}$ SW $\frac{1}{4}$ - Sec. 31, T22N, R22E	
		72	4- 1-1894	Jesse	Creek			S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ - Sec. 31, T22N, R22E (Except for 2 parts, deeded to Gilmore & Pittsburg RR & G. W. Snyder)	160 ac
		60	4- 1-1894	Jesse	Creek			Property in Manhattan Addition, Salmon City, Idaho	
		250	4- 1-1894	Jesse	Creek			SW $\frac{1}{4}$ & SE $\frac{1}{4}$ - Sec. 1; SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ - Sec. 2, T21N, R.	
		25	4- 1-1894	Jesse	Creek			Lots 1 & 10 - Sec. 6, T21N, R22E. (Except for parts of Lots 1 & 10 described in decree.)	
is		13	4- 1-1894	Jesse	Creek			Portion of Sec. 1, in Arlington Heights addition, Salmon City Idaho	
onal Bank		200	4- 1-1894	Jesse	Creek			SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, Lot 4 - Sec. 30; NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, Lots 1,2 - Sec. 31, T22N, R22E	
		7.5	4- 1-1894	Jesse	Creek			Lots in North Salmon Addition, Grandview Addition, and McCardell's Addition, Salmon City, Idaho	

SCANNED
JUL 21 2005

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

COPY

Ident. Number: **A75-10475**
Date Received: 5/ 3/1990
Receipt No: M006881
Received By: _____

COPY FOR
YOUR FILES

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

COPY FOR
YOUR FILES

1. Name: SILVER PEAK RANCH TRUST
Address: C/O MYRTHUS AUSTIN/RON AUSTIN
TRUSTEES
1029 HWY 93 N
SALMON ID

208-756-3368

83467

2. Date of Priority: APR 1, 1894

3. Source: JESSE CREEK

Trib. to: SALMON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
21N	22E	1	SW		NW		LEMHI
22N	22E	31	NE		SW		LEMHI
			NW		SE		LEMHI

5. Description of diverting works:
HEADGATE, 2 DITCHES, FLOOD IRRIGATION

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	1.940		

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

A.F.A.

8. Total consumptive use is 335.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
22N	22E	31	NE	NE		IRR	4.0

SCANNED

JUL 21 2005

10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
22N	22E	31	SE		NE		IRR	40.0
			NE		SE		IRR	10.0
							Section Acres	54.0
		32	NE		NW		IRR	4.0
			NW		NW		IRR	4.0
			SW		NW		IRR	40.0
			SE		NW		IRR	17.0
			NE		SW		IRR	3.0
			NW		SW		IRR	12.0
							Section Acres	80.0
							Total Acres	134.0

11. Place of use in counties: LEMHI

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

13. Other Water Rights Used:
NONE

14. Remarks:

THIS CLAIM IS FOR COMBINED DECREED RTS. 75-0009 AND 0003 IN
IN TOTAL. CLAIMANTS LAND IS VERY ROCKY AND REQUIRES ABOUT
4 INCHES PER ACRE TO IRRIGATE ADEQUATELY.

THIS IS A HIGH WATER RIGHT AND IS USUALLY AVAILABLE ONLY FOR A
SHORT PERIOD OF THE IRRIGATION SEASON.

CHANGED OWNERSHIP 3/8/95/JT

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: / /

Decree Plaintiff

vs

Decree Defendant

SCANNED

JUL 7 1 2005



NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Please print or type

(see instructions on back of page)

DATE OF CLOSING: Jan. 2-1995

RECEIVED

JAN 06 1995

LEGAL DESCRIPTION OF PROPERTY: Township 21.N. 22.N Range 22ESection 31, SE SE 1/4 of NE SE 1/4 of SE NE 1/4, Govt. Lot _____, BM. _____Lot 1, Block _____, Subdivision/Townsite _____

If you have additional legal descriptions, please attach separate sheet.

Department of Water Resources

RECEIVED

JAN 11 1995

Department of Water Resources
Eastern District Office

☐ Served Only by a Public Service Water Supply (all water is received from a city or company who maintains water supply system, owns the water right, and bills the customer on a regular basis)

☐ Water Right Number(s) 75-4471
Assigned by IDWR: _____

☐ Name and Address of Former Owner/Claimant(s)(Seller): John Austin
John Austin
SILVER PEAK RANCH Trust

☐ New Owner/Claimant (Purchaser): Myrthus Austin -- Trustee

☐ New Mailing Address: (208) 756-3368
1029 Hwy 93 N. Salmon, ID. 83467

☐ New Telephone Number: (208) 756-3368

☐ Does the change in ownership result in a splitting of the water right owned/claimed? yes no no
If yes, then describe the portion of the water right that is now owned/claimed by the new owner:

☐ Attach proof of ownership, describe proof attached: _____

(proof of ownership must describe either the property conveyed or include the claim number. Proof of ownership is not required if this form is signed by the former owner/claimant.)

☐ Signature of New Owner/Claimant(s) Myrthus Austin Date 1-2-1995
Silver Peak Ranch Date _____

☐ Signature of Former Owner/Claimant(s): John Austin Date 1-2-1995
Betty Austin Date _____

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

FOR IDWR USE ONLY:

Initial Review and Data-Entry

Date: _____ By: _____

Further Action Needed:

Further Action Taken

Date: _____ By: _____

Final Review and Data-Entry

Date: _____ By: _____

Claim Numbers of Split, if any:

SCANNED

JUL 21 2005

Original to be mailed to Idaho Department of Water Resources
Copies to Former Owner and New Owner

RECEIPT
For Monies Paid
to the
Idaho Department of Water Resource

Receipt No: 8029756

Date: 8/ 8/1995
Time: 15:54:54

Received
From: AUSTIN, MYRTUS

Type of Payment		Program A cct		Amount
ADJUDICATION FEE	41503	337	1155	50.00
LATE FEE	41503	337	1155	50.00
Total				100.00
CHECK	1272			

A75-04471

Water Right Numbers

Region: EASTERN

Signature:

Jo Thompson

SCANNED
JUL 21 2005

For Organizations:

I do solemnly swear or affirm that I am Trustee of
Silver Peak Ranch Trust, that I have signed the foregoing
document in the space below as Trustee of
Silver Peak Ranch Trust and that the statements contained in the
foregoing document are true and correct.

Myrthos Austin
Signature of Authorized Agent

Trustee / Silver Peak Ranch Trust
Title and Organization

3-8-95
Date

State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 8th day
of March 19 95

Betty J. Thompson
Notary Public

Seal

Residing at BETTY J. THOMPSON, NOTARY PUBLIC
My Commission Expires RESIDING AT 2140 E. 1000 N. IDAHO

SCANNED

JUL 21 2005

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
22N	22E	31	SE	NE		IRR	40.0
			NE	SE		IRR	10.0
			Section Acres				54.0
		32	NE	NW		IRR	4.0
			NW	NW		IRR	4.0
			SW	NW		IRR	40.0
			SE	NW		IRR	17.0
			NE	SW		IRR	3.0
			NW	SW		IRR	12.0
			Section Acres				80.0
			Total Acres				134.0

11. Place of use in counties: LEMHI

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

13. Other Water Rights Used:

14. Remarks:

CHANGED OWNERSHIP 3/8/95/JT/DW

15. Basis of Claim: STATUTORY CLAIM

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: _____

SCANNED

JUL 21 2005

This is a Constitutional Right

A75-10475 attached

See I.C. 42-105

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: **A75-04471**

Date Received: 3/8/1995

Receipt No: 5020756

Received By: Jo

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

1. Name: SILVER PEAK RANCH TRUST
Address: C/O MYRTHUS AUSTIN/RON AUSTIN
TRUSTEES
1029 HWY 93 N
SALMON ID 83467
208-756-3368

2. Date of Priority: APR 1, 1941

3. Source: WASTE WATER (HIGH WATER) Trib. to: SALMON RIVER
JESSE CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
22N	22E	31	NE	SW			LEMHI
			SE	SW			LEMHI
			NW	SE			LEMHI

5. Description of diverting works:
HEADGATE & DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	2.500		

7. Total Quantity Appropriated is:
2.500 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
22N	22E	31	NE	NE		IRR	4.0

SCANNED

JUL 21 2005

1978, the Idaho legislature passed a law (Idaho Code 42-243) which requires that all water rights in Idaho be recorded by 1983. To accomplish this, the law (1) requires the Idaho Department of Water Resources to notify water users of their need to record their water rights and (2) requires water users to comply with the law by recording their water rights with the Idaho Department of Water Resources by 1983.

What is a water right?

In its simplest form, a water right is the private use of Idaho's public water.

Prior to 1963, a person could receive title to a portion of public water without written documentation. The person merely had to divert a specific amount of water from its source and apply the water to a beneficial use. There are many beneficial uses recognized by Idaho law -- irrigation, domestic, stockwater, industrial and power production, to name a few. It is this type of unrecorded water right which the 1978 Idaho legislature declared must be recorded by 1983.

Since 1963, a law has been in effect that requires a permit from the Idaho Department of Water Resources

before groundwater (water from a well) can be developed as a water right except when used only for the domestic needs of one household and small stockwater wells. Since 1971, a comparable mandatory permit system has been in effect for all uses of surface water (water from a river, stream, creek, lake or spring), including domestic and stockwater use.

One of the most important parts of a water right is its priority date. This is the date that the water was first applied to a beneficial use. Idaho law states, "the first in time is first in right." Therefore, an individual who first uses water has a right that is superior to the right of someone who later uses water from the same source.

What if the priority date of my water right is after 1963 or 1971?

The only water rights that can be legally recognized and recorded as a claim to a water right in this five-year project are groundwater rights developed before March 25, 1963, and surface water rights developed before May 20, 1971. Water users who developed water rights after these dates must file an application for a permit with the Idaho Department of Water Resources, if they have not already done so.

The major difference between a claim to a water right and an application for a permit is in how the priority date is established. The priority date that is recorded as part of the claim is a historical date that shows the first date of actual use of the water. An application for a permit, on the other hand, receives its priority date on the day it is filed with the Idaho Department of Water Resources.

Why record all the water rights in Idaho?

It is estimated that there are about 100,000 unrecorded water rights in Idaho that have been established by individuals who applied water to a beneficial use prior to the 1963 and 1971 dates. Such rights are called use or constitutional rights. Although use rights are recognized by law, they pose problems both for the water user and the state.

A major problem for a water user with a use right is that he often has little evidence that he has a water right until his right is decreed or adjudicated in a court of law, often a lengthy and costly procedure. When a water user goes to court in a dispute over water, a judge will require him to produce evidence of his water right. The judge then issues a decree which determines how the water will be distributed among the water users involved in the dispute.

Use rights are a problem for the state because they represent a portion of water about which little is

known. For the Idaho Department of Water Resources to effectively administer the future use of Idaho's water resources, more must be known about exactly how much water is being used and for what purposes.

There are several good reasons for having all the water rights in the state on record.

- A water user can present his claim, which is kept on permanent file at the Idaho Department of Water Resources, in support of his water right if he should ever need to submit such evidence to a court.
- The state will have a better indication of whether or not there is water available for use by those who may want to develop a water right in the future.
- The information about water use will be available to all who need it to make long-range decisions about a valuable and increasingly scarce natural resource -- water.

MICROFILMED

NOV 19 1986

11-4471
75-A
(2)
Jesse C. Cook

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR LEMHI COUNTY

GEORGE G. MILLER,

Plaintiff,

vs.

ERNEST LONG, MR. ERNEST LONG, JAMES
MORTON, MRS. JAMES MORTON, GUY EDWARDS,
MRS. GUY EDWARDS, WILLIAM BOOMER, MR.
WILLIAM BOOMER, HARRY KELLY, MRS. HARRY
KELLY, ROLA MIDDLEKAUFF, J. C. MIDDLE-
KAUFF, GEORGE W. OLIVER, MRS. GEORGE W.
OLIVER, CHARLES H. ROSE, MRS. CHARLES
H. ROSE, JEROME A. BERRIS, MRS. JEROME A.
BERRIS, BESS A. McCAULEY, SARAH E. KELLY
FRANK AVARD, MRS. FRANK AVARD, MARSHALL
RANDOLPH, E. B. RANDOLPH, E. J. BENDERSON,
DEBBIE WING, RICHARD BERRIS, OLIVE
BRADEN, E. J. DUFFEY, MRS. E. J. DUFFEY,
MIRIAM M. HART, WILLIAM B. HART, C. E.
BAYBORTH, MARIE RYAN, JERRY RYAN, J. E.
BOWMAN, THOMAS WEND, ANNIE B. CASTERLIN,
HENRY B. CASTERLIN, CLARA B. FLETCHER,
ANTHONY NICHOLS, CITIZENS NATIONAL BANK,
CITY OF SAULSBURY, ALFRED CROFT, MRS. ALFRED
CROFT, WILLIAM H. CROFT, MRS. WILLIAM H.
CROFT, THOMAS A. CORTEN, MRS. THOMAS A.
CORTEN, CLARK ALBEE, JOHN ERYEN, JR., MRS.
JOHN ERYEN, FR. C. J. ESTABROOK, WYNNE
HILL, MRS. WYNNE HILL,

DEFENDENTS.

Defendants,

SCANNED

JUL 21 2005

1925

This cause came regularly to be heard the 19th day of June, 1925,
before Hon. George W. Edgington of the Ninth Judicial District of the State
of Idaho sitting for Hon. Ralph W. Adair, Judge of the Sixth Judicial District
of the State of Idaho, in and for the County of Lemhi, without a jury, John
H. Padgham, Esq., appearing as attorney for the plaintiff George G. Miller,
Messrs. Durlough & Glenmon appearing as attorneys for the defendants Anthony
Nichols, Frank Avard and Thomas Wend, R. A. Hall, Jr., Esq., appearing as
attorney for the defendant E. B. Randolph, and E. H. Casterlin, Esq., appear-
ing as attorney for the defendants Ernest Long, Guy Edwards, William Boomer,
Harry Kelly, George W. Oliver, Berthe M. Rose, otherwise known as Mrs. Charles
H.

See Pages 4-5

P. 1

H. Rose, Edson A. Morris, Sarah R. Wiley, Citizens National Bank, Emerson Hill, Gilmore and Pittsburg Railroad Company, Limited, and the Estate of John Lang, deceased; and it appearing to the satisfaction of the Court that all of the above entitled parties are properly parties to this action, and that the default of all the non-answering defendants herein has been duly entered, and that this action has been dismissed as to all parties not served with summons; and it further appearing to the satisfaction of the Court that the parties hereto, by stipulation, duly filed with the Court, have agreed upon a Decree and have waived Findings of Fact and Conclusions of Law, and this matter having been fully considered by the Court and the Court being fully advised in the premises,

WHEREFORE, By reason of the law and the premises aforesaid IT IS ORDERED, ADJUDGED AND DECREED as follows:-

That this decree is a summary, supplemental adjudication of the waters of Jesse Creek and its tributaries, supplemental to that certain Decree of record in the office of the Clerk of this Court in Book "A" of Judgments at page 251 thereof, and that the rights hereby adjudicated shall be, and they are, subject to all the terms and conditions of such original Decree, and shall not in any manner affect any right therein established.;

That each and every of the tracts of land described in the Complaint, Complaints in Intervention, Answers and Cross Complaints in this action belonging to the several parties plaintiff and defendant herein are arid in character and will not successfully raise any agricultural crops without the application of water thereon for the irrigation thereof, and that all of said lands are susceptible of irrigation from the said Jesse Creek;

That the owners of the said respective tracts of land are as alleged in the said Complaints, Complaints in Intervention and Cross Complaints on file herein, and that they are as hereinafter set forth.

That the amount of water for each tract of land hereinafter set forth is necessary and ample for the proper irrigation of said lands and in the respective amounts necessary for the delivery to the said several tracts of land of the amount necessary for the proper irrigation thereof;

SCANNED

JUN 1 2005

That the dams and diverting works of the several parties to this action were, at the time of the several appropriations, and are now of sufficient size and capacity to carry and convey water so appropriated to and upon the several tracts of land of the said several parties for the irrigation thereof, and that each and every of the said several tracts of land are situated in Laramie County, State of Idaho;

That for the irrigation of the said several tracts of land the said parties hereto, or their predecessors in interest, did, respectively, appropriate the quantities of water hereinafter stated and on the dates hereinafter set forth and from the streams herein mentioned, as set opposite the names of each of said parties and ever since said dates of the said several appropriations said water has been so diverted and used on said lands in the irrigation thereof;

That the points of diversion of the waters of said Jesse Creek for the said tracts of land, respectively, be and the same hereby are fixed at the points where they now exist;

That the following named parties to this suit are entitled to the uninterrupted use of the flow of the waters of Jesse Creek and its tributaries upon the lands mentioned and described in the Complaints, Complaints in Intervention and Answers and Cross Complaints herein, and appurtenant to said lands as hereinafter specified in the following amounts and from the following dates, to-wit,-

George G. Miller, seven-tenths of one cubic foot per second of time with date of priority April 1st, 1894, appurtenant to,-

All that certain piece or parcel of land bounded as follows:- Beginning at corner No. 1, identical with the standard corner of Township 22N., R. 21 and 22 E. 2E.M., thence N. 89° 45' E. 40 chains to corner No. 2; thence N. 81° E. 20 chains to corner 3; thence S. 89° 55' E. 39.9 chains to corner No. 4; thence S. 10.05 chains to corner No. 1, the place of beginning containing 20.02 acres of land.

Estate of John Long, Deceased, 2 cubic feet per second of time, with date of priority April 1st, 1894, appurtenant to,-

All of the NW¹/₄ of the 35th, the NE¹/₄ of the 35th and Lots No. 2 and 3, and the SE¹/₄ of the NW¹/₄, and the SE¹/₄ of the NE¹/₄ of Section 30, all in Township 22 North, Range 22 East of the Boise Meridian, also

SCANNED

JUL 21 2005

P. 3

The NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of said Section 30 in said Township and Range excepting therefrom that part heretofore conveyed by John Long and Henry Long to John H. Wheeler by Deed dated September 7th, 1901, and recorded in the office of the County Recorder of said Lemhi County, in Book "LV" of Deeds page 225, also the following described tract of land, to-wit:-

From the Ne Corner of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 30 in said Township and Range run thence South 17 rods to the place of beginning, thence South 63 rods, thence East 80 rods, thence North 64 rods 25.45 links, thence North 88° 20' West 57 rods 53 links, thence West 23 rods to the place of beginning, being the same land conveyed by John H. Wheeler and Anna Wheeler to John Long by Deed dated April 3rd, 1900, and recorded in the office of the Recorder of said Lemhi County in Book "S" of Deeds page 376, being a part of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 30.

Guy Edwards, 1.7 cubic feet per second of time, with date of priority April 1st, 1894, appurtenant to,-

Lots No. 3 and 4 and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 31, Township E2 North, Range 22 East of the Boise Meridian.

William Boomer, 1.44 cubic feet per second of time, with date of priority April 1st, 1894, appurtenant to,-

SE $\frac{1}{4}$ of the NW $\frac{1}{4}$, NE $\frac{1}{4}$ of the SE $\frac{1}{4}$, Section 31 of Township E2 North of Range 22 East of the Boise Meridian, (Excepting therefrom that parcel of land conveyed to William S. Andrews by Deed dated June 1st, 1901, recorded in Book "L" of Deeds at page 183, and excepting therefrom that parcel conveyed to the Gilmore & Pittsburg Railroad Company by Deed dated May 10th 1900, recorded in Book "S" of Deeds at page 410, and excepting therefrom that parcel of land conveyed to George W. Snyder and Lizzie Snyder by Deed dated August 20th, 1908, recorded in Book "S" of Deeds at page 449, all reference being to Records of Lemhi County, Idaho).

Harry Kelly, 1.2 cubic feet per second of time, with date of priority April 1st, 1894, appurtenant to,-

All of Blocks 1, 2, 11, 12, 13, 14, 15, and Lots 1 to 5, inclusive, in Block 3, Lots 1 to 8 and 11 to 13, inclusive, in Block 10, Lots 1 to 6 and 11 to 13, inclusive, in Block 22, Lots 1 to 15, inclusive in Block 23, Lots 3 to 17, inclusive, in Block 24, Lots 1 to 7, inclusive, in Block 25, Lots 2 to 8, inclusive, in Block 26, and Lots 1 to 5, inclusive, in Block 27, all in Benbenton Addition to the City of Nelson.

George F. Oliver, 5 cubic feet per second of time, with date of priority of April 1st, 1894, appurtenant to,-

The NW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 1, the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$, the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 2, all in Township 21 North of Range 21 East of the Boise Meridian.

Bertha H. Rose, five-tenths of one cubic foot per second of time, with date of priority April 1st, 1894, appurtenant to,-

All of Lots 1 and 10, Section 3, Township 21 North Range 22 E.B.M. (Excepting from this conveyance that part of said Lots 1 and 10 described as follows:

SCANNED
JUL 21 2005

P. 4

That part of said Lot 10 described as follows:
Beginning at the SW corner of said Lot 10 and running thence N. 17 rods, 21 links; thence N. 43° 10' E. 9 rods; thence S. 60° 40' E. 13 rods 7 links; thence S. 34° 45' W. 21 rods, 18 links and thence W. 5 rods, 7 links to the place of beginning. Containing 263 rods. And also excepting that part of said Lot 1 described as follows: Beginning at a point 92 rods, 12 links E. from the NW corner of NE $\frac{1}{4}$ of said Section 8 and running thence E along the N. line of said Twp. 53 rods to the W. side of the Salmon River; thence S. along the W. side of Salmon River 7 rods and 10 links; thence N. 85° W. 52 rods, 15 links; thence N. 10° 30' W. 3 rods, 15 links to the place of beginning. Containing 1 acre and 180 rods. And exceptin therefrom that certain parcel conveyed to Adolph Wright by deed recorded in Book "J" of Deeds at page 321 thereof, and those certain parcels conveyed to Ellis Nieman by Deeds recorded in Book "27" of Deeds at page 117 thereof and Book "2" of Deeds at page 74 thereof, Records of Lemhi County, Idaho).

Edson A. Morris, twenty-six hundredths of one cubic foot per second of time, with priority date of April 1st, 1894, appurtenant to,-

Beginning at a point on the North line of Section 1, in Township 21 North of Range 21 East of the Boise Meridian, South 89° 47' 30" West, 580 feet from the Northeast corner of said Section 11, and running thence South 0° 39' East 852.46 feet to the North line of the alley in Block 14 of Arlington Heights Addition, thence South 89° 53' 30", along the North line of said alley, 880 feet to the East line of 18th Street, in said Arlington Heights Addition, thence North 0° 39' East along said East line of 18th Street, 550.94 feet to the said North line of Section 1; thence North 89° 47' 30" East along said North line of Section 1, 880 feet to the place of beginning containing eleven and forty six one hundredths (11.46) acres.

Citizens National Bank, 4 cubic feet per second of time, with date of priority April 1st, 1894, appurtenant to,-

The SE $\frac{1}{4}$ of the SW $\frac{1}{4}$, SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and Lot 4 of Section 20, and the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$, NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and Lots 1 and 2 of Section 31, all in Township 22 North of Range 22 East of the Boise Meridian.

Emerson Hill, fifteen hundredths of one cubic foot per second of time, with date of priority April 1st, 1894, appurtenant to,-

of Block 2
All of the Lots 1 and 2 in North Salmon Addition; Lot 5 and the W $\frac{1}{2}$ of Lot 6 in Block 3 of Grandview Addition to North Salmon; Lots 4 and 5 of Block 1 and Lots 1, 2, 3, 4, and 5 of Block 8 of McCordell's Addition to North Salmon in the City of Salmon, Lemhi County, Idaho.

Gilmore and Pittsburg Railroad Company, Limited, 1.5 cubic feet per second of time, with date of priority April 1st, 1894, appurtenant to,-

The SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 31 and Lots 3, 6 and 8 of Section 32, Township 22 North, Range 22 East of the Boise Meridian; also

All that part of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 31, described as follows,-

From the SW corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section 31, run East along the South line of said subdivision 13 rods to the place of beginning; thence North 20° East 155 rods, more or less, to the NW corner of Lot 3 of said Section 31; thence South along the West line of Section 32, 160 rods to the SE corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section 31, thence West along the South line of said subdivision to the place of beginning; also

That part of Lot 1, Section 6, Township 21 North, Range 22 East of the Boise Meridian, described as follows,-

Beginning at a point 62 rods 12 links East of the NW Corner of the NE $\frac{1}{4}$ of said Section 6, run thence East along the North line of said Township 52 rods to the East side of the Salmon River; thence Southerly along said river 7 rods and 10 links, thence North 85° West 52 rods 15 links to the East side of the County Highway, thence North 10° 30' West 3 rods 15 links to the place of beginning, which said tract is further described in Book "S" of Deeds at page 411, Records of Lemhi County, Idaho; also,

Beginning at the NW corner of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 31, Township 22 North, Range 22 East of the Boise Meridian, run thence East along the North line of said subdivision to the center of the County Highway, the place of beginning; thence South along the center line of said Highway to the South line of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section 31, thence East 94.5 rods, more or less, to the SW Corner of the land described in Book "S" of Deeds at page 411, thence North about 20° East 165 rods, more or less, to the NW Corner of Lot No. 3 of Section 32 in said Township, thence West 80 rods, more or less, to the place of beginning, being the same property description in Book "S" of Deeds, page 410 thereof, all Records of Lemhi County, Idaho

Anthony Nichols, 1.6 cubic feet per second of time, with date of priority September 14th, 1914, appurtenant to,-

The South half of the Southwest quarter (SE $\frac{1}{2}$) of Section eleven (11) Township twenty-one (21) North, Range twenty-one (21) East of the Boise Meridian.

Frank Ayers, 1.12 cubic feet per second of time, with date of priority September 14th, 1914, appurtenant to,-

The East half of the Northwest quarter (NW $\frac{1}{2}$) of Section eleven (11) Township twenty-one (21) North, Range twenty-one (21) East of the Boise Meridian.

E. D. Randolph, 1.8 cubic feet per second of time, with date of priority September 14th, 1914, appurtenant to,-

The Southwest quarter of Section Twelve, in Township twenty-one North, Range 21 East of the Boise Meridian, containing 160 acres.

George G. Miller, six-tenths of one cubic foot per second of time with date of priority September 15th, 1914, appurtenant to,-

All that certain piece or parcel of land bounded as follows:-

Beginning at corner No. 1, identical with the Standard corner of Township 22 N., R. 21 and 22 E., T. 22 N.; thence N. 60° 55' W. 40 chains to corner No. 2; thence N. 5° E. 20 chains to corner No. 3; thence South 60° 55' E. 38.9 chains to corner No. 4; thence S. 70.06 chains to corner No. 1, the place of beginning; containing 80.02 acres of land.

That the water hereby decreed to the respective parties hereto shall be measured at their respective points of diversion in the said Jesse Creek:

If, at any time, there is not sufficient water in said creek to supply the full amount awarded herein and hereby to each of said parties the amount of water attainable from the creek shall be distributed pro rata to all persons herein named who are in need of said water for irrigation purposes and desire to presently use the same for that purpose.

SCANNED

JUL 7 1995

IT IS FURTHER ADJUDGED AND DECREED, That each of the parties to this action shall pay his or her own costs:

That each and every of the parties to this suit, their agents, servants, attorneys and employees and each and every and all persons acting in aid of or for any of the parties to this suit are hereby restrained and enjoined from in any manner interfering with or diverting or using the waters of said stream, or its tributaries, except in accordance with the terms and conditions of this Decree.

Dated this 19th day of June, 1925.

Geo. W. Edgington
Judge

Filed & Entered June 20th, 1925.
F. W. Simmonds, Clerk
By Margaret Shoup, Deputy.
Book "C" of Judgments, pages 294-5-6-7.

STATE OF IDAHO)
County of Latah) ss.

I, W. W. Simmonds, Clerk of the District Court in and for the County aforesaid, do hereby certify that the foregoing is a full, true and complete copy of a Decree on file and of record in my office, in Book "C" of Judgments at pages 294-5-6-7.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 16th day of July, 1925.

W. W. Simmonds
Clerk of the District Court.

SCANNED

JUL 1 2005

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES



CLAIM TO A WATER RIGHT

AMENDED

AMENDED

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

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

Notice is hereby given that JOHN AUSTIN

(Name of Claimant)

Telephone No. 756-3472

1035 North Hwy 93, Salmon Idaho 83467

(Mailing Address)

(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, 1941
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)
Wastewater tributary to Salmon 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:

Quantity	(cfs, af)	Use	(Domestic, Irrigation, Stock, Etc.)	(Both dates inclusive)	
				(Mo., Day)	(Mo., Day)
Quantity <u>2.5 cfs</u>		Use <u>Irrigation</u>		Period of Use From <u>4/1</u>	To <u>11/1</u>
Quantity _____		Use _____		Period of Use From _____	To _____
Quantity _____		Use _____		Period of Use From _____	To _____
Quantity _____		Use _____		Period of Use From _____	To _____
Quantity _____		Use _____		Period of Use From _____	To _____

- (4) 2.5 cfs TOTAL QUANTITY USED.
(cfs, af)

- (5) A) Point of diversion: (Location of point where water is diverted from its source)
NE 1/4 SW 1/4, Sec. 31, Twp. 22N, Rge. 22E, B.M., County of T.EMHT
Additional points of diversion: SESW, NWSE Sec 31, T22N, R22E

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. COLLECTION DITCH FOR WASTE WATER THAT ORIGINATES FROM DECREE WATER RIGHTS FROM JESSE CREEK TO DITCHES FOR FLOOD IRRIGATION

- (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.	NE1/4				NW1/4				SW1/4				SE1/4				TOTAL
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
22N	22E	31	4			40									10				54
		32					4	4	40	17	3	12							80

No. of acres 134

- B) If water is used for other than irrigation, fully describe that use, being as specific as possible:
NONE

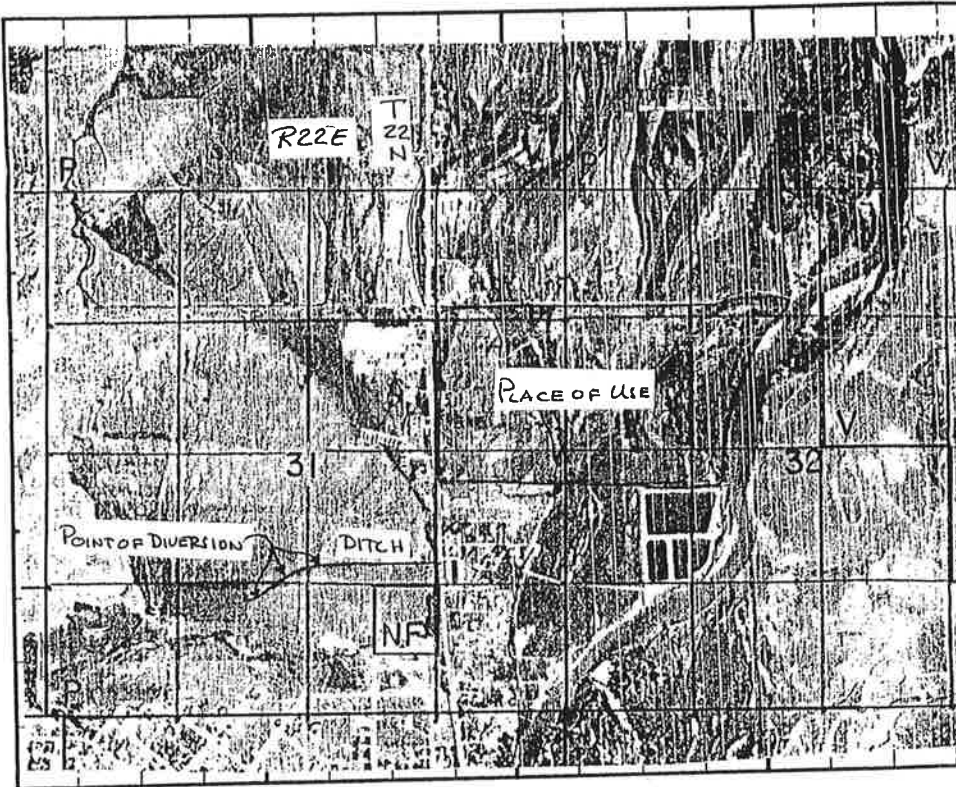
NOTE: Include here the type and number of stock watered:

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

SCANNED

JUN 1 2005

(8) Remarks CLAIMANTS HAVE USED THIS WASTEWATER DITCH TO COLLECT THE WATER AND TRANSPORT THE WATER TO THEIR LAND



Scale: 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 subdivision section, township and range of the public land survey system.

State of Idaho)
County of BONNEVILLE) ss.

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 affiant's knowledge.

John Austin
(Claimant)

1987.



Sworn to before me this 22 day of December

[Signature]
Notary Public

Residing at 1010 1st St

My commission expires 12 Sept. 1994

AMENDED FOR DEPARTMENT USE ONLY

Received by <u>KCW</u>	Date <u>22 NOV 87</u>	Exception filed by:	Forwarded to	Date
Prelim. check by	Date		claimant by:	
\$30.00 fee received by <u>N.A.</u>	Date	<u>Robert L. Blackader</u>	<u>wa</u>	<u>3-14</u>
Published in <u>Bozard-Herald</u>				
Dates <u>1-4-11-80</u>				

SCANNED

JUL 21 2005

OCT 1 02 2011

RECEIVED

MAR 13 1995

AFFIDAVIT

Department of Water Resources
Eastern District Office

AFFIDAVIT Re: Claim to Water Right No. 75-04471

I/We hereby certify that I/We knew Matthias Austin, and was well acquainted with him prior to the time he bought a parcel of land from the Gilmore Pitts Burg Railroad Co. Ltd. in about 1940. I/we know the location of said land; the discription thereof attached hereto. I/we know and certify that Matthias watered said land with water from Jesse Creek each year until he sold his property to his brother Myrthus Austin.

I/we know and certify that Myrthus Austin and sons have watered said land annually with water from Jesse Creek from the time he bought said property.

Elden Stokes
Elden Stokes

Veda Stokes
Veda Stokes

Said Jesse Creek water was "Applied to a beneficial use prior to the 1963 and 1971 dates...Such rights are called use or constitutional rights...(and) are recognized by law". (Publication by the department of water resources) Therefore I understand that this is a constitutional water right.

Myrthus Austin

SUBSCRIBED AND SWORN To before me this 10th day of March 1995.

Kim Blake
Salmon, Idaho
9/1/99

NOV 18 1996

RECEIVED

MAR 13 1995

Re; Claim to water right No. 75-04471

Department of Water Resources
Eastern District Office

+ - - - - Source - - - - - +							+ - - - - - Tributary - - - - -		
JESSE CREEK							SALMON RIVER		
+ - - - - - Point of Diversion - - - - -									
Twn	Rng	Sec	Tract	Lot	RFlg	County			
21N	22E	1	SW NW		(59)	LEMHI			
22N	22E	31	NE SW		(59)	LEMHI			
			NW SE		(59)	LEMHI			
+ - - - - - Water Use - - - - -									
Code	Description	Period From	Period To	Diversion Rate	Diversion Volume				
01 - IRRIGATION		04/01	11/01	1.940					
+ - Total Div. Rate - +							+ - Total Consumptive Use - +		
1.940							335.0		
+ - - - - - Place of Use - - - - -									
Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County	
22N	22E	31	NE NE		4.0	01	IRRIGATION	(59) LEMHI	
22N	22E	31	SE NE		40.0	01	IRRIGATION	(59) LEMHI	
22N	22E	31	NE SE		10.0	01	IRRIGATION	(59) LEMHI	
22N	22E	32	NE NW		4.0	01	IRRIGATION	(59) LEMHI	
22N	22E	32	NW NW		4.0	01	IRRIGATION	(59) LEMHI	
22N	22E	32	SW NW		40.0	01	IRRIGATION	(59) LEMHI	
22N	22E	32	SE NW		17.0	01	IRRIGATION	(59) LEMHI	
22N	22E	32	NE SW		3.0	01	IRRIGATION	(59) LEMHI	
22N	22E	32	NW SW		12.0	01	IRRIGATION	(59) LEMHI	

Total Acres: 134.0

+ - - Diversion Means - HEADGATE, 2 DITCHES, FLOOD IRRIGATION

I hereby certify that the above is a true copy of the land owned by the Silver Peak Ranch Trust.

Myrthus Austin
Myrthus Austin

SUBSCRIBED AND SWORN To before me this 10th day of March 1995

MICROFILMED

NOV 18 1996

Kim Blake
Salmon Id.
9/1/99

Re: Claim to Water Right No. 75-04471

Page Two

TIC
JANUARY 12, 1995

JOHN AUSTIN
1029 HWY 93 N
SALMON ID 83467-3406

RE: CHANGE IN OWNERSHIP FOR 75-4471 E020756

Dear Mr. Austin:

We are returning your Change of Water Right Ownership form because we do not have a Notice of Claim #A75-04471 filed in the Snake River Basin Adjudication (SRBA).

We do have a Notice numbered A75-10475 filed that is based on two deeded rights and covers the same 134 acres. If you wish to have the ownership changed on that right, please submit the form again with Claim #A75-10475 referenced.

You may also wish to file a Notice of Claim for 75-04471. I have enclosed the claim form for your convenience. Silver Peak Ranch can complete the form, then have Myrthus sign in the presence of a Notary and return the form with a check for \$100.00 (\$50.00 filing fee, and \$50.00 late fee).

If you have any questions regarding this matter, please do not hesitate to contact this office (525-7161).

Respectfully,

Jo Thompson
Adjudication Secretary

Enclosure

MICROFILMED

NOV 18 1996

SCANNED

OCT 16 2007

RECEIVED

APR 21 2008

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: A75-04471

Date Received: 3/8/1995

Receipt No: E020756

Received By: Jo

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: SILVER PEAK RANCH TRUST 208-756-3368
Address: C/O MYRTHUS AUSTIN/RON AUSTIN
TRUSTEES
1029 HWY 93 N
SALMON ID 83467

2. Date of Priority: APR 1, 1941

3. Source: WASTE WATER Trib. to: SALMON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
22N	22E	31	NE	SW			LEMHI
			SE	SW			LEMHI
			NW	SE			LEMHI

5. Description of diverting works:
HEADGATE & DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	2.500		

7. Total Quantity Appropriated is:
2.500 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 of	Lot	Use	Acres
22N	22E	31	NE	NE		IRR	

MICROFILMED

A7504471



10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
22N	22E	31	SE	NE		IRR	40.0
			NE	SE		IRR	10.0
			Section Acres				54.0
		32	NE	NW		IRR	4.0
			NW	NW		IRR	4.0
			SW	NW		IRR	40.0
			SE	NW		IRR	17.0
			NE	SW		IRR	3.0
			NW	SW		IRR	12.0
			Section Acres				80.0
			Total Acres				134.0

11. Place of use in counties: LEMHI

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

13. Other Water Rights Used:

14. Remarks:

CHANGED OWNERSHIP 3/8/95/JT/DW

15. Basis of Claim: STATUTORY CLAIM

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: _____

MICROFILMED

For Organizations:

I do solemnly swear or affirm that I am Trustee of
Silver Peak Ranch Trust, that I have signed the foregoing
Organization document in the space below as Trustee of
Silver Peak Ranch Trust and that the statements contained in the
Organization foregoing document are true and correct.

Myrthos Austin
Signature of Authorized Agent

Trustee Silver Peak Ranch Trust
Title and Organization

3-8-95
Date

State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 8th day
of March 19 95

Betty J. Thompson
Notary Public

Seal

Residing at BETTY J. THOMPSON, NOTARY PUBLIC
My Commission Expires NOVEMBER 18, 1996

MICROFILMED

NOV 18 1996

Date: 03/08/95