

07/09/2008

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

RIGHT NUMBER: 75-10475

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

SOURCE: JESSE CREEK

TRIBUTARY: SALMON RIVER

QUANTITY: 1.940 CFS

PRIORITY DATE: 04/01/1894

POINT OF DIVERSION:

T21N R22E S1 SWNW Within LEMHI County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 10/31	1.940 CFS

PLACE OF USE: IRRIGATION in LEMHI County

T22N R22E S31	NENE	0.40	T22N R22E S31	SENE	30.00
T22N R22E S31	NESE	8.80	T22N R22E S32 Lot 1	NENW	1.80
T22N R22E S32	NWNW	0.30	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	9.00	T22N R22E S32 Lot 3	SENE	7.70
T22N R22E S32 Lot 4	SENE	6.10	T22N R22E S32 Lot 7	NESW	4.50
T22N R22E S32	NWSW	3.10	T22N R22E S32 Lot 6	NWSW	7.70
T22N R22E S32 Lot 7	NWSW	2.90			

122.2 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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed



Idaho Department of Water Resources

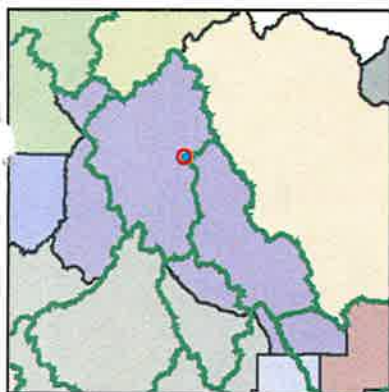
SRBA Recommendation:

75-10475

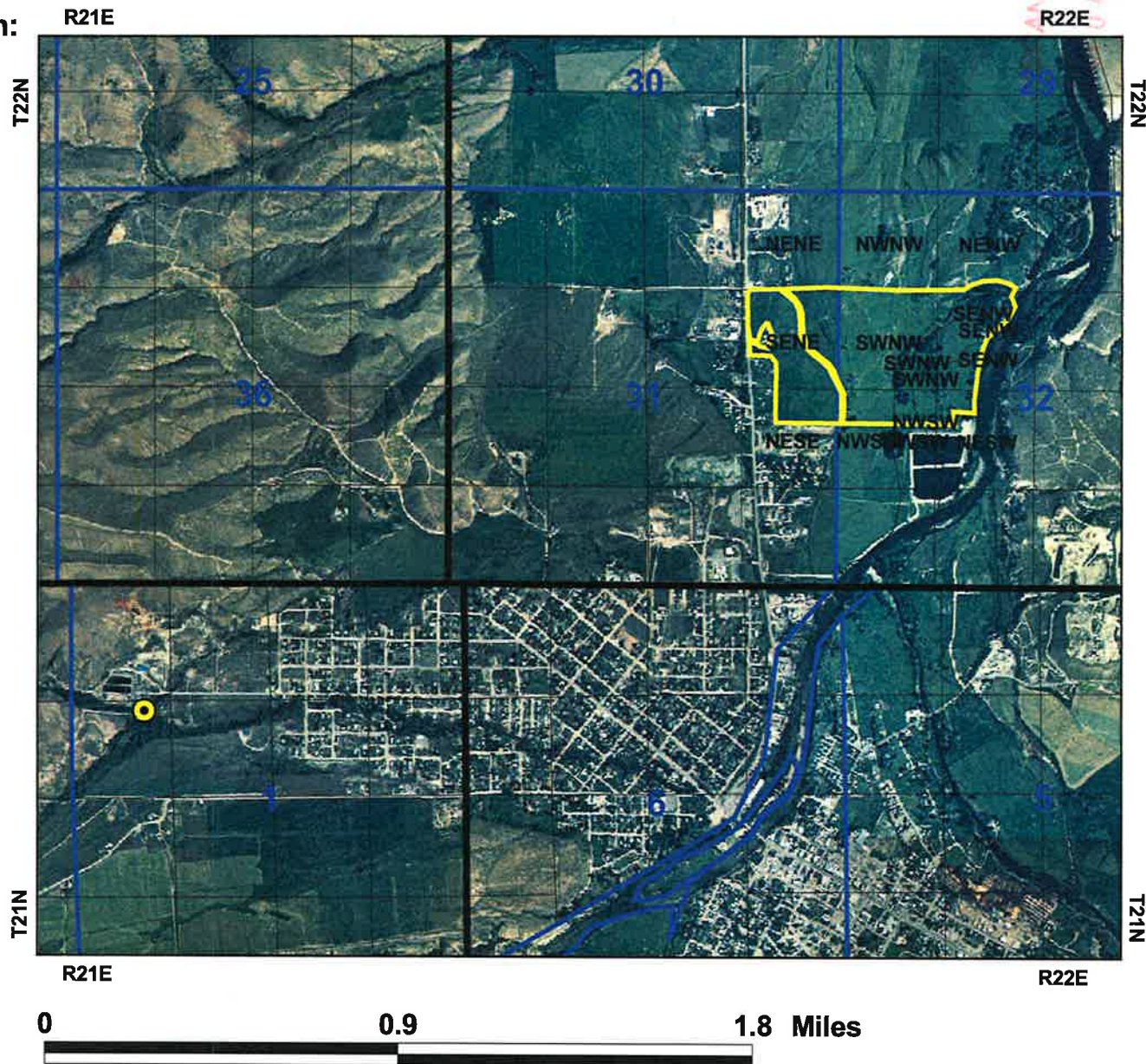
(Irrigation)

Legend

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



Lemhi County
IDWR Basin 75



Prepared by D. Favreau
On Tuesday, July 18, 2006
1987/88 Aerial Photography



Idaho Department of Water Resources

SRBA Recommendation
75-10475
(IRRIGATION)

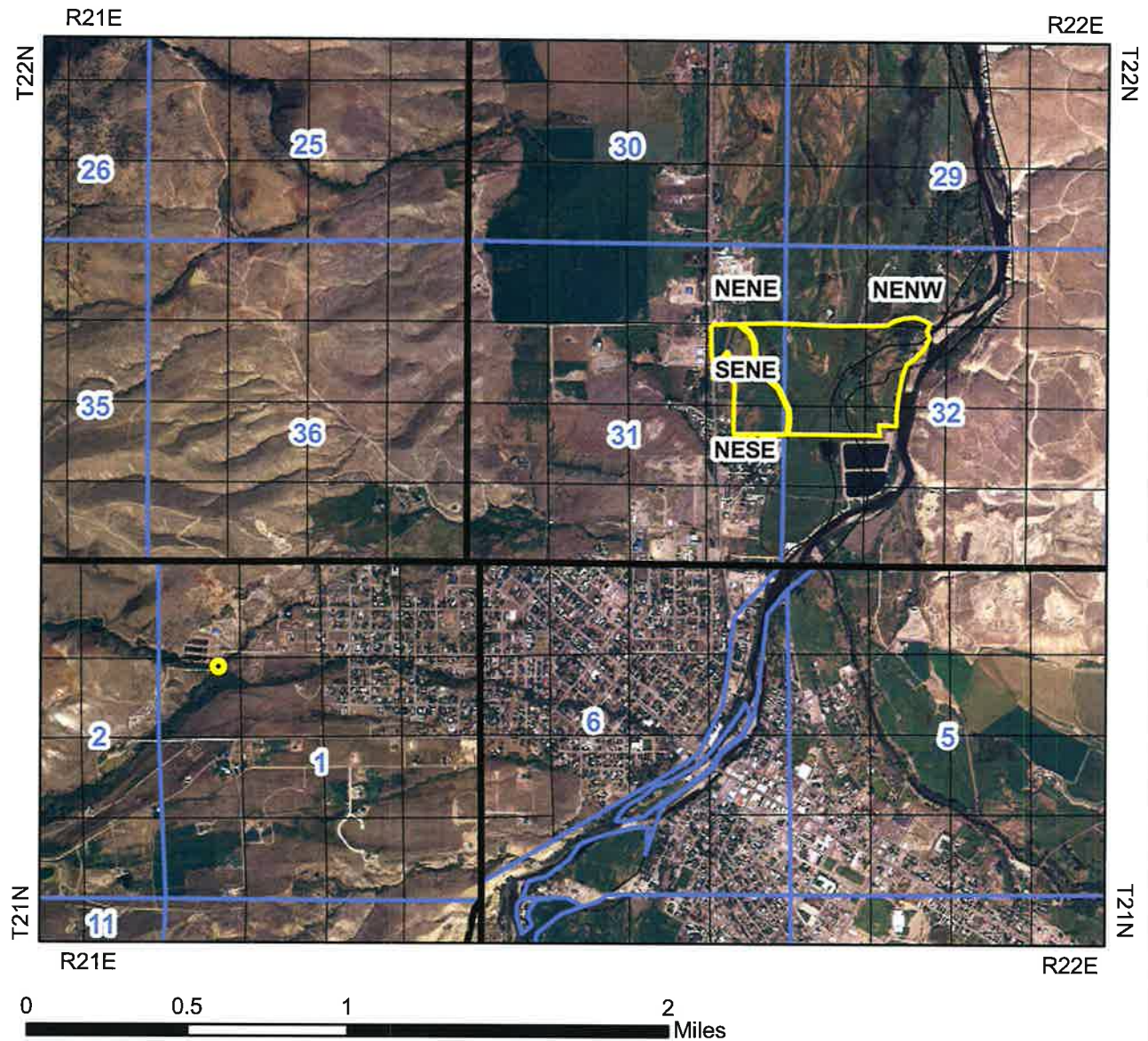
Legend

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

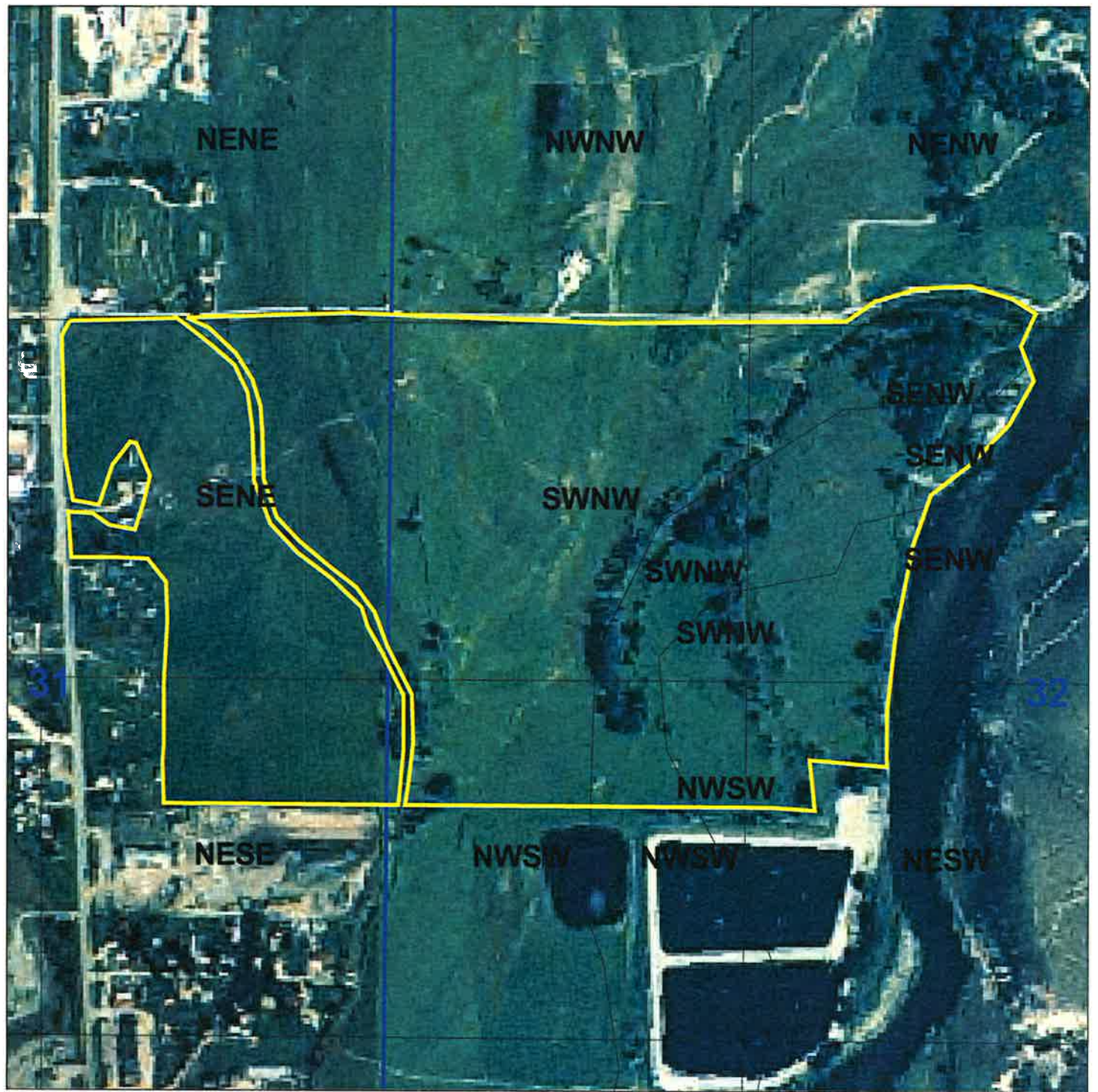


Lemhi County
IDWR Basin 75

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



75-10475



Page 10 of 10

This Indenture, Made this 6th day of November in the year of our Lord one thousand nine hundred and thirty-seven between WILLIAM D. BOOMER and DELLA BOOMER, husband and wife, of County of Lemhi, State of Idaho, the parties of the first part, and CITY OF SALMON, a municipal corporation of Salmon, County of Lemhi, State of Idaho, the party of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of FOUR THOUSAND FOUR HUNDRED AND NO/100 (\$4,400.00) - - - - - DOLLARS, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt where of is hereby acknowledged, have GRANTED, BARGAINED and SOLD and by these presents do GRANT, BARGAIN, SELL, CONVEY and CONFIRM unto the said party of the second part, and to its heirs and assigns forever, all of the following described real estate, situated in County of Lemhi, State of Idaho, to-wit:

All the right title and interest of the parties of the first part in and to the waters 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 SANER and the N²SE² of Section 31 in Township 22 North Range 22 East of the Boise Meridian, Lemhi County, State of Idaho.

This water is first right water

Documentary stamps \$4.50 canceled 3/15/39 R L S

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all estate, right, title, interest in and to the said property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, ~~which said parties of the first part have granted, bargained and sold~~

TO HAVE AND HOLD all and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its heirs and assigns forever. And the said parties of the first part, and their heirs, the said premises in the quiet and peaceful possession of the said party of the second part, its heirs and assigns, against the said parties of the first part and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim, the same shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hand and seal, the day and year first above written.

Signed, sealed and delivered in the presence of

William D. Boomer [SEAL]

Della Boomer [SEAL]

[SEAL]

STATE OF IDAHO, } ss.
COUNTY OF LEMHI, }

On this 6th day of November, in the year 1937, before me, Frederick Hughes Snook State

Notary Public in and for said County, personally appeared

William D. Boomer and Della Boomer, husband and wife, known

to me to be the person s whose name s are subscribed to the within instrument, and acknowledged to me that t hey executed the same.

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

((SEAL))

Frederick Hughes Snook
Notary Public for the State of Idaho,
Residing at Salmon, Idaho

75-3 warranty deed

Received from Bob Blackadar
during meeting re: Jesse Cr.
11/7/2008

M. Van Bussum

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."

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

DEC - 4 2008

75-10475

Bob says G&P sold Austin land w/o water right
- need deed - copy

Ron d say from Norton Ditch to west is only stuff
 irrigated from Jesse Cr.

look @ resolution of 94-00004

17 ac

paying for 1.4 cfs (70 inches) = 4 in./ac.

add 75-4471 & 75-10475 as uncontested
overlap.

set up a meeting w/ Austins & Blackadar

Priority Date Data Entry Form

Claim Number 75-10475

Claimed Priority Date: 4/1/1894

Claimed Basis: Decreed

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

Water Right Priority Date:

Water Right Basis:

Recommended Priority Date ____

Recommended Basis _____

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

claimed combination of 75-3 & 75-9
Boomer G&P

75-3 → 4-1-1894

75-9 → 4-1-1894

recommend 4-1-1894

Reviewer:

MVB

Date:

4/9/2008

Point of Diversion and Source Data Entry Form

Claim Number 75-10475

Claimed Point of Diversion and Source

T21N R22E S1 SWNW Within LEMHI County Source: JESSE CREEK SALMON RIVER

T22N R22E S31 NESW Within LEMHI County Source: JESSE CREEK SALMON RIVER

T22N R22E S31 NWSE Within LEMHI County Source: JESSE CREEK SALMON RIVER

☐ Use Claimed POD and Source as Recommended POD and Source

Water Right Point of Diversion and Source

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? 75-4471, 75-113A, 75-113B, 75-113C, 75-29, 75-24
75-14123, 75-14124, 75-14125

Document how the POD and Source were verified:

source could be Jesse Creek or Pollard Creek,
depending on where POD is - looks like it's
right where connection b/n Jesse & Pollard is
Does POD go to Farmers Ditch? Which ditch?
Ask which are red/green ditches. *which ditches they are using

Confirm method/path of conveyance
original source for decree was probably Jesse Creek as opposed
to Chippis or Pollard - so probably no change in POD/Source
→ topographically feasible to irrigate decreed POU from Jesse Creek

Reviewer: MVBDate: 4/16/2008

Is claimant in violation of Civil Case 94-4 by using
both red & green ditches?

Place Of Use Data Entry Form

Claim Number 75-10475

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

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:

See letter from Tim Luke in AJ Claim Backfile - there is some question as to whether Austin should have any claim to 75-9 → WM records indicate delivery ~~of~~ only 75-3 → 1973 document shows no delivery of 75-9 at all, but shows delivery of 75-3 to Austin

If they only have 75-3, need evidence of accomplished change in POU.

If they have 75-3 & 75-9, still need evidence of accomplished change in POU.

Reviewer: MVB

Date: 4/16/2008

Claimed POU is ^{partially} outside that decreed in 75-3 &/or 75-9

Property was irrigated in 1987 & 2004.

rec same shape as 75-4471 (mvb 5/28/2008)

Purpose of Use Data Entry Form

Claim Number 75-10475

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
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Recommended Purpose of Use

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

Document how the Purpose of Use was verified:

75-3175-9
A decree for irrigation

Reviewer:

MVB

Date:

4/16/2008

Period of Use and Quantity Data Entry Form

Claim Number 75-10475

Claimed Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
IRRIGATION	4/01	11/01	1.94	

Overall Diversion Rate 1.94

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
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Overall Diversion Rate

Overall Diversion Volume

Recommended Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
Irrigation	4/1	10/31	1.44 cfs	surface water
standard season for this PLS				

Overall Diversion Rate

1.44 cfs

Overall Diversion Volume

- b/c 75-3 has been historically delivered & 75-9 has not
 1.44 cfs Rate
 1.5 cfs
 (1.44 cfs or 1 inch per acre, depending on final pou)

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

See memo from Tim Luke in AJ Claim Backfile - questions how much has been delivered historically to Austin. According to Tim, 75-3 has been delivered, not 75-9, and the rest is waste water.

See scanned claim - says land is rocky & they need 4 inches of water to adequately irrigate - no Hubble included

No combined. No cfs limiting conditions - 75-4471 is not limited in its delivery - only limited by system capacity

Reviewer: MVB

Date: 4/16/2008

Contacts Data Entry Form

Claim Number: 75-10475

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

contact info looks okay - claimants have
been previously contacted here

Reviewer: MVBDate: 4/16/2008

History for decreed rights 75-3 and 9

WR History

75-3	Boomer
1.44	cfs
Jesse Creek	
Irrigation	
75-9	Gilmore & Pittsburg Railroad Co
0.5	cfs
Jesse Creek	
Irrigation	

WR	Claim	Recommendation
75-3		
	75-10475 Austin	75-10475 Silver Peak Ranch Trust
	1.94 cfs	1.94 cfs
	134 ac	122.2 ac
75-9	Jesse	Jesse
	Irrigation	Irrigation

*Last updated 2/15/2008 (mvanbussum)
For digital copy of Excel spreadsheet see Monica Van Bussum

Sum recommended cfs	1.94
Sum recommended ac	N/A
Sum recommended af	N/A
Unaccounted for cfs	0
Unaccounted for ac	N/A
Unaccounted for af	N/A

Split/Overlap Analysis - Water Right No.:

75-10475

Twp	Rng	Sec	Q-Q	Decree		WR Record		Claim	Recommendation
				75-3	75-9	75-3	75-9	75-10475	75-10475
				Boomer	Gilmore & Pittsburg RR	Boomer	Gilmore & Pittsburg RR	Austin	Silver Peak Ranch Trust
				1.44	1.5	1.44	1.5	1.94	1.94
POD:				Jesse Creek decree	Jesse Creek decree	Jesse Creek	Jesse Creek	Jesse Creek	Jesse Creek
21N	22E	1	SWNW			X		X	X
22N	22E	31	NESW					X	
			NWSE					X	
POU:									
21N	22E	6	Lot 1 (NENE)		X		X		
22N	22E	31	SWNE	X		X	X		
			SENE	X	X	X	X	40	30
			NESE	X	X	X	X	10	8.8
			NWSE	X		X			
			SESE		X		X		
			NENE					4	0.4
22N	22E	32	Lot 3 (N1/2SENW)		X		X	17	7.7
			Lot 3 (SWNW)		X		X	40	33
			Lot 6 (W1/2NWSW)		X		X	12	7.7
			Lot 8 (W1/2SWSW)		X		X		
			NENW					4	1.8
			NWNW					4	0.3
			NESW					3	4.5
				72	75	72	75	97	97
				0	0	0	0	134	94.2

inches
acres

**objection - need to look at Civil Case 94-4

RECEIVED

OCT 15 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

Case No. 39576

A.

Subcase

75 - 10475

(Insert water right number)

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: c/o 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: _____
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: _____
10. ☒ **I object because:**
☒ This water right Should not exist.

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

E. REASONS SUPPORTING OBJECTIONS(S): 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 Judgement.

F.

VERIFICATION (must be completed)

State of Idaho)
)ss.
County of Lemhi)

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: Oct. 12, 2007



Judy A. Peck
Notary Public for East Idaho C.U.
Residing at: Carmen Id.
My Commission Expires: 7-31-2012

INSTRUCTIONS FOR MAILING

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

G. CERTIFICATE OF MAILING

I certify that on October 13, 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:

Silver Peak Ranch Trust
Name: 90 Myrthus Austin / Ron Austin
Address: 63 Hwy 93 N
Salmon, ID 83467-5292

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

Robert J. Blackadar
Signature of objector or attorney
mailing on Objector's behalf

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED 82

2003 JUN 20 AM 11 55

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

BOB BLACKADAR)
Plaintiff/Counterdefendant,)

vs.)

MYRTHUS AUSTIN)
Defendant/Counterclaimant.)

Case No.: 94-00004

MEMORANDUM DECISION AND
ORDER DENYING COSTS AND
ATTORNEY'S FEES

I.

PROCEDURAL & FACTUAL BACKGROUND

1. This case originated as a small claims action filed by Bob Blackadar ("Blackadar") against Myrthus Austin ("Austin") alleging causes of action of trespass and damages resulting when in 1989 Austin entered upon Blackadar's property to deepen and clean a previously unused irrigation ditch referred to as the "red ditch." The issue was whether Austin had a right to use and maintain the red ditch to deliver water to his property. Historically, Austin used a ditch referred to as the "green ditch", which also runs across Blackadar's property. The red ditch is a lateral ditch that branches off of the green ditch on Blackadar's property and runs across the property and onto Austin's property. Initially, Blackadar did not contest Austin's right to use and maintain the green ditch easement.
2. Blackadar prevailed in the small claims action and was awarded \$400.00 in damages and \$25.00 in attorney's fees. Judgment was entered on August 29, 1989.
3. On September 11, 1990, Austin appealed the decision to the magistrate division wherein a *de novo* court trial was held. On December 21, 1989, judgment was again entered in favor of

of damages was to be determined in a subsequent proceeding. No attorney's fees or costs were awarded.

9. In 2002, this Court set the matter for status conference to resolve the damage issue. The parties were initially ordered to mediation. On March 25, 2003, the parties filed a stipulation indicating to the Court that a resolution had been reached with regard to damages but that the parties left the issue of attorney's fees for the Court to resolve. Pursuant to the stipulation, Austin gave up any and all right to use of the red ditch and Blackadar waived his right to any damages. The stipulation provided that the parties would "let the judge determine if any legal fees are appropriate." Following the filing of the stipulation this Court entered a final judgment in the case and set a deadline in accordance with I.R.C.P. 54(d)(5) for the filing of memoranda of costs.

10. On April 10, 2003, Blackadar timely filed a memorandum of costs seeking costs and attorney's pursuant to I.C. § 12-120(3) and under the Consumer Protection Act, I.C. § 48-608(3). Austin also timely filed a memorandum of costs and fees seeking costs and fees for proceeding *pro se*. Blackadar filed an objection to Austin's memorandum of costs. A hearing was held on the matter on May 20, 2003.

II.

MATTER DEEMED FULLY SUBMITTED FOR DECISION

Argument occurred in this matter on May 20, 2003. The parties did not request additional briefing, and the Court does not require any additional filings on this matter. Therefore, this matter is deemed fully submitted for decision the next business day, or May 21, 2003.

III.

APPLICABLE LEGAL STANDARDS FOR THE AWARD OF COSTS AND FEES

In regards to costs, I.R.C.P. 54(d)(1)(A) provides that "[e]xcept when otherwise limited by these rules, costs shall be allowed as a matter of right to the **prevailing party** or parties, unless otherwise ordered by the court." (emphasis added). I.R.C.P. 54(d)(1)(C) lists those types of costs, discretionary and as a matter of right, that can be awarded pursuant to I.R.C.P. 54(d)(1)(A).

The Court in this case declines to award costs or attorney's fees to either party for the following reasons.

1. **Untimeliness of memoranda of costs for portions of the proceedings.**

Because no memoranda of costs were filed until after the case was ultimately remanded by the Idaho Supreme Court, this Court finds that any claim for costs and/or attorney's fees for any portion of the proceedings occurring prior to the remand by the Idaho Supreme Court for a trial *de novo* is untimely and, therefore, waived pursuant to I.R.C.P. 54(d)(5). The 14-day time limit under I.R.C.P. 54(d)(5) runs from the entry of any order from which a direct appeal can be taken. In this case there were three direct appeals from orders prior to the matter being remanded by the Supreme Court and no memorandum of costs were filed within the required time period.

2. **Neither party "prevailed" on all of the issues in the SRBA proceedings.**

Because this case involved multiple issues and counterclaims, the determination of the extent to which a party prevailed on a particular issue is one of discretion. I.R.C.P. 54(d)(1)(B). The Court may apportion the costs and fees between and among the parties in a fair and equitable manner after considering all the issues and claims involved in the action. *Id.* In this regard, this Court finds that neither party prevailed on all of the issues raised in the proceedings following remand from the Idaho Supreme Court.

Following remand, Blackadar raised additional issues regarding abandonment and forfeiture of Austin's water right and related right to use the green ditch. The issues surrounding the existence of the water right were responsible for venue being transferred to the SRBA. Although Blackadar prevailed on the issues of trespass and damages, Austin prevailed on the issues of abandonment and forfeiture as concerns his water right and right to the use of the green ditch for delivery of the same.

Furthermore, because the parties ultimately settled the issue of damages and any remaining issues regarding the use of the red ditch pursuant to a stipulation, this Court cannot determine which party prevailed. Accordingly, in exercising its discretion, the Court finds that because neither party prevailed on all of the issues, a fair and equitable resolution is that each party bear their own costs and fees.

3. **Austin may not recover attorney's fees.**

CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM
DECISION AND ORDER DENYING COSTS AND ATTORNEY'S FEES was mailed
on June 20, 2003, with sufficient first-class postage to the
following:

BOB BLACKADAR

Represented by:

JAY D SUDWEEKS

PO BOX 1846

TWIN FALLS, ID 83303

Phone: 208-733-7180

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

MYRTHUS AUSTIN

1029 HWY 93 N

SALMON, ID 83467

Phone: 208-756-3368



Milton A. Slavin
ATTORNEY AT LAW
1016 Main Street
P.O. Box 1103
Salmon, Idaho 83467
Telephone: 208-756-2030

LEMMI COUNTY DISTRICT COURT
FILED
A.M. _____ P.M. 4:30

JUN 24 1992

ALBERTA WEIDENACK, CLERK
Alberta Weidenack
DEPUTY

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

BOB BLACKADAR,)
)
Plaintiff,)
)
vs.)
)
MYRTHUS AUSTIN,)
)
Defendant.)

Case No. 7427

PLAINTIFF'S ANSWERS TO
DEFENDANT'S THIRD REQUEST
FOR ADMISSIONS

Plaintiff makes the following response to Defendant's Third
Request For Admissions:

ANSWERS TO THIRD REQUEST FOR ADMISSIONS

REQUEST NO. 1: Isn't it true that in your "Respondent's
Brief" dated 3 April 1990 under the heading "STATEMENT OF FACTS"
that you stated:

A. "Plaintiff brings this action for recovery of damages
incurred while Defendant was burning the existing ditch banks and
constructing an additional or "new lateral ditch across Plain-
tiff's property."

B. "Although, the Defendant claims the "new" ditch was
merely being maintained as an old or existing ditch, the facts do
not support this claim. The Plaintiff contends and the facts

ever existed at the location of the alleged "new" ditch prior to 1989 that such ditch had somehow been filled in and was no longer visible?

ANSWER TO REQUEST NO. 7: No, that is not my contention that the ditch had been filled in and is no longer visible. My contention is that if a ditch had ever existed at the location of the alleged "new" ditch; that it had not been used to deliver water as a primary conveyance for at least 5 years and therefore was abandoned.

REQUEST NO. 8: This statement taken from the above mentioned transcript you testified: "Ditches dug with my backhoe usually have a square bottom." Would you agree that this statement was meant to infer that at the time of construction the alleged "new" ditch had a square bottom?

ANSWER TO REQUEST NO. 8: No. I would not agree that the statement was meant to infer that at the time of construction the alleged new ditch had a square bottom. Essentially I believe the point to be irrelevant. After discovering the ditch across my property I originally assumed Mr. Austin had dug it with a backhoe and I believe I testified originally alleging that a backhoe was used. Mr. Austin subsequently responded with the "square bottom" terms and enlightened me that a backhoe was not used, but a V shaped blade was used and it created these even furrows and not mounds like a backhoe would create.

REQUEST NO. 9: Taken from the same transcript: (Slavin)

easement for delivery of water. Is that correct?

ANSWER TO REQUEST NO. 12: Yes.

REQUEST NO. 13: From the same transcript and hearing when asked about the existence of the "red" ditch you replied: "No, it had not. There were probably other ditches on that property that were used to irrigate the property, but not necessarily to act as a conduit for Mr. Austin's water to pass over. I mean this property has a high water right associated with it and there are lots of feeder ditches around the whole thing so when we have lots of water we pick it up in certain spots, and especially a ditch in this area might have been something like a pickup where we would pick up the water and divert it to another spot to get more benefit out of it before it left our property." Would you agree then that at some point after you have derived all the benefit that you can that the water leaves your property?

ANSWER TO REQUEST NO. 13: Yes, however we try to irrigate with the water and move it regularly so that the water is consumed where it is intended and not allowed to saturate an area and then run down the drain, so to speak.

REQUEST NO. 14: Since you were at one time Secretary of the Jesse Creek water users group, would you agree that the Defendant and his son are the only persons having legal claim to Jesse Creek water that exits the Plaintiff's property in an easterly direction?

ANSWER TO REQUEST NO. 14: I would agree that Myrthus Austin

Myrthus Austin
1029 Hwy 93 N.
Salmon, Idaho 83467
(208) 756-3368

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

BOB BLACKADAR

Plaintiff

Vs

Myrthus Austin

Defendant & Counterclaimant

CASE NO. 7427

DEFENDANTS RESPONSE TO

REQUEST FOR ADMISSIONS

Defendant & Counterclaimant makes the following response to
Plaintiff's request for admissions:

1. During our first small claims proceeding before Judge Roos on Aug.23, 1989, as I recall, near the close of the proceedings Judge Roos asked you how long had it been since you used the ditch and you responded very specifically. Plaintiff/Respondent requests that you admit what your response was. The ditch in wuestion is the unauthorized ditch or red ditch and not the ditch you used in 1988.

RESPONSE TO PLAINTIFF'S REQUEST # 1. I don't recall Judge Roos asking said question.

2. On October 25,1991, Darrell Aldous informed the Director of the Ida. Department of Water Resources of the difficulty of measuring water on the Jessee Creek Water district 75-A and requested an order that all water users install lockable headgates and measuting devices at all their diversions subject to the regulation of the water Master. On november 29, George Austiguy ETI Water Alllocators mailed the order signed by the Director on November 29, 1991 requiring these measuring devices be installed by April, 1992.

I met George Austiguy in March of 1992, 1 day after our annual water users meeting and nothing had been done at our common diversion point known as the farmer's Ditch and he informer me of options that would be acceptable to the Department in that location and in that application. I essentially decided on a Parshall Flume and informed all the water users I could, either by phone or by mail, of what I had decided and requested their assistance in fabricating the measuring device and installing it when it was completed. As I recall, you suggested your Son Ron could weld and he could build the structure, and I owned a parshall flume we could pattern a bigger one from, and I had a shop to build it in and a backhoe to install it with, and with our collective effort we accomplished the task on time. After it was completed I counted most of the costs for materials and labor (excluding my own) and came up with \$1,217.81. I devised a formula whereby the older water right (my own) was weighted twice as much as the other rights because the older right was more valuable and ran longer and calibrated the cfs entitled to each water:right times the aforementioned weight or value of the water:right to determine each water users proportionate share of the cost of the measuring device.

As I recall, I spoke to you on the phone and you stated you had two water rights and you wanted to "double-dip " as I put it, on the cost of the measuring device. One dip was \$220.35 and the other was \$211.34 for a total of \$431.89.

Myrthus Austin
1029 N. Hwy 93
Salmon, ID 83467
208-756-3368

LEMHI COUNTY DISTRICT COURT

FILED
A.M. 3:00 P.M.

JUN 24 1992
Alberta Wenderrick
ALBERTA WENDERRICK, CLERK

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

BOB BLACKADAR,

Plaintiff,

vs.

MYRTHUS AUSTIN, et al.

Defendants.

Case No. 7427

ANSWERS TO INTERROGATORIES
REQUESTS FOR PRODUCTION OF
DOCUMENTS AND ADMISSIONS

Defendant, Myrthus Austin answers as follows:

INTERROGATORIES

1. Set forth the name, address, telephone number and substance of the information expected to be testified to on any evidentiary matter related to the above-referenced claim and defense for each and every individual who may be called as a witness to testify on any issue in this matter.

ANSWER TO INTERROGATORY NO. 1: List of Witnesses:

1. RON CARLSON, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83401, 525-7161. Ron is expected to testify to the facts, records, and/or statutes as they apply to this case.

2. ELDON STOKES, 234 Pine, Salmon, Idaho 83467, 756-2839. Eldon is expected to testify that he was the Supervisor of the State Dept. of Highways in Salmon, that the "red" ditch crosses Dept. of Highway's property, that he owns property adjacent to the Defendant and has personal knowledge of the existence of said ditch prior to 1989 as well as knowledge of where said ditch goes, that he has seen water in said ditch prior to 1989, that any water left in said ditch during the irrigation season would flow to the Austin property, that there were no piles of overburden as claimed.

3. PAUL NELSON, Fourth of July Creek Road, North Fork,
RESPONSE TO INTERROGATORIES AND REQUESTS

Austin dispute, to any conversation between him and the Plaintiff regarding said dispute.

7. DAVE CALL, 509-11th St., Salmon, Idaho, 756-4601. Dave is expected to testify that he investigated the ditch in question at the request of the Defendants, that there are spur ditches that evidence prior existence of the alleged "new" ditch, that he also flew over said ditch and took photographs of it, that from the air said ditch appears to be a natural drainage, evidence of erosion over an extended period of time where the "red" ditch drops off the hill by the highway. Legality and laws regarding use of whatever substance the Plaintiff was using and rehabilitated for in 1989.

8. WILLIAM GUYAZ, 500-9th, Salmon, Idaho, 756-2492. William is expected to testify that he and his father created the video to be used as an exhibit herein, existence or non existence of overburden.

9. PATT ALDOUS, 1506 N. Hwy 93, Salmon, Idaho, 756-3616. Patt is expected to produce aerial photos in possession of Salmon City, Farmer's Ditch (Jesse Creek) water records together with any testimony she may have relative to these exhibits.

2. List all expert witnesses intended to be called in any hearing or trial in this matter. As to each such expert, set forth the name, address, qualifications and expected testimony.

ANSWER TO INTERROGATORY NO. 2: Expert Witnesses:

1. ROBERT STODDARD, Hwy 28, Salmon, Idaho, 756-2956. Robert is expected to testify as to knowledge of the "red" ditch, whether or not said ditch was created in 1989, the appearance of said ditch at the time it was allegedly created in comparison to now, fences that the Defendant would have to go through in order to create said ditch, condition of ditch and banks, existence/non-existence of overburden, existence of perennials, size and shape of said ditch, opinion as to damages, opinion as to truth of Plaintiff's claim(s) and testimony(s), species and value of plant life allegedly burned, the effect of the alleged ditch and or alleged damage on wheeline sprinklers.

2. RON AUSTIN, 416 Broadway, Salmon, Idaho, 756-6339. Ron is

RESPONSE TO INTERROGATORIES AND REQUESTS 3

- i. Plaintiff's Exhibit A, court file.
- j. Map or drawing of Plaintiff's property that was requested from the Plaintiff.
- k. Answers to Interrogatories and Requests for Admissions and Documents.
- l. Respondent's Brief on Appeal.
- m. Possibly, the Court Transcript from the previous hearing.
- n. Any additional records which any of the witnesses may bring which are at this time unknown to the Defendant(s).

4. Set forth in detail the water rights claimed, decreed or permitted, quantity, priority date, place of use, point of diversion and dates of use for the past ten (10) years for which an easement is required across the Plaintiff's properties.

ANSWER TO INTERROGATORY NO. 4: DECREE NO. 75-0003, 1.4 CFS, priority date 04/01/1894, Point of diversion D7 FARMERS DITCH. DECREE NO. 75-0009, 1.5 CFS, 04/01/1894, D7 FARMERS DITCH. WATER CLAIM NO. 75-4471, 2.5 CFS, 04/01/1941, D7 FARMERS DITCH. The Defendant(s) used the available water appurtenant to the decrees and claim listed above for each of the past ten years to irrigate farm land. Although a log was not kept of the exact dates that delivery began and ended, the irrigation season begins the 1st of April and ends the 1st of November. The Defendant(s) own two easements which cross the Blackadar property.

REQUESTS FOR ADMISSION

1. Admit that on or about May 4, 1989, that MYRTHUS AUSTIN entered upon the Blackadar property for the purpose of cleaning ditches and burning ditch banks across the Blackadar property.

ANSWER TO REQUEST NO. 1: Yes.

2. Admit that JOHN AUSTIN entered upon the Blackadar premises on or about May 4, 1989, for the purpose of cleaning ditches and burning ditch banks across the Blackadar property.

ANSWER TO REQUEST NO. 2: Yes.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please produce each and every document that you intend to

VERIFICATION

STATE OF IDAHO)
) ss.
County of Lemhi)

MYRTHUS AUSTIN, affirms and attests that the answers to the foregoing INTERROGATORIES AND REQUESTS are verily true to the best of his knowledge.

Myrthus Austin
MYRTHUS AUSTIN

SUBSCRIBED TO before me this 24th day of June, 1992.

(SEAL)

Albert D. Mason
Notary Public for State of Idaho
Residing at Salmon, Idaho
Commission Expires: 4/23/97

CERTIFICATE OF SERVICE

I served the foregoing ANSWER TO INTERROGATORIES AND REQUEST FOR ADMISSIONS AND PRODUCTION OF DOCUMENTS upon the following persons this 24 day of June, 1992.

Milton Slavin
1016 Main St.
Salmon, ID 83467

Judge Brent J. Moss
P.O. Box 39
Rexburg, ID 83440

Myrthus Austin
Myrthus Austin

BOB BLACADAR,)
 PLAINTIFF,) CASE No. SC2348
)
 -VS-) WRITTEN ARGUEMENT
)
 MYRTHUS AUSTIN,)
 DEFENDANT.)
)

THE DEFENSE WILL ATTEMPT TO SHOW THAT THE DITCH MARKED IN RED ON EXHIBIT A WAS IN EXISTENCE FOR A NUMBER OF YEARS PRIOR TO 1989. THE DEFENSE WILL ALSO ATTEMPT TO SHOW THAT THE RED DITCH WAS NEVER ABANDONED BUT WAS USED BY THE DEFENDANT EACH YEAR SINCE 1941 TO COLLECT WASTE WATER WHICH IS USED TO IRRIGATE FARM LAND BELOW THE PLAINTIFFS PROPERTY. THE DEFENSE WILL PROVE BEYOND A REASONABLE DOUBT THAT THE PLAINTIFF HAS KNOWINGLY AND MALICIOUSLY MISREPRESENTED THE FACTS AND HAS FRAUDULANTLY USED THE COURT IN ATTEMPT TO EXTORT MONEY FROM THE DEFENDANT.

IN DISTRICT COURT ON JUNE 19, 1925 JESSE CREEK WAS ADJUDICATED. AMONG THE DECREES WERE WILLIAM BOOMER AND GILMORE AND PITTSBURG RAILWAY. WILLIAM BOOMER RECEIVED HIS WATER FROM THE DITCH MARKED IN RED. GILMORE AND PITTSBURG RAILWAY RECEIVED THEIR WATER FROM THE DITCH MARKED IN GREEN. THE DEFENDANT OWNS THE WATER RIGHTS AS WELL AS PROPERTY THAT ONCE BELONGED TO BOOMER AND THE RAILROAD. THE DEFENDANT WHO IS 80 YEARS OLD IS PROBABLY THE LAST LIVING PERSON WHO KNEW WHICH DITCHES IRRIGATED THESE PROPERTIES. BOTH DITCHES HAD THE SAME POINT OF DIVERSION ABOVE THE BLACKADAR RANCH HOUSE

OWNERS BEFORE ME. I CLAIM THE RIGHT AS WELL AS THE RIGHT TO THE DITCH WHICH CARRIES THE WATER. I BELIEVE THIS WASTEWATER RIGHT IS RECORDED BUT IN THE EVENT THAT IT IS NOT, I HAVE BEEN USING SAID WATER CONTINUOUSLY FOR 48 YEARS THEREFORE IT IS APPROPRIATED TO ME.

TO TAKE THIS RIGHT FROM ME WOULD CAUSE IRREPARABLE DAMAGE TO THE DEFENDANT MUCH WATER SUBS OUT OF THE GREEN DITCH AND IS WASTED. SINCE DIVERTING BACK INTO THE RED DITCH I HAVE BEEN ABLE TO CONSERVE ABOUT ONE THIRD OF MY WATER THAT BEFORE WAS WASTED.

UNDER OATH BLACKADAR TESTIFIED THAT I TOOK A BACKHOE ON HIS PROPERTY AND DUG A DITCH 2 FEET WIDE, 18 INCHES DEEP AND PILED THE RESIDUE ON THE BANK WHICH WOULD BE AT LEAST A FOOT HIGH. THIS WOULD MAKE THE BOTTOM OF THE DITCH 2 1/2 FEET DEEPER THAN THE BANK. THE PLAINTIFF ADMITTED THAT HE OWNED A BACKHOE AND WAS VERY FAMILIAR WITH THE TYPE OF DITCH THAT A BACKHOE DIGS, ALSO TESTIFYING THAT THE QUOTE "NEW DITCH" HAS A SQUARE BOTTOM.

THERE IS IN FACT NO NEW DITCH. THE ENCLOSED PHOTOGRAPHS COUPLED WITH MY OWN TESTIMONY AND THE TESTIMONY OF TWO WITNESSES PROVES THAT BLACKADAR KNOWINGLY AND WILLFULLY LIED. THEREFORE HIS TESTIMONY SHOULD BE DISCREDITED, THE DEFENDANT SHOULD BE AQUITTED AND THE PLAINTIFF SHOULD BE PUNISHED TO THE FULL EXTENT OF THE LAW. THE DEFENDANT SHOULD ALSO RECEIVE MONEY DAMAGES FOR LOSS OF TIME AND MENTAL ANGUISH BROUGHT ON BY THIS FRIVOLOUS AND FRAUDULANT ACTION BY THE PLAINTIFF.

RESPECTFULLY SUBMITTED THIS 21 DAY OF NOVEMBER, 1989.


MYRTHUS AUSTIN DEFENDANT

Milton A. Slavin
ATTORNEY AT LAW
P.O. Box 1103
Salmon, Idaho 83467
Telephone: 208-756-2030

LEMHI COUNTY DISTRICT COURT
FILED 4:15
A.M. P.M.

APR 23 1992

ALBERTA WENDERRICK, CLERK
By *Terri J. Norton*
DEPUTY

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

BOB BLACKADAR,

Plaintiff,

vs.

MYRTHUS AUSTIN,

Defendant.

)
)
)
)
)
)
)
)
)
)

Case No. 7427

AMENDED COMPLAINT

COMES NOW the Plaintiff herein and complains and alleges as follows:

I

Plaintiff, Bob Blackadar, is an individual residing in the State of Idaho, County of Lemhi.

II

Defendant, Myrthus Austin, is an individual residing in the State of Idaho, County of Lemhi.

III

Plaintiff is the owner of real property located north and adjacent to the Salmon city limits, Lemhi County, Idaho.

IV

That on or about May 15, 1989, Defendant entered upon the Plaintiff's property presumably for the purpose of the spring

COMPLAINT

Page 1

3. For attorney fees and costs incurred herein.
4. For such other and further relief as the Court deems just and equitable in the premises.

DATED this 23rd day of April, 1992.

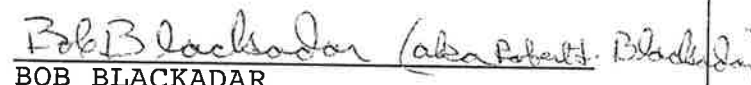

MILTON A. SLAVIN
Attorney for Plaintiff

VERIFICATION

STATE OF IDAHO :
: ss.
County of Lemhi :

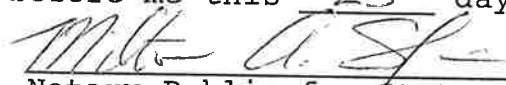
BOB BLACKADAR, being first duly sworn upon oath, deposes and says:

That he is the Plaintiff in the above entitled action; that he has read the foregoing COMPLAINT, and knows the contents thereof and that the same is true and correct as he verily believes.


BOB BLACKADAR

SUBSCRIBED AND SWORN To before me this 23 day of April, 1992.

(SEAL)

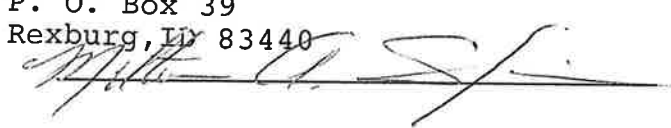

Notary Public for State of Idaho
Residing at Salmon, Idaho
Comm. expires: 10/26/93

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing COMPLAINT upon the following persons(s) this day of April, 1992, by placing the same in the U.S. Mail with the necessary postage affixed thereto.

Myrthus Austin
1029 Highway 93 North
Salmon, Idaho 83467

The Honorable Brent J. Moss, Magistrate
Madison County Courthouse
P. O. Box 39
Rexburg, ID 83440



3

Milton A. Slavin
ATTORNEY AT LAW
P.O. Box 1103
Salmon, Idaho 83467
Telephone: 208-756-2030

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

BOB BLACKADAR,	)	
	)	
Plaintiff/Respondent	)	Case No. 7427
	)	
vs.	)	RESPONDENT'S BRIEF
	)	
MYRTHUS AUSTIN,	)	
	)	
<u>Defendant/Appellant.</u>	)	

COMES NOW, the Plaintiff/Respondent, BOB BLACKADAR, by and through his attorney of record, and submits herewith his response to Appellant's Brief.

I

STATEMENT OF FACTS

Plaintiff brought this action for damages incurred as a result of the Defendant's trespass, having occurred in May of 1989 when Defendant came upon Plaintiff's property to maintain his lateral ditch. Additionally, Plaintiff brings this action for recovery of damages incurred while Defendant was burning the existing ditch banks and constructing an additional or "new" lateral ditch across Plaintiff's property.

Lodged
4-3-90
4:11 P.M.

had such a ditch or easement ever existed it was abandoned

through the nonuse and failure to keep the ditch in good repair.

See Condie vs. Swainston, 62 Idaho 473, 112 P2d. 787; Joyce

vs. Murphy Land, etc., Co., 35 Idaho 549, 208 Pac. 241; Kinney on

Irrigation, 2nd Edition, Sec. 1116, page 2012; Stalling vs. -

Ferrin, 7 Utah 477, 27 Pac. 686; Jackson vs. Indian Creek

etc. Co., 18 Idaho 513, 110 Pac. 251; Rutherford etc. Co. -

vs. Lucerne etc. Co., 12 Wyo. 299, 75 Pac. 445.

4. The burden rests upon the owner of the easement (Austin)

to keep it in proper condition for the use(s) for which it was

granted (or in this case obtained) and the failure to so maintain

the easement for an unreasonable length of time has been held to

amount to its abandonment. (See 17 AmJur Section(s) 172/165)

5. Plaintiff is the owner of the property in question and a

heavy construction contractor and as such is competent witness

to testify as to the property values and the damages thereto.

See Smith vs. Big Lost River Irr. Dist., (1961), 83 Idaho 374,

364 P2d 146; Pence vs. Big Lost River Irr. Dist., (1961), 83

Idaho 393, 364 P2d 158; Donahue vs. Big Lost River Irr. Dist.,

(1961), 83 Idaho 393, 364 P2d 158; Johnson vs. Big Lost River

Irr. Dist., (1961), 83 Idaho 394, 364 P2d 159.

III

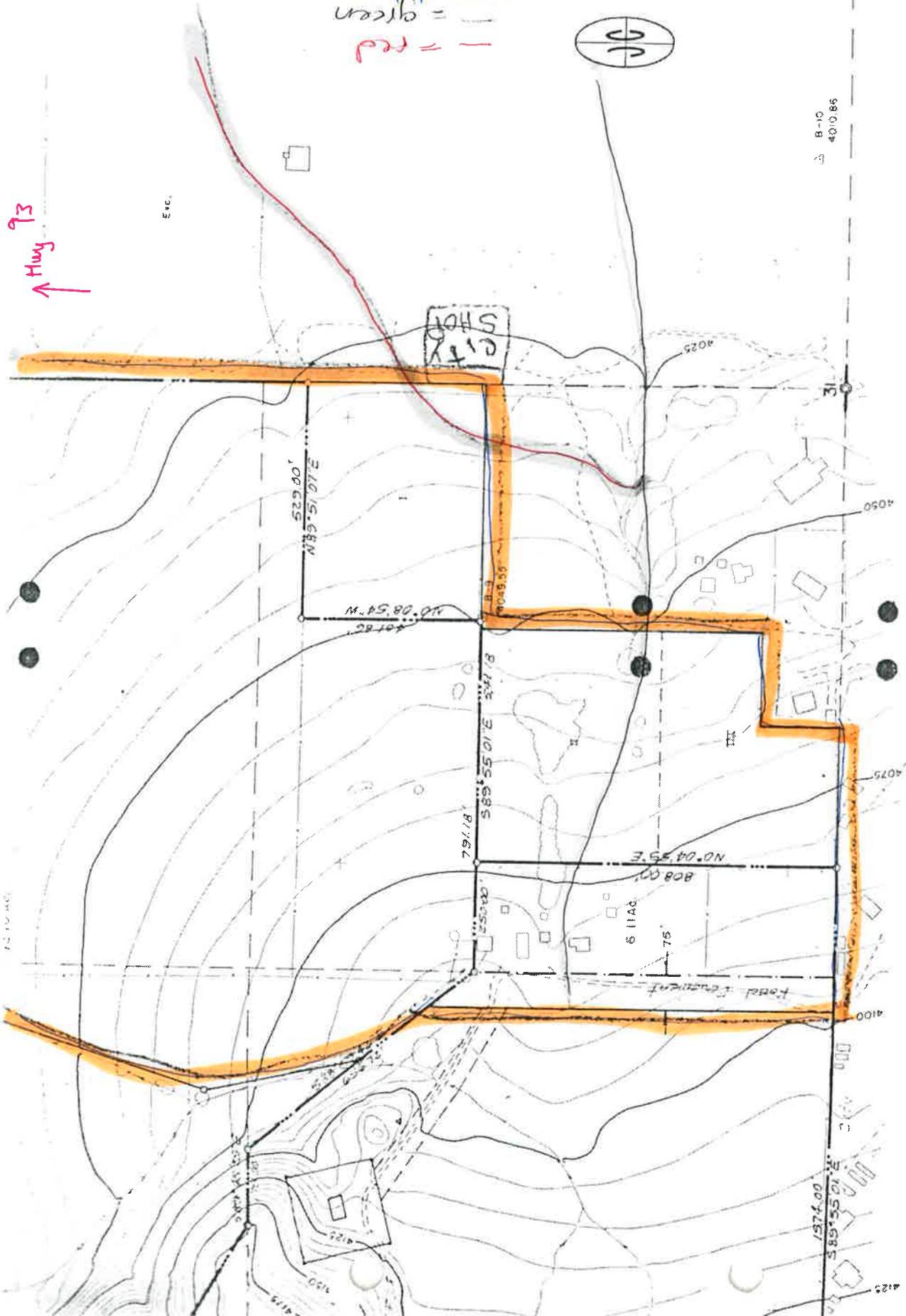
ARGUMENT

Defendant, Austin, admits to going upon the Plaintiff's,

Blackadar, property during May of 1989 in order to maintain his

ditch(es) and specifically admits to removing overburden from the

5217



8.97 GPM = 1"

DECREED RIGHTS ON JESSE CREEK DRAINAGE

LEMHI COUNTY, IDAHO

FEBRUARY 12, 1973

NO.	DIVERSION	OWNER	PRIORITY	INCHES AMOUNT
75-001 ✓	JC1	Axel Sorenson	1894	35 ✓ = 0.7
75-003 ✓	JC1	Murphus Austin	1894	72 ✓ = 1.44
75-007 ✓	JC1	Blackador ?	1894	200 ✓ = 4
75-013 ✓	JC1	Axel Sorenson	1914	30 ✓ = 0.6
75-017 ✓	JC1	Blackador	1867	75 ✓ = 1.5
75-019 ✓	JC1	Blackador (Hul right)	1868	65 1/2 ✓ = 1.31
75-019 ✓	JC1	Blackador (Cole right)	1868	24 2/3 ✓ = 0.49
75-019	JC1	Reddington & Everts	1868	30 ✓ = 0.6
75-023	JC1	Carl Gaver (City?)	1869	7 15" = 0.3
75-026	JC1	Axel Sorenson	1884	10 ✓ = 0.2
75-113	JC1	Blackador (Edwards right)	1894	100 ✓ = 2
75-020	JC2	Axel Sorenson	1888	15 = 0.3
75-004	JC3 & PC2	City of Salmon	1894	60 = 1.2
75-008	JC3 & PC2	" " " (not active?)	1894	7.5 = 0.15
75-019 ✓	JC3 & PC2	" " "	1868	60 = 1.2
75-114	JC3 & PC2	" " "	1894	25 = 0.5
75-021	JC3 & PC2	" " "	1883	5 = 0.1
75-024	JC3 & PC2	" " "	1877	5 = 0.1
75-026	JC3 & PC2	" " "	1884	15 = 0.3
75-016 ✓	JC3 & PC2	" " "	1867	100 = 2
75-018 ✓	JC3 & PC2	" " "	1867	15 = 0.3
ITEM # 9 - PART 2				
75-014	PC1	Jacobson	1902	60 = 1.2
75-015	PC2	Dave Amesworth (not active?)	1913	20 = 0.4
75-005	PC3	PJB Ranches	1894	250 = 5
	PC4 & CC1	Present City of Salmon Points of Diversion		
75-022	CC2	PJB Ranches	1889	100 = 2
75-002	CC3	Guy Edwards	1894	85 = 1.7

JUN 26 1992

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: 75-10475

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

RECEIVED

DEC 02 2006

IDWR/North

SCANNED ✓

DEC 11 2006

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

CLAIM NO(s). 75-10475

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.: A0014938 file* 412P50P002

Township _____ Range _____ Section _____ 1/4 _____ 1/4 _____ 1/4 _____
Township _____ Range _____ Section _____ 1/4 _____ 1/4 _____ 1/4 _____

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

headgate on creek ditches to pour claimed diversions in
S31 22N 22E are diversions in ditches no caps really taken

SCANNED

JAN 04 2010

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

☐ SYSTEM DIAGRAM INCLUDED ☐ NA

☐ Shown on GIS Layout

☒ CK IF IN OFFICE EXAM

DATE EXAM CONDUCTED: 5-5-06

FIELD EXAMINER: Bob Foster

Print Name

Bob Foster

Signature

SCANNED

JAN 04 2008

SCANNED
OCT 15 1995

MARCH 8, 1995

SILVER PEAK RANCH TRUST
C/O MYRTHUS AUSTIN/RON AUSTIN TRUSTEES
1029 HWY 93 N
SALMON ID 83467

RE: CHANGE IN OWNERSHIP FOR A75-10475

Dear Mr. Austin:

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

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

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

Respectfully submitted,

Jo Thompson
Adjudication Secretary

Enclosure: Notice of Claim

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NOV 18 1996



NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Please print or type
(see instructions on back of page)

DATE OF CLOSING: 3/7/95

LEGAL DESCRIPTION OF PROPERTY: Township 21.N. 22.N Range 22E
Section 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.

- [] 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)
Assigned by IDWR: A75-10475 --- 75-04471 - Done - gone to Austin *Filed new claim/late*
- [] Name and Address of Former Owner/Claimant(s)(Seller):
Austin Myrthus and Austin John W.
1029 HWY 93 N. and 1035 HWY 93 N.
- [] New Owner/Claimant (Purchaser):
Silver Peak Ranch Trust
- [] New Mailing Address:
Austin Myrthus And Austin Ron -- Trustees
1029 HWY 93 N.
- [] New Telephone Number: (208) 756-3368
- [] Does the change in ownership result in a splitting of the water right owned/claimed? yes no
If yes, then describe the portion of the water right that is now owned/claimed by the new owner:
~~A75-10475 and 75-04471~~
- [] Attach proof of ownership, describe proof attached: A75-10475 and 75-04471
(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 Trustee Date 3/7/95
Ron Austin Trustee Date 3/7/95
- [] Signature of Former Owner/Claimant(s): Myrthus Austin Date 3-7-95
John Austin Betty Austin Date 3/7/95

(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:

3-8-95 Mr. Austin was here today to change ownership to a trust. New claim was filed on 75-04471 (\$100.00) changed OS on 75-10475 to Trust. Jo

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

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NOV 18 1996



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

FILE: A75-10475

RECEIVED

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

August 2, 1994

AUG - 5 1994

Myrthus Austin
John W. Austin
1029 Hwy 93 North
Salmon, ID 83467

Department of Water Resources
Eastern District Office

Re: Water Right Numbers 75-0003 & 75-0009

Gentlemen:

In 1992 Department staff assisted the Jesse Creek watermaster in compiling a water right delivery list for water district 75A, Jesse Creek and tributaries. This list indicates that you own water right numbers 75-0003 and 75-0009. Both rights have the same priority date, 4/1/1894, and were claimed in the Snake River Basin Adjudication (SRBA) as combined rights under claim number A75-10475 with a total combined diversion rate of 1.94 cfs. Our list shows that both rights are diverted from Jesse Creek at the head of the Farmer's Ditch. Right 75-0003 was originally decreed for 1.44 cfs. Right 75-0009 was originally decreed for 1.5 cfs.

In response to recent inquiries and information requests regarding these rights and Jesse Creek water district records, 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. Your SRBA claim and water district records from 1992 are the only documents in our records which show your possessory interest in right 75-0009. Your name is linked with right 75-0009 in the 1992 records probably as the result of our delivery list given to the watermaster in that year. The watermaster's daily log books do not indicate that more than 1.5 cfs was delivered under your name in that year. Subsequent water district records do not make any specific reference to your ownership of right 75-0009. Similarly, water district records which we reviewed from the 1970's through 1991 do not make any specific reference to your ownership of right 75-0009. Attached to this letter is a summary of a review of rights 75-0009 and 75-0003 and Jesse Creek water district records.

The purpose of this letter is to ask that you submit any and all documentation which you have concerning your possessory interest in water right 75-0009. If you can not submit sufficient documentation concerning your ownership of right 75-0009, then the Department will revise its 1992 water right delivery list to be consistent with information and evidence found in the water district records prior to 1992.

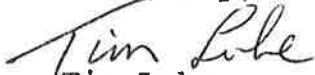
MICROFILMED

Please submit the requested information at your earliest convenience. Since water rights 75-0003 and 75-0009 are not likely

deliverable for the remainder of this year, our revision of the listing is not critical at this time. However, we do wish to revise the list in respect to this matter prior to the ensuing irrigation season.

Please contact me directly at 327-7864 if you have questions concerning this matter.

Sincerely,

A handwritten signature in cursive script that reads "Tim Luke".

Tim Luke

Water Allocations

cc: Eastern Region
Mickey Berbeck, Watermaster

MICROFILMED

NOV 18 1996

MEMORANDUM

TO: NORM YOUNG

FROM: TIM LUKE

DATE: June 22, 1994

RE: RESEARCH OF WATER DISTRICT 75A RECORDS - BOB BLACKADAR MATTER
AND REQUEST

=====

I have reviewed water district 75A records from 1980 through 1990 which are on file here at the state office. My research may substantiate Blackadar's claim, that Myrthus Austin owns or is entitled to less water than he has claimed in the SRBA. A water right list provided by us to the watermaster in 1992 also appears to be inconsistent with the records I have reviewed in regard to Austin's rights. In particular, our list showed two rights owned and claimed by Austin but the water district records indicate that Austin only owned one of these rights.

For your purpose, I have attached a copy of the water right list provided to the watermaster in 1992. Blackadar has complained to me that this list is in error concerning Austin's rights. Specifically, I believe he stated that Austin has never owned or used at least one of the two rights which are shown on our list, and/or that Austin is entitled to either much less water than shown on the list or no water at all.

Summary of Records Reviewed:

The water district records from 1987 through 1990 provide the most complete information about water rights and delivery. The better quality of records in this period are due in part to the more active or robust efforts of the watermaster who was elected during this period, and in part because of Eastern Region's intervention and assistance provided during 1987. The 1987 file contains a listing of water rights which was compiled and dated June 16, 1987. This list shows Austin as owning only one water right, 75-0003 for 1.44 cfs. The other water right claimed by Austin, 75-0009, is listed as being owned by the Gilmore and Pittsburgh Railroad (GPR). Along with this list is a map showing the various diversions within the district and the water rights associated with each diversion. Both the map and June 16 water rights list appear to have been prepared by IDWR. The map does show right 75-0003 as being diverted at the Farmer's Ditch. Right 75-0009 is not listed on the map. Both the watermaster report and budget report show Austin as owning right 75-0003. The watermaster report and log books confirm delivery of water to Austin under right 75-0003, and Austin received a bill for this right as well. The budget report lists right 75-0009 as owned by GPR, but GPR did not receive a bill, presumably due to non-use in the prior year. The 1987 log books and watermaster report do not show delivery or use of water under 75-0009.

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NOV 18 1996

Also, the 1987 file does contain a second water rights list which was compiled and dated February 12, 1973. It is not clear who prepared this list but again it looks like a Department document. This list shows Austin has owning only right no. 75-0003 for 1.44 cfs. Right 75-0009 is not even showed on this list.

Watermaster reports, water district budget reports and daily log books for years 1988 through 1990 all show right 75-0003 as owned and used by Austin. No direct references are made to right 75-0009, nor are there any deliveries recorded for this right. Deliveries under right 75-0003 range from 0.5 cfs to 1.5 cfs. The right is generally showed as being delivered in May and June, and cut sometime in June or early July.

Water district records from 1980 through 1986 are less complete and are of poorer quality than those for 1987 through 1990. The watermaster and budget reports for these years all identify Austin as a water user. These reports do not identify the water rights owned by the different users within the district. There are no daily log books for these years, other than 1981. The 1981 log books shows daily delivery of 85 inches (1.7 cfs) to Austin.

The 1992 watermaster and budget records indicate that Austin owned both rights 75-0003 and 75-0009. This notation is likely a result of the waer right list compiled by George Austiguy. The daily log books for that year show Austin's name next to right 75-0009 only, with a water right diversion rate of 1.5 cfs. No more than 1.5 cfs is reported as being delivered in that year. The 1993 annual report, budget and daily log books all identify right 75-0003 as being owned by Austin while no reference at all is given to 75-0009. The 1991 documents also refer only to Austin having right 75-0003, while no reference at all is given to 75-0009.

Finally, I have looked at the decreed places of use as recorded in our water rights database. There is some overlap in the place of use between rights 75-0003 and 75-0009. This overlap looks like the only thing connecting Austin's ownership or interest in 75-0009. Copies of the place of use descriptions for 75-0003 and 75-0009 and corresponding SRBA claims are attached.

In addition, I did discuss this matter with the present Jesse Creek watermaster last week when I visited Salmon. The watermaster described Austin's use of water on the Farmer's Ditch as primarily use of wastewater. Austin is at the end of the ditch and there is almost always some waste water for him to divert at that point, even when rights 75-0003 and 75-0009 are not deliverable. Since the Farmer's Ditch is the last diversion on Jesse Creek, I believe the watermaster indicated that most or all of the available natural flow is diverted at that point. Since Austin's right or rights have a late priority date, and because of the available return flow at the end of the ditch, it appears that the watermaster is not deliberately trying to deliver a specific quantity of water to Austin at the head of the Farmer's Ditch.

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NOV 18 1996

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.

RECEIVED
MAY 3 1990
Department of Water Resources

CIVIL CASE NUMBER: 39576

Ident. Number: A75-10475

Date Received: 5/03/1990

Receipt No: M006881

Received By: RAO

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: JOHN W. AUSTIN 208-756-3368
Address: 1029 HWY 93 NORTH
SALMON, ID 83467

OR

Name: MYRTHUS AUSTIN 208-756-3368
Address: 1029 HWY 93 NORTH
SALMON, ID 83467

2. Date of Priority: APR 01, 1894

3. Source: JESSE CREEK Trib. to: SALMON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	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:

A75-10475

Page 1

Date: 05/03/90

SCANNED
JAN 04 2003

MICROFILMED
DEC 15 1992

A7510475

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
22N	22E	31	NE	NE		IRR	4.0
			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~~ Norton Ditch M.C.

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.

15. Basis of Claim: DECREED
 Case Number:
 Court :
 Decree date:

Decree Plaintiff

vs

Decree Defendant

16. Signature(s)

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

Number of attachments: 1

For Individuals:

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

Signature of Claimant(s): X. Mephus Austin Date: May 3 - 1990

Date: _____

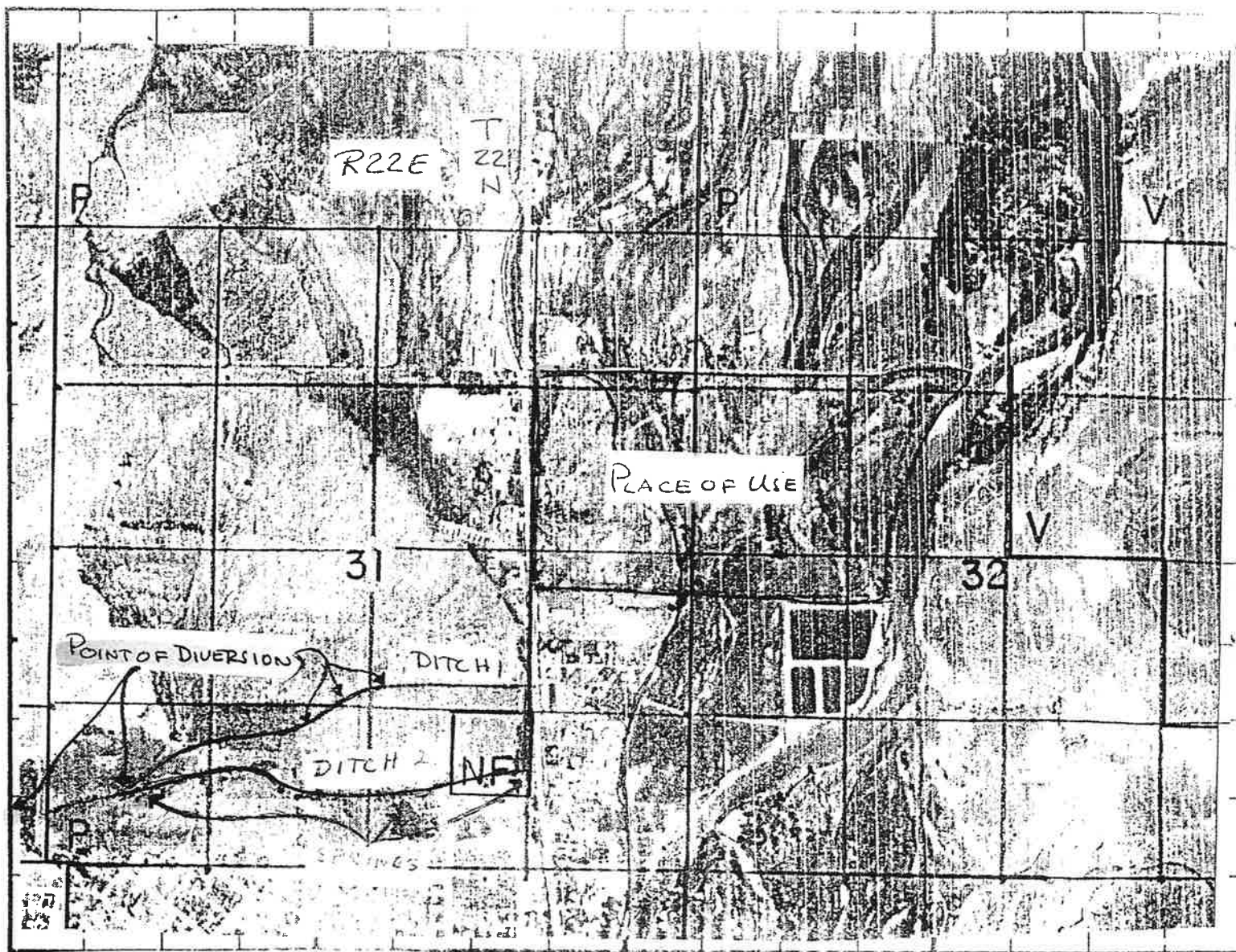
State of Idaho)
County of Lamhi) SS.

Subscribed and sworn (or affirmed) before me this 3rd day
of May 19 90 [Signature]
Notary Public

Seal

Residing at Helen Harrington, Notary Public
Residing at Boise, Idaho
My Commission Expires December 1, 1994

Malin



JAN 04 2003

SCANNED

MICROFILMED
JUL 15 1992

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: A75-10475
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 83467
208-756-3368

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 of	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 of	Lot	Use
22N	22E	31	NE	NE		IRR

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N440181950

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

MICROFILMED

NOV 18 1996