

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: 39356

Ident. Number A36-00039 P

Date Received _____

Receipt Number SO13107

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

RECEIVED

MAR 12 1991

Department of Water Resources
Southern Region Office

Please type or print clearly

1. Name of Claimant (s) PHILIP T. KINNISON or PATSY A. KINNISON Phone (303) 986-0448Mailing Address 7909 West Harvard, Lakewood, Colorado Zip 802272. Date of Priority (Only one (1) per claim) January 2, 18913. Source of water supply (a) Billingsley Creek via Buckeye Ditch
which is tributary to (b) Snake River4. a. Location of existing point of diversion is: Township 7 South Range 13 East Section 11,
NW 1/4 of SE 1/4 of NE 1/4, Govt. Lot, _____ B.M., County of GoodingAdditional points of diversion if any: Re-diverted from Buckeye Ditch in the NE 1/4 NW 1/4 SE 1/4, Sec. 11, T. 7 S.,
R. 13 E., B.M.

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. From the concrete diversion on the bank of
Billingsley Creek, the water flows in an open ditch known as the Buckeye Ditch. The
water is re-diverted from the Buckeye Ditch by means of a concrete headgate and then is
transported to the properties by an open ditch where the property is irrigated.

MICROFILMED

OCT 11 1994

6. Water is claimed for the following purposes: (both dates are inclusive) (cfs) (acre feet)
- For Stockwater purposes from Jan. 1 to Dec. 31 amount 0.02 or _____
- For Irrigation purposes from Mar. 15 to Nov. 15 amount 0.04 or _____
- For Aesthetic purposes from Jan. 1 to Dec. 31 amount 0.14 or _____
- For _____ purposes from _____ to _____ amount _____ or _____
7. Total quantity claimed (a) 0.14 (cfs) and/or (b) _____ (acre feet)
8. Total consumptive use claimed is _____ acre feet per annum.
9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) 1 to 2 calves at times and stream for aesthetic purposes
10. Description of place of use:
- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
 - If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			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	
7 S	13 E	11														S-J 1			1

Total number of acres irrigated 1 acre

11. In which county (ies) are lands listed above as place of use located? Gooding County
12. Do you own the property listed above as place of use? Yes X No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.
13. Describe any other water rights used at the same place and for the same purposes as described above.
_____ or None (X)
14. Remarks:
This amount of water is needed because the soil is very sandy and because of the loss of water being transported in the open ditches.
In the 1932 decree, it states that the water is transported by use of the Granger Ditch.
The Granger Ditch has been abandoned and the Buckeye Ditch has been used for years to transport the water from Billingsley Creek to the subject property.

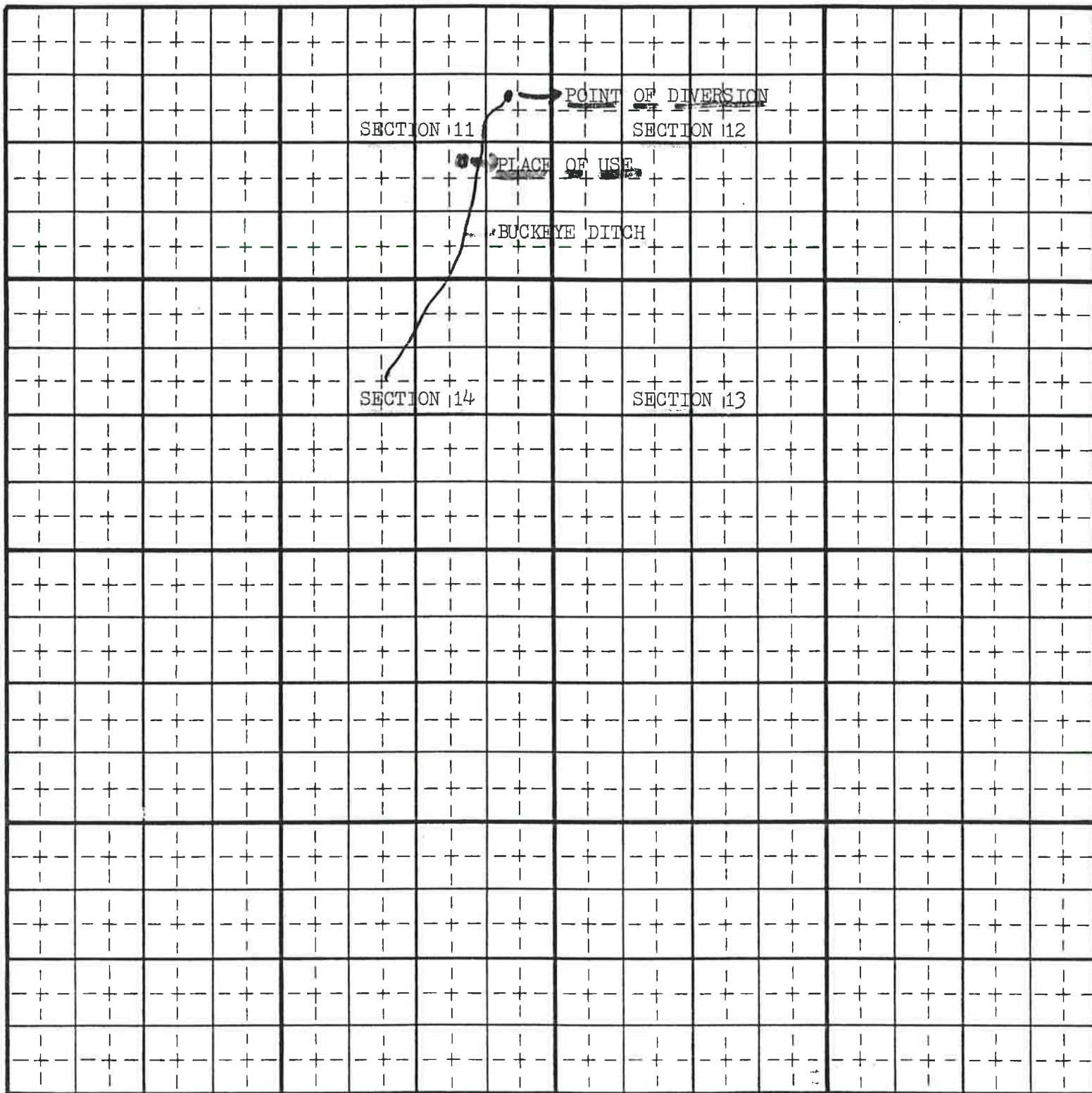
Last Name KINNISON Ident No. _____

MICROFILMED
OCT 11 1994
Copies: White - State, Yellow - Claimant

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

TOWNSHIP 7 SOUTH, RANGE 13 EAST OF THE BOISE MERIDIAN



MICROFILMED
OCT 11 1994

Last Name KINNISON Ident No. _____

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) Be. al Use Posted Notice L Permit Decree X

If applicable provide IDWR Water Right Number Part of 36-0039

Court U.S. District Court Case Number 1602 Decree Date March 22, 1932

Plaintiff vs Defendant New International Mortgage Bank vs Idaho Power Company

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 two (2)

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) Patricia Kinnison Date 3-4-91

Philip A Kinnison Date 3/4/91

For Organizations: I do solemnly swear or affirm that I am _____

_____ Title
of _____, that I have signed the foregoing
Organization

document in the space below as _____ of _____
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____ Date _____

✓ State of ~~Idaho~~/or Colorado)
County of Jefferson) SS.

Subscribed and sworn (or affirmed) before me this 4th day of March 19 91

SEAL

Notary Public _____

Residing at _____

My Commission Expires _____

Please Print Name

MY COMMISSION EXPIRES
JUNE 28, 1991
2825 S. COLOREDADO
DENVER, CO 80222

17. Notice of Appearance:

Notice is hereby given that I, _____ will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

Last Name KINNISON Ident. Number _____

MICROFILMED
OCT 11 1994

Copies White-State, Yellow-Claimant

and is 729 feet south of the section line between said section 2 and 11; thence north 80 degrees 28' west 949 feet to a point (which point is 573.8 feet south of a point on the section line between said sections 2 and 11 in said Twp. and Range aforesaid 1320 feet west from the said quarter corner between sections 2 and 11 first above mentioned;)- thence north 80 degrees 28' west 199.1 feet to a point; thence south 23 degrees 40' west about 2269 feet to a point 290 feet east from the quarter corner on the west boundary line of section 11, Twp. 7 S. R. 13 E. B. M.; thence east along the south boundary line of Lot 3 of said Section 11 to the southeast corner of said Lot 3; thence north along the east boundary line of said Lot 3 to the northeast corner thereof; thence east along the south boundary line of Lot 2, in said section 11 to the southeast corner of said Lot 2; thence north along the east boundary line of said Lot 2 to the place of beginning.

POOR ORIGINAL

038 Condit .5 Spring April 1, 1930 Huitt Spring
James E. (Said Huitt Spring is located on the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 19, Twp. 7 S. R. 14
and E.B.M.)
Jennie The NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ (also known as Lot 3) of Section 19, Twp. 7 S. R. 14 E.B.M.
M. Condit

039 Dilatush, 2.4 Billingsley Creek Jan. 2, 1891 Granger Ditch
and .3 Spring Jan. 2, 1891 Unnamed Spring
04 Alice I. (Said unnamed spring arises in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13
Dilatush,
and Charles J. E. B. M. at a point 1065 feet north 2 degrees 2' west from the southeast corner of
Carey said tract of land. That the point of diversion of said Granger Ditch is on the
bank of Billingsley Creek about 100 feet below the diversion point of said Buckeye
Ditch and from the diversion point of said Granger Ditch the quarter section
corner common to secs. 11 and 12 Twp. 7 S. R. 13 E. B. M. bears south 31 degrees
27' east a distance of 333.4 ft)
Beginning at the southeast corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R.

MICROFILMED
OCT 11 1994

thence west along the forty line 1075'; thence north 20 degrees 49' east 520 feet; thence north 24 degrees 34' east 450 feet; thence south 81 degrees 26' east 595 feet to the east forty line; thence south along the forty line 1128 feet to the point of beginning.

041 Eliason
042 Armedia

8 Spring

Dec. 12, 1991

Weatherby Springs;
(Hoagland Tunnel)

4 Spring

April 4, 1910

Weatherby Springs;

The NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 36, Twp. 7 S. R. 13 E. B. M. excepting therefrom, however, the following described tract of land: Beginning at the quarter corner between Sections 25 and 36 of said township and range, running thence east 399 feet to the center of the public highway, thence in a southwesterly direction in the center of said highway 273 feet, thence westerly along the north bank of the Clifford Ditch 370 feet, to the west boundary line of said NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 36, thence north along said west boundary line 257 feet to the point of beginning, said tract of land excepted containing 2.2 acres, more or less, and the property herein described containing 37.8 acres, more or less.

POOR ORIGINAL

04 Eliason
041 Jacob and
042 Carrie I.

1.6 Len Lewis Spring

Sept. 1, 1839

Brailsford-Owens Ditch

.7 Spring

March 8, 1902

Weatherby Springs;

The SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 25, Twp. 7 S. R. 13 E. B. M.; also that certain portion of the northwest corner of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 36, in Twp. 7 S. R. 13 E. B. M. in Idaho, more particularly described as follows, to-wit: Beginning at the quarter corner between sections 25 and 36 in said Twp. 7 S. R. 13 E. B. M. running thence east a distance of 399 feet to the center of the public highway, thence in

MICROFILMED
OCT 11 1994

INPUT: AJ_SELECTION:HHT-BROWN-NOA4.SEL

TYPE OF ACTION: ADD

MODIFY ALL FIELDS FLAG:

LAST NAME: BROWN

ADDRESS LINE 1: HEPWORTH NUNGESTER LEZAMIZ

ADDRESS LINE 3: PO BOX 389

CITY: TWIN FALLS

STATE: ID ZIP: 833030389

FIRST NAME: PATRICK D

ADDRESS LINE 2:133 SHOSHONE ST N

PHONE NUMBER: (208) 734-7510

36-00029B. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00039F. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00039P. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00051A. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00054A. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00125A. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-07323. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-10673. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-00039F. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-00039P. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-00051A. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-00054A. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-00125A. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-07323. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-10220. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-10673. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A37-00792F. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A37-07852. ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE

RECEIVED

APR 06 1993

Department of Water Resources
Southern Region OfficeMICROFILMED
OCT 11 1994

N.C.A.

S.C.

466 11 120
OCT 11 1994
MICROFILMED

1 HEPWORTH, NUNGESTER & LEZAMIZ,
2 CHARTERED
3 133 Shoshone St. North
4 P.O. Box 389
5 Twin Falls, ID 83303-0389
6 Telephone: (208)734-7510
7 Attorneys for Claimant
8 (PPK\21530SUP.NO3\lmr)

RECEIVED
MAR 0 2 1993

Department of Water Resources
Adjudication Bureau

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

11 * * * * *

12 In Re the General Adjudication)
13 of Rights to the Use of Water) Case No. 39576
14 from the Snake River Basin)
15 Water System)
16 _____)
17 The State of Idaho, ex rel.) HAGERMAN WATER RIGHT OWNERS,
18 R. Keith Higginson in his) INC. AND ITS INDIVIDUAL
19 official capacity as director) MEMBERS' THIRD SUPPLEMENTAL
20 of the Idaho Department of) NOTICE OF APPEARANCE
21 Water Resources,)
22)
23 Petitioner,)
24 vs.)
25 United States; State of Idaho;)
26 and all claimants to the use)
27 of water from the Snake River)
28 Basin Water System,)
29 Respondents.)
30 _____)

31 * * * * *

32 COMES NOW the law firm of Hepworth, Nungester & Lezamiz
33 and supplements it Notice of Appearance to add on behalf of

LAW OFFICES
HNL
Chartered
Hepworth,
Nungester,
& Lezamiz

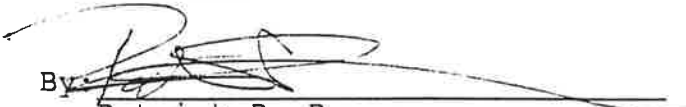
6661 11 100
OCT 1 1994
MICROFILMED

Hagerman Water Right Owners, Inc. and its individual members, the following individuals:

Mavencamp, John V.	A36-00189A
Mavencamp, John V.	A36-10766
Zabala, Ignacio Nick	A36-08320

Dated this 1 day of March, 1993.

HEPWORTH, NUNGESTER & LEZAMIZ,
CHARTERED

By 
Patrick D. Brown
Attorneys for Respondents

CERTIFICATE OF MAILING

The undersigned, a resident attorney of the State of Idaho, with offices at 133 Shoshone St. North, P.O. Box 389, Twin Falls, Idaho 83303, and one of the attorneys for the respondents in this matter, certifies that he caused to be mailed a copy of the above and foregoing THIRD SUPPLEMENTAL NOTICE OF APPEARANCE on the 1 day of March, 1993, to:

Snake River Adjudication (original)
District Court
P.O. Box 27070
Twin Falls, ID 83303-0126

Chief, Natural Resources Division (1)
Office of Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

4661 11 100
MICROFILMED
OCT 11 1994

The United States Department of Justice (1)
Environment and Natural Resources Division
550 West Fort Street, Box 33
Boise, ID 83734



Patrick D. Brown

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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: A36-00039P
Date Received: 3/13/1991
Receipt No: S013107
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: BRUCE R BOTHWELL 208-837-6402
Address: PO BOX 444
HAGERMAN ID 83332

AND

Name: MARY L BOTHWELL 208-837-6402
Address: PO BOX 444
HAGERMAN ID 83332

2. Date of Priority: JAN 2, 1891

3. Source: BILLINGSLEY CREEK Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
07S	13E	11	NW	SE	NE		GOODING

5. Description of diverting works:
VIA BUCKEYE DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.040		
STOCKWATER	01/01	12/31	0.020		
AESTHETIC	01/01	12/31	0.140		

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

8. Total consumptive use is 3.0 Acre Feet Per Annum.

9. Non-irrigation uses:
STOCKWATER/2 BEEF; AESTHETIC/OPEN STREAM

MICROFILMED
JAN 21 1992

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
07S	13E	11	NW	SE	IRR	1.0
			NW	SE	STOCK	
			NW	SE	AES	
					Section Acres	1.0
					Total Acres	1.0

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:
NONE

14. Remarks:

THIS AMOUNT OF WATER IS NEEDED BECAUSE THE SOIL IS VERY SANDY AND BECAUSE OF THE LOSS OF WATER BEING TRANSPORTED IN THE OPEN DITCH. IN THE 1932 DECREE, IT STATES THAT THE WATER IS TRANSPORTED BY USE OF THE GRANGER DITCH. THE GRANGER DITCH HAS BEEN ABANDONED AND THE BUCKEYE DITCH HAD BEEN USED FOR YEARS TO TRANSPORT THE WATER FROM BILLINGSLEY CREEK TO THE SUBJECT PROPERTY.
LOT 4, BLOCK 2, WILLOW BROOK SUBD.

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 _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

MICROFILMED

JAN 21 1965

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): _____ Date: _____
_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

MICROFILMED

JAN 21 1993



NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

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

DATE OF CLOSING Aug 5, 1992

RECEIVED
SEP 30 1992
Department of Water Resources
Southern Region Office

LEGAL DESCRIPTION OF PROPERTY: Township _____ Range _____
Section _____, 1/4 of _____ 1/4 of _____ 1/4, Govt. Lot _____, BM.
Lot 4, Block, 2, Subdivision/Townsite Willow Brook Sub.
If you have additional legal descriptions, please attach separate sheet. Hegeman, Id.

- ☐ 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: 36-00039 P
- ☐ Name and Address of Former Owner/Claimant(s)(Seller): Philip T. KENNISON
- ☐ New Owner/Claimant (Purchaser): Beuel & Meryl Bethwell
- ☐ New Mailing Address: P.O. Box 444
Hegeman Id. 83332
- ☐ New Telephone Number: (208) 837-6402
- ☐ 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:

- ☐ 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) [Signature] Date 9/24/92
- ☐ Signature of Former Owner/Claimant(s): _____ 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: 9/30/92 By: MP

Further Action Needed:

Further Action Taken

Date: _____ By: _____

Final Review and Data-Entry

Date: _____ By: _____

Claim Numbers of Split, if any:

MICROFILM
JAN 21 1993

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



WARRANTY DEED

For Value Received

Philip T. Kinnison and Patsy A. Kinnison, husband and wife,
hereinafter referred to as Grantor, does hereby grant, bargain, sell, and convey unto
Bruce R. Bothwell and Mary L. Bothwell, husband and wife,
hereinafter referred to as Grantee, whose current address is

P.O. Box 444, Hagerman, ID, 83332

the following described premises, to-wit:

Lot 4 in Block 2 of **WILLOW BROOK SUBDIVISION**, Gooding County, Idaho,
being a part of Parcel "C" of Robert L. Justice Ranch, located in
part of the Northwest Quarter of the Southeast Quarter of Section 11,
Township 7 South, Range 13, East of the Boise Meridian, according to
the plat thereof, recorded August 13, 1979, as Instrument No. 78287,
in the Office of the County Recorder of said County.

STATE OF IDAHO, COUNTY OF GOODING **145739**

Filed for record at the request of **FIRST AMERICAN TITLE**

30 min. past 4 o'clock P. M. this 5th
of August 1991

JOHN A. MYERS, Recorder

JOHN A. MYERS, Recorder

By [Signature] Dep. [Signature]

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said
Grantee, his heirs and assigns forever. And the said Grantor does hereby covenant
to and with the said Grantee, that Grantor is the owner in fee simple of said
premises; that said premises are free from all encumbrances except current years
taxes, levies, and assessments, and except U. S. Patent reservations, restrictions,
easements of record, and easements visible upon the premises, and that Grantor will
warrant and defend the same from all claims whatsoever.

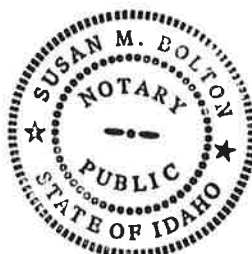
Dated: August 5th, 1991.

[Signature]
Philip T. Kinnison

[Signature]
Patsy A. Kinnison

STATE OF IDAHO)
: SS
COUNTY OF Gooding)

On This 5th day of August, in the year 1991, before me, a Notary Public in
and for said State, personally appeared Philip T. Kinnison and Patsy A. Kinnison,
known or identified to me to be the persons whose names are subscribed to the within
Instrument, and acknowledged to me that they executed the same.



[Signature]
Notary Public for Idaho
Residing at Gooding, Idaho
Commission Expires: 10/16/92

MICROFILM

JAN 21 1992

First American Title Company of Idaho



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. E, Twin Falls, Idaho 83301

(208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Mar. 15, 1990

Re: A36-00039N
A36-00039P

PHILIP T KINNISON
7909 WEST HARVARD
LAKEWOOD CO 80227

Dear Claimant(s):

Please find enclosed your receipt and a copy of a computer generated claim based on the information from your original claim(s) which has been entered in our computer records.

Please review the computer generated claim for accuracy. In a few instances clarifications may have been added by the Department at the time of data entry. If you have any questions or objections regarding the computer record of your claim(s), please contact this office.

Yours truly,

Judy Givens
Adjudication Secretary

/jg

Enclosures:

MICROFILMED

JAN 2

Water Right Number - R36-00039P

Prefix Translation: RESEARCH

Old (D) Number -

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

*** C - CURRENT OWNER ***
KINNISON

PHILIP T

1 - 7909 WEST HARVARD

2 -

3 -

City- LAKEWOOD

State- CO Zip- 80227

Phone#- 303-986-0448

KINNISON

PATSY A

1 - 7909 WEST HARVARD

2 -

3 -

City- LAKEWOOD

State- CO Zip- 80227

Phone - 303-986-0448

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +
01/02/1891 17 SOUTHERN - DISALLOWED+ - - - - Source - - - - - + + - - - - - Tributary - - - - - +
BILLINGSLEY CREEK SNAKE RIVER

+ - - - - Point of Diversion - - - - - +

Twn Rng Sec Tract Lot RFlg County

07S 13E 11 SE SE NE (47) GOODING

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
01 - IRRIGATION 04/01 10/31 0.040
04 - STOCKWATER 01/01 12/31 0.020
52 - AESTHETIC 01/01 12/31 0.140+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
0.120 3.0

+ - - - - Place of Use - - - - - +

Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County
07S	13E	11	NW SE		1.0	01	IRRIGATION	(47) GOODING
07S	13E	11	NW SE			04	STOCKWATER	(47) GOODING
07S	13E	11	NW SE			52	AESTHETIC	(47) GOODING

Total Acres: 1.0

+ - - Diversion Means - VIA BUCKEYE DITCH

+ - - Non-Irrigation Use - STOCKWATER/2 BEEF; AESTHETIC/OPEN STREAM

+ - - Other Rights for Same Use - NONE

Water right number - R36-00039P

Prefix Translation: RESEARCH

+ - - - - - Remarks - - - - - +

FORFEITED/ABANDONED.

+ - - - - - Old Water Right Numbers - - - - - +

3600039A

+ - - - - - Conditions of Approval - - - - - +

P04 - FORFEITED/ABANDONED: This is included for a claim based on a
- decree or license that is PROPOSED to be disallowed on the basis
- that the water right no longer exists because forfeiture of the
- right by nonuse was confirmed and a defense to forfeiture was not
- confirmed, or because abandonment of the right was confirmed.

+ - - - - Decree Plaintiff - - - +

+ - - - - Decree Defendant - - - +

+ - Decree Date - +
00/00/0000

+ - - - - - Comments - - - - - +

Date: 03/14/1991 User Id: BEDKE Subject: SCC-STAFF REVIEW
Date: 02/06/1992 User Id: CLELLAND Subject: COPIED FROM REMARKS
THIS AMOUNT OF WATER IS NEEDED BECAUSE THE SOIL IS VERY SANDY AND BECAUSE OF THE LOSS OF WATER BEING TRANSPORTED IN THE OPEN DITCH.
IN THE 1932 DECREE, IT STATES THAT THE WATER IS TRANSPORTED BY USE OF THE GRANGER DITCH. THE GRANGER DITCH HAS BEEN ABANDONED
AND THE BUCKEYE DITCH HAD BEEN USED FOR YEARS TO TRANSPORT THE WATER FROM BILLINGSLEY CREEK TO THE SUBJECT PROPERTY.
LOT 4, BLOCK 2, WILLOW BROOK SUBD.
Date: 08/04/1992 User Id: CHRISTEN Subject: BASIS FOR DISALLOWAL
NO DIVERSION OR DEVELOPMENT ON THIS LOT SINCE 1980.

+ - - Audit Fields - - +

08/04/92 CHRISTEN

+ - - - - - Adjudication Rights Dates and Flags Area - - - - - +

Court Report Filing	- 00/00/0000	Field Inspection Made	- 07/24/1990	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 08/04/1992	Old Judicial District	-
Claim Received Date	- 03/13/1991	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S013107	Water District	- 36A
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- OR	Presumption Flag	-
				Notice of Error Flag	-

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: A36-00039P
Date Received: 3/13/1991
Receipt No: S013107
Received By: Jee

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: PHILIP T. KINNISON 303-986-0448
Address: 7909 WEST HARVARD
LAKEWOOD, CO 80227

OR
Name: PATSY A. KINNISON 303-986-0448
Address: 7909 WEST HARVARD
LAKEWOOD, CO 80227

2. Date of Priority: JAN 2, 1891

3. Source: BILLINGSLEY CREEK Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
07S	13E	11	NW	SE	NE		GOODING

5. Description of diverting works:
VIA BUCKEYE DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.040		
STOCKWATER	01/01	12/31	0.020		
AESTHETIC	01/01	12/31	0.140		

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

8. Total consumptive use is 3.0 Acre Feet Per Annum.

9. Non-irrigation uses:
STOCKWATER/2 BEEF; AESTHETIC/OPEN STREAM

10. Place of Use:

Township	Range	Section	1/4	of 1/4	Lot	Use	Acres
07S	13E	11	NW	SE		IRR	1.0
			NW	SE		STOCK	
			NW	SE		AES	

Section Acres 1.0

Total Acres	1.0
-------------	-----

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:

NONE

14. Remarks:

THIS AMOUNT OF WATER IS NEEDED BECAUSE THE SOIL IS VERY SANDY AND BECAUSE OF THE LOSS OF WATER BEING TRANSPORTED IN THE OPEN DITCH. IN THE 1932 DECREE, IT STATES THAT THE WATER IS TRANSPORTED BY USE OF THE GRANGER DITCH. THE GRANGER DITCH HAS BEEN ABANDONED AND THE BUCKEYE DITCH HAD BEEN USED FOR YEARS TO TRANSPORT THE WATER FROM BILLINGSLEY CREEK TO THE SUBJECT PROPERTY.

LOT 4, BLOCK 2, WILLOW BROOK SUBD.

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 _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s): _____ Date: _____

_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

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 39576

Subcase No.: 36-00039P

STANDARD FORM 5

STIPULATED ELEMENTS
OF A WATER RIGHT

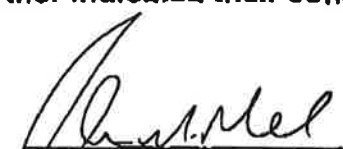
This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; that they have been served with sufficient process, according to the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

The parties and IDWR agree and stipulate that the elements of this water right should be decreed as described in the attached Amended Claim. This SF5 and settlement is expressly conditioned on the acceptance of its terms by the Court and the decree of the water right with the elements as described in this stipulation. The parties and IDWR have further indicated their concurrence by initialing each of the attached pages.


Patrick D. Brown

Attorney for Bruce & Mary Bothwell

2/2/00
Date
John Marshall

Attorney for Cranney Bros.

2/2/00
Date
IDWR Concurrence2/2/00
Date

APPROVED AS TO FORM


DEPUTY ATTORNEY GENERAL
2-2-00

Feb 02 00 11:10a

PATRICK D. BROWN

208-4-1970

p. 3

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: 2-2-2000
PAGE: A-1

RIGHTS FROM: SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

Right Number: 36-000392

Name and Address: BRUCE R BOTHWELL
MARY L BOTHWELL
PO BOX 444
HAGERMAN, ID 83332

Source: BILLINGSLEY CREEK Tributary: SNAKE RIVER

Quantity: .14 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT IN EXCESS OF .05 CFS FOR IRRIGATION IS SUBORDINATED TO ALL GROUNDWATER AND SURFACE WATER RIGHTS WITH PRIORITY DATES OF APRIL 30, 1993 OR EARLIER.

Jim
RB
NBS

Priority Date: 01-02-1891

Diversion Point: T07S R13E S11 SESENE Within Gooding County

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	Irrigation	02-15 TO 11-30	.14 CFS
	Domestic 1 HOME	01-01 TO 12-31	.02 CFS
	Aesthetic	01-01 TO 12-31	.14 CFS

THE PURPOSES OF USE FOR AESTHETIC AND DOMESTIC ARE SUBORDINATE TO ALL GROUNDWATER AND SURFACE WATER RIGHTS WITH PRIORITY DATES OF APRIL 30, 1993 OR EARLIER.

Place of Use: Domestic Within Gooding County
T07S R13E S11 NWSE 1
1 Acres Total

Irrigation
Same as Other Use

Aesthetic
Same as Other Use

Other Provisions Necessary for Definition / Administration of this Water Right:

THE SUBORDINATED PORTIONS OF THIS WATER RIGHT SHALL NOT BE ASSERTED, DELIVERED, HONORED, USED, ENFORCED, EFFECTIVE, OR OTHERWISE RECOGNIZED IF IT WOULD CAUSE OR REQUIRE EITHER DIRECTLY OR INDIRECTLY, CURTAILMENT OF, INJURY TO, OR MITIGATION FROM ANY SURFACE WATER OR GROUNDWATER RIGHTS WITH PRIORITY DATES OF APRIL 30, 1993 OR EARLIER. IF THE SUBORDINATED PORTIONS ARE AVAILABLE AT BILLINGSLEY CREEK, THAT WATER SHALL BE AVAILABLE FOR DIVERSION UNDER THIS RIGHT.

FEB. -02' 00(WED) 12:01

GIVENS ~~W~~RSLEY LLP

TEL: 2083881300

P. 003/008

Feb 02 00 11:11a

PATRICK D. BROWN

208-64-1970

p. 4

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: 2-2-2000

PAGE: A-2

Explanatory Material: Basis of Claim - Decreed

PROPERTY IS ALSO KNOWN AS LOT 4, BLOCK 2, WILLOW BROOK SUBDIVISION

RB *JB*
Jim
NBS

CERTIFICATE OF SERVICE

I certify that on February 2, 2000, I caused to be served true and correct copies of the Standard Form 5, to the following persons, in the manner indicated and addressed as follows:

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:

Patrick Brown
Law Offices
109 S. Adams
Jerome, ID 83338

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

John Marshall
Givens Pursley
P. O. Box 2720
Boise, ID 83701-2720

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



Signature of person or attorney mailing the form

RECEIVED

JUL - 8 1999

Department of Water Resources

1999 JUL -7 PM 3: 50

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO

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

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 36-00039P

RECEIVED

JUL 28 1999

Department of Water Resources
Southern Region

On July 07, 1999, Special Master FRITZ X HAEMMERLE issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED July 07, 1999.


TERI HRANAC
Deputy Clerk

Partial Decree - Not Attached

1999 JUL -7 PM 3: 50
DISTRICT COURT-SRBA
TWINFALLS CO., IDAHO
FILED _____

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

In Re SRBA	)	Subcase 39-00039P
	)	
Case No. 39576	)	SPECIAL MASTER'S REPORT
_____	)	

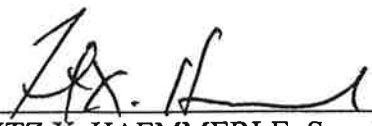
FINDINGS OF FACT AND CONCLUSIONS OF LAW

A notice of claim was filed for this water right pursuant to I.C. § 42-1409 (1990). The director of the State of Idaho Department of Water Resources examined the water system for areas 1, 2, and 3 and investigated and abstracted the notices of claims for those Reporting Areas. The Director of the Idaho Department of Water Resources then filed a *Director's Report* which asserted how the elements of this water right should be decreed by the court.

An objection to the *Director's Report* for water right 39-00039P was filed. On August 12, 1998, the court held a trial for this water right. After trial, the court issued its *Findings of Fact and Conclusions of Law* (Oct. 16, 1998), incorporated herein by reference. Based on those findings; now therefore

IT IS THEREFORE RECOMMENDED that subcase 39-00039P be decreed as recommended in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED July 16, 1999.



FRITZ X. HAEMMERLE, Special Master
Snake River Basin Adjudication

1999 JUL -7 PM 3:50

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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)
_____)

CERTIFICATE OF MAILING

Water Right(s): 36-00039P

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on July 07, 1999, with sufficient first-class postage prepaid to the following:

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

STATE OF IDAHO
Represented by:
CLIVE STRONG
NATURAL RESOURCES
DEP AG OFFICE OF ATTY GEN
STATEHOUSE MAIL
BOISE, ID 83720-0010
Phone: 208-334-2400

BRUCE R. BOTHWELL
BOTHWELL, MARY
PO BOX 44
HAGERMAN, ID 83332

CERTIFICATE OF MAILING


TERI HRANAC
Deputy Clerk

PAGE 1

07/07/99

Memorandum

1998 SEP -9 PM 2:10
Dodged
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

To: Files 36-00039C, 36-00039F & 36-00039J

From: Fritz Haemmerle

By: Steve Clelland

Date: 09/08/98

Re: Conveyance Loss for 36-00039 Split Rights

At the request of the SRBA court, the conveyance loss to deliver a water right in the Buckeye Ditch, 1400 feet to the headgate diversion for the 36-00039 split portions at the Willowbrook Subdivision, can be calculated to be 0.35 cfs.

This quantity does not accurately account for the ditch conditions at extremely low flows. Ditch dimensions from the Willowbrook headgate to the claimants are unknown. Conveyance loss within Willowbrook has not been calculated.

See also the attached complete analysis of the Buckeye Ditch losses.

CONVEYANCE LOSS - WORSTELL

0.35 cfs
in 1400' <

REACH	LENGTH (FT)	AVE WIDTH (FT)	SEEPAGE (FT/DAY)	WORSTELL LOSS (CFS)	DELIVERY (CFS)	DELIVERY LEFT (CFS)	LOSS FACTOR	DELIVERY LOSS (CFS)	FLOW (CFS)
1	800	10.0	2.00	0.20	0.06	18.83	0.0107	0.00	26.81 - 00048B (0.01)
2	600	10.0	2.00	0.15	1.02	18.77	0.0081	0.02	26.55 - 00112A, 00112B, 00039 series (0.01)
3	1400	10.0	2.00	0.35	0.24	17.75	0.0199	0.01	25.38 - 00082A
4	800	10.0	2.00	0.20	0.44	17.51	0.0115	0.02	24.79 - 00082B, 00082C, 00039K @ 0.01 cfs each
5	1100	10.0	2.00	0.28	0.17	17.07	0.0163	0.01	24.14 - 00065
6	1200	10.0	2.00	0.30	0.10	16.90	0.0179	0.01	23.70 - 00103C, 00103E, 00103F @ 0.01 each
7	300	10.0	2.00	0.08	1.22	16.80	0.0045	0.11	23.29 - 00108A, B, C, H; 00103B, 00085A, B, 00125A @ 0.01 each
8	1000	10.0	2.00	0.25	0.16	15.58	0.0162	0.02	22.00 - 00108D, G @ 0.01 each
9	500	10.0	2.00	0.13	0.50	15.42	0.0082	0.06	21.58 - 00108J
10	2200	10.0	2.00	0.56	4.13	14.92	0.0373	0.62	20.96 - 00091A, B; 00108E, 00064B @ 0.16 each
11	5500	10.0	2.00	1.39	0.20	10.79	0.1288	0.06	16.27 - 00003E
12	1700	10.0	2.00	0.43	0.09	10.59	0.0406	0.03	14.68 - 00003G
13	3900	10.0	2.00	0.99	0.34	10.50	0.0938	0.14	14.16 - 00035J
14	600	10.0	2.00	0.15	0.27	10.16	0.0149	0.12	12.84 - 00035E, F, G, 35B @ 0.04
15	1500	10.0	2.00	0.38	0.62	9.89	0.0383	0.29	12.42 - 00035H, 00003A @ 0.15 each
16	1600	10.0	2.00	0.40	1.00	9.27	0.0436	0.51	11.42 - 00003C, F @ 0.26 each
17	600	10.0	2.00	0.15	0.30	8.27	0.0183	0.16	10.01 - 00003T
18	300	10.0	2.00	0.08	3.25	7.97	0.0095	1.75	9.56 - 00003B
19	3000	10.0	2.00	0.76	0.24	4.72	0.1606	0.17	6.24 - 00003D
20	3000	10.0	2.00	0.76	4.48	4.48	0.1692	3.89	5.24 - 00003H
TOTALS	31600			7.98	18.83			7.98	

REACH = SECTION OF CHANNEL

LENGTH = LENGTH OF REACH, THE CHANNEL CAN BE DIVIDED INTO EQUAL LENGTH REACHES
OR ACTUAL LENGTHS BETWEEN DELIVERY POINTS

AVE WIDTH = AVERAGE TOP WIDTH OF REACH

SEEPAGE = SOIL SEEPAGE RATE OF REACH

WORSTELL LOSS = CONVEYANCE LOSS IN REACH BASED ON WORSTELL METHOD

DELIVERY = TOTAL DELIVERIES IN REACH

DELIVERY LEFT = SUM(DELIVERIES OF CURRENT AND REMAINING REACHES)

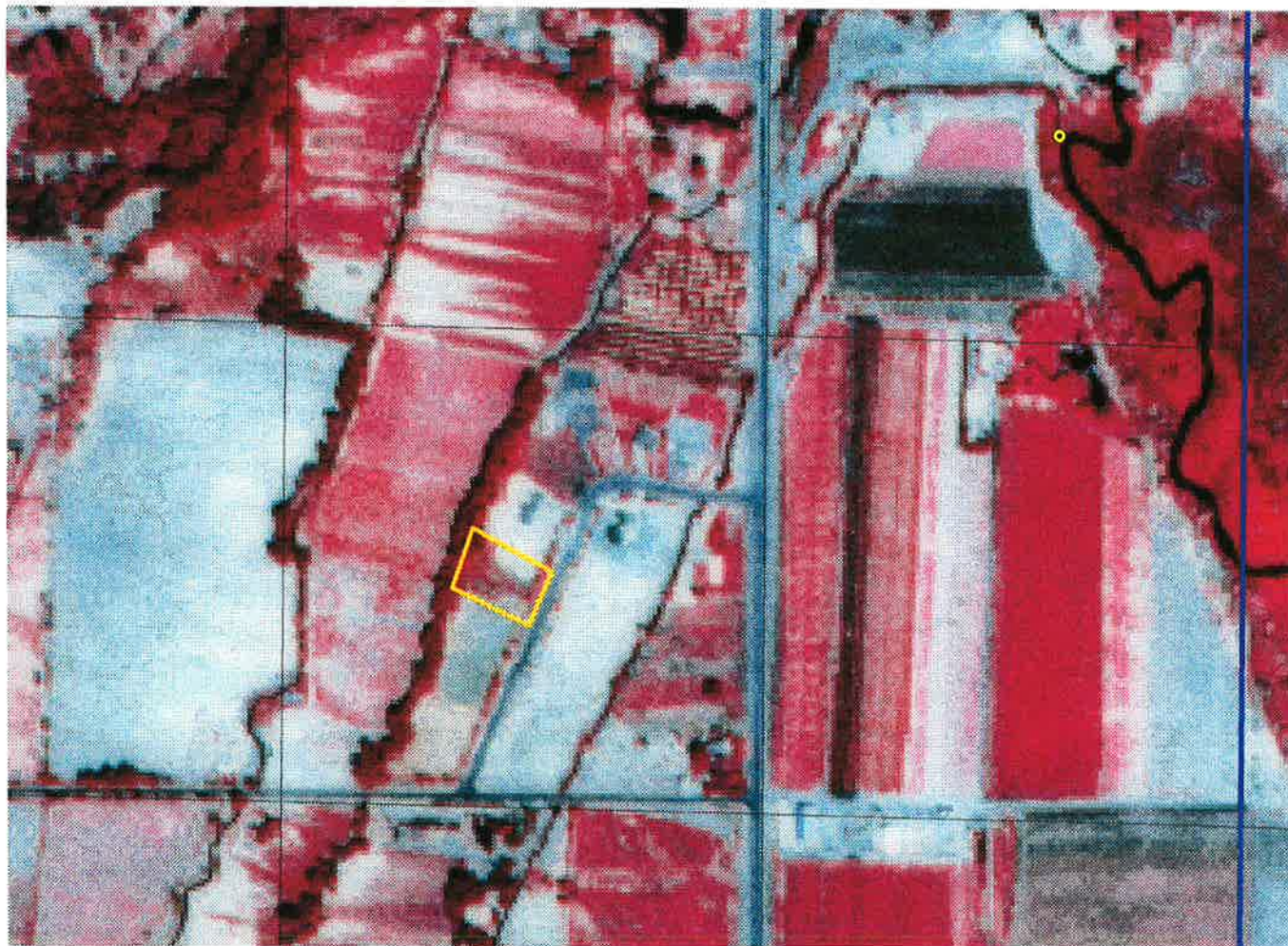
LOSS FACTOR = WORSTELL LOSS/DELIVERY LEFT

DELIVERY LOSS = SUM(LOSS FACTORS OF CURRENT AND PREVIOUS REACHES) X DELIVERY,
REPRESENTS THE LOSSES ASSIGNED TO THE DELIVERIES IN THE REACH

FLOW = TOTAL FLOW AT BEGINNING OF EACH REACH

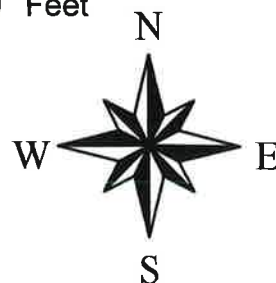
IDAHO DEPARTMENT OF WATER RESOURCES

36-00039P



1320 0 1320 Feet

TNS 7S, RNG 13E,
SEC 11, NWSE



⊙ Recommended Point of Diversion

□ Recommended Place of use

— Section lines

□ Quarter/Quarter Lines

GIS PLACE OF USE PRESENTATION
1987 and/or 1988 NAPP PHOTOGRAPHY
DATA ENTRY SEPTEMBER 1997
BY STEVE CLELLAND

SUBCASE NO. 36-00039P

	CLAIM (3/13/91)	AMENDED CLAIM	RECOMMENDATION	OBJECTION
NAME	Bruce & Mary Bothwell	N/A	Bruce & Mary Bothwell	
BASIS OF CLAIM	Decree		Decree	
SOURCE	Billingsley Creek		Billingsley Creek	
QUANTITY	0.120 cfs		.04 cfs	XX maximum quantity: pursuant to decree &/or beneficial use if greater
PRIORITY DATE	1/2/1891		1/2/1891	
PURPOSE OF USE	Irrigation/Stockwater/ Aesthetic		Domestic	XX add stockwater & aesthetic
PERIOD OF USE	Irr.: 3/15 - 11/15 SW.: 1/1 - 12/31 Aes.: 1/1 - 12/31		1/1 - 12/31	
POINT OF DIVERSION	T07S R13E S11		T07S R13E S11	
PLACE OF USE	T07S R13E S11 1 acre		T07S R13E S11	
REMARKS			Water is delivered through the Buckeye Ditch. Property is also known as lot 4, block 2, Willowbrook Subdivision. The appropriator is entitled to the amount of water described above for dom. purposes at a point of measurement where the delivery ditch enters the place of use described above. This right may be diverted so long as the amount of water diverted at the point of diversion for dom. purposes does not constitute unreasonable waste and does not conflict with the public interest, as determined by the director.	XX strike all remarks appearing after "Willowbrook Subdivision"

CLAIM NUMBERS A36-00039 P

DATE 10/1/97

AGENT SW

TRANSFER NUMBER _____

OBJECTION FILED yes

TOTAL ACRES FROM RECOMMENDATION Dom
ALLOW 1/2 Acre

GEOGRAPHIC INFO SYSTEM Ø

RIGHT NO				NE				NW				SW				SE			
	TNS	RNG	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
RECOM	<u>7s</u>	<u>13E</u>	<u>11</u>														<u>Dom</u>		<u>Dom</u>
GIS																	<u>Ø</u>		<u>Ø</u>
RECOM																			
GIS																			
RECOM																			
GIS																			
RECOM																			
GIS																			

UPDATED

POLYGON #

UPDATED

B36-DBPOU.DBF * 10/1/97 SW

POLYGON CREATED ON 604 505 10/1/97 SW

B36-DBPOD.DBF

ATTRIBUTES OF B36-POU.SHP ()

ATTRIBUTES OF B36-POD.SHP 454 Buckeye

RED AREA SHOWN IN NAPP PHOTO IS DUE TO LACK OF MAINTENANCE
of Ditch on the East side of the Lot, Ditch overflowed across Lot.
Confirmed by field Exam. No Acres Actually BEING IRRIGATED.

Domestic Allowed Because the Ditch WAS CONSIDERED A
"TAPPED IN" SOURCE.

* Added this WR number into GIS tables for POU & POD .DBF

P/U CONFLICT yes () no (X)

P/D CONFLICT yes () no (X)

READY FOR DECREE yes (X) no ()

SENT FOR DECREE yes () no ()



WILLOW BROOK
SUBD.

A36-00039A
(SPLIT REVIEW)

NON - USE AREAS

R PROOF

CVR

MAPS

PHOTOS

MISC

MICROFILM

OCT 11 1994

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 the Rights to the Use of Water)
from the Snake River Basin)
Water System)

Case No. 36-00039P -0001

The State of Idaho, ex rel.)
R. Keith Higginson in his)
official capacity as Director)
of the Idaho Department of)
Water Resources,)

RESPONSE TO OBJECTION

Petitioner,)

vs.)

The United States; the State)
of Idaho; and all Claimants to)
the use of water from the Snake)
River Basin Water System,)

Respondents.)

I. GENERAL INFORMATION

1. Person responding to objection:

Name: R. KEITH HIGGINSON, DIRECTOR

Address: IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711-4449

Briefly describe your interest in this water right:

IDWR is required to file a response to an objection to part
I of the director's report pursuant to I.C. section 42-1412(2).

(Over)

MICROFILMED
OCT 11 1994

NOTED
RECEIVED

2. Person who filed objection:

Name: BRUCE R & MARY L BOTHWELL
Address: PO BOX 444
HAGERMAN ID 83332

3. If this response is filed by an attorney:

Attorney Name(s): NICHOLAS B. SPENCER
Attorney Address: DEPUTY ATTORNEY GENERAL(S)
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711 4449

Attorney Phone No.: (208) 327-7900

II. STATEMENT OF THE RESPONSE

3. |☒| Quantity: I respond to the objection concerning:
- 3a. |☒| The total quantity of water used in cubic feet per second.
7. |☒| Purposes of Use: I respond to the objection concerning the purpose(s) of use.
10. |☒| Consumptive Use: I respond to the objection concerning the annual volume of consumptive use.
11. |☒| Remarks: I respond to the objection concerning the "remarks" listed with the water right.
14. |☒| Other: I respond to the objection concerning:

ALL MATTERS RAISED IN THE CLAIMANTS' ANSWER,
AFFIRMATIVE DEFENSES, AND PRAYER FOR RELIEF.

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection items 3 and 3.a, and all allegations of the objection regarding those items, IDWR responds as follows: (1) IDWR recommended this right because information in its possession was sufficient to support recommendation of the standard amount for a simple domestic use; (2) the information currently in IDWR's possession is not sufficient to support a finding that a greater amount has been beneficially used; (3) the claimant is not entitled to any amount greater than that which is beneficially used (Idaho Code Secs. 42-104 and 42-1402); (4) the recommendation of the director to the SRBA Court as to how the right should be decreed does not constitute a taking because it is simply a recommendation and not a final determination of the right; and (5) the eventual decree by the SRBA Court of the amount of water beneficially used, even if less than the amount previously decreed, will not constitute a taking because the right is limited to that amount beneficially used.

In response to Statement of the Objection item 7, and all allegations of the objection regarding that item, IDWR responds that it recommended the same purpose or purposes of use that were identified on the notice of claim and that were found when the claim was investigated.

In response to Statement of the Objection item 10 and all allegations of the objection regarding this item, IDWR responds as follows: (1) The decree asserted by the claimant did not set an annual volume of consumptive use for this water right. (2) Idaho Code Sec. 42-1411(2)(i) requires the director to determine the annual volume of consumptive use for each water right acquired under state law and recommended in the director's report. (3) General provision 9 of the director's report states: "Where consumptive use is not stated for a right or a portion of a right, the consumptive use for that right or that portion of the right is so small that it is deemed de minimus." (4) IDWR did not include a consumptive use volume in its recommendation for this right because the consumptive use for this water right is deemed to be de minimus. Because no annual consumptive use volume was claimed for this right, and because no different amount is stated in the objection, this portion of the objection should be stricken.

(Over)

MICROFILMED

OCT 11 1994

In response to Statement of the Objection item 11, and all allegations of the objection regarding that item, IDWR responds that it has authority pursuant to Idaho Code Sec. 42-1411(2)(j) to include in its recommendations of water rights acquired under state law and recommended in the director's report "such other matters as are necessary to define the right." The remark or remarks objected to are necessary to adequately describe and define this water right.

In response to Statement of the Objection item 14, and all allegations of the objection regarding that item, see attached "IDWR's Response to Answer Affirmative Defenses and Prayer for Relief of Claimant".

In response to the sentence listed in Changes to the Director's Report, whereby the claimant attempts to "reserve the right to claim all purposes of use and quantities of use as shown by the evidence at trial," IDWR responds as follows: Insofar as this purported reservation of rights may constitute an attempt to reserve the right to amend at trial the claimant's notice of claim, the claimant improperly seeks to use the objection process to amend the claim. A claimant must obtain leave of the court to amend a claim just as a party must obtain leave of the court to file a late claim after the director's report is filed.

CHANGES TO THE DIRECTOR'S REPORT

The director proposes no changes to the description of this claim in the Director's Report.

☒ Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary:

	No. of Pages
Notice of Claim No. A36-00039P	7
IDWR's Response to Answer, Affirmative Defenses, and Prayer for Relief of Claimant	4

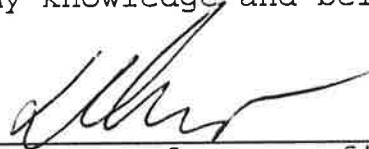
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

David B. Shaw, being first duly sworn, upon oath, deposes and says:

That R. Keith Higginson, in his official capacity as director of the Idaho Department of Water Resources, is a party to this proceeding, as defined by I.C. 42-1401A(1) and (7); that I am the Adjudication Bureau Chief for IDWR and am authorized by R. Keith Higginson, in his official capacity as director of IDWR, to verify this response; and that I have read the foregoing response, know its contents and that the statements contained therein are true to the best of my knowledge and belief.



Signature of person filing response

By: 
(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 10th day of September, 1993.



Notary Public for Idaho

Residing at: _____

My Commission expires _____

Danni Smith, Notary Public
Residing at Boise, Idaho
My Commission Expires December 5, 1994

(Over)

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of September, 1993, I mailed the original and copies of the foregoing response, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepared and addressed as follows:

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

2. One copy to the owner of the water right, and you must fill in the following information:

See No. 3

3. One copy to the party who filed the objection, or if represented by an attorney, to their attorney; and you must fill in the following information:

Name: HEPWORTH NUNGESTER & LEZAMIZ
Address: PATRICK D BROWN
& PENELOPE PARKER
PO BOX 389
TWIN FALLS ID 83303

4. One copy to:

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 33
Boise, Idaho 83734


Signature of Respondent or attorney
mailing on Respondent's behalf

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: 39356

Ident. Number A36-00039 P

Date Received

Receipt Number SO13107

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED

MAR 12 1991

Department of Water Resources
Southern Region Office

Please type or print clearly

1. Name of Claimant (s) PHILIP T. KINNISON or PATSY A. KINNISON Phone (303) 986-0448Mailing Address 7909 West Harvard, Lakewood, Colorado Zip 802272. Date of Priority (Only one (1) per claim) January 2, 18913. Source of water supply (a) Billingsley Creek via Buckeye Ditch
which is tributary to (b) Snake River4. a. Location of existing point of diversion is: Township 7 South Range 13 East Section 11,
NW 1/4 of SE 1/4 of NE 1/4, Govt. Lot, _____ B.M., County of GoodingAdditional points of diversion if any: Re-diverted from Buckeye Ditch in the NE¹NW¹SE¹, Sec. 11, T. 7 S.,
R. 13 E., B.M.

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. From the concrete diversion on the bank of
Billingsley Creek, the water flows in an open ditch known as the Buckeye Ditch. The
water is re-diverted from the Buckeye Ditch by means of a concrete headgate and then is
transported to the properties by an open ditch where the property is irrigated.

MICROFILMED
OCT 11 1994
JAN 21 1995

6. Water is claimed for the following purposes: (both dates are inclusive) (cfs) (acre feet)
- For Stockwater purposes from Jan. 1 to Dec. 31 amount 0.02 or _____
- For Irrigation purposes from Mar. 15 to Nov. 15 amount 0.04 or _____
- For Aesthetic purposes from Jan. 1 to Dec. 31 amount 0.14 or _____
- For _____ purposes from _____ to _____ amount _____ or _____
7. Total quantity claimed (a) 0.14 (cfs) and/or (b) _____ (acre feet)
8. Total consumptive use claimed is _____ acre feet per annum.
9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) 1 to 2 calves at times and stream for aesthetic purposes
10. Description of place of use:
- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
 - If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			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	
7 S	13 E	11														S-J 1			1

Total number of acres irrigated 1 acre

11. In which county (ies) are lands listed above as place of use located? Gooding County
12. Do you own the property listed above as place of use? Yes X No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.
13. Describe any other water rights used at the same place and for the same purposes as described above.
_____ or None (X)
14. Remarks:

This amount of water is needed because the soil is very sandy and because of the loss of water being transported in the open ditches.

In the 1932 decree, it states that the water is transported by use of the Granger Ditch. The Granger Ditch has been abandoned and the Buckeye Ditch has been used for years to transport the water from Billingsley Creek to the subject property.

MICROFILMED
OCT 11 1994

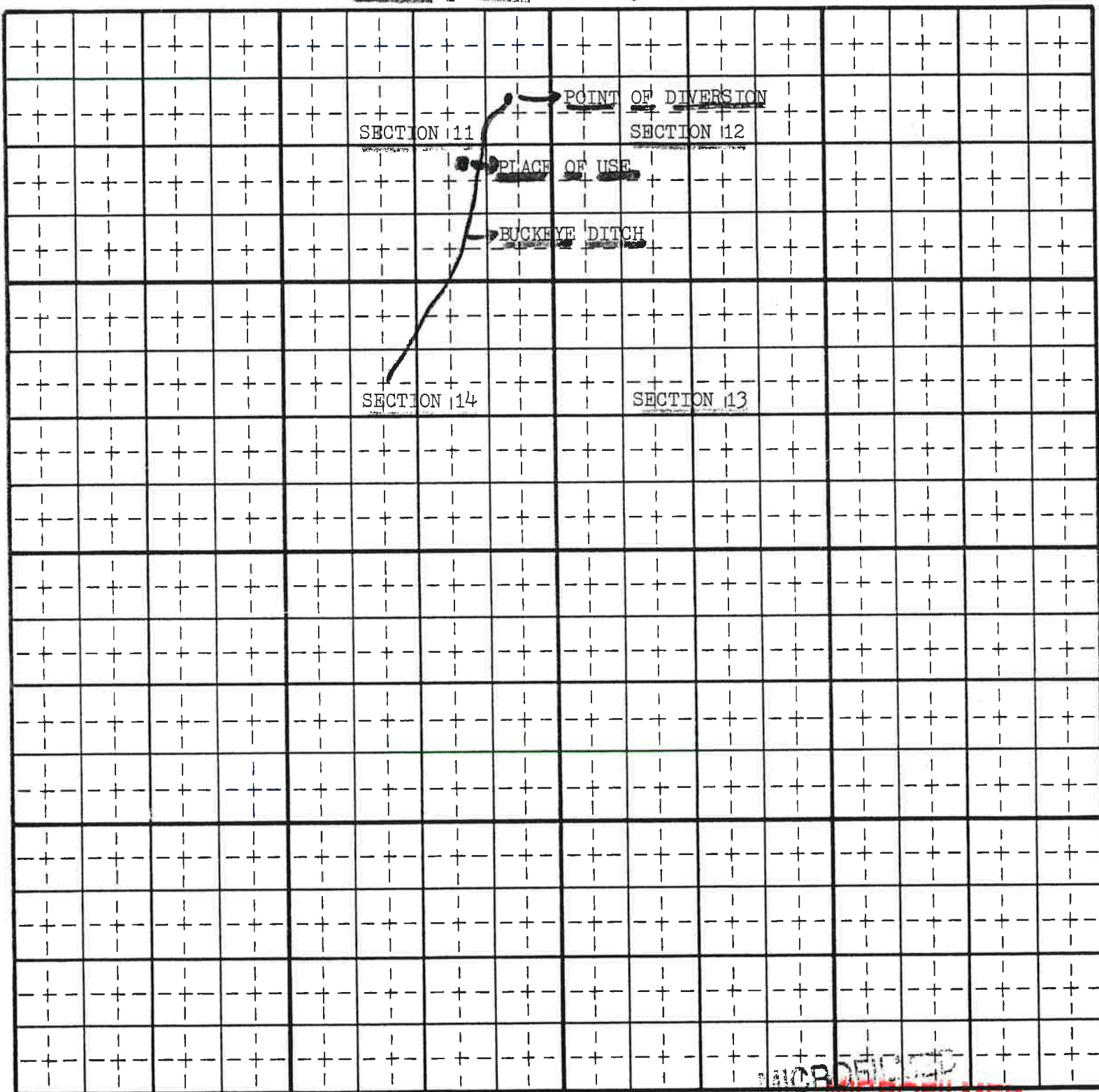
Last Name KINNISON Ident No. _____

Copies: White -State, Yellow-Claimant

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

TOWNSHIP 7 SOUTH, RANGE 13 EAST OF THE BOISE MERIDIAN



MICROFILMED
JAN 21 1993
OCT 11 1994

Last Name KINNISON Ident No. _____

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) Be. Legal Use Posted Notice License Permit
Decree X

If applicable provide IDWR Water Right Number Part of 36-0039

Court U.S. District Court Case Number 1602 Decree Date March 22, 1932

Plaintiff vs Defendant New International Mortgage Bank vs Idaho Power Company

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 not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments two (2)

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s)

Patsy G. Kinnison
Philip A. Kinnison

Date 3-4-91

Date 3/4/91

For Organizations: I do solemnly swear or affirm that I am _____

Title

of _____, that I have signed the foregoing
Organization

document in the space below as _____ of _____
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____ Date _____

✓ State of ~~Idaho~~/or Colorado)
County of Jefferson) SS.

Subscribed and sworn (or affirmed) before me this 4th day of March 19 91

SEAL

Notary Public [Signature]

Residing at _____

My Commission Expires _____

Please Print Name

MY COMMISSION EXPIRES:
JUNE 28, 1994
2625 S. COLORADO BLVD.
DENVER, CO 80222

17. Notice of Appearance:

Notice is hereby given that I, _____ will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

MICROFILMED
OCT 11 1994
JAN 21 1995

Last Name KINNISON Ident. Number _____

Copies White-State, Yellow-Claimant

WARRANTY DEED

POOR ORIGINAL

For Value Received

WE, ROBERT NICHOLSON WOLFE and EMMA LOUISE WOLFE, husband and wife,
 the grantors, do hereby grant, bargain, sell and convey unto
 PHILIP T. KINNISON and PATSY A. KINNISON, husband and wife,
 the grantees, whose current address is 7909 West Harvard Place, Lakewood, Colorado,
 the following described premises, in Gooding County Idaho, to-wit:

1. Block 2, Willingbrook Subdivision
 refers to the official plat thereof
 file in the County Recorder, records
 Gooding County, Idaho.

together with 7 shares of water for
 irrigation purposes from the Buckeye
 Water Company.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee,
 their heirs and assigns forever. And the said Grantor & do hereby covenant to and
 warrant said Grantee that they the owner's in fee simple of said premises; that they are true
 to the boundaries.

And that they will warrant and defend the same from all lawful claims whatsoever.
 Dated December 19, 1982.

Robert Nicholson Wolfe
 Robert Nicholson Wolfe

Emma Louise Wolfe
 Emma Louise Wolfe

STATE OF IDAHO, COUNTY OF Gooding
 On this 19th day of December, 1982,
 before me, a Notary Public in and for the said State, per-
 sonally appeared ROBERT NICHOLSON WOLFE
 and EMMA LOUISE WOLFE,
 known to me to be the person whose name & AFO

known to me to be the person whose name & AFO
 authorized to the within instrument, and acknowledged to
 me that they executed the same.

Richard H. Halpin
 Notary Public

Commission Expires March 23, 1984
 Comm. Expired

Seal of Idaho
 Notary Public

STATE OF IDAHO, COUNTY OF Gooding
 I hereby certify that this instrument was filed for record at
 the request of SECURITY TITLE CO.

at 24 minutes past 6 o'clock P.M.
 this 6 day of Jan
 1983, in my office, and duly recorded in Book
 of Deeds at Page 10000.

By *Judy Kinnison*
 Ex-Officio Recorder

By *Judy Kinnison* Deputy
 Fee \$2.00
 Mail to: ☒

INSTRUMENT NO.

98617

MICROFILM
 JAN 2 1983

and is 729 feet south of the section line between said section 2 and 11; thence north 80 degrees 28' west 949 feet to a point (which point is 573.8 feet south of a point on the section line between said sections 2 and 11 in said Twp. and Range aforesaid 1320 feet west from the said quarter corner between sections 2 and 11 first above mentioned;)- thence north 80 degrees 28' west 199.1 feet to a point; thence south 23 degrees 40' west about 2269 feet to a point 290 feet east from the quarter corner on the west boundary line of section 11, Twp. 7 S. R. 13 E. B. M. 13 thence east along the south boundary line of Lot 3 of said Section 11 to the southeast corner of said Lot 3; thence north along the east boundary line of said Lot 3 to the northeast corner thereof; thence east along the south boundary line of Lot 2, in said section 11 to the southeast corner of said Lot 2; thence north along the east boundary line of said Lot 2 to the place of beginning.

POOR ORIGINAL

038 Condit 5 Spring April 1, 1930 Huitt Spring
James E. (Said Huitt Spring is located on the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 19, Twp. 7 S. R. 14
and E.B.M.)
Jennie The NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ (also known as Lot 3) of Section 19, Twp. 7 S. R. 14 E.B.M.
M. Condit

039 Dilatash, 2.4 Billingsley Creek Jan. 2, 1891 Granger Ditch
and 3 Spring Jan. 2, 1891 Unnamed Spring
04 Alice I. (Said unnamed spring arises in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R. 13
Dilatash, E. B. M. at a point 1065 feet north 2 degrees 2' west from the southeast corner of
and Charles C. said tract of land. That the point of diversion of said Granger Ditch is on the
Carey bank of Billingsley Creek about 100 feet below the diversion point of said Buckeye
Ditch and from the diversion point of said Granger Ditch the quarter section
corner common to secs. 11 and 12 Twp. 7 S. R. 13 E. B. M. bears south 31 degrees
27' east a distance of 333.4 ft)

Beginning at the southeast corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 11, Twp. 7 S. R.

MICROFILMED
JUL 11 1994

thence west along the forty line 1075'; thence north 20 degrees 49' east 520 feet; thence north 24 degrees 34' east 450 feet; thence south 81 degrees 26' east 593 feet to the east forty line, thence south along the forty line 1122 feet to the point of beginning.

041 Eliason,	.6	Spring	Dec. 12, 1901	Weatherby Springs;
042 Armedia	.4	Spring	April 4, 1910	(Hoagland Tunnel) Weatherby Springs;

The NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 36, Twp. 7 S. R. 13 E. B. M. excepting therefrom, however, the following described tract of land: Beginning at the quarter corner between Sections 25 and 36 of said township and range, running thence east 399 feet to the center of the public highway, thence in a southwesterly direction in the center of said highway 273 feet, thence westerly along the north bank of the Clifford Ditch 370 feet, to the west boundary line of said NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 36, thence north along said west boundary line 257 feet to the point of beginning, said tract of land excepted containing 2.2 acres, more or less, and the property herein described containing 37.3 acres, more or less.

04 Eliason	1.6	Len Lewis Spring	Sept. 1, 1889	Brailsford-Owens Ditch
044 Jacob and Carrie I.	.7	Spring	March 8, 1902	Weatherby Springs;

The SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 25, Twp. 7 S. R. 13 E. B. M.; also that certain portion of the northwest corner of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 36, in Twp. 7 S. R. 13 E. B. M. in Idaho, more particularly described as follows, to-wit: Beginning at the quarter corner between sections 25 and 36 in said Twp. 7 S. R. 13 E. B. M. running thence east a distance of 399 feet to the center of the public highway, thence in

MICROFILMED
OCT 11 1994

POOR ORIGINAL

JAN 2 1951

IDWR'S RESPONSE TO ANSWER, AFFIRMATIVE DEFENSES AND PRAYER FOR
RELIEF OF CLAIMANT

This portion of the response addresses the multi-page attachment to the objection (hereinafter "the attachment"), wherein the claimant admits or denies all sections of Parts I, II, and III of the director's report, asserts 27 affirmative defenses, and alleges a prayer for relief. The attachment contains the following sections, corresponding to the various sections of the director's report:

- (1) I. GENERAL RESPONSE
- (2) II. DESCRIPTIVE SUMMARY, (first unnumbered page of Part I of the director's report)
- (3) III. TABLE OF CONTENTS (second and third unnumbered pages of Part I of the director's report)
- (4) IV. 1. INSTRUCTIONS FOR USING THIS REPORT PART I (page 1 of Part I of the director's report)
- (5) IV. 2. SCOPE OF THE ADJUDICATION (pages 1-3 of Part I of the director's report)
- (6) IV. 3. PURPOSE OF THIS REPORT PART I (pages 3-4 of Part I of the director's report)
- (7) V. 1. BOUNDARIES OF BASIN (pages 4-6 of Part I of the director's report)
- (8) V. 2. WATER SOURCES (page 6 of Part I of the director's report)
- (9) V. 3. DEVELOPMENT OF WATER USE (pages 6-9 of Part I of the director's report)
- (10) VI. GENERAL PROVISIONS 1-8 APPLY TO ALL WATER RIGHTS IN BASIN 36 (page 9 of Part I of the director's report)
- (11) VI. General Provision 1. EFFECT OF ADJUDICATION (page 9 of Part I of the director's report)
- (12) VI. General Provision 2. GENERAL ADMINISTRATIVE PROVISIONS (pages 9-10 of Part I of the director's report)
- (13) VI. General Provision 3. CONJUNCTIVE ADMINISTRATION (page 10 of Part I of the director's report)
- (13) VI. General Provision 4. ADMINISTRATION OF GROUND WATER RIGHTS (page 10 of Part I of the director's report)
- (14) VI. General Provision 5. ADMINISTRATION OF BASIN 36 RELATIVE TO THE SNAKE RIVER (page 10 of Part I of the director's report)
- (15) VI. General Provision 6. ADMINISTRATION OF SMALL DOMESTIC AND STOCK WATER RIGHTS (page 11 of Part I of the director's report)
- (16) VI. General Provision 7. MEASURING DEVICES AND CONTROL

- WORKS (page 11 of Part I of the director's report)
- (17) VI. General Provision 8. **FIRE FIGHTING PURPOSES** (page 11 of Part I of the director's report)
 - (18) VI. General Provision 9. **CONSUMPTIVE USE** (page 12 of Part I of the director's report)
 - (19) VI. **GENERAL PROVISION 10 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH DOMESTIC USE AS A PURPOSE OF USE** (page 12 of Part I of the director's report)
 - (20) VI. General Provision 10. **DOMESTIC USE** (page 12 of Part I of the director's report)
 - (21) VI. **GENERAL PROVISION 11 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH STOCK WATER USE AS A PURPOSE OF USE** (page 13 of Part I of the director's report)
 - (22) VI. General Provision 11. **STOCK WATER USE** (page 13 of Part I of the director's report)
 - (23) VI. **GENERAL PROVISIONS 12-16 APPLY TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH IRRIGATION AS A PURPOSE OF USE** (page 13 of Part I of the director's report)
 - (24) VI. General Provision 12. **IRRIGATION USE** (pages 13-14 of Part I of the director's report)
 - (25) VI. General Provision 13. **DIVERSION VOLUME FOR IRRIGATION** (page 14 of Part I of the director's report)
 - (26) VI. General Provision 14. **CONSUMPTIVE USE FOR IRRIGATION** (pages 14-15 of Part I of the director's report)
 - (27) VI. General Provision 15. **AMOUNT OF COMBINED WATER RIGHTS FOR IRRIGATION** (page 15 of Part I of the director's report)
 - (28) VI. General Provision 16. **DIVERSION RATES IN EXCESS OF .02 CFS PER ACRE** (pages 15-16 of Part I of the director's report)
 - (30) VI. 17. **INSTRUCTIONS FOR USE OF LIST OF RECOMMENDED WATER RIGHTS** (pages A-i through A-iii of Part I of the director's report)
 - (31) VI. 18. **IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW** (pages A-1 through B-25 of Part I of the director's report)
 - (32) **DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36), (DIRECTOR'S REPORT PART II)**
 - (33) **DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36), (DIRECTOR'S REPORT PART III)**

The attachment also contains part VIII, **AFFIRMATIVE DEFENSES** (pp. 20 through 28) and a **PRAYER FOR RELIEF** (untitled, p. 28).

In response to each of the items enumerated above IDWR responds that pursuant to Section 4 a.(2)(c) of SRBA Administrative Order 1, Rules of Procedure, IDWR generally denies each and every allegation, if any, contained in each enumerated portion of the attachment. IDWR affirmatively responds that neither SRBA Administrative Order 1, Rules of Procedure, nor Title 42, Chapter 14, Idaho Code, make provision for IDWR to affirm, amplify, or otherwise respond to the claimant's admissions, or to deny the claimant's denials, and that IDWR therefore does not believe that it is required to do so. Title 42, Chapter 14, Idaho Code solely defines the content and scope of the director's report. It is to contain a description of the water system and is to provide a recommendation as to each water right claimed and as to those matters necessary for administration of those water rights. Therefore, the content and scope of the objection is limited to those same matters. The attachment to the present objection asserts or otherwise raises matters not directly addressing the elements of the water right as recommended, the description of the water system, or the general provisions. Rather, the attachment raises broad issues as to the constitutional, statutory and administrative efficacy of the entire adjudication process. All such issues should be raised by means of motions to designate basinwide issues and similar procedural vehicles specifically designed to provide for basinwide notice and participation. They should not be permitted to divert the focus of any individual subcase away from the issues directly connected to the elements of the water right and the administration thereof. Therefore, because the attachment to the present objection is not within the scope of the statutory purpose of an objection it should be stricken.

However, in the event that the court should determine that all or part of the attachment is properly within the scope of the objection, IDWR further responds as follows:

IDWR affirmatively responds that all statements within the director's report are properly included therein pursuant to Title 42, Chapter 14, Idaho Code, and in particular pursuant to Idaho Code §§ 42-1411 and 42-1412(8); and that the provisions of the Idaho Rules of Civil Procedure regarding pleadings are inapplicable to the extent that they are in conflict with the statutory requirements. Therefore IDWR denies all allegations directed at the contents of the director's report.

As to the enumerated portions of the attachment addressing the listings of recommended water rights, abstracts of federal reserved water right claims, or negotiated agreements, other than the individual recommendation that is the subject of this objection, IDWR responds that such claims or agreements are not brought before this court by this objection.

Responding to the 27 affirmative defenses asserted in the attachment, IDWR generally denies each and every affirmative defense asserted. IDWR further responds that affirmative defense numbers 1, 2, 4, 5, 10, 11, 12, 18, and 22, asserting various violations of civil or constitutional rights, fail to comply with the requirements I.R.C.P. 9(b) providing that in all averments of violation of civil or constitutional rights the factual circumstances constituting such violation must be stated with particularity. Accordingly, IDWR asserts that those affirmative defenses should be stricken.

In response to that portion of the multi-page attachment to the objection wherein the claimant asserts a prayer for relief, IDWR responds as follows:

1. IDWR denies that the director's report asserts any claims against the claimant; rather, the director's report contains only the recommendation of the director as to how the claimant's water right should be decreed and administered.
2. IDWR denies that the claimant is entitled to have the water right decreed as claimed unless in the director's report the water right has been recommended as claimed.
3. IDWR denies that any acts upon its part constitute the taking of private property for which just compensation should be allowed and awarded.
4. IDWR denies that the claimant is entitled to recover court costs and reasonable attorney fees.
5. IDWR denies that the claimant by this objection has raised any claims against IDWR entitling such claimant to any relief other than the eventual judicial determination and decree of the various elements of the claimant's water right, if any, and of those related matters necessary to describe and administer that water right.

RECEIPT
For Monies Paid
to the
IDAHO DEPARTMENT OF WATER RESOURCES

36-00039P

Receipt No: 5015581

Date: 4/ 6/1993
Time: 11:58:46

Received

From: BOTHWELL, MARY

Type of Payment	Program	Acct	Class	Amount
COPIES ADJ/FILES	64100	229.21	1760	6.74

Total

CHECK 3039

\$6.74

Region: SOUTHERN

Signature: _____

Janie Robertson

MICROFILMED
OCT 11 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

05-Feb-1993

BRUCE R BOTHWELL
PO BOX 444
HAGERMAN ID 83332

RE: Copy of SRBA File(s): 36-00039F, 36-00039P, 36-10673

Dear Mr. Bothwell:

Please find enclosed the copies of documents you recently requested contained in the above referenced SRBA file(s) as of this date. Please note that copies of orthophoto quad maps or NAPP photography or aerial slides which may have been used in the review of your claim(s) have not been included since they are not easily reproduced. These items are however available for your review at our office. Please also note that in some situations some water rights may have other associated files which contain privileged information between IDWR staff and our legal council which has not been copied.

Please remit the following for the cost of the copies and postage:

\$6.74

Sincerely,

Jeanie
Jeanie Robertson
Records Clerk

Encl:

Bothwell
36
33
5
74 x 5 = 3.70
post. 2.90
env. .14
6.74

MICROFILMED

OCT 11 1994

RECEIVED

FEB 03 1993

Department of Water Resources
Southern Region Office

1/14/93
(Date)

IDAHO DEPARTMENT OF WATER RESOURCES
222 SHOSHONE ST. EAST
TWIN FALLS, IDAHO 83301

Dear Idaho Department of Water Resources:

Please provide me with a copy of all information included in
my file as it relates to water right number 36-00039 P 36-10673
36-00039 F

Please advise me of any documents in my file which you are not
releasing to me and why they are not being released.

Please bill me for the copy charge.

Sincerely,

James R. Stewart
(Name)

P.O. Box 4444
(Address)

Heppner ID 83332
(City, State, Zip Code)

cc: David B. Shaw, Adjudication Bureau Chief
Idaho Department of Water Resources
1301 North Orchard Street
Statenhouse Mail
Boise, Idaho 83720-9000

MICROFILMED
OCT 11 1994

RECEIVED

APR 30 1993

Department of Water Resources
Adjudication Bureau

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

Case No. A36-00039P
(You must insert the
water right number you
are objecting to)

The State of Idaho, ex rel.
R. Keith Higginson in his
official capacity as Director
of the Idaho Department of
Water Resources,

OBJECTION

Petitioner,

vs.

The United States; the State
of Idaho; and all Claimants to
the use of water from the Snake
River Basin Water System,

36-00039P -0001/
93-04-0043

Respondents.

INSTRUCTIONS

This form must be used to file an objection to any water right recommended in the Director's Report. You may object to one water right per objection form. The water right number you are objecting to must be indicated above in the blank space following "Case No." To object to more than one water right, you must file a separate objection form for each. Forms may be obtained from the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form, as long as it is identical to the court's form. You must file your objection by the deadline shown in the notice that IDWR mailed to you. The objection must be received by the court on or before the deadline specified. Instructions for mailing this objection are found at Page 6, and must be strictly followed.

Any party physically filing 25 (twenty-five) or more objections must make an appointment with the Clerk of the Adjudication Court and arrange for an appointment to file multiple objections.

(Over)

OBJECTION - 1

MICROFILMED
OCT 11 1994

By filing an objection form, you are certifying that the objection is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and that it is not filed for any improper purpose, such as to harass, cause unnecessary delay or needless increase in the cost of litigation.

I. GENERAL INFORMATION

Please fill in the following information:

1. Person objecting:

Name: Bruce R. and Mary L. Bothwell

Address: P.O. Box 444

Hagerman, ID 83332

Briefly describe your interest in this water right:

Decreed water right pursuant to New

International Mortgage Bank v. Idaho Power

Company 3/22/32 decree with a priority date

of 01/02/1891

2. Owner of the water right:

Name: Bruce R. and Mary L. Bothwell

Address: P.O. Box 444

Hagerman, ID 83332

3. If this objection is filed by an attorney:

Attorney Name: Patrick D. Brown & Penelope Parker

Attorney Address: Hepworth, Nungester & Lezamiz

P.O. Box 389, Twin Falls, ID 83303

Attorney Phone No.: (208) 734-7510

If filed by an attorney, notice of pending court proceedings will be sent to the attorney only.

II. STATEMENT OF THE OBJECTION

Please check each "box" which states your objection to the recommendation in the Director's Report.

1. ☐ Name and Address: I object to the name and/or address of the owner of the water right.
2. ☐ Source: I object to the source of water.
3. ☒ Quantity: I object to:
 - a. ☒ the total quantity of water used in cubic feet per second; or
 - b. ☐ the total quantity of water stored in acre-feet per year; or
 - c. ☐ the total quantity of water reserved for each and every purpose, including all present and future uses.
4. ☐ Priority Date: I object to the priority date.
5. ☐ Points of Diversion: I object to the legal description of the point(s) of diversion.
6. ☐ Instream Flow: I object to the legal description of the beginning and ending points of the instream flow.
7. ☒ Purpose(s) of Use: I object to the purpose(s) of use.
8. ☐ Period of Year: I object to the period of year when water is used or is necessary for the purpose stated.
9. ☐ Place of Use: I object to:
 - a. ☐ the legal description of the place of use; or
 - b. ☐ the number of irrigated acres within each forty (40) acre subdivision.
10. ☒ Consumptive Use: I object to the annual volume of consumptive use.
11. ☒ Remarks: I object to the "remarks" listed with the water right.

(Over)

MICROFILMED
OCT 11 1994

12. ☐ Water Right Recommendation: I object to:
- a. ☐ this water right being recommended at all; or
- b. ☐ this water right not being recommended.
13. ☐ Description of Reservation: I object to the legal description of the reservation.
14. ☒ Other: I object to: See attached
- _____
- _____
- _____
- _____

REASONS SUPPORTING EACH BOX CHECKED

In the space following, you must state the reason(s) by number for each box checked. You may use additional pages if necessary.

See Page 7

CHANGES TO THE DIRECTOR'S REPORT

Specifically describe how you want the Director's Report to be changed. You may use additional pages if necessary.

Maximum quantity: pursuant to decree and/or beneficial use,

if greater; Purpose of use: add stockwater & aesthetic;

consumptive use: change accordingly; Remarks: strike all

remarks appearing after "Willowbrook Subdivision".

Please note: You should attach copies of documents which support your objection. Note on each document the "box number" it supports.

☒

Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary. _____

See Hagerman Water Right Owners, Inc.'s

Compendium "A"

VERIFICATION (Must be Completed)

State of Idaho

County of Coeur d'Alene

George L. Bahr + Mary L. Bahr, being first duly
(Name of person filing objection)
sworn, upon oath, deposes and says:

That I am the person or entity filing this objection, that I am a water claimant or party in this proceeding, as defined by I.C. Sec 42-1401A(1) and (7), and that I have read the foregoing objection, know its contents and that the statements contained therein are true to the best of my knowledge and belief.

George L. Bahr Mary L. Bahr
Signature of person filing objection

By: [Signature]

(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 20th day of April,
1993.

[Signature]
Notary Public for Idaho
Residing at: HAGERMAN, IDAHO
My Commission Expires: 5-10-97

MICROFILMED

OCT 11 1994

(Over)

INSTRUCTIONS FOR MAILING

You must mail the objection, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted by the Clerk of the Court.** You must also send a copy to the owner of the water right, if other than yourself; to the Office of the Attorney General, State of Idaho; and to the United States Department of Justice, as set out below in the Certificate of Mailing. Finally, you must sign the Certificate of Mailing to show that you followed these steps.

CERTIFICATE OF MAILING

I hereby certify that on the 28 day of April, 1993, I mailed the original and copies of the foregoing objection, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepaid and addressed as follows:

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

2. One copy to the owner of the water right, and you must fill in the following information:

Owner name: Bruce R. and Mary L. Bothwell

Owner's address: P.O. Box 444

Hagerman, ID 83332

3. One copy to:

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

4. One copy to:

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 33
Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf

REASONS SUPPORTING EACH BOX CHECKED, page 4

Box 3, 3a and 10 - IDWR recommends an amount less than decreed and/or beneficially used. A reduction in water right would constitute a taking.

Box 7 - Beneficially used for purposes set forth in notice of claim.

Box 11 - This is beyond the statutory authority vested in the Director.

CHANGES TO DIRECTOR'S REPORT, page 4

Objectors reserve the right to claim all purposes of use and quantities of use as shown by the evidence at trial.

MICROFILMED
OCT 11 1994

Question 14., page 4, Other

I.

GENERAL RESPONSE

Except as specifically admitted herein, objectors deny each and every allegation contained in the Director's Report, any related or subsidiary pleadings, and/or any attachments thereto.

II.

DESCRIPTIVE SUMMARY

(DIRECTOR'S REPORT PART I)

(hereinafter DRP-I)

(DRP-I at first unnumbered page)

The objectors admit that Part I of the Director's recommendation contains some claims to water rights appropriated under state law from Reporting Area 3. The objectors deny all other averments because the objectors lack sufficient knowledge or information upon which to form a belief as to the truth of the averments.

III.

TABLE OF CONTENTS

(DRP-I at 2nd and 3rd unnumbered pages)

The objectors admit that the Table of Contents reflects the page numbers of the referenced sections and deny all other averments based upon the objectors' lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments and because any averment, expressed or implied, is so

indefinite that it prevents the objectors from knowing what would be admitted or denied.

IV.

INTRODUCTION

1. INSTRUCTIONS FOR USING THIS REPORT PART I. (DRP-I at page 1)

The objectors admit that Part I consists of seven sections; that the description of the water system includes a brief description of Reporting Area 3 and an illustration of the boundaries of the reporting area; that the water rights and the list of the recommended rights are grouped alphabetically by source and listed chronologically by priority date; that the rights or claims in the list of claims/rights not recommended are listed numerically by water right number; and that brief instructions are found at the beginning of the applicable sections. The objectors deny that any description or any implication that the description of the water system or the illustrations are true and accurate due to lack of knowledge or information regarding the truth of the averment; deny that the general provisions apply to all water rights or define or limit classes of water rights; and deny that the general provisions "will affect your water right," based upon insufficient knowledge or information upon which to form a belief as to the truth of the averments.

2. SCOPE OF THE ADJUDICATION. (DRP-I at page 1 - 3)

The objectors deny all averments in paragraph a., due to lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments.

Regarding paragraph b., the objectors lack sufficient information or knowledge upon which to form a belief as to whether water rights which are not claimed in the adjudication will or will not exist upon entry of the court's decree and, therefore, deny such averment. The objectors admit that the court entered an order dated January 17, 1989, but presently lack sufficient knowledge to know whether any of the other averments concerning the court's order are true or accurate and, therefore, deny the same. The objectors deny that a right must be adjudicated before water may be distributed by the director. The objectors deny all other averments in paragraph b.

3. PURPOSE OF THIS REPORT PART I. (DRP-I at page 3 - 4)

The objectors admit that portion of the first sentence which states "This report contains the Director's recommendations to the SRBA District Court as to the nature and extent of water rights," but deny that such recommendations "are necessary for administration of water rights in Reporting Area 3," and further deny the Director has authority to "administer" such rights.

Regarding the second paragraph, the objectors admit that all water rights remain subject to the applicable law generally, but deny the remainder of the second paragraph.

Regarding the third paragraph of this section, the objectors deny all averments therein based upon lack of knowledge or information upon which to form a belief as to the truthfulness of the averments.

V.

DESCRIPTION OF THE WATER SYSTEM: BASIN 36

1. **BOUNDARIES OF BASIN.** (DRP-I at pages 4 - 6)

Regarding the first paragraph of this section, the objectors deny all averments due to a lack of knowledge or information upon which to admit or deny.

Regarding the second, third and fourth paragraphs of this section, the objectors admit that as broad statements, those paragraphs are generally accurate but the statements are so broad and attenuated from any matter relevant to the objectors' water right that the objectors are unable to know what would be implicitly admitted or denied and therefore, deny the same.

With respect to the fifth paragraph of this section, the objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred and, therefore, deny the averments.

2. **WATER SOURCES.** (DRP-I at page 6)

The objectors admit that the Snake River Plain Aquifer is the source of outflows of springs located along the Snake River Canyon Wall in the Hagerman Valley. The objectors presently lack sufficient knowledge or information upon which to form an opinion as to the truth of the other averments set out in this section and, therefore, deny the same.

3. **DEVELOPMENT OF WATER USE.** (DRP-I at pages 6 - 9)

The objectors admit that numerous factual and historical averments are set out in this section, which may be accurate, but

these objectors have no basis for knowing whether some or all of the averments are intended to relate to the objectors' claims and, thus, are prevented from knowing what would be admitted or denied. Therefore, the averments are denied.

VI.

GENERAL PROVISIONS

GENERAL PROVISIONS 1 - 8 APPLY TO ALL WATER RIGHTS IN BASIN 36.
(DRP-I at page 9)

The objectors deny that "General Provisions 1 - 8" apply to all water rights in Basin 36 as the statements are so broad and attenuated from any matter relevant to the objectors' water rights, that the objectors are unable to know what would be explicitly admitted or denied. The objectors also specifically deny that general provisions 1-8 apply to the objectors' right.

1. EFFECT OF ADJUDICATION. (DRP-I at page 9)

With respect to paragraph a., the objectors presently have no knowledge or information upon which to form a belief as to the truth of whether a future decree would supersede prior decrees, or whether unclaimed rights would cease to exist and, therefore, deny the same.

Regarding paragraph b., the objectors deny that the Director has any powers to administer water rights other than those specifically delegated by the Legislature of the State of Idaho, and which do not violate the objectors' state and federal constitutional rights, and therefore the averments are denied.

2. GENERAL ADMINISTRATIVE PROVISIONS. (DRP-I at pages 9 - 10)

The objectors admit paragraphs a. and b.

3. CONJUNCTIVE ADMINISTRATION (DRP-I at page 10)

The objectors deny the conjunctive administration provisions based upon the objectors' lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments and because any averment expressed or implied is so indefinite that it prevents the objectors from fairly understanding what would be admitted or denied. Additionally, the objectors deny that the Department of Water Resources has any statutory or regulatory authority for the "conjunctive administration" as therein described.

4. ADMINISTRATION OF GROUND WATER RIGHTS (DRP-I at page 10)

The objectors deny the averments within this section.

5. ADMINISTRATION OF BASIN 36 RELATIVE TO THE SNAKE RIVER (DRP-I at page 10)

The objectors admit that the springs are hydrologically interconnected with the Snake River Aquifer, but deny all other averments based upon the objectors' lack of sufficient information or knowledge upon which to form a belief as to the averments herein. The objectors additionally deny any said averments expressed or implied because the averments are so indefinite and generalized as to prevent the objectors from fairly understanding what would be admitted or denied.

6. ADMINISTRATION OF SMALL DOMESTIC AND STOCK WATER RIGHTS (DRP-I at page 11)

The objectors admit that part of the first sentence of subparagraph a. to the effect that "small domestic and stock water rights from surface water are not subject to administration," but deny the balance of said sentence and said paragraph.

The objectors admit the first sentence of paragraph b., and deny the balance of that paragraph because the criteria set forth therein ("if the director determines that administration is necessary") is so ambiguous, indefinite and uncertain that it prevents the objectors from knowing what would be admitted or denied, and by further reason of the fact that no statutory or regulatory authority exists conferring such sweeping and unlimited authority upon the Director or the Department.

The objectors deny the averments in paragraph c. as the averments are inaccurate and because the objectors lack sufficient knowledge or information upon which to form a belief as to the truth of the matters averred.

7. MEASURING DEVICES AND CONTROL WORKS (DRP-I at page 11)

The objectors deny all averments contained herein as such averments are based upon an indeterminate subjective standards which are so ambiguous and indefinite as to prevent the objectors from fairly knowing what would be admitted or denied. Additionally, no statutory or regulatory authority exists conferring such sweeping and unlimited authority upon the Director or the Department as is alleged in this paragraph.

MICROFILMED
OCT 11 1994

8. FIRE FIGHTING PURPOSES (DRP-I at page 11)

The objectors admit that subparagraph a. and subparagraph b. are generally accurate statements of present law, but deny the averments are in any way relevant to defining the objectors' right.

9. CONSUMPTIVE USE (DRP-I at page 12)

The objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred and, therefore, deny the same.

GENERAL PROVISION 10 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH DOMESTIC USE AS A PURPOSE OF USE (DRP-I at page 12)

The objectors deny that "General Provision 10" applies to all water rights in Basin 36 shown with domestic use as a purpose of use as the statements are so broad and attenuated from any matter relevant to the objectors' water rights, that the objectors are unable to fairly understand what would be explicitly admitted or denied and, therefore, deny the same.

10. DOMESTIC USE (DRP-I at page 12)

The objectors deny that the definition of "domestic use" contained in paragraphs a., b., and c. is consistent or in conformity with the definition of such term for purposes of the Idaho Constitution, or statutory definition contained in I.C. Section 42-111 as now, or as heretofore in effect at relevant times. The objectors further deny that the limitations set forth therein exist, are in force, or apply or serve in any way to limit objectors' rights.

GENERAL PROVISION 11 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH STOCK WATER USE AS A PURPOSE OF USE. (DRP-I at page 13)

The objectors deny that "General Provision 11" applies to all water rights in Basin 36 shown with stock water use as a purpose of use as the statements are so broad and attenuated from any matter relevant to the objectors' water right, that the objectors are unable to fairly understand what would be admitted or denied and, therefore, deny the same.

11. STOCK WATER USE (DRP-I at page 13)

The objectors deny the averments herein as beyond the scope and applicability of the definition as provided by Idaho law as now, or as heretofore in effect at relevant times. The objectors further deny that the limitations set forth therein limit the objectors' right or are relevant to the right.

GENERAL PROVISIONS 12 - 16 APPLY TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH IRRIGATION AS A PURPOSE OF USE (DRP-I at page 13)

The objectors deny that "General Provisions 12 - 16" apply to all water rights in Basin 36 shown with irrigation as a purpose of use as the statements are so broad and attenuated from any matter relevant to the objectors' water right that the objectors are unable to fairly understand what would be admitted or denied.

12. IRRIGATION USE. (DRP-I at pages 13 - 14)

The objectors deny all averments based upon the objectors' lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments and because

prevent the objectors from fairly knowing what would be admitted or denied; because the standard utilized ("as determined by the director") is ambiguous, subjective and indefinite so as to prevent objectors from knowing what would be admitted or denied; and because it is both expressly and implicitly in excess of the power and authority conferred upon the State of Idaho, the Director or the Department by the Constitutions of the United States and State of Idaho, pertinent provisions of the Idaho Code or valid applicable regulations, if any, adopted by the Department in conformity with law. Therefore, the objectors deny the same.

13. DIVERSION VOLUME FOR IRRIGATION. (DRP-I at page 14)

The objectors admit that Figure 1 generally depicts certain lands in Basin 36; however, the objectors deny all other averments including that the amounts set forth are the maximum annual volume of water reasonably required at the field headgate for irrigation, either within Basin 36 in general, or upon objectors' real property in particular. The objectors additionally deny that the maximum annual volumes per acre set forth is that which is "reasonably required for irrigation unless a higher annual diversion volume is reasonably required due to conveyance losses, method of irrigation or field conditions;" because the standard utilized ("as determined by the director") is ambiguous, subjective and indefinite so as to prevent objectors from knowing what would be admitted or denied; and because it is both expressly and implicitly in excess of the power and authority conferred upon the State of Idaho, the Director or the Department

by the Constitutions of the United States and State of Idaho, pertinent provisions of the Idaho Code or valid applicable regulations, if any, adopted by the Department in conformity with law. Therefore, the objectors deny the same.

14. CONSUMPTIVE USE FOR IRRIGATION. (DRP-I at page 14 and 15)

The objectors admit that the recommended water rights contained within the Director's Report show only the irrigation use listed unless otherwise indicated in "Remarks." The objectors deny all other averments contained within this section, including the amount of maximum annual volume of consumptive use per acre in the northern and southern portions of the basin, all of which is beyond the scope of any power or authority vested in the Director or the Department, and contrary to fact; historical use; established, vested, decreed, licensed or permitted rights.

15. AMOUNT OF COMBINED WATER RIGHTS FOR IRRIGATION. (DRP-I at page 15)

The specific averments have no relationship to or basis in fact relating to the individual needs or rights of the objectors, and accordingly, objectors deny this section in its entirety. In addition, no statutory or regulatory authority exists conferring upon the Director, or the Department, the power to limit use and ownership of objectors' private property rights as alleged.

16. DIVERSION RATES IN EXCESS OF .02 CFS PER ACRE. (DRP-I at page 15 - 16)

The objectors deny the averments contained in this section in its entirety.

17. INSTRUCTIONS FOR USE OF LIST OF RECOMMENDED WATER RIGHTS. (DRP-I at page A-i, A-ii and A-iii)

The objectors admit that each water right in the list of recommended water rights includes a description including right number, name and address, source, maximum quantity, consumptive use, priority date, point of diversion, purpose of use, period of use, place of use, basis of right and others. The objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred in said descriptions other than that the descriptions allegedly include the Director's or Department's version of the facts as they relate to the matters identified. Objectors deny the accuracy of the substantive allegations or information set forth with regard to the objectors' right.

18. IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW. (DRP-I, pages A-1 - B-25)

The objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred in said recommended water rights other than those specific admissions contained in Questions 1 - 12 of the attached individual objection, and therefore deny the same.

DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36)

(DIRECTOR'S REPORT PART II)

I.

Objectors do not understand the allegations, averments or contents of Part II of the Director's Report for Reporting Area 3 (Basin 36) to pertain or relate to objectors or their claims, and do not believe any response is required. To the extent a response is required, objectors deny the same in its entirety.

DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36)

(DIRECTOR'S REPORT PART III)

I.

No report denominated as Part III of the Director's Report for Reporting Area 3 (Basin 36) has been filed, and accordingly objectors are unable to admit, deny or otherwise response to the same. Objectors do not understand that the contemplated subject matter of such Part III will relate or pertain to objectors or their claims, and no response is required in any case. To the extent any response is required, objectors deny the same in its entirety.

VIII.

AFFIRMATIVE DEFENSES

Pursuant to I.R.C.P. 8(c), objectors herewith state the following matters of affirmative defense or avoidance:

AFFIRMATIVE DEFENSE NO. 1

The objectors' water right is an incorporeal form of real property (as defined by Idaho Code Sections 7-703, 73-114, 55-101,

MICROFILMED

OCT 11 1994

and like statutes) protected by Section 14, Article 1, of the Idaho Constitution, and the Fifth Amendment to the United States Constitution, and allege that the actions of the Director in recommending, limiting and/or regulating said rights is an unconstitutional infringement upon and a taking of private property, without just compensation and violation thereof.

AFFIRMATIVE DEFENSE NO. 2

The adjudication authorization legislation, I.C. Section 42-1401, et seq., on its face and as applied by the Director and the Department constitutes an improper delegation of constitutional power and authority conferred upon the executive, legislative and/or judicial branches of government and as such violate the provisions governing separation of powers set forth in Article 2, Section 1, Idaho Constitution.

AFFIRMATIVE DEFENSE NO. 3

The procedure set forth in the adjudication authorization legislation, statutes, I.C. Section 42-1401, et seq., and any rules, regulations, procedures, policies or standards promulgated by the Director and/or the Department, if any, are vague and so lacking in reasonable specificity so as to render them impossible of reasonable comprehension, or consistent and meaningful application.

AFFIRMATIVE DEFENSE NO. 4

The procedures, rules, regulations, policies or standards, if any, adopted, implemented and applied by the Department and/or the Director violate the equal protection and due

process clauses of the Fourteenth Amendment, United States Constitution, and Article 1, Sections 2 and 13, Idaho Constitution.

AFFIRMATIVE DEFENSE NO. 5

The adjudication authorization legislation, Idaho Code Section 42-1401, et seq., and the actions of the Director and Department in recommending, limiting and/or regulating the objectors' water right constitutes a violation of 42 U.S.C. Section 1983.

AFFIRMATIVE DEFENSE NO. 6

The water right owned by the objectors is the subject of valid existing decrees issued by the Director and Department, which decrees are binding upon the State of Idaho, the Department and the Director. As a result, the State of Idaho, the Department and the Director are precluded by the doctrines of res judicata, collateral estoppel, judicial estoppel and the like from relitigating or questioning the validity, existence or priority of such right, and/or from taking any position in the Director's Report, or otherwise, which is inconsistent with such decrees.

AFFIRMATIVE DEFENSE NO. 7

The Director's recommendations are contrary to decreed rights, historical use and extent licenses and permits issued by the Department. There has been no forfeiture nor abandonment of the objectors' water rights, nor have the objectors' water rights been prescriptively or adversely possessed, nor have such decrees been vacated or such licenses and permits revoked.

AFFIRMATIVE DEFENSE NO. 8

The Directors' Report fails to state a claim to the extent the same asserts a forfeiture, abandonment, prescriptive or adverse acquisition or loss, or loss resulting from estoppel, of the objectors' water right in the absence of any fact upon which forfeiture, abandonment, prescriptive or adverse acquisition for loss, or loss resulting from estoppel, may be based or asserted.

AFFIRMATIVE DEFENSE NO. 9

The objectors' water right is an incorporeal form of real property, as defined by Idaho Code Sections 7-703, 73-114, 55-101, and like statutes, and, as such, pursuant to Idaho Code Section 7-904, et. seq., the actions of the Director in attempting to limit, reduce and/or regulate such rights, and the assertion of some inconsistent proprietary ownership or right to use or control by the State of Idaho, constitutes an unauthorized and invalid taking of private property without the payment of just compensation, or compliance with statutory requirements, all in violation of Title 7, Chapter 7, Idaho Code.

AFFIRMATIVE DEFENSE NO. 10

The actions of the Director, the Department and their agents, servants and employees in recommending, limiting, reducing and/or regulating objector's water rights, either as alleged in the Director's Report or as in fact applied, violates objectors' rights as secured by Art. 1, Section 1; Art. 15, Sections 3, 4 and/or 5; and/or as otherwise provided in the Constitution of the State of Idaho.

AFFIRMATIVE DEFENSE NO. 11

The various allegations, statements and assertions contained in the Director's Report concerning the Department and/or the Director's position or intentions with regard to the adjudication, as well as the implementation of statutes and/or regulations, as well as the administration of water or management of water rights or claims to the beneficial uses of water, if implemented, constitute a violation of various provisions the United States and Idaho constitutions, and/or a violation of the letter, spirit and/or intent of various statutes enacted by the legislature, and/or constitute an exercise of purported authority or powers either in excess of those conferred by law, or in a manner inconsistent with those conferred by law, or both.

AFFIRMATIVE DEFENSE NO. 12

The individual recommendations relating to the specific water right of the objectors as set forth in the Director's Report are (1) not based upon substantial evidence and/or are not, in fact, the product of any reasonable, complete or accurate investigation as required by law; (2) are the product of arbitrary and capricious action on the part of the Department or the Director; (3) have been made in excess of the constitutional and statutory authority of the Department and the Director; (4) have been made upon an unlawful and invalid procedure; (5) are affected by various and sundry errors of law; and/or (6) are clearly erroneous in view of the reliable, probative and substantial evidence.

AFFIRMATIVE DEFENSE NO. 13

The Director's Report is a pleading subject to the provisions of the Idaho Rules of Civil Procedure, including, but not limited to the requirement of I.R.C.P. 8(a)(1) that such pleadings contain a clear and plain statement of the facts, demonstrating an entitlement to relief. The Director's Report violates such provision.

AFFIRMATIVE DEFENSE NO. 14

The Director's Report fails to state a claim upon which relief may be granted.

AFFIRMATIVE DEFENSE NO. 15

The Director's Report is subject to, and must comply with, the requirements of Idaho Code Section 42-1411. The Director's Report does not comply with the requirements of the statute.

AFFIRMATIVE DEFENSE NO. 16

In conducting the investigation and compiling the Director's Report, the Department and the Director have not complied with the requirements of Idaho Code Section 42-1410.

AFFIRMATIVE DEFENSE NO. 17

In conducting the investigation and compiling the Director's Report, the Department and the Director have not complied with the requirements of Idaho Code Section 42-1416.

AFFIRMATIVE DEFENSE NO. 18

The procedures specified in the authorizing legislation and procedural rules promulgated in accordance therewith serve to

deny objectors due process of law in violation of Amendment Fourteen to the Constitution of the United States and Art. 1, Section 13, Idaho Constitution.

AFFIRMATIVE DEFENSE NO. 19

The "General Provisions" and "Other Statements" contained in the Director's Report, along with the Claims Investigation Manual, Adjudication Memoranda and other materials of a similar nature used or employed by the Department, the Director and/or their agents, servants and/or employees constitute rules and regulations which were required to be proposed, promulgated, adopted and approved in conformity with the Administrative Procedures Act and other applicable statutory provisions. The Department, Director and their agents, servants and employees have failed to comply with such requirements, and accordingly, the "General Provisions," "Other Statements", Claims Investigation Manual and the like are invalid, void and of no force or effect.

AFFIRMATIVE DEFENSE NO. 20

Neither the "General Conditions," the Claims Adjudication Manual, Adjudication Memoranda or other promulgations, adoptions, policies, or the like have been submitted to or approved by the Legislature as required by Idaho Code Section 67-5217.

AFFIRMATIVE DEFENSE NO. 21

The relief requested by the Department and the Director in the Director's Report are beyond and in excess of the subject matter jurisdiction of the Court.

AFFIRMATIVE DEFENSE NO. 22

The actions of the Legislature, or the Department and the Director to enact, adopt, implement or enforce statutes, regulations, rules or policies subsequent to November 19, 1987, and to apply or enforce the same for the purpose of, or with the effect of recommending, diminishing or altering objectors' water rights, constitute a violation of Amendment Fourteen, United States Constitution; Art. 1, Section 13, Idaho Constitution; the SRBA authorization legislation; and Idaho Code Sections 73-101 and 73-106.

AFFIRMATIVE DEFENSE NO. 23

These proceedings are subject to the requirements and provisions of Idaho Code Sections 12-117, 12-121, 12-123 and I.R.C.P. 11, and the provisions of the private attorney general doctrine, and other related doctrines, and the Department, Director and State of Idaho are obligated to objectors for the payment and reimbursement of any and all reasonable costs or attorney fees incurred herein.

AFFIRMATIVE DEFENSE NO. 24

The Director's Report asserts what amounts to be a taking of private property by power of eminent domain as governed by Idaho Code Section 7-701 et seq., and as such, venue is therefore improper.

AFFIRMATIVE DEFENSE NO. 25

The Department and the Director are equitably estopped from seeking any reduction in the quantity, quality or priority of

objectors' water rights by virtue of prior statements, representations and actions of the Department, Director or their agents, servants and employees.

AFFIRMATIVE DEFENSE NO. 26

The Department and the Director are barred by laches and the applicable statutes of limitation, including, but not limited to, Idaho Code Sections 5-202, 5-203, 5-204, 5-206, 5-207, 5-208, 5-215, 5-218, 5-219(2), 5-224 and/or 5-241.

AFFIRMATIVE DEFENSE NO. 27

Objectors hereby reserve the right to assert any further affirmative defenses not expressly stated herein, but which subsequently become apparent.

WHEREFORE, the objectors pray for judgment as follows:

1. That the State of Idaho take nothing by reason of its Directors' Report, and that this action, and any claims asserted against objectors, be dismissed.

2. That a decree be entered adjudicating the existence, validity, amount and priority of objectors' water rights in accordance with objectors' claims.

3. That to the extent the acts of the Department or Director constitute a taking of objectors' property for public use, that objectors be allowed and awarded just compensation therefor.

4. That the objectors be allowed all costs of suit and reasonable attorney fees incurred herein.

5. For such further relief to which the Court finds objectors justly entitled.

MICROFILMED
OCT 11 1994

(WATER\21530ANS)

NOTICE OF ERROR

X

RESPONSE

X

CORRECTED R PROOF

MICROFILMED
JAN OCT 11 1994

Final Recommendation

Old (D) Number - HAT - 10-21-92

Water Right Number - R36-00039P

Prefix Translation: RESEARCH

+ - - - - Last Name - - - - +

+ - First Name - - - +

+ - - - - Address - - - - - +

*** C - CURRENT OWNER ***
BOTHWELL

BRUCE R

1 - PO BOX 444

2 -

3 -

City- HAGERMAN

State- ID Zip- 83332

Phone - 208-837-6402

BOTHWELL

MARY L

1 - PO BOX 444

2 -

3 -

City- HAGERMAN

State- ID Zip- 83332

Phone - 208-837-6402

*** O - ORIGINAL OWNER ***
KINNISON

PATSY A

1 - 7909 WEST HARVARD

2 -

3 -

City- LAKEWOOD

State- CO Zip- 80227

Phone - 303-986-0448

KINNISON

PHILIP T

1 - 7909 WEST HARVARD

2 -

3 -

City- LAKEWOOD

State- CO Zip- 80227

Phone - 303-986-0448

+ - - Priority Date - - +
01/02/1891+ - - Region - - - +
17 SOUTHERN+ - - Stage - - - +
D - DECREED

+ - - Status - - - +

+ - - - - Source - - - - - +
BILLINGSLEY CREEK+ - - - - Tributary - - - - - +
SNAKE RIVER+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County

07S 13E 11 SE SE NE (47) GOODING

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

43 - DOMESTIC 01/01 12/31 0.040

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
0.040 0.0+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County

07S 13E 11 NW SE 43 DOMESTIC (47) GOODING

Total Acres:

MICROFILMED
JAN 21 1993

Prefix Translation: RESEARCH

+ - - Diversion Means - VIA BUCKEYE DITCH

+ - - Non-Irrigation Use - DOMESTIC, 1 HOME

+ - - Other Rights for Same Use - NONE

+ -	Remarks
-----	----------------

WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.
PROPERTY IS ALSO KNOWN AS LOT 4, BLOCK 2, WILLOWBROOK
SUBDIVISION.

THE APPROPRIATOR IS ENTITLED TO THE AMOUNT OF WATER DESCRIBED ABOVE FOR DOMESTIC PURPOSES AT A POINT OF MEASUREMENT WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED ABOVE.

THIS RIGHT MAY BE DIVERTED SO LONG AS THE AMOUNT OF WATER DIVERTED AT THE POINT OF DIVERSION FOR DOMESTIC PURPOSES DOES NOT CONSTITUTE UNREASONABLE WASTE AND DOES NOT CONFLICT WITH THE PUBLIC INTEREST, AS DETERMINED BY THE DIRECTOR.

+-----Old Water Right Numbers-----+

+----- Conditions of Approval -----+

No Conditions of Approval found.

+ - - - Decree Plaintiff - - - +	+ - - - Decree Defendant - - - +	+ - Decree Date - + 00/00/0000
----------------------------------	----------------------------------	-----------------------------------

+ -	-Comments-	+ -
-----	------------	-----

Date: 03/14/1991 User Id: BEDKE Subject: SCC-STAFF REVIEW

Date: 02/06/1992 User Id: CLELLAND Subject: COPIED FROM REMARKS

THIS AMOUNT OF WATER IS NEEDED BECAUSE THE SOIL IS VERY SANDY AND BECAUSE OF THE LOSS OF WATER BEING TRANSPORTED IN THE OPEN DITCH. IN THE 1932 DECREE, IT STATES THAT THE WATER IS TRANSPORTED BY USE OF THE GRANGER DITCH. THE GRANGER DITCH HAS BEEN ABANDONED AND THE BUCKEYE DITCH HAD BEEN USED FOR YEARS TO TRANSPORT THE WATER FROM BILLINGSLEY CREEK TO THE SUBJECT PROPERTY. LOT 4, BLOCK 2, WILLOW BROOK SUBD.

Date: 08/04/1992 User Id: CHRISTEN Subject: BASIS FOR DISALLOWAL
NO DIVERSION OR DEVELOPMENT ON THIS LOT SINCE 1980.

Date: 09/24/1992 User Id: SCHULTZ Subject: NOTICE OF ERROR (NOE)

RECEIVED NOE 9/23/92 FROM BRUCE BOTHWELL. CHANGED NOE FLAG FROM BLANK TO A.

CLAIM VERIFIED 8/4/92. DID NOT REVERIFY ANY PART OF CLAIM.

Date: 09/30/1992 User Id: SOUTH1 Subject: NOE - RESPONSE

SENT RESPONSE 9/30/92. REQUESTED EVIDENCE OF WATER USE BEFORE

RIGHT CAN BE RECOMMENDED. M. STERLING

Date: 09/30/1992 User Id: SOUTH1 Subject: OWNERSHIP CHANGE

RIGHT CAN BE RECOMMENDED: IN OVERSHOOTING

CHANGE OF OWNERSHIP
SUBMITTED WITH FORM.

Date: 10/22/1992 User Id: THORNTON Subject: CHANGE IN RECOMMENDATION

THE RECOMMENDATION HAS BEEN CHANGED TO ALLOW FOR DOMESTIC USE DITCH IS THE DEVELOPED DIVERSION SYSTEM ALTHOUGH NO DEVELOPMENT HAS OCCURRED.

+ - - Audit Fields - - +

10/22/92 THORNTON

MICROFILMS
JAN 2

Water right number - R36-00039P

Prefix Translation: RESEARCH

+ - - - - - Adjudication Rights Dates and Flags Area - - - - - +

Court Report Filing	- 00/00/0000	Field Inspection Made	- 07/24/1990	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 00/00/0000	Old Judicial District	-
Claim Received Date	- 03/13/1991	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S013107	Water District	- 36A
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- AND/OR	Presumption Flag	-
				Notice of Error Flag	- C

MICROFILM

JAN 21

INTER-DEPARTMENT MEMO

TO: File

SUBJECT: Subdiv lots

FROM: Allen

DATE: 10/21/92

Phone Conv. with Lynne K-H. She called & indicated to allow Domestic Use for those lots that have constructed diversions (pipelines &/or ditches). The domestic use shall be allowed for the irrigation season only and there will not need to be any special condition or remark.

☐ For your information

☐ Response required


signature

MICROFILMED
JAN 21 1993

DECREED RIGHT SPLIT ANALYSIS

PARENT RIGHT NO. 36-00039 TOTAL DIVERSION RATE see below. PREPARATION DATE 8/5/92 HHT

CLAIM PORTION	CLAIMED RATE	RECOMMENDED RATE	IS CLAIMED RATE EXCEEDED BY ANALYSIS	CONVEYANCE LOSS	DOES DIV RATE + CALC. C.L. EXCEED CLAIMED RATE	TOTAL RECOMMENDED DIV. RATE
A	<u>split right</u>			<u>Ø</u>		<u>0.03</u>
B	<u>0.12</u>	<u>0.03</u>	<u>N</u>	<u>Ø</u>		<u>0.06</u>
(C)	<u>0.28</u>	<u>0.06</u>	<u>N</u>	<u>Ø</u>		<u>0.06</u>
D	<u>0.26</u>	<u>0.06</u>	<u>N</u>	<u>Ø</u>		<u>0.03</u>
E	<u>0.04</u>	<u>0.03</u>	<u>N</u>	<u>Ø</u>		<u>0.03</u>
F	<u>0.12</u>	<u>0.03</u>	<u>N</u>	<u>Ø</u>		<u>0.04</u>
G	<u>0.04</u>	<u>0.04</u>	<u>N</u>	<u>Ø</u>		
H	<u>disallowed</u>			<u>Ø</u>		
J	<u>disallowed</u>			<u>Ø</u>		
K	<u>0.20</u>	<u>0.20</u>	<u>Y</u>	<u>0.01</u>	<u>Y</u>	<u>0.20</u>
L	<u>0.12</u>	<u>0.03</u>	<u>N</u>	<u>Ø</u>		<u>0.03</u>
M	<u>disallowed</u>			<u>Ø</u>		
N	<u>disallowed</u>			<u>Ø</u>		
P	<u>disallowed</u>			<u>Ø</u>		<u>0.48</u>

10-22-92 Additional Review

Willowbrook Sub. - A36-00039H - 0.04
 00039J - 0.04
 00039M - 0.04
 00039N - 0.04
 00039P - 0.04

minimal
conveyance
loss

Based on discussion w/ Lynn K-H, IDWR will allow domestic w/irrig. season for the lots in Willowbrook Subd. for lots w/o development due to the existence of the ditch available in the subd. HHT

Parent rights:

36-00039A 2.136 14 ac.
 36-00039B 0.26 2 ac.

MICROFILMED
 JAN 21 1993

Conveyance losses for the splits of this right in the subdivision are insignificant and minimal for each right.
 (except for 39K)

AUG-24-1992

NOTICE OF ERROR FORM

RECEIVED

SEP 23 1992

Please type or print clearly, fill out completely, and return to:

Idaho Department of Water Resources

Statehouse Mail

Boise, Idaho 83720-9000

Department of Water Resources

The notice of error must be received at IDWR by the **deadline date** printed below with your proposed recommendation.

YOUR DEADLINE FOR FILING A NOTICE OF ERROR IS: SEP-24-1992

1. Water right number:

36-00039

RECEIVED

2. Name:

Bruce Bothwell

MICROFILMED

Address:

P.O. Box 444
Hagerman, ID. 83332

JAN 21 1993

Department of Water Resources
Southern Region Office

Weekday Telephone Number:

208-837-6402

TEAR AT PERFORATIONS AND COMPLETE FORM ON OTHER SIDE

(Instead of filling in items 3 and 4 below you may include a copy of your proposed recommendation with the changes marked on the copy.)

3. Describe the portion of proposed recommendation with which you disagree:

This water right wasn't just reduced, it was disallowed completely. I bought the property with water rights only to find out that it has been disallowed.

4. Describe the changes you wish to have made in the proposed recommendation:

This acre as well as any acre should be left with at least the minimum amount of water needed to irrigate it. I want the same amount of water as I have on the acre next door.

5. Describe why you disagree with the proposed recommendation:

Because it is unfair to take away all of my water when I paid hard cash for it.

6. Date: 9/22/92

SIGNATURE

David P. Towell



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

September 30, 1992

Bruce Bothwell
P.O. Box 444
Hagerman, Idaho 83332

RE: Ownership Change & Response to Notice of Error in Snake
River Basin Adjudication for Right 36-00039P

Dear Mr. Bothwell:

Pursuant to notification that you presently own the property in which the above referenced Adjudication Claim is appurtenant, the Department has changed the record of the current owner as you requested. Please find enclosed a copy of the computer record of our recommendation to the court noting the change in claimant.

This claim has been disallowed based upon the non-use of the water right as claimed. The Adjudication reports on those water rights developed prior to November 19, 1987. Decreed rights for water which has not been used for a period of at least five years prior to that 1987 date are considered forfeited.

You may provide to IDWR evidence which shows this water was used within the five year period prior to November 19, 1987 for the purposes claimed. If no further evidence is provided or the evidence is not supportive, this claim will remain as proposed in the Director's report.

If no evidence is supplied and at a later date you wish to put the water to use, you will need to file for an application for permit for a new water right at that time.

Please submit any evidence of water use by October 12, 1992. If you have any further questions, please contact our office.

Sincerely,

Marci Sterling
Engineering Specialist (EIT)

Enclosure: Copy of Change of Ownership form
Copy of Recommendation

RECEIVED
JAN 21 1993

R PROOF



CVR



MAPS



PHOTOS



MISC



MICROFILMED

JAN 21 1993

Water Right Number - R36-00039P

Prefix Translation: RESEARCH

Old (D) Number -

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

*** C - CURRENT OWNER ***

BOTHWELL

BRUCE R

1 - PO BOX 444

2 -

3 -

City- HAGERMAN

State- ID Zip- 83332

Phone - 208-837-6402

BOTHWELL

MARY L

1 - PO BOX 444

2 -

3 -

City- HAGERMAN

State- ID Zip- 83332

Phone - 208-837-6402

*** O - ORIGINAL OWNER ***

KINNISON

PATSY A

1 - 7909 WEST HARVARD

2 -

3 -

City- LAKEWOOD

State- CO Zip- 80227

Phone - 303-986-0448

KINNISON

PHILIP T

1 - 7909 WEST HARVARD

2 -

3 -

City- LAKEWOOD

State- CO Zip- 80227

Phone - 303-986-0448

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
01/02/1891 17 SOUTHERN I - DISALLOWED+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
BILLINGSLEY CREEK SNAKE RIVER+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County
07S 13E 11 SE SE NE (47) GOODING+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
01 - IRRIGATION 04/01 10/31 0.040
04 - STOCKWATER 01/01 12/31 0.020
52 - AESTHETIC 01/01 12/31 0.140+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
0.120 3.0+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County
07S 13E 11 NW SE 1.0 01 IRRIGATION (47) GOODING
07S 13E 11 NW SE 04 STOCKWATER (47) GOODING
07S 13E 11 NW SE 52 AESTHETIC (47) GOODINGMICROFILMED
JAN 21 1993

Water right number - R36-00039P

Prefix Translation: RESEARCH

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

Total Acres: 1.0

+ - - Diversion Means - VIA BUCKEYE DITCH

+ - - Non-Irrigation Use - STOCKWATER/2 BEEF; AESTHETIC/OPEN STREAM

+ - - Other Rights for Same Use - NONE

+ - - - - - Remarks - - - - - +	
FORFEITED/ABANDONED.	

+ - - - - - Old Water Right Numbers - - - - - +	
3600039A	

+ - - - - - Conditions of Approval - - - - - +	
P04 - FORFEITED/ABANDONED: This is included for a claim based on a	
- decree or license that is PROPOSED to be disallowed on the basis	
- that the water right no longer exists because forfeiture of the	
- right by nonuse was confirmed and a defense to forfeiture was not	
- confirmed, or because abandonment of the right was confirmed.	

+ - - - - Decree Plaintiff - - - +		+ - - - - Decree Defendant - - - +		+ - Decree Date - +	
				00/00/0000	

+ - - - - - Comments - - - - - +	
Date: 03/14/1991 User Id: BEDKE Subject: SCC-STAFF REVIEW	
Date: 02/06/1992 User Id: CLELLAND Subject: COPIED FROM REMARKS	
THIS AMOUNT OF WATER IS NEEDED BECAUSE THE SOIL IS VERY SANDY AND BECAUSE OF THE LOSS OF WATER BEING TRANSPORTED IN THE OPEN DITCH.	
IN THE 1932 DECREE, IT STATES THAT THE WATER IS TRANSPORTED BY USE OF THE GRANGER DITCH. THE GRANGER DITCH HAS BEEN ABANDONED	
AND THE BUCKEYE DITCH HAD BEEN USED FOR YEARS TO TRANSPORT THE WATER FROM BILLINGSLEY CREEK TO THE SUBJECT PROPERTY.	
LOT 4, BLOCK 2, WILLOW BROOK SUBD.	
Date: 08/04/1992 User Id: CHRISTEN Subject: BASIS FOR DISALLOWAL	
NO DIVERSION OR DEVELOPMENT ON THIS LOT SINCE 1980.	
Date: 09/24/1992 User Id: SCHULTZ Subject: NOTICE OF ERROR (NOE)	
RECEIVED NOE 9/23/92 FROM BRUCE BOTHWELL. CHANGED NOE FLAG FROM BLANK TO A.	
CLAIM VERIFIED 8/4/92. DID NOT REVERIFY ANY PART OF CLAIM.	
Date: 09/30/1992 User Id: SOUTH1 Subject: NOE - RESPONSE	
SENT RESPONSE 9/30/92. REQUESTED EVIDENCE OF WATER USE BEFORE RIGHT CAN BE RECOMMENDED. M. STERLING	
Date: 09/30/1992 User Id: SOUTH1 Subject: OWNERSHIP CHANGE	
CHANGE OF OWNERSHIP RECEIVED 9/30/92. ORIGINAL OWNER PHILIP T. KINNISON, NEW OWNER BRUCE R. & MARY L. BOTHWELL. COPY OF DEED	
SUBMITTED WITH FORM.	

+ - - Audit Fields - - +	
09/30/92 SOUTH1	

MICROFILMED

JAN 21 1993

Water right number - R36-00039P

Prefix Translation: RESEARCH

+ - - - - Adjudication Rights Dates and Flags Area - - - - - +

Court Report Filing	- 00/00/0000	Field Inspection Made	- 07/24/1990	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 00/00/0000	Old Judicial District	-
Claim Received Date	- 03/13/1991	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S013107	Water District	- 36A
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- AND/OR	Presumption Flag	-
				Notice of Error Flag	- B

MICROFILMED
JAN 21 1993

39B - Veerendal purchased lot 19 from
now owned by shokul
Veerendal ? chad 39B

**WILLOW
BROOK
SUBDIVISION**

FRIESEN
39M

A36-00039P
KINNISON

No beneficial use found
7-24-90
SCC
per field Egon

✓ This block was not irrigated in 1987 per NAPP photo
any use developed after that year! willow claims

microfilm

14M 1993

per

7-0

5

0
SCA

Mr. & Mrs. Bruce Bothwell
P.O. Box 444
Hagerman, ID 83332



State of Idaho
Depart. of Water Resources
222 Shoshone St E
Twin Falls, ID 83301

MICROFILM

Files 36-00039F
36-00039P
36-10673