

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: A36-00064B
Date Received: 8/15/1988
Receipt No: S001436
Received By:

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

1. Name: MICHAEL J. FLEMING 208-837-4934
Address: RT 1 BOX 7
HAGERMAN, ID 83332

AND/OR

Name: PAUL F. FLEMING 208-837-4420
Address: P.O. BOX 54
HAGERMAN, ID 83332

2. Date of Priority: SEP 10, 1884

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	SE	NE			GOODING

5. Description of diverting works:
OPEN DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	10/01	4.520		

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

8. Total consumptive use is 153.0 Acre Feet Per Annum.

9. Non-irrigation uses:
S/150 HOLSTEIN HEIFERS AND BEEF CATTLE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	13E	23	NE	NW		IRR	40.0
			NW	NW		IRR	11.0
					Section Acres		51.0
					Total Acres		51.0

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:
SEE REMARKS

14. Remarks:
PART OF 36-0064 DECREE OF 5.6 CFS, WHICH HAS BEEN SPLIT.

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

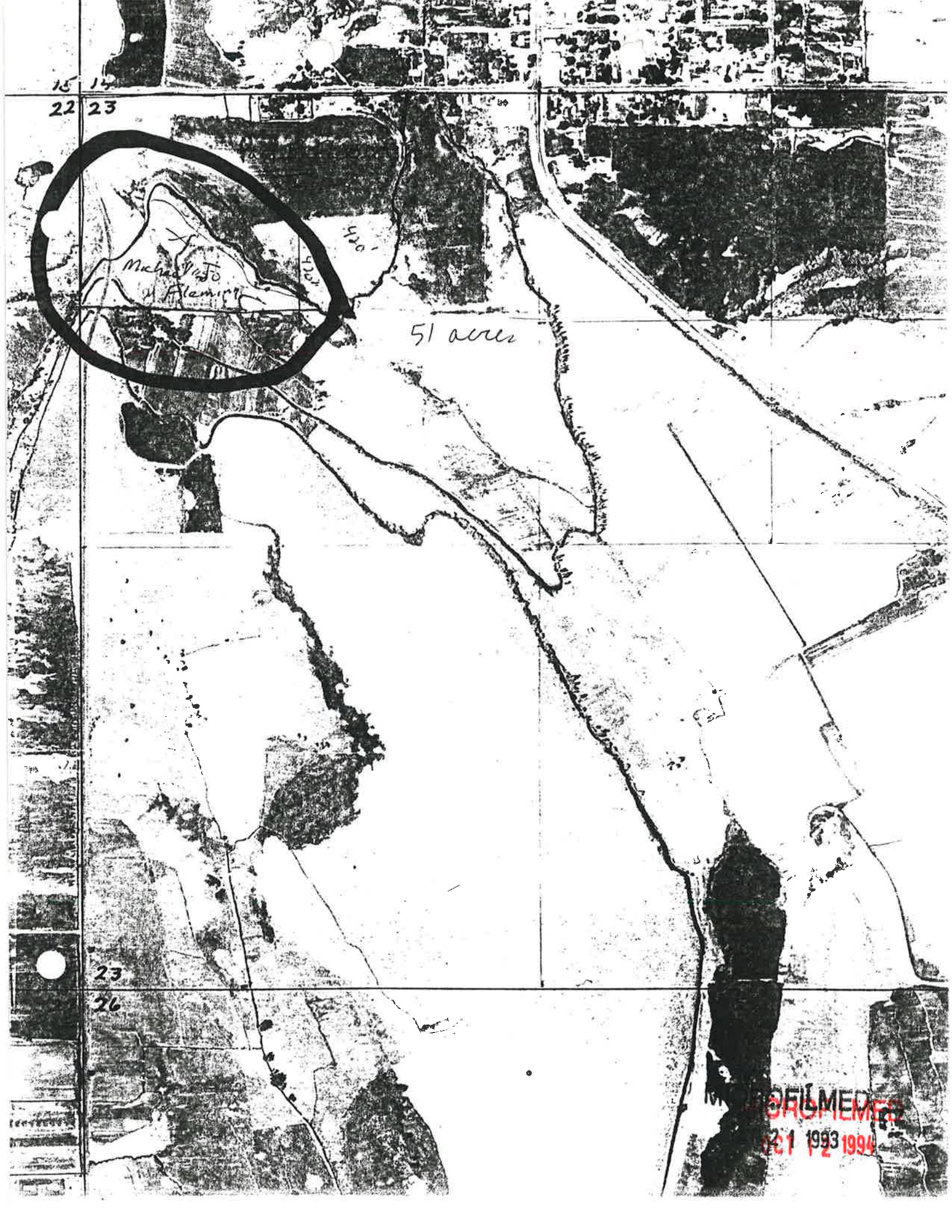
Decree Plaintiff

vs

Decree Defendant

(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.

MICROFILMED
OCT 12 1994



51 acres

Michael J. To
Fleming

FILMED
OCT 1 1993 1994

A36-00003B	A36-00003C	A36-00003E	A36-00003F	A36-00003G	A36-00003J	A36-00006	A36-00007	A36-00008	A36-00021B
A36-00022	A36-00023	A36-00033F	A36-00034B	A36-00035J	A36-00039C	A36-00039D	A36-00039E	A36-00039J	A36-00039M
A36-00039N	A36-00041A	A36-00041C	A36-00042A	A36-00048A	A36-00049	A36-00050D	A36-00051D	A36-00055AF	A36-00055BC
A36-00060	A36-00061	A36-00062	A36-00063	A36-00064B	A36-00068	A36-00069	A36-00070	A36-00071A	A36-00075
A36-00077C	A36-00079	A36-00086C	A36-00089A	A36-00090A	A36-00090F	A36-00092	A36-00094A	A36-00096A	A36-00097
A36-00098	A36-00099	A36-00100	A36-00101	A36-00103C	A36-00103F	A36-00106	A36-00108A	A36-00108B	A36-00110A
A36-00110B	A36-00111A	A36-00111B	A36-00112A	A36-00112B	A36-00113H	A36-00113J	A36-00119	A36-00120	A36-00121
A36-00123A	A36-00123E	A36-00133	A36-00134A	A36-00134C	A36-00135B	A36-00135C	A36-00141	A36-00192	A36-02002
A36-02038	A36-02169	A36-04091	A36-04142	A36-04260	A36-07071	A36-07081	A36-07089	A36-07092A	A36-07142
A36-07142A	A36-07172	A36-07229	A36-07233	A36-07346	A36-07658	A36-07875	A36-08099	A36-08317	A36-10055
A36-10119	A36-10120	A36-10140	A36-10141	A36-10168	A36-10231	A36-10249	A36-10283	A36-10283B	A36-10405
A36-10520	A36-10906	A36-15166	A36-15168	A36-15240	A36-15463				

TOTAL RECORDS IN SELECTION FILE: 116

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RECEIVED
FEB 10 1993
Department of Water Resources

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\HAGERMAN.NOA\lmr)

9
10
11
12
13 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
14 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

15 * * * * *

16 In Re the General Adjudication)
17 of Rights to the Use of Water)
18 from the Snake River Basin)
19 Water System)

Case No. 39576

20
21 The State of Idaho, ex rel.)
22 R. Keith Higginson in his)
23 official capacity as director)
of the Idaho Department of)
Water Resources,)

NOTICE OF APPEARANCE

24 Petitioner,)

25 vs.)

26 United States; State of Idaho;)
27 and all claimants to the use)
28 of water from the Snake River)
29 Basin Water System,)

30 Respondents.)

31 * * * * *

32 PLEASE BE NOTIFIED that the firm of Hepworth, Nungester
33 & Lezamiz, Chartered, hereby appears on behalf of Hagerman Water



Hepworth,
Nungester,
& Lezamiz

NOTICE OF APPEARANCE - 1

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1	Users, Inc. and its individual members:	
2	Anderson, Anita G.	A36-00050D
	Babington Lynn J. & Kathy	A36-00003C
3	Banbury Pipe Co., Inc.	A36-10906
	Banbury Pipe Co., Inc.	A36-02038
	Big Bend Irrigation & Mining Co.	A36-00192
4	Big Bend Irrigation & Mining Co.	A36-00133
	Big Spring Water User's Assoc.	A36-00022
5	Big Springs Water User's Assoc.	A36-00023
	Big Springs Water User's Assoc.	A36-15166
6	Blastock, Alma E.	A36-00108B
	Bolduc, Mark E.	A36-00103C
7	Boyer, Dale E. & Elaine M.	A36-00079
	Brailsford, Robert H.	A36-04260
	Brooks, Allen L. & Andree	A35-00060
8	Brooks, Allen L. & Andree	A36-07346
	Bybee, Gertrude B. Owsley	A36-00042A
9	Bybee, Gertrude B. Owsley	A36-00041C
	Candy, Walter W. & Margaret	A36-00135B
10	Candy, Walter W. & Margaret	A36-00134A
	Clouser, Doris H. & John F.	A36-00090A
11	Clouser, Doris H. & John F.	A36-00089A
	Crandlemire, Roger C. & George C.	A36-00113H
12	Crandlemire, Roger C. & George C.	A36-00112B
	Crandlemire, Roger C. & George C.	A36-00111B
	Crandlemire, Roger C. & George C.	A36-00113J
13	Crandlemire, Roger C. & George C.	A36-00110B
	Crandlemire, Roger C.	A36-00134C
14	Crandlemire, Roger C.	A36-00135C
	Crandlemire, Roger C.	A36-10140
15	Crandlemire, Roger C.	A36-10141
	DeVries, Abraham & Hermina	A36-00055AF
16	Dice, Philip F. & Judith A.	A36-00041A
	Dice, Philip F. & Judith A.	A36-10405
	Erwin, Frank C. & Peggy	A36-00092
17	Fleming, Michael J. & Paul F.	A36-00064B
	Flint, William E. and Vera C.	A36-00110A
18	Flint, William E. and Vera C.	A36-00111A
	Flint, William E. and Vera C.	A36-00112A
19	Flint, William E. and Vera C.	A36-10168
	Fuell, Keith L. & Jolene	A36-00086C
20	Gardner, Barbara & Robert B.	A36-00003B
	Gardner, Barbara	A36-00003J
21	Gisler, Harry R.	A36-00021B
	Gisler, Bradley	A36-00077C
	Glauner, Frank L. & Joan	A36-00039E
22	Grigg, Mattie P. & Golden T.	A36-10283B
	Gustafson Family Trust/Gustafson	A36-00033F
23	Ivan J. & Lucille co-trustees	
	Hagerman-Gun Club	A36-00100



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1	Hagerman Gun Club	A36-00099
	Hagerman Gun Club	A36-07233
2	Hagerman Gun Club	A36-07172
	Hagerman Gun Club	A36-10249
3	Hagerman Water Users Assoc.	A36-15168
	Jensen, Alice	A36-00055BC
4	Johnson, Ira L. & Huguette M.	A36-07142
	Joint Hagerman School Dist 233	A36-15463
	Jones, John W., Jr.	A36-00068
5	Jones, John W., Jr.	A36-00069
	Jones, John W., Jr.	A36-07071
6	Jones, John W., Jr.	A36-00070
	Kipp, Rudy B. & Elberta M.	A36-10119
7	Kipp, Rudy B. & Elberta M.	A36-10120
	Kipp, Rudy B. & Elberta M.	A36-07658
8	Kiser, John & Karl Woodall & Sons, Inc	A36-00071A
	Kiser, John & Karl Woodall & Sons, Inc	A36-00075
9	Korbis, George J. & Nellie W.	A36-00039N
	Laughlin, Craig J. & Rita D.	A36-7089
	Laughlin, Craig J. & Rita D.	A36-00051D
10	Littlefair, Larry & Tara	A36-0121
	Littlefair, Larry & Tara	A36-10055
11	Littlefair, Larry & Tara	A36-00119
	Littlefair, Larry & Tara	A36-00120
12	Lloyd, Cleave C.	A36-04142
	Lloyd, Cleave C.	A36-00003G
13	McFaddan, Dan H. & Irma R.	A36-2169
	McFaddan, Dan H. & Irma R.	A36-00048A
	McFaddan, Dan H. & Irma R.	A36-00049
14	Morris, Howard & Rhonda	A36-00063
	Morris, Howard & Rhonda	A36-00061
15	Morris, Howard & Rhonda	A36-00062
	Mueller, Manfred	A36-00035J
16	Norwood Subdivision/	A36-15240
	Ruby Springs Water Company	A36-07092A
17	Potter, Mark B. & Susan H.	A36-00039J
	Rawson, Frank S. & Carol A.	A36-00123A
18	Reese, Bruce W. & LaRose A.	A36-04091
	Reese, Bruce W. & LaRose A.	A36-10231
19	Rue, James O. & Beverly Jane	A36-07142A
	Shaffer, Roger	A36-00034B
20	Simcoe, Doyt H. & Roxie J.	A36-00003F
	Simpson, Michael, on behalf of	A36-0123E
	Josephine Simpson Estate	
21	Simpson, Michael, on behalf of	A36-0096A
	Josephine Simpson Estate	
22	Strange, Wm. (Penelope Turner-remainder man)	A36-00006
	Strange, Wm. (Penelope Turner-remainder man)	A36-00007
	Strange, Wm. (Penelope Turner-remainder man)	A36-00008
23	Veenendaal, Dick J.	A36-00108A
	Veenendaal, Dick J.	A36-00039C



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1	Vernon, Edith L.	A36-00003E
	Walmsley, Fred J. & Susan K.	A36-00039D
2	Ward, John P. & Rush, Ruth E.	A36-00094-A
	Ward, John P. & Rush, Ruth E.	A36-00090F
3	Watkins, Paul E. & Inez S.	A36-00106
	Watkins, Paul E. & Inez S.	A36-08099
	Wiens, M.J., Jr.	A36-07229
4	Wiens, M.J., Jr.	A36-07081
	Wiens, M.J., Jr.	A36-80317
5	Wiens, M.J., Jr.	A36-00098
	Wiens, M.J., Jr.	A36-00097
6	Wiens, M.J., Jr.	A36-02002
	Wiens, M.J., Jr.	A36-00101
7	Wiens, M.J., Jr.	A36-00141
	Wiens, M.J., Jr.	A36-10520
	Woolley, Max J. & Blanche	A36-00039M
8	Ya-Ta-Hay Investments, Inc.	A36-10283A
	Ya-Ta-Hay Investments, Inc.	A36-07875
9	Zink, Basil Lester & Myrle Hyde	A36-00103F

10 the respondents in the above-entitled action, as counsel of record
 11 for said Hagerman Water Users, Inc. and said individuals.

12 DATED This 9 day of February, 1993.

13 HEPWORTH, NUNGESTER & LEZAMIZ

14
 15 By 
 16 PATRICK D. BROWN
 Attorneys for Respondents

17
 18 CERTIFICATE OF MAILING

19 The undersigned, a resident attorney of the State of
 20 Idaho, with offices at 133 Shoshone St. North, P.O. Box 389, Twin
 21 Falls, Idaho 83303, and one of the attorneys for the respondents
 22 in this matter, certifies that she caused to be mailed a copy of
 23 the above and foregoing NOTICE OF APPEARANCE on the 9 day of



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 Nungester,
 & Lezamiz

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1 February, 1993, to:

2 Snake River Adjudication
3 District Court
P.O. Box 27070
Twin Falls, ID 83303-0126

4 Clive Strong
5 Chief Natural Resources Division
6 Office of Attorney General
Statehouse
Room 210
Boise, Idaho 83720

7 David Shaw
8 Adjudications Bureau Chief
9 Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

10 United States Department of Justice
11 Environment and Natural Resources Division
550 West Fort Street, Box 33
Boise, ID 83734

12
13 
14 Patrick D. Brown



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& Lezamiz

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OCT 12 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 1, 1993

Patrick D. Brown
Hepworth, Nungester and Lezamiz
133 Shoshone St. N.
P.O. Box 389
Twin Falls, ID 83303-0389

Re: Notice of Appearance

Dear Mr. Brown:

We received your Notice of Appearance on behalf of Hagerman Water Owners, Inc. and its individual members on February 10, 1993. The records listed on the notice were updated with some exceptions.

Claim numbers with "A" prefixes identify claims filed in the SRBA. Claim numbers without prefixes identify recommendations in the Director's Report. The following table identifies claimants for which you filed a notice of appearance, but the number you referred to is actually the identification of the recommendation. They have been updated with the notice information.

Claimant's Name	Recommendation No. (no "A" prefix)
Bybee, Gertrude B. Owsley	36-00042A 36-00041C
Candy, Walter W. & Margaret	36-00135B
Crandlemire, Roger C.	36-00134C 36-00135C
Gustafson Family Trust/Gustafson, Ivan J. & Lucille co-trustees	36-00033F
McFaddan, Dan H. & Irma R.	36-00048A
Muller, Manfred	36-00035J
Zink, Basil Lester & Myrle Hyde	36-00103F

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Mr. Patrick D. Brown
March 1, 1993
Page 2

The following is a list of claims that have been updated with the notice information, however, there is a discrepancy between IDWR records and the notice list (see third column).

Claimant's Name as listed on Notice of Appearance	As Claimed/ As Recommended	Claim No. or Claimant's Name in IDWR's Records
Anderson, Anita G.	A36-00050D/36-00050D	Andersen (name spelling is different)
Brailsford, Robert H.	A36-04260/36-04260	A36-04260B/36-04260B (claim was split--"B" suffix)
Brooks, Allen L. & Andree	A35-00060	A36-00060/36-00060 (Basin 36 instead of Basin 35)
Crandlemire, Roger C. & George C.	A36-00113J/36-00113J	Crandlemire, Roger C. (George C. not listed as claimant)
Gisler, Harry R.	A36-00021B/36-00021B	A36-00021/36-00021 (claim was renumbered)
Glauner, Frank L. & Joan	A36-00039E/36-00039E	Jean instead of Joan
Gustafson Family . Trust/Gustafson, Ivan J. & Lucille co-trustees	A36-00011C/36-00033F	Gustafson, Ivan J. (not listed as a trust)
Johnson, Ira L. & Huguette M.	A36-07142/36-07142	Johnson, Ira L. (Huguette M. not listed as claimant)
Joint Hagerman School Dist. 233	A36-15463/36-15463	Original claim & IDWR records show school dist. as #3.
Jones, John W., Jr.	A36-00068/36-00068 A36-00069/36-00069 A36-07071/36-07071 A36-00070/36-00070	Jones, John W. Jr. & Deloris D. (Deloris D. is included as a claimant)

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Mr. Patrick D. Brown
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 Page 3

Claimant's Name as listed on Notice of Appearance	As Claimed/ As Recommended	Claim No. or Claimant's Name in IDWR's Records
Mueller, Manfred	A36-00034D/36-00035J	Muller (name spelling is different in IDWR records)
Strange, Wm. (Penelope Turner- er-remainder man)	A36-00006/36-00006 A36-00007/36-00007 A36-00008/36-00008	Strange, Wm. & Louise (Louise is included as a claimant, Penelope Turner is not in records)
Veenendaal, Dick J.	A36-00108A/36-00108A A36-00039C/36-00039C	Veenendaal, Dick J. & Sigrid E. (Sigrid E. is included as a claimant)
Wiens, M. J., Jr.	A36-80317	A36-08317/36-08317 (no. was transposed on notice)
Wiens, M. J., Jr.	A36-00098/36-15384	36-15384 (claim was combined with no. 36-00141 into no. 36- 15384)
Wiens, M. J., Jr.	A36-00141/36-15384	36-15384 (claim was combined with no. 36-00098 into no. 36- 15384)

The following claims have not been updated with the notice information because of the discrepancies listed in the third column.

Claimant's Name	Claim No. as listed on Notice of Appearance	Discrepancy Between Notice of Appearance and IDWR Records
Hagerman Gun Club	A36-00100/36-00100 A36-00099/36-00099 A36-07233/36-07233 A36-07172/36-07172 A36-10249/36-10249	Owners are listed as Bob Porter and Fred Surbaugh

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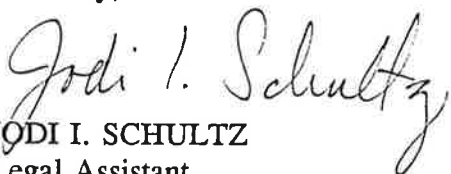
Mr. Patrick D. Brown
March 1, 1993
Page 4

Claimant's Name	Claim No. as listed on Notice of Appearance	Discrepancy Between Notice of Appearance and IDWR Records
Ya-Ta-Hay Investments, Inc.	A36-07875/36-07875	No record of this claim no., nor any other claim no. for claimant other than A36- 10283A/36-10283A (as listed)

Please review the claimants and claim numbers and let me know if you have any questions or problems with the claims as listed in IDWR's records. Also, please review the claims in the last table. We need to solve these discrepancies before IDWR's records are updated with the notice information. My phone number is 327-5444.

Please note we have received your supplemental and second supplemental notices of appearance and are currently working to update those records. We will inform you if there are any discrepancies.

Sincerely,


JODI I. SCHULTZ

Legal Assistant
Idaho Department of Water Resources

cc: IDWR Southern Region

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STATE OF IDAHO
IDAHO DEPARTMENT OF WATER RESOURCES

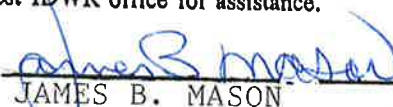
NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

RECEIVED
FEB 17 2000
Department of Water Resources
Boothman Building

Please print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

1. Water Right No(s).: 36-00064B - Portion of this right 26 inches
 Adjudication Claim No(s).: 36-00064B AJ5809NP

2. The following REQUIRED information must be submitted with this form:
 - A. A copy of the most recent DEED, TITLE POLICY, CONTRACT OF SALE or other legal document indicating your ownership of the property and water rights or claims in question, WITH ATTACHED LEGAL DESCRIPTION.
AND
 - B. PLAT OF PROPERTY or SURVEY MAP for parcel of ten acres or less. (These are usually attached to your deed or on file with the county.)
OR
 - C. For water rights or adjudication claims involving ten or more irrigated acres, a USDA Farm Service Agency AERIAL PHOTO with irrigated acres outlined and point(s) of diversion clearly marked.

3. Name and Address of Former Owner/Claimant Paul F. Fleming PO Box 54, Hagerman, ID 83332
Michael J. Fleming, 17826 Highway 30,
Bliss, ID 83314
4. New Owner/Claimant(s) James B. Mason AKA John B. Mason
 New Mailing Address Name Connector (Check one): ☐ and, ☐ or, ☐ and/or
P. O. Box 569, Hagerman, ID 83332
 City, State and ZIP Code _____
 New Telephone Number () _____
5. Date you acquired the property February 15, 2000
6. If you have acquired only a portion of the former owner's property, IDWR may need to split the water right(s) or adjudication claim(s). If this applies, describe in detail your portion of each water right or adjudication claim in the spaces below. If necessary, attach additional pages.
 Number of acres you irrigate _____ Number and type of stock _____
 Diversion rate in CFS _____ Number of homes _____ Other uses _____
 If a water right or adjudication claim is being split and you are not sure how to identify your portion of the original right or claim, please contact the nearest IDWR office for assistance.
7. Signature of New Owner or Claimant(s) 
JAMES B. MASON
 (Corporations or other organizations must submit a list of directors and/or officers demonstrating authority to sign form.)
8. For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him or her for all matters related to your claims..

DATE: 01/28/00
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	PAUL F FLEMING PO BOX 54 NAGERMAN ID 83332 (208) 837-4420	09/10/1984	IRRIGATION	03-15 11-15	0.720 CFS	
TOTAL DIVERSION: CONSUMPTIVE USE:					0.720 CFS	57.00 AFA

C MICHAEL J FLEMING
17826 HIGHWAY 30
BLISS ID 833145066
(208) 837-6453

Water Source: BILLINGSLEY CREEK

Tributary to: SNAKE RIVER

Stage: DECREED

Point(s) of Diversion: T07s R13E S11

SESENE

GOODING County

Place of use Legal Description for: IRRIGATION

		NE				NW				SW				SE				
T	R S	NENE	NNE	SUNE	SENE	NENW	NNW	SNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	SUM
		Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	
07S	13E 23					06	13											19.0
																	19.0	
																	TOTAL ACRES	
																	19.0	

POU County: GOODING

Other Rights: NONE

Remarks: GEN WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.
A DIVERSION RATE OF 0.56 CFS AT THE FIELD HEADGATE IS
RECOMMENDED FOR THE PLACE OF USE DESCRIBED ABOVE.
0.16 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE
LOSSES IN DELIVERY OF THIS RIGHT.

Dates:	Exam Made Date:	Verified Date:	Objection Filed Date: 04/29/1993
Misc:	Water District Number: 36A	Field Inspection Flag:	
		Presumption Flag:	

4
135.4
H2L

5
6.6
H2L

6
4.4
H2L

8
102.0
H2L

1
8.8

3
7.1

19.15
T-1028

5.4

6
5.7

7
4.8

10
7.6
H2L

36.3

18.33
T-132

3
30.5

14.2

64 T-132

all
one
field

①

37
64.4

3.9

QUITCLAIM DEED

GG-01761

For Value Received

DEBBIE EDWARDS, who acquired title as Debbie Burgess, and VON L. EDWARDS, wife and husband

Hereinafter called the grantor, hereby remises, releases, and forever Quitclaims unto

MICHAEL J. FLEMING, A SINGLE MAN
ADDRESS: 17824 Hwy 30, Bliss, ID 83314

Hereinafter called the grantee, the following described premises, in Gooding County, Idaho to-wit:

See attached EXHIBIT "A"

TO HAVE AND TO HOLD the said premises, with their appurtenances unto said Grantee, and the grantee's heirs and assigns forever.

Dated: January 25, 2000

Debbie Edwards

Debbie Edwards

Von L Edwards

Von L. Edwards



184422

STATE OF IDAHO)
) ss.

COUNTY OF Gooding)

On this 1st day of ~~January~~ ^{February}, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Debbie Edwards and Von L. Edwards, 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.

Stacey Clark

Notary Public

Residing at: Hagerman, ID

My Commission expires: 1-14-2005

By Calista Silva
of Feb 20 00 9:00
45 min. past 9 o'clock P.m. this 11
Filed for record at the request of Stacey Clark
STATE OF IDAHO COUNTY OF GOODING

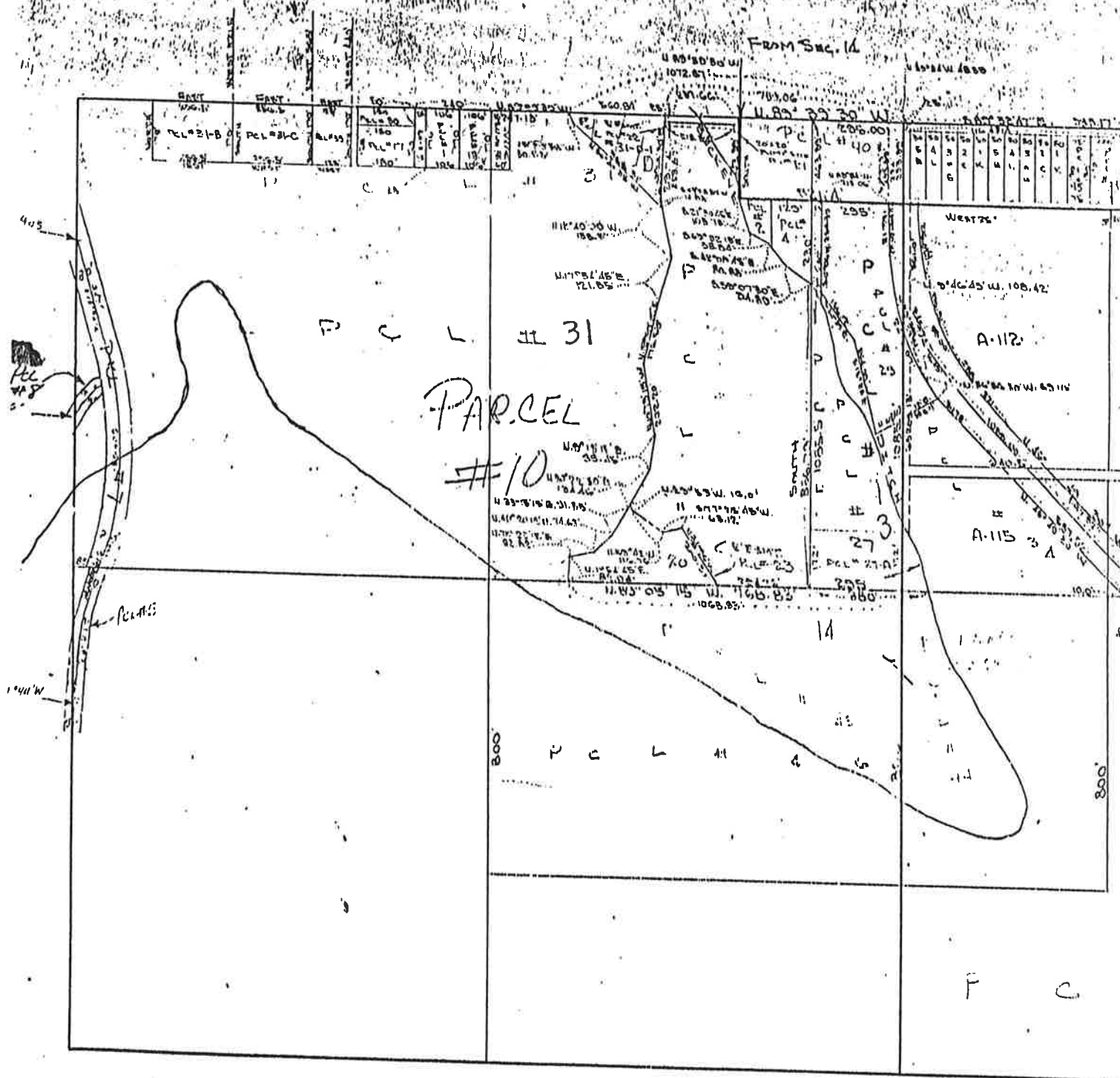
EXHIBIT "A"

TOWNSHIP 7 SOUTH, RANGE 13, EAST OF THE BOISE MERIDIAN, GOODING
COUNTY, IDAHO

Section 23: Part of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ lying West of the center line of County Road running
North and South as now constructed.

EXCEPTING therefrom that portion lying North of the Bell Ditch as constructed
March 8, 1984.

NORTH
HALF



THIS PLAT IS MADE SOLELY FOR THE PURPOSE OF ASSISTING IN
LOCATING THE LAND, AND THE COMPANY ASSUMES NO LIABILITY
FOR VARIATIONS, IF ANY, WITH AN ACTUAL SURVEY.

CORPORATE
LIMITS OF HAZARD
LOCAL PAGE 507
Comm. Records.

WARRANTY DEED

#GG-01761

For Value Received

MICHAEL J. FLEMING, also shown of record as MICHAEL JOSEPH FLEMING, A SINGLE MAN

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

JAMES B. MASON also known as JOHN B. MASON, A MARRIED MAN CONTRACTING WITH HIS SOLE AND SEPARATE PROPERTY
Address: P.O. BOX 569, HAGERMAN, ID 83332

Hereinafter called the Grantee, the following described premises situated in **GOODING** County, Idaho, to-wit:

SEE ATTACHED SCHEDULE A

TOGETHER WITH all water and water rights, ditches and ditch rights used thereon or appurtenant thereto including but not limited to 26.0 Inches of Water from the Buckeye Ditch and any licenses with the State of Idaho.

SUBJECT TO:

All reservations in patents or deeds in the chain of title.

2000 taxes are an accruing lien, not due or payable until the fourth Monday in November of the current year, the first one-half of which is not delinquent until after December 20 of the current year.

Assessments of the Buckeye Irrigation District and the rights and powers of said District as by law provided.

TO HAVE AND TO HOLD, the said premises, with their appurtenances unto the said Grantee and to the successors heirs and assigns of the Grantee forever. The Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from all incumbrances except as above described and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated: February 11, 2000


MICHAEL J. FLEMING

STATE OF IDAHO)

COUNTY OF GOODING) ss.

184423
STATE OF IDAHO COUNTY OF GOODING
Filed for record at the request of hand title
46 min. past 1 o'clock p.m. this 11
of Feb 2000
By Cubita Siles Deputy

On this 10th day of February, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared **MICHAEL J. FLEMING**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.


Notary Public

SCHEDULE A

Order Number: GG-01761

Parcel 1:

TOWNSHIP 7 SOUTH, RANGE 13, EAST OF THE BOISE MERIDIAN, GOODING COUNTY, IDAHO

Section 23: That part of the N $\frac{1}{2}$ NW $\frac{1}{4}$, described as follows:

Commencing at the North quarter corner of said Section 23;
Thence North 89°39'30" West, along the North boundary of said Section 23,
1072.87 feet to the TRUE POINT OF BEGINNING;
Thence continuing North 89°39'30" West along the North boundary of said
Section 23, 247.13 feet, more or less, to the Northeast corner of the
NW $\frac{1}{2}$ NW $\frac{1}{4}$ of said Section 23;
Thence South along the East boundary of said NW $\frac{1}{4}$ NW $\frac{1}{4}$, 170 feet;
Thence West parallel with the North boundary of said NW $\frac{1}{4}$ NW $\frac{1}{4}$, 106 feet;
Thence West 314 feet;
Thence North 170 feet to the North boundary of said Section 23;
Thence West along the North boundary of said Section 23 to the Northwest corner
of said Section 23;
Thence South along the West boundary of said Section 23 to the Southwest corner
of the NW $\frac{1}{4}$ NW $\frac{1}{4}$;
Thence East along the South boundary of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ to
a point that lies North 89°05'15" West, 1063.83 feet from the Southeast
corner of said NE $\frac{1}{4}$ NW $\frac{1}{4}$;
Thence North 01°54'45" East, 82.04 feet;
Thence North 78°23'15" East, 82.82 feet;
Thence North 49°20'15" East, 74.63 feet;
Thence North 33°15'15" East, 91.38 feet;
Thence North 30°22'3" East, 134.46 feet;
Thence North 09°18'15" East, 99.45 feet;
Thence North 10°19'15" West, 202.20 feet;
Thence North 15°57'15" East, 176.53 feet;
Thence North 17°54'45" East, 121.85 feet;
Thence North 12°40'00" West, 158.37 feet;
Thence South 03°53'30" West, 14.95 feet;
Thence North 50°40'38" West, 368.31 feet;
Thence North 25°29'38" West, 30.55 feet to the TRUE POINT OF BEGINNING.

EXCEPT the following described tracts:

- a. That portion of the above described property deeded to the Hagerman Highway District No. 3, dated October 1, 1968, recorded October 15, 1968 as Instrument Number 26582, Gooding County records.
- b. TOWNSHIP 7 SOUTH, RANGE 13 EAST OF THE BOISE MERIDIAN, GOODING COUNTY IDAHO

Section 23: Part of the N $\frac{1}{2}$ NW $\frac{1}{4}$ lying East of said County Road along the West side of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and North of the Bell ditch across said NW $\frac{1}{4}$ NW $\frac{1}{4}$, and West of the following described line:

Beginning at the North quarter corner of Section 23;
Thence South along the East boundary of said NE $\frac{1}{4}$ NW $\frac{1}{4}$ to the Southeast corner
of said NE $\frac{1}{4}$ NW $\frac{1}{4}$;

Page 3 of Warranty Deed

Thence North 89°05'15" West along the South boundary of the NE¼NW¼,
1063.83 feet to the Point of Beginning;

Thence North 01°54'45" East, 82.04 feet;

Thence North 78°23'15" East, 82.82 feet;

Thence North 49°20'15" East, 74.63 feet;

Thence North 33°15'15" East, 91.38 feet;

Thence North 30°22'30" East, 134.46 feet;

Thence North 09°18'15" East, 99.45 feet;

Thence North 10°19'15" West, 202.20 feet;

Thence North 15°57'15" East, 176.53 feet;

Thence North 17°54'45" East, 121.85 feet;

Thence North 12°40'00" West, 158.37 feet;

Thence North 03°53'30" East, 244.74 feet more or less to the North boundary of
said NE¼NW¼.

c. TOWNSHIP 7 SOUTH, RANGE 13, EAST OF THE BOISE MERIDIAN, GOODING
COUNTY, IDAHO

Section 23: Part of the NW¼NW¼ lying West of the center line of County Road running
North and South as now constructed.

Parcel 2:

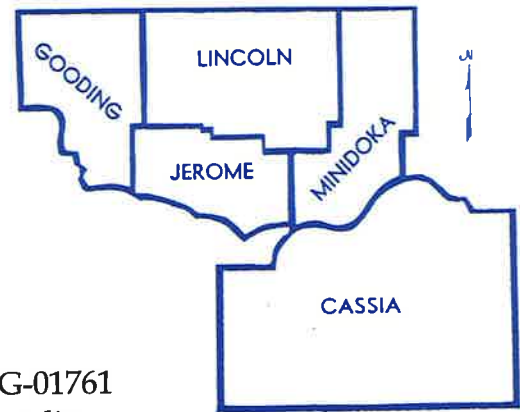
TOWNSHIP 7 SOUTH, RANGE 13, EAST OF THE BOISE MERIDIAN, GOODING
COUNTY, IDAHO

Section 23: Part of the NW¼NW¼ lying West of the center line of County Road running
North and South as now constructed.

EXCEPTING therefrom that portion lying North of the Bell Ditch as constructed
March 8, 1984.

Land Title and Escrow, Inc.

A FULL SERVICE TITLE COMPANY



February 16, 2000

REFER TO: GG-01761
OFFICE: Gooding

State of Idaho
Department of Water Resources
Southern Region
1341 Fillmore, Suite 200
Twin Falls, Idaho 83301-3380

RECEIVED
FEB 17 2000
Department of Water Resources
Southern Region

RE: Notice of Change of Water Right Ownership
Fleming to Mason
Cert. Mail # Z 321 171 557

Dear Sirs:

At the request of the Buyer, we are forwarding to your office the following in connection with the above referenced:

- Notice of Change of Water Right Ownership
- Copy of Deed # 184422, 184423
- Copy of Map

Thank You,

LAND TITLE AND ESCROW, INC.

Keri Craig
Keri Craig
Escrow Assistant
(208) 934-8477
P.O. Box 473, 706 Main Street
Gooding, Idaho 83330

CC:

BOX 177, BURLEY, IDAHO 83318
PHONE 678-3524 - FAX 678-4435

BOX 348, JEROME, IDAHO 83338
PHONE 324-3357 - FAX 324-6961

BOX 473, GOODING, IDAHO 83330
PHONE 934-8477 - FAX 934-5890

BOX 111, RUPERT, IDAHO 83350
PHONE 436-0808 - FAX 436-1199

DRAFT
**SUPPLEMENTAL DIRECTOR'S REPORT REGARDING CLAIMS
TO WATER RIGHT NOS. 36-00064B, 36-10446 AND 36-15069**

In Re SRBA
Twin Falls County Civil Case No. 39576
Sub-Case Nos. 36-00064B, 36-10446 and 36-15069

DRAFT

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Karl J. Dreher, Director
David R. Tuthill Jr., Adjudication Bureau Chief

January 21, 1998

Cumm. CL.
as used now
2.5 cfs

DRAFT

The Director of the Idaho Department of Water Resources (IDWR) submits this Supplemental Director's Report Regarding Claims to Water Right Nos. 36-00064B, 36-10446 and 36-15069 in response to the Special Master's bench order of November 18, 1997 and in accordance with Administrative Order 1. This supplemental director's report was prepared under the supervision of Karl J. Dreher, Director, and David R. Tuthill Jr., Adjudication Bureau Chief for IDWR. The following persons assisted in the preparation of the following portions of this report:

David R. Tuthill Jr., Adjudication Bureau Chief helped to prepare and reviewed this Supplemental Report Regarding Claims to Water Right Nos. 36-00064B, 36-10446 and 36-15069.

Steve Clelland, Senior Water Resource Agent, investigated and prepared the preliminary recommendation for claim numbers 36-00064B, 36-10446 and 36-15069.

WATER RIGHT NOS. 36-00064B, 36-10446 and 36-15069

This report addresses those elements of water right numbers 36-00064B, 36-10446 and 36-15069 (hereinafter the Water Rights) that are in dispute. IDWR understands those elements to be Quantity, Place of Use (Irrigated Acreage), and Remarks as to subcase number 36-00064B, and IDWR's recommended disallowal of the claims in subcase nos. 36-10446 and 36-15094.

LEGAL PRINCIPLES UNDERLYING RECOMMENDATION OF WATER RIGHT NUMBERS 36-00064B, 36-10446 and 36-15069

IDWR's recommendations of water right numbers 36-00064B, 36-10446 and 36-15069 are based upon IDWR's factual understanding of the following legal principles. These principles are not described for purposes of legal argument, but simply for the purpose of describing the basis of IDWR's recommendations for these water rights. If these principles are erroneous or inaccurate, the conclusions reached in this report may change.

1. Beneficial use is the basis, measure and extent of any water right.
2. The description of the beneficial use is the description of the water right.
3. The description of a water right should be adequate for the Department of Water

Resources to administer it vis a vis other water rights.

4. The beneficial use of water pursuant to a water right cannot be changed or enlarged in such a way that other water right holders on a source will be injured.
5. Previous decrees are evidence of the elements of a water right; however, they are not the only evidence, nor are they conclusive evidence.
6. A water right holder involved in a water rights adjudication must claim in that adjudication all water rights purported to be appurtenant to the land involved; otherwise, he is forever barred from bringing those claims in subsequent adjudications.
7. If a decreed water right does not describe all of the elements of a water right required in section 42-1409, Idaho Code, the director shall include in the Director's Report recommendations for those elements not defined by the prior decree based upon the extent of beneficial use of the water right as of the date of the commencement of an adjudication.
8. Because beneficial use is the basis, measure and extent of any water right, a water right holder is entitled to irrigate only those lands on which water has been historically put to beneficial use pursuant to his water right.
9. Because beneficial use is the basis, measure and extent of any water right, a water right holder is entitled to use only that quantity of water that has historically been put to beneficial use on those lands historically irrigated pursuant to his water right.

FACTUAL FINDINGS UNDERLYING RECOMMENDATION OF WATER RIGHT NUMBERS 36-00064B, 36-10446, AND 36-15094

I. Decrees

1. Water right number 36-00064 was decreed in the *New International Mortgage* decree, entered in 1932.¹ A copy of the relevant portion of that decree is attached as Exhibit A. In that decree, 5.6 cfs pursuant to Water Right number 36-00064 was decreed from Billingsley Creek via the Buckeye Ditch to Gertrude and Ben Homes on a particularly described 70 acre tract with a priority date of September 10, 1884.

¹ *New International Mortgage Bank v. Idaho Power Co., et al.*, Equity No. 1602 (D.S. Id. 1932), at p. 12.

2. The *New International Mortgage* decree does not define certain elements of the water rights decreed therein; specifically, it does not define the number of irrigated acres within the place of use to which the water rights were decreed appurtenant. Thus, IDWR must determine its recommendation of this element based upon the extent of beneficial use of the water right as of the date of the commencement of the Snake River Basin Adjudication.

II. Investigation of Water Right No. 36-00064B

A. Place of Use (Irrigated Acreage)

1. Exhibit B, attached hereto, is a copy of a Geographic Information Systems Shape File delineating in yellow the place of use recommended by IDWR pursuant to water right number 36-00064B. It is based on a 1987 NAPP photograph No. AA70. The place of use recommended is within the place of use claimed, which can also be observed on Exhibit B.

2. The claim to water right no. 36-00064B specified 51 acres irrigated in the NWNW and NENW $\frac{1}{4} \frac{1}{4}$ sections of T07S R13E Section 23.

3. IDWR recommended as irrigated a total of 19 acres; 6 in the NENW $\frac{1}{4} \frac{1}{4}$ section and 13 in the NWNW $\frac{1}{4} \frac{1}{4}$ section of T07S R 13E Section 23. IDWR recommended this acreage based on the following:

a. On August 10, 1990, IDWR Senior Water Resource Agent Steve Clelland visited the claimed place of use, conducted a field examination and observed two irrigated parcels with the area claimed as irrigated pursuant to water right number 36-00064B. Referring to Exhibit B, within the place of use claimed, Mr. Clelland observed one larger irrigated parcel straddling the dividing line between the NENW $\frac{1}{4} \frac{1}{4}$ section and the NWNW $\frac{1}{4} \frac{1}{4}$ section, and a smaller irrigated parcel south and west of the larger parcel between the Bell and Buckeye ditches. He observed that no other land was irrigated by water delivered pursuant to claimed water right number 36-00064B. He observed no indication of any means to apply water to any other land; no indication of cultivation of any other land; and no indication of vegetation other than natural foliage on any other land within the claimed place of use.

b. Upon returning to his office, Mr. Clelland found that his observations were consistent with the 1987 NAPP photograph showing areas irrigated and unirrigated.

c. Mr. Clelland also confirmed his observations with the pertinent 1979

ASCS map. The ASCS map showed that the larger irrigated parcel was 15.4 acres in size and the smaller irrigated parcel was 3.8 acres in size (the ASCS map showed this smaller parcel as two parcels each 1.9 acres in size). However, he had observed that an area of the smaller parcel was not actually irrigated. Mr. Clelland observed a slope to this area, making irrigation impractical using the existing delivery system. He observed no indication of cultivation on this area, and no indication of vegetation on the area other than natural foliage. Mr. Clelland estimated this small unirrigated area to be approximately one acre in size based on the size of surrounding parcels as shown by the ASCS map. After subtracting the one acre Mr. Clelland determined was not irrigated from the 3.8 acres shown as irrigated by the ASCS map, Mr. Clelland determined that the smaller irrigated parcel was three acres in size. Therefore, adding the approximately three acres making up the irrigated area of the smaller parcel to the 15.4 acres making up the irrigated area of the larger parcel yielded a total irrigated area approximating 19 acres. ?

B. Quantity of Water Used

1. The quantity of water claimed pursuant to water right number 36-00064B was 4.52 cfs for irrigation purposes.
2. IDWR recommended for irrigation purposes a .72 cfs flow rate pursuant to this water right. The quantity recommended was determined as follows:
 - a. As mentioned above, IDWR determined that acreage irrigated pursuant to water right number 36-00064B totaled 19 acres. During his August 10, 1990 field exam, Mr. Clelland observed that the larger irrigated tract of approximately 16 acres was sprinkler irrigated and that the smaller tract of approximately 3 acres was flood irrigated.
 - b. It is IDWR's experience that the on-farm irrigation requirement for sprinkler systems is rarely greater than .02 cfs per acre. Thus, IDWR multiplied the .02 cfs per acre rate by the 16 acres found to be sprinkler irrigated to come up with an on-farm irrigation requirement of .32 cfs for the sprinkler irrigated portion of the property.
 - c. IDWR also analyzed the flood irrigated three acre tract using the "Hubble" methodology to determine that the necessary on-farm irrigation requirement for those three acres is .24 cfs.
 - d. IDWR determined that the conveyance loss associated with diversion through the Buckeye ditch of water right number 36-00064B was .16 cfs.

- e. IDWR then added the .32 cfs necessary for the sprinkler irrigated tract to the .24 cfs necessary for the flood irrigated tract and the .16 cfs conveyance loss for a total flow rate of .72 cfs.

C. Remarks

- 1. The recommendation of this right in the director's report includes the following remarks:
 - a. WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.
 - b. A DIVERSION RATE OF 0.56 CFS AT THE FIELD HEADGATE IS RECOMMENDED FOR THE PLACE OF USE DESCRIBED ABOVE.
 - c. 0.16 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT.
- 2. IDWR does not oppose the deletion of these remarks from the description of this water right.

II. Investigation of Water Right No. 36-10446

A. Disallowal

- 1. The claim to water right no. 36-10446 was for .70 cfs from an unnamed spring to irrigate 6 acres in the NWNE $\frac{1}{4}$ $\frac{1}{4}$ section of T07S R13E Section 2. The right was claimed as a beneficial use right with a priority date of January 1, 1934.
- 2. The claim states as its basis a statutory claim. However, no copy of any statutory claim was submitted with the adjudication claim nor was IDWR able to find a statutory claim matching this adjudication claim.
- 3. IDWR recommended that the claim to water right number 36-10446 be disallowed for the following reasons:
 - a. IDWR Senior Water Resources Agent Steve Clelland visited the place of

use claimed on March 15, 1991 to conduct a field examination.

b. During his field examination, Mr. Clelland observed no evidence of irrigation within the place of use claimed. He found no spring at the Point of Diversion claimed. He found no diversion system in place to deliver irrigation water to the place of use.

c. Because this claim is to a water right based on beneficial use, IDWR contacted the claimant by letter dated October 3, 1990 asking the claimant to provide evidence of the priority date claimed. No such proof of priority was submitted to IDWR, although the claimant did reply by letter dated October 24, 1990 that he could not find an individual with knowledge as to the date this claimed water right was first put to beneficial use.

d. Based on the fact that Mr. Clelland found no irrigation within the place of use claimed, no spring at the point of diversion claimed, no diversion system to deliver irrigation water to the place of use claimed; that the claimant provided no proof of priority as requested; and on IDWR's understanding that beneficial use must be shown to establish a water right based on beneficial use, IDWR recommended the claim to water right number 36-10446 for disallowal.

II. Investigation of Water Right No. 36-15094

A. Disallowal

1. The claim to water right no. 36-15094 was for 1.0 cfs from wastewater to irrigate 50 acres in the NWNW $\frac{1}{4}$ $\frac{1}{4}$ section of T07S R13E Section 1. The right was claimed as a beneficial use right with a priority date of January 1, 1910

2. The claim states as its basis a statutory claim. However, no copy of any statutory claim was submitted with the adjudication claim nor was IDWR able to find a statutory claim matching this adjudication claim.

3. IDWR recommended that the claim to water right number 36-15094 be disallowed for the following reasons:

a. On March 15, 1991, IDWR Senior Water Resources Agent Steve Clelland visited the place of use claimed to conduct a field examination.

b. During the field exam, Mr. Clelland found the diversion works

described in the claim at a different location than the point of diversion claimed. The legal description of the location at which Mr. Clelland found the point of diversion described is T07S R13E NESENE $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$ (Lot 1).

c. During the field exam, Mr. Clelland found that the place of use irrigated by the point of diversion described above lay within both Basin 36 and Basin 37.

d. During the field exam, Mr. Clelland that 16.4 acres were irrigated by the point of diversion described above within the area in the following legal description:

T07S R13E Section 2 SENE (Lot 1)	6.7 Acres
SWNE (Lot 2)	3.0 Acres
T06S R12E Section 34 SESE	<u>6.7 Acres</u>
	16.4 Acres

e. As mentioned above, it is IDWR's experience that the on-farm irrigation requirement for sprinkler systems is rarely greater than .02 cfs per acre. Thus, IDWR multiplied the .02 cfs per acre rate by the 16.4 acres found to be sprinkler irrigated to come up with an on-farm irrigation requirement of approximately .33 cfs for the area irrigated pursuant to this claimed water right.

f. Because this claim is to a water right based on beneficial use, IDWR contacted the claimant by a copy of the letter dated October 3, 1990 sent to the claimant asking him to provide evidence of the priority date claimed for water right number 36-10446. This letter contained handwritten notations specifying that the request for priority was for water right number 36-15094 and was not be confused with the first letter asking for proof of priority for water right number 36-10446. The letter also contained a handwritten date of March 22, 1990. However, a copy of the letter in IDWR's claim file for this claim is attached to a note specifying that the letter was sent on March 22, 1991. No such proof of priority was submitted to IDWR.

g. Because IDWR had no proof of priority establishing the date of first beneficial use for water right number 36-15094, it recommended the claim to this water for disallowal.

Based on the foregoing legal principles and factual findings, IDWR has determined that its initial recommendations pursuant to claims to water right numbers 36-00064B, 36-10446 and 36-15094 are accurate and should be so recommended by the Special Master to the Presiding Judge for Partial Decree.

STATE OF IDAHO)
) ss.
County of Ada)

David R. Tuthill, Jr., being first duly sworn, upon oath, deposes and says:

That it I am the Acting Adjudication Bureau Chief for IDWR, that I have read the foregoing report, know its contents, and that the statements contained therein are true to the best of my knowledge and belief.

Notary Public for the State of Idaho
Residing at: _____
My commission expires: _____

EXHIBIT A

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF IDAHO, SOUTHERN DIVISION.

NEW INTERNATIONAL MORTGAGE
BANK, a corporation,

Plaintiff,

IDAHO POWER COMPANY, a
corporation, et al,

Defendants.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO
In Equity No. 1602

D E C R E E

WHEREAS, The above entitled action having heretofore been submitted to the court upon pleadings and stipulations of fact, on file herein, and WHEREAS, the court being duly advised in the premises, and having made its findings of fact and conclusions of law:

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, That all of the land described in the complaint of the plaintiff, and in the answers, cross-complaints, and counter-claims of the defendants and intervenors, and each of them, is semi-arid in character and requires the artificial application of water or irrigation in order to produce thereon ordinary agricultural crops; that said land is situate in what is known as the Hagerman Valley, east of and adjacent to the Snake River, and that the same lies between the rim rock, or canyon wall, to the east of the Snake River and said Snake River; that the subsoil of said valley underlying said valley and all of the same is shattered, fissured lava flow, upon which has been deposited layers of clay and gravel, interspersed with water worn boulders, fragments of rock, and the soil is composed mainly of decomposed lava rock, oxidized lava rock and sand, and that owing to the nature of the soil and subsoil, the coarse texture and the mechanical composition of the soil and its free drainage, the said land and all of the land

MICROFILMED

in Hagerman Valley requires a large amount of water, as hereinafter specified, for its successful irrigation and production thereon of ordinary agricultural crops.

IT IS FURTHER ORDERED, ADJUDGED, AND DECIDED, That said land, and all of the same, is situated in what is known as the Hagerman Valley, in Gooding County, Idaho, excepting certain lands of the Idaho Power Company situated on the south side of Snake River, which lands are in Twin Falls County, Idaho; said Hagerman Valley being a small valley or cove on the east side of the Snake River, between "Thousand Springs" on the south and "Lower Salmon Falls" on the north, comprising approximately 16,000 acres of land lying between the rim rock on the east and the Snake River on the west; that in the land, territory, and country immediately to the east of said Hagerman Valley there is underground flowage of water, flowing towards the Snake River, which comes to the surface in numerous springs, seeps, and trickles along said rim rock, and in numerous and divers other springs located in the said Hagerman Valley, and that said underground flowage of water is the common source and supply of two creeks situated in the Hagerman Valley, one commonly known as "Riley Creek", which said stream flows in a southwesterly direction and empties into Snake River, and the other commonly known as "Billingsley Creek", which said stream flows in a northwesterly direction and empties into Snake River, said Riley Creek and said Billingsley Creek being the natural drainage and waterways into which the waters afforded by said seeps, rivulets, springs and underground flow naturally drain and are conveyed into the Snake River; and that the said Riley Creek and Billingsley Creek have the same source, that is to say, that the waters of both of said creeks have their origin in the underground flowage of water flowing beneath the lavas in a generally westerly direction and making their appearance as seeps, trickles, rivulets and springs on the

rim rock bounding said Hagerman Valley on the east and also in said valley, and that the said Riley Creek and Billingsley Creek are a part of the same drainage system, and that interference with the waters supplying the seeps, trickles, rivulets and springs supplying Riley Creek is an interference with the natural flow of Billingsley Creek, and that interference with the waters supplying the seeps, trickles, rivulets and springs supplying Billingsley Creek is an interference with the natural flow of said Riley Creek.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That of and from the waters comprising and constituting the source and supply of Billingsley Creek and Riley Creek, and the waters of the seeps, springs, and rivulets so mentioned and above set out, the plaintiff, New International Mortgage Bank, be, and hereby is, ordered, adjudged, and decreed to have the use of, and the right to use for, the irrigation of its hereinafter described land and for domestic and other purposes thereon, the following amounts of water, to-wit:

36-001 ✓ Twelve second feet of the waters of Riley Creek, with a priority of May 1, 1893, said water to be diverted by means of a dam constructed in, and a ditch leading from, said Riley Creek; the point of diversion of said ditch being located at a point in the SW ^{1/4} SE ^{1/4}, Sec. 1, Twp. 8 South, Range 13 E. B. M., from which the corner of Sections 1, 2, 35, and 36, Twp. 7 and 8 South, Range 13 E. B. M. bears north 60° 12' west, 4365 feet distant;

Head ditch

36-002 ✓ Also 12 second feet of the waters of Riley Creek, with a priority of October 1, 1906, the point of diversion of said ditch being located near the head of Riley Creek, that is to say, where the main body of water comprising said Riley Creek emerges from the hillside in the form of springs, said springs being sometimes referred to as the Thompson or Tucker Spring, which said point of diversion is located in the SE ^{1/4} SE ^{1/4}, Sec. 36, Twp. 7 South, Range 13 E. B. M., from ^{which} the corner of Sections 1, 2, 35, and 36, Twp. 7

Point ditch

NAME	AMOUNT OF WATER IN SECOND FEET AND SOURCE	PRIORITY OF APPROPRIATION	DIVERSION POINT
36-0062	.28 Spring	May 1, 1912	Weatherby Springs;
36-0063	.8 Spring	Nov. 1, 1915	Weatherby Springs;
SE$\frac{1}{4}$ of the NE$\frac{1}{4}$ of Sec. 36, S$\frac{1}{2}$ of the NE$\frac{1}{4}$ of the NE$\frac{1}{4}$, NW$\frac{1}{4}$ of the NE$\frac{1}{4}$ of the NE$\frac{1}{4}$, Sec. 36, SE$\frac{1}{4}$ of the SW$\frac{1}{4}$ of the NE$\frac{1}{4}$, of Sec. 36, E$\frac{1}{2}$ of the SW$\frac{1}{4}$ of the SW$\frac{1}{4}$ of NE$\frac{1}{4}$, of Sec. 36, and NE$\frac{1}{4}$ of the SE$\frac{1}{4}$, all in Sec. 36, Twp. 7 S. R. 13 E. B. M. Also that portion of Lot 2 Sec. 31, Twp. 7 S. R. 14 E. B. M. more particularly described as follows: "Beginning at the southwest corner of said Lot 2, thence running north on the Section line about 80 rods to the north bank of John Curran's irrigation ditch; thence east along said ditch bank about 80 rods to the east line of said Lot 2; thence south along said line about 80 rods to the southeast corner of said Lot 2; thence west along the south line of said Lot 2, about 80 rods to the point of beginning; The entire above tract contains 157.85 acres.			
36-0064	5.6	Billingsley Creek Sept. 10, 1884	Bukeye Ditch
HOMES, GER- TRUDE, AND BEN HOMES	Starting at the NW$\frac{1}{4}$ corner of NE$\frac{1}{4}$NW$\frac{1}{4}$ of Sec. 23, Twp. 7 S. R. 13 E. B. M. first corner and running due east 804 feet to 2nd corner; thence due south 234 feet to third corner; thence due east 228 to fourth corner; thence due South 65 rods 13 feet to fifth corner; thence due west 1032 feet to sixth corner; thence about due north 80 rods to starting point, said tract containing about 30 acres of land except 7/12ths of an acre lying east of the Dilatash Ditch located in the northeast corner of the above described tract; and the NW$\frac{1}{4}$ of the NW$\frac{1}{4}$ of Sec. 23, Twp. 7 S. R. 13 E. B. M.; containing in both forties approximately 70 acres of land.		
36-0065	.7	Billingsley Creek Sept. 10, 1884	Bukeye Ditch
JENSEN,	1.4	Billingsley Creek April 1, 1885	Sands Ditch
J. H.,	.5	Billingsley Creek March 30, 1884	E.M. Bell Ditch
36-0066	AND MRS.		
J. H.			
36-0067	JENSEN		
NE$\frac{1}{4}$ of the NW$\frac{1}{4}$ of Sec. 14, Twp. 7 S. R. 13 E. B. M. Excepting therefrom the following described tract of land: Beginning at the southeast corner of the NE$\frac{1}{4}$ of the NW$\frac{1}{4}$, Sec. 14, Twp. 7 S. R. 13 E. B. M.; thence west along the south boundary thereof 288 feet; thence in a northeasterly direction along the Dilatash water ditch 871 feet; thence east 115 feet to the east boundary line of the said NE$\frac{1}{4}$ of the NW$\frac{1}{4}$; thence south along the east boundary line thereof to the southeast corner of the said NE$\frac{1}{4}$NW$\frac{1}{4}$, the place of beginning. Also that part of the Southeast Quarter of the Northwest Quarter (SE$\frac{1}{4}$NW$\frac{1}{4}$) Section 14, Twp. 7 S. R. 13 E. B. M., Tax No. 25, described as follows: Beginning at the northwest corner of the SE$\frac{1}{4}$ of the			

EXHIBIT B

ALAN G. LANCE
Attorney General
State of Idaho

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

CHARLES L. HONSINGER
Deputy Attorneys General
Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098
Telephone: (208) 327-5458
Fax: (208) 327-7866

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 Numbers 36-0006B, 36-10446, 36-15094
	)	
Case No. 39576	)	AFFIDAVIT OF STEVE CLELLAND
	)	
	)	
STATE OF IDAHO	)	
	) ss.	
County of Twin Falls	)	

Steve Clelland, being first duly sworn on oath, deposes and states as follows:

My name is Steve Clelland, and I am a Senior Water Resource Agent with the Idaho Department of Water Resources (IDWR). I make the following statements based upon my personal knowledge of the facts related therein.

1. My work address is Idaho Department of Water Resources (IDWR), Southern

Regional Office, 222 Shoshone St. East, Twin Falls, ID 83301-6105. I reside in Twin Falls, Idaho.

2. I have previously been qualified by the Snake River Basin Adjudication Court as an expert in the field of water rights investigation and so testified as such in the trial of subcase no. 36-00003G.

3. My educational background and relevant work experience is described in Attachment 1 to this affidavit.

4. I conducted the initial investigation of claims to water right numbers 36-00064B, 36-10446 and 36-15094. I also prepared the initial recommendation for these claims.

5. Based on my investigation and knowledge of these claims, I adopt as my testimony and incorporate in this Affidavit the Factual Findings portion of the Supplemental Director's Report Regarding Claim to Water Right Nos. 36-00064B, 36-10446 and 36-15094. dated January 21, 1998, attached to the Affidavit of David R. Tuthill, Jr. as Exhibit 1.

DATED this ____ day of January, 1998.

Steve Clelland

Subscribed and sworn to before me this ____ day of January, 1998.

Notary Public for Idaho

Residing at: _____

My commission expires: _____

Certificate of Service

I certify that on the ____ day of January, 1998, I hand delivered copies of the foregoing document, including all attachments to the following:

Mr. Michael J. Fleming
Route 1, Box 7
Hagerman, ID 83332

Person delivering document(s)

EXHIBIT 1

STEVE CLELLAND
WORK EXPERIENCE AND EDUCATION

1. My educational background includes a bachelor's degree in Agricultural Education from the University of Idaho in May, 1982. As part of my college education, I took classes pertaining to soils, crop management, farm business management, accounting, agricultural engineering, surveying, water measurement and animal science courses related to livestock production and management.

2. My work experience includes the following:

a. In 1981, I worked as an irrigation scheduling field technician for Stukenholtz Consulting where I was responsible for determining the irrigation requirements for fields under a variety of irrigation systems. Determining the irrigation requirements for these fields involved the use of tensiometers, instruments that measure soil tensile strength. (A high tensile strength tensiometer reading indicates a low moisture content in a particular soil sample; conversely, a low tensile strength tensiometer reading indicates a high moisture content in a particular soil sample.) Throughout the growing season, I monitored specific fields; charting tensiometer readings, and taking soil and crop samples to determine nutrient and irrigation requirements. I used this information to assist the farmer in determining proper irrigation and fertilization requirements and techniques for specific soil and crop types, and specific irrigation systems.

b. Upon my graduation from college, I worked with Simplot Soilbuilders from 1982 to 1986 as a fieldman. My duties in that position included but were not limited to: developing my knowledge of sprinkler systems to help farmers determine the proper application of fertilizers and pesticides; determining farm tract acreages from a variety of maps to resolve disputes regarding the area over which a particular fertilizer or pesticide had been applied; and conducting field examinations which often involved speaking with the farmer about their crop rotation practices, and their application and use of fertilizers and pesticides. During these field examinations I took crop and soil samples to determine nutrient and pesticide requirements for specific soil and crop types. Often, I could apply pesticides or fertilizers to a field by using the field's irrigation system. Thus, I had to learn about and understand various aspects of specific irrigation systems, including the area irrigated by the system, type of irrigation system, and the system's flow rates.

c. I then worked for the Twin Falls Canal Company for two years from 1986 to 1988 where I was responsible for helping the company's engineer plan and construct water diversion structures and canals, and for ensuring that water measurement devices were both accurate and properly maintained. My duties also included: surveying potential canal and diversion sites to prepare for construction of measurement devices and structures; in conjunction with the company's engineer, drawing plans for measurement devices and structures; building weirs and other measuring devices using welding equipment; and monitoring the work of construction crews to ensure that measuring devices and structures were being built in accordance with plans.

d. After working for Twin Falls Canal Company, I started a position with the Idaho Department of Water Resources as a Water Resource Agent in 1988. After one year in this position, I was promoted to Senior Water Resource Agent. I have held this position for the past seven years. My duties as a Senior Water Resource Agent are detailed in the attached job description. During my employment with the Idaho Department of Water Resources, I have received professional training in: hydrology; the use of polysonic flowmeters; the use of IDWR's methodology for calculating field irrigation diversion rates (see IDWR's Report Regarding Evaluation of Irrigation Diversion Rates); the preparation and use of claim verification records; and the use of ArcView geographical information systems. Through my experience while employed in this position, I have gained a good working knowledge (or become more practiced where I already had a familiarity) with the following:

- i. Water flow measurement methods through the use of flow meters, various types of weirs, bucket and stopwatch, and other measurement devices and methods;
- ii. The interpretation of aerial photography;
- iii. The calculation of acreage using aerial photographs, ortho photo quads, and other photographs and maps using grids, planimeters and other devices and techniques;
- iv. Reading and interpreting legal descriptions in order to locate that area described on maps or aerial photographs;
- v. The public land survey system;
- vi. Global positioning equipment;
- vii. All types of irrigation systems and methods;
- viii. Different types of wells and pumps and the calculation of pump outputs;
- ix. All of IDWR's electronic databases;
- x. The various diversion systems in the Hagerman Valley, including locations of all points of diversion and places of use of all the various water right claims.
- xi. Farming practices and techniques, including historic cropping patterns and irrigation practices in the Hagerman Valley.

Using this knowledge and other methods and devices, I have conducted over 400 water right claim field exams during my period of employment with IDWR..

FAMILIARITY WITH THE HAGERMAN VALLEY

Beginning in July, 1990, as part of my duties as a senior water resource agent with IDWR, I began conducting field examinations in the Hagerman Valley. During the irrigation seasons of 1990 through 1992, I visited the Hagerman Valley approximately 200 times to

ALAN G. LANCE
Attorney General
State of Idaho

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

CHARLES L. HONSINGER
Deputy Attorney General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 327-7900
FAX: (208) 327-7866
Attorney for IDWR

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 Nos. 36-00064B, 36-10446, 36-
	)	15094
	)	
	)	
	)	
	)	
Case No. 39576	)	AFFIDAVIT OF
	)	DAVID R. TUTHILL, JR.
	)	

STATE OF IDAHO)
) ss.
County of Ada)

David R. Tuthill, Jr., being first duly sworn, deposes and states as follows:

1. My name is David R. Tuthill, Jr. I am the Adjudication Bureau Chief for the Idaho Department of Water Resources (IDWR).
2. My work address is Idaho Department of Water Resources (IDWR), 1301 North

Orchard, Boise, Idaho 83706. I reside in Boise, Idaho.

3. My educational background includes a Bachelor of Science degree in agricultural engineering from Colorado State University at Fort Collins, Colorado, in 1974, and a Master of Science degree in civil engineering from the University of Colorado at Boulder, Colorado, in 1975. I have also attended and presented papers at numerous seminars on water rights investigation and administration.

4. I have been registered as a professional engineer in Idaho since 1979.

5. I have worked for IDWR for 21 years in the following positions respectively: Adjudication Section Supervisor; Payette Adjudication Supervisor; Water Allocation Section Supervisor; Regional Office Manager of IDWR's Western Regional Office; and currently as Adjudication Bureau Chief. In these positions I have investigated hundreds of water rights, including reviewing their descriptions in decrees, licenses and permits. I have supervised the distribution of water to water right holders and resolved disputes between competing water users. I have extensive first-hand knowledge of how water rights for a variety of uses interact with other water rights from the same source. I have extensive first-hand experience with the difficulty of resolving disputes between water right holders when the water use under a right is not adequately described.

6. I am familiar with the factual and legal basis for IDWR's policy regarding its recommendation of quantity, irrigated acreage, and remarks relating to specific elements of water rights.

7. I have either personal knowledge of the facts I testify to in this Affidavit, or they are available to me from IDWR records and personnel, and are the type of facts or data that are regularly and customarily considered by experts in the field of water use and water right

investigation and administration to be a reasonable basis to form an opinion about such water use or water right.

8. I adopt as my testimony and incorporate in this Affidavit the Legal Principles and the Conclusions portions of the Supplemental Director's Report Regarding Claim to Water Right Nos. 36-00064B, 36-10446, and 36-15094 dated January 21, 1998, attached to this Affidavit as Exhibit 1.

9. In Exhibit 1 I set forth my factual understanding of the law which underlies my opinion on behalf of IDWR regarding its description of specific elements of water right numbers 36-00064B, 36-10446, and 36-15094. To the extent, if any, these statements are inaccurate as a matter of fact, the opinions expressed in my report may change.

FURTHER YOUR AFFIANT SAYETH NAUGHT

DAVID R. TUTHILL, JR.

SUBSCRIBED AND SWORN to before me this ____ day of _____, 1998.

Notary Public for the State of Idaho

Residing at: _____

My commission expires: _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of _____, 1997
I caused to be served by First Class U.S. Mail, a true and correct copy of the foregoing
document on the following person(s):

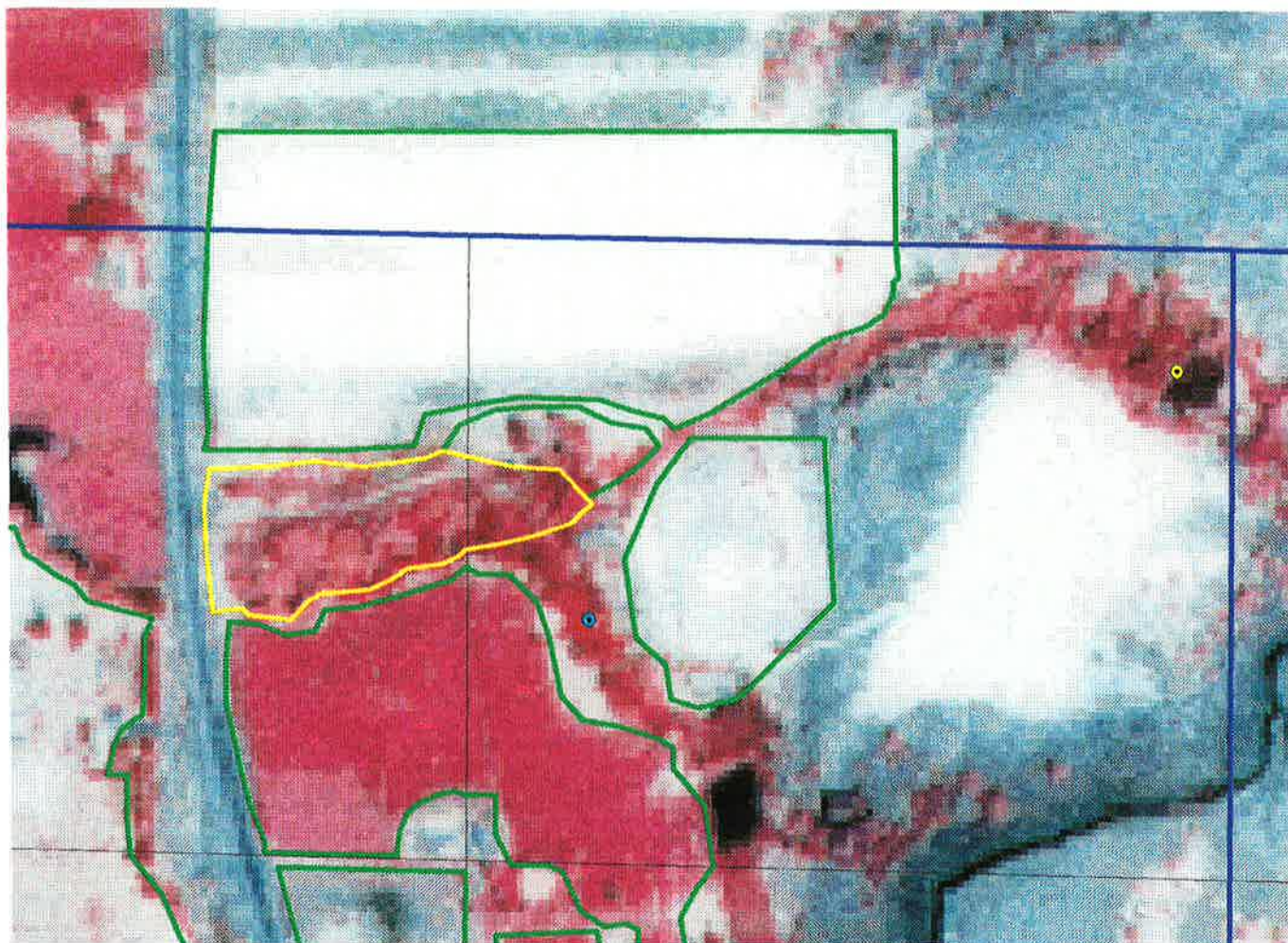
Mr. Michael J. Fleming
Route 1, Box 7
Hagerman, ID 83332

Person Mailing Documents

EXHIBIT 1

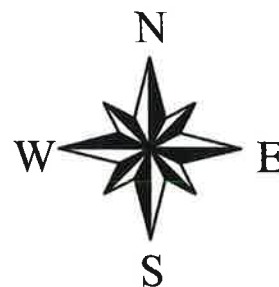
IDAHO DEPARTMENT OF WATER RESOURCES

36-10446



660 0 660 Feet

TNS 7S, RNG 13E,
S2, NE



⊙ Recommended Point of Diversion

 **RECOMMENDED** Place of use

 **Section lines**

 **Quarter/Quarter Lines**

GIS PLACE OF USE PRESENTATION
1987 and/or 1988 NAPP PHOTOGRAPHY
DATE: APRIL 29, 1998
BY: STEVE CLELLAND

Exhibit 1

4/28/98

See

STOCKWATER: not c
rights. f
for the S

.96 pump cap. delivery per pump
5 days on - 2 days
71% 29%

(increase time 29% ∴
reduce rate by 2

CL. =

.16 CL
(.56 49 ac)
<.65 22 ac>

.81 cfs total

20% CL

.18 2ND HG

.47 1st HG

Total Reach = 9900

≈ 1.9 mi

2ND HG (9900 + 5500) = 15400

perform: Chass

— for .6, 2.5, 10.0 widths
on the 2nd headgate
— assume MAD rate/acre for 6 acres?

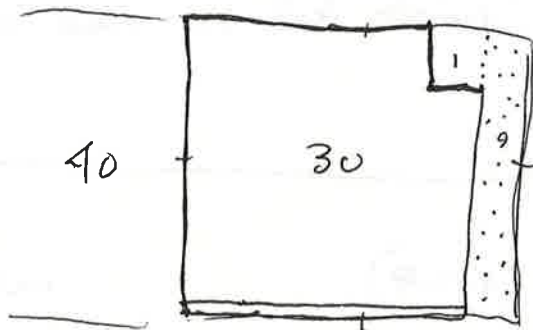
64

Fleming

Rad = 116.5' irrigated acres?

Est. 70 ac.

1086'



$$5.6 \text{ cfs} / 70 \text{ AC} = 0.08$$

Count has ruled BU nullifying
partial Forfeiture

{ 2.5 cfs to point
= 82% CL }

gravity system:

1 cfs @ 3 days = 5.94 AF

.85 $\frac{\text{AF}}{\text{day}}$ @ 7 days =

4/28/98

See

FLEMING TRIAL NOTES

STOCKWATER:

not claimed as part of the irrigation rights. Proposed a separate filing for the SW uses as late claims.

.96 pump cap. delivery per pump co.
5 days on - 2 days off
71% 29%

(9.5 AF)

(increase time 29% ∴
reduce rate by 29%)

$\frac{.69 \text{ cfs}}{(29 \text{ Hrs})} \quad 9.5$

.16 CL
(.56 49 ac)
<.65 22 ac>

{ 2.5 cfs to point
= 82% CL }

.81 cfs total

20% CL

gravity system:

1 cfs @ 3 days = 5.94 AF

.85 $\frac{AF}{day}$ @ 7 days =

2ND HG
1st HG

Total Reach = 9900
2ND HG (9900 + 5500) = 15400

≈ 1.9 mi

perform:

Class

for .6, 2.5, 10.0 widths
on the 2nd headgate
— assume

03/06/2002

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

RIGHT NUMBER: 36-64B

NAME AND ADDRESS: MICHAEL J FLEMING
17826 HIGHWAY 30
BLISS ID 833145066

PAUL F FLEMING
PO BOX 54
HAGERMAN ID 83332

SOURCE: BILLINGSLEY CREEK

TRIBUTARY: SNAKE RIVER

QUANTITY: 4.52 CFS

OF THE TOTAL QUANTITY, 3.86 CFS IS FOR CONVEYANCE LOSS. THE SAME
CONVEYANCE LOSS IS SHARED AND USED IN COMBINATION WITH ALL OTHER
WATER RIGHTS DIVERTED OUT OF THE BUCKEYE DITCH.

PRIORITY DATE: 09/10/1884

POINT OF DIVERSION:

T07S R13E S11 SESENE Within GOODING County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	02/15 11/30	4.520 CFS

PLACE OF USE: IRRIGATION Within GOODING County

T07S R13E S23	NENW	6.0	T07S R13E S23	NWNW	16.0
---------------	------	-----	---------------	------	------

22 ACRES TOTAL

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

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

EXPLANATORY MATERIAL: Decreed

WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.

14

36-00064B

FLEMING POU

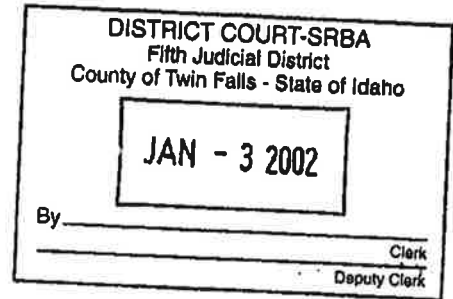
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 36-00064B



NAME AND ADDRESS: PAUL F FLEMING
PO BOX 54
HAGERMAN, ID 83332

MICHAEL J. FLEMING
17826 HIGHWAY 30
BLISS, ID 83314-5066

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 4.52 CFS

OF THE TOTAL QUANTITY, 3.86 CFS IS FOR CONVEYANCE LOSS. THE
SAME CONVEYANCE LOSS IS SHARED AND USED IN COMBINATION WITH ALL
OTHER WATER RIGHTS DIVERTED OUT OF THE BUCKEYE DITCH.

PRIORITY DATE: 09/10/1884

POINT OF DIVERSION: 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	4.52 CFS

PLACE OF USE:	Irrigation	Within Gooding County
	T07S R13E S23	NWNW 16.0
	22.0 Acres Total	

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

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

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Roger Burdick

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

836 cfs = 41.8
6.09 cfs = 304.5"

1998 JUN 19 AM 9:02

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

Subcase: 36-00064B

Case No. 39576

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

I. PROCEDURAL BACKGROUND

The water right before the court is 36-00064B claimed by Michael and Paul Fleming (Claimants). Quantity and number of irrigated acres are in dispute. The Claimants allege a quantity of 4.52 cfs and 51 acres of irrigated land. The Idaho Department of Water Resources (IDWR) recommended a quantity of 0.72 cfs and 19 acres of irrigated land.

II. FINDINGS OF FACT

1. The Claimants purchased the property where water right 36-00064B is used in 1971. Prior to purchasing the property, Michael Fleming worked and irrigated the land from 1956 to 1971. From 1971 to date, Michael Fleming conceded that only 22 acres of land have been irrigated.

2. IDWR originally recommend 0.56 cfs for water right 36-00064B. IDWR used a technique of measurement know as the "Hubble" analysis to arrive at this recommendation. Under this analysis, a number of different variables including weather data, soil type, type of crop irrigated, and method of irrigation are considered. The weather data used for the Hubble analysis was taken from the Bliss weather station.

3. IDWR conducted a second analysis under a different technique known as the "Marginal Allowed Deficit" (MAD) analysis. The variables used under MAD are similar to those in Hubble. IDWR testified that the only material difference between the two methods, as applied to water right 36-00064B, is that the MAD analysis used weather data taken from the Hagerman area where the water right at issue is actually used. Under this approach, IDWR's recommendation for water right

36-00064B increased to 0.72 cfs (0.038 multiplied by 19 acres). IDWR concedes that the weather data used under the MAD analysis is more reliable because it utilizes weather data from the actual place of use. For this reason, the court finds that the MAD analysis is more probative and reliable than the Hubble analysis.¹

4. Water right 36-00064B is diverted out of Billingsley Creek and into the Buckeye Ditch. The irrigated land consists of two irrigated parcels. See Trial Exhibit 2, Attachment B (GIS for 36-00064B). Since the late 1970s, the land has been irrigated using both gravity (wild flood) and sprinkler irrigation. The larger parcel on the north has been sprinkler irrigated. The smaller parcel to the south has been gravity irrigated. The parcel is irrigated out of two headgates. The first headgate serves the larger parcel on the north and is located 9,900 feet from the point of diversion on Billingsley Creek. The second headgate serves the smaller parcel to the south and is located 15,400 feet from the point of diversion located on Billingsley Creek. The total conveyance loss to deliver both portions of this water right to its place of use is 6.09 cfs. The same conveyance loss is shared and used in combination with other water rights delivered out of the Buckeye Ditch.

5. The water right before the court was originally decreed as water right 36-00064 in *New International Mortgage Bank v. Idaho Power Company*, in Equity No. 1602 (S.D. Idaho, Mar. 22, 1932) (*International Mortgage Decree*). That case was a private adjudication. A prior decree entered in a private adjudication “evidences a legal right to the use of water.” *In Re SRBA Case No. 39576 (24 Hagerman Subcase)*, 130 Idaho 736, 741, 947 P.2d 409, 414 (1997). However, a prior decree entered in a private adjudication is not conclusive as to that right. *Id.* In this case, there is insufficient evidence before the court to determine what, if any, portion of the original decreed right is appurtenant to the parcel that is currently before the court. Therefore, the court finds that the *International Mortgage Decree* is not probative of the quantity claimed for water right 36-00064B.

¹ IDWR’s conclusions under the Hubble and MAD methods of determining quantity are admissible in these subcases. However, the court is making no determination whether IDWR’s conclusions would be admissible when those opinions are subjected to cross-examination or scrutiny. IDWR’s conclusions under both the Hubble and MAD methods are the type of scientific or technical evidence that is subject to the test of admissibility announced in *Ryan v. Beisner*, 123 Idaho 42, 46, 844 P.2d 24 (Ct. App. 1992), citing *Landrigan v. Celotex Corp.*, 605 A.2d 1079, 1084 (N.J. 1992). See also, *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993).

III. CONCLUSIONS OF LAW

1. Acreage

There is no dispute that the place of use contains two irrigated parcels. There is no dispute that the parcel located on the northern section consists of 13 acres. The only disputed acreage involves the parcel located to the south. IDWR recommended 6 acres for this parcel. In addition to the 6 acres, Michael Fleming testified that he irrigates 3 additional acres located on the eastern half of the southern parcel between the irrigated land and the ditch. Based on this credible testimony, the court finds a total of 22 acres of irrigated land.

2. Quantity

In measuring quantity, the rule is "waters appropriated will be measured for their sufficiency from the point of diversion, not at the place of use." *Glenn Dale Ranches, Inc. v. Shaub*, 94 Idaho 585, 588, 494 P.2d 1029 (1972); *see also, Hidden Springs Trout Ranch v. Hagerman Water Right Users, Inc.*, 101 Idaho, 677, 681, 619 P.2d 1130 (1980). Since the right is measured from the point of diversion, the quantity decreed must include two distinct components. The first component is the amount of water necessary for the purpose of use. For irrigation purposes, this amount is the quantity necessary to actually grow crops. The second component is called conveyance loss, which is the amount of water necessary to deliver the right from the point of diversion to the place of use. As to the first component, IDWR recommended 0.038 inches per acre under the MAD approach. The MAD method used weather data taken from the Hagerman area where the water right is actually used as opposed to the Hubble method which used weather data from the Bliss weather station. Therefore, the quantity determined under the MAD approach is more reliable and probative than the Hubble method. The court having determined that 22 acres have been irrigated, the total quantity used to carry out the purpose of use is 0.836 cfs (22 acres multiplied by 0.038 inches per acre).

The only real dispute is the amount of water necessary to convey the water right from the point of diversion to the place of use. IDWR employs a so-called weighted pro rata method of determining conveyance loss in the Hagerman area.² On any ditch, there may be a number of rights. For any water right along the ditch, that water right must share a portion of the total conveyance loss with other rights on the ditch. Notwithstanding this fact, all rights on the ditch will have a fixed conveyance loss

2

The court is not aware if IDWR employs the weighted pro rata method of allocating conveyance loss in other parts of the state.

necessary to deliver a single right, independent of other rights along the ditch. For example, assuming that the last water right on a ditch required a conveyance loss of 1.00 cfs, this loss would be the amount necessary to deliver that water right without regard to any other rights existing on the ditch. IDWR, employing the weighted pro rata method, would distribute the 1.00 cfs conveyance loss required for the last water right and assign a portion of the 1.00 cfs to all water rights on the ditch.

The result of the weighted pro rata method is that the recommendation for each right along the ditch includes a conveyance loss less than the amount of water actually necessary to deliver each particular water right on the ditch. One problem with IDWR's method is that it requires that all rights along a ditch are fully used and never abandoned or forfeited. If any single right along the ditch is not in use or is abandoned or forfeited, then there will not be enough conveyance loss in the ditch system to deliver all the rights.

Furthermore, the court is concerned about the accuracy of any decree entered in the SRBA if a water right along a ditch is abandoned or forfeited. If one right is abandoned or forfeited on a ditch system, then the total conveyance loss in a ditch will not be sufficient to deliver the remaining water rights. Under these circumstances, the court would have to continuously update its decree to ensure that conveyance loss is accurately reflected and sufficient for any given ditch system. Determining and including the conveyance loss for each single right in a ditch system cures the problem. Using this method, any rights that remain in a ditch system after one or more rights are abandoned or forfeited will always reflect the correct conveyance loss independent of other rights.

Another problem with IDWR's method of allocating conveyance loss is the potential result in case of a call made on water. In times of scarcity, water rights are delivered "first in time, first in right." IDAHO CONST., art XV, § 3. Since the quantity of the water right is measured from the "point of diversion, not place of use," *Glenn Dale Ranches, Inc.*, any user making a call has a right to that amount of water necessary to deliver the right from the point of diversion to the place of use. Because IDWR does not factor in a full conveyance loss for every single right on a ditch, a user making a call may not be able to deliver the right to its place of use. The right holder's ability to make an effective call would require all rights up ditch being in use and valid.

For these reasons, the court finds that the full conveyance loss should be included in the quantity for any given right. In this case, there is no dispute that it takes a combined 6.09 cfs to deliver the water down the Buckeye Ditch to the second headgate. That amount is then added to the quantity

necessary to fulfill the purpose of use which, as previously stated, is 0.83 cfs. Adding the two quantities together, the total quantity is 6.93 cfs.³ Quantity should be reported as follows:

Quantity: 6.93 cfs

Of the total quantity, 6.09 cfs is for conveyance loss. The same conveyance loss is shared and used in combination with all other water rights diverted out of the Buckeye Ditch.

Although the court finds that water right 36-00064B should be reported for a total quantity of 6.93 cfs, the court notes that the amount claimed is only 4.52 cfs. Before the court enters a recommendation for this right, the Claimant will have an opportunity to amend his claim. If the claim is amended, the court will allow an additional objection period for this water right. If the claim is not amended by **July 31, 1998 by 5 p.m.**, the court will recommend water right 36-00064B with the full amount of quantity necessary for the purpose of use with an amount of conveyance loss less than necessary to deliver the single right to its place of use:

Quantity: 4.52 CFS

Of the total quantity, 3.69 cfs is for conveyance loss. The same conveyance loss is shared and used in combination with all other water rights diverted out of the Buckeye Ditch.

3. Effect of Prior Decree

This right was decreed in a private adjudication under the *International Mortgage Decree*. In this case, applying the facts as presented by IDWR to the law that water rights be measured from the point of diversion not place of use, the amount recommended herein exceeds the original decreed amount. Accordingly, the issues are the extent to which **this court** is bound by a prior decree entered in a private adjudication and whether IDWR may recommend a water right in excess of that decreed in a private adjudication.⁴

³ To be sure, "the public policy against wasting water prohibits . . . unreasonable [conveyance] loss." *Glenn Dale Ranches, Inc. v. Shaub* at 588. Taking this principle into consideration, a conveyance loss shared between a number of different rights may constitute a reasonable use of water. However, a single right being diverted down a ditch may constitute an unreasonable loss of water when that conveyance loss exceeds a certain percentage of the water actually used to carry out the purpose of use for that single water right. In this case, IDWR considers a conveyance loss of over 50 percent to be an unreasonable loss of water. According to IDWR, this is a "rule of thumb."

⁴ Decrees entered in general adjudications "shall be conclusive as to the nature and extent of all water rights in the adjudicated water system." I.C. § 42-1420; *24 Hagerman Subcases* at fn. 2.

The effect of prior decrees was discussed by the Idaho Supreme Court in *In Re SRBA Case No. 39576 (24 Hagerman Subcases)*, 130 Idaho 736, 947 P.2d 409 (1997). In that case, the court held that “[a] decree issued in a private water adjudication binds only those parties to the decree.” *Id.* at 742.⁵ Thus, non-parties to the prior decree and IDWR are not bound by the prior decree. *Id.* Given this holding, the Supreme Court went on to outline the duties of both IDWR and the court with respect to prior decrees entered in private adjudications. The court held that a prior decree entered in a private adjudication is “evidence” of a water right which is considered along with all other evidence, including evidence collected by IDWR.

While a decree issued in a private adjudication is evidence of a legal right, the Director is not obligated to accept the decree as conclusive proof of the extent and the nature of the water right In one-party cases, where a party alleges facts differently from that contained in the Director’s Report, an evidentiary hearing must be conducted. The district court should weigh the Director’s Report, as well as reports submitted by the Director as an independent expert, with other relevant facts.

Id. at 746.

The previously mentioned holding is not a unilateral restriction. The ruling does not state that IDWR is bound by the limits of a decree, but can reduce a right if its investigation establishes something different than the decreed amount. The ruling contemplates that IDWR performs a neutral and unbiased investigation of each water right claimed under state law.

In this adjudication, the Director is “an independent expert and technical assistant [who] assure[s] that claims to water rights acquired under state law are accurately reported The director shall make recommendations as to the extent of beneficial use and administration of each water right under state law.” I.C. § 42-1401B(1).

. . . . Although a decree evidences a legal right to the use of water, *see* I.C. § 42-230(e), it does not obligate the Director to make a recommendation contrary to his findings.

Id. at 741.

If IDWR performs a neutral and unbiased investigation of the SRBA stream system, it is possible that some investigations will reveal that some decreed water rights should be reported in excess of the original decreed right. In fact, if IDWR were to limit its findings to the limit and extent

⁵

The prior decree also binds those parties in privity with original parties to a decree issued in a private adjudication. *Mays v. District Court of Sixth Judicial District*, 34 Idaho 200, 200 P. 115 (1921).

of a previously decreed right in light of contrary evidence that the right should be reported in excess of the original decreed amount, then IDWR would be breaching its duty to investigate water rights to the extent of beneficial use under I.C. § 42-1401B(1).

Since IDWR is not bound by a prior decree entered in a private adjudication, neither is this court. The prior decree is simply evidence. If the evidence shows that a previously decreed right entered in a private adjudication should be reduced, then the court will reduce the right. On the other hand, if the evidence presented shows that the right should be increased, then the court will increase the water right. By increasing a previously decreed right entered in a private adjudication, this court is not expanding the original decreed right. Rather, the court is making a correct determination of the original beneficial use of water after considering all the evidence.

Though IDWR is not conclusively bound by a decree entered in a private adjudication, the type of evidence submitted as to a water right claimed under a prior decree may be relevant in different legal contexts. For example, assuming a water right was claimed with a priority date of 1900, the only relevant evidence to prove establishment of that water right would be the use of the right in 1900. “[T]he law of this territory is that the **first appropriation** of water for a useful or beneficial purpose gives the better right thereto. . . .” *Malad Valley Irrigating Company v. Campbell*, 2 Idaho 411, 18 P. 52 (1888) (emphasis added); *McGinness v. Stanfield*, 6 Idaho 372, 55 P. 1020 (1898). If a court in a private adjudication decreed the same 1900 water right, presumably the court determined the extent of beneficial use for that water right in 1900. See e.g., *Clear v. Marvin*, 86 Idaho 87, 92, 383 P.2d 346 (1963) (A final judgment entered by a court of competent jurisdiction is presumed valid).⁶

Under this example and assuming IDWR does not challenge the decreed priority date, IDWR could make a recommendation which differs from the prior decree in one of two ways. First, IDWR could challenge the determination of a prior court as to the amount of beneficial use. Under this scenario, IDWR would be required to present evidence that in 1900, the beneficial use of water was something different than that determined by the prior court. Evidence of current beneficial use could be relevant to the extent and establishment of the right if it can be shown that the current use is the

6

The *International Mortgage Decree* is the product of a stipulated settlement between the parties. Because of this, some have suggested that the decree is not entitled to any weight. Those who continue to assert that stipulated judgments carry no weight should direct their attention to the Idaho Supreme Court's decision in *Western Industrial and Environmental Services, Inc. v. Kaldveer Associates, Inc.*, 126 Idaho 541, 544, 887 P.2d 1048 (1994) (holding that stipulated arbitration settlements are entitled to be enforced under principles of *res judicata* and collateral estoppel).

same or similar as it was when the right was established. In such a case, the party or IDWR offering the evidence would be required to lay a foundation tying current use to use of the right in 1900.

Second, IDWR could base its recommendation on the use of the water right after 1900. Under this scenario, again assuming the decreed priority date was not challenged by any party or IDWR, evidence of water usage after the decreed priority date of 1900 would be relevant only as to a claim that the right has been abandoned, forfeited, or adversely possessed. "A water right may not be statutorily lost or reduced based on current non-application to beneficial use for a lesser duration than that specified in I.C. § 42-222(2)." 24 *Hagerman Subcases* at 743. Stated differently, use of a right after the claimed and undisputed priority date is irrelevant to the extent or establishment of the right unless, as previously stated, a foundation is laid showing that the current use is the same or similar to the use of the right on the establishment date.⁷

In this case, the facts as presented by IDWR show that water right 36-00064B should be decreed for a quantity of 6.93 cfs. The only difference between the court's findings and IDWR's recommendation, as previously indicated, is that this court holds that conveyance loss should not be allocated between rights in a ditch. As a result of this legal conclusion, the total quantity found for this water right exceeds that amount originally decreed in the *International Mortgage Decree*.

IV. CONCLUSION

In reviewing this subcase, it is clear that IDWR is not following the rule that "waters appropriated will be measured for their sufficiency from the point of diversion, not at the place of use." *Glenn Dale Ranches, Inc.* at 588. Each water right shall describe the full conveyance loss for that particular right irrespective of whether other rights are diverted down a ditch. Furthermore, the court holds that neither this court nor IDWR is bound by private decrees entered in a private

7

With respect to prior decrees or licenses, the legislature declared that current evidence of beneficial use is relevant as to prior decrees or licenses which did not define elements required to be decreed in the SRBA. I.C. § 42-1427(1)(b). To the extent that determining relevance is a court function under the Idaho Rules of Evidence, there is some question whether the legislature has the authority to declare matters relevant when the matter before the court would not otherwise be relevant. "Statutory provisions and rules governing the admissibility of evidence, to the extent they are evidentiary and to the extent they are in conflict with applicable rules of Idaho Rules of Evidence, are of no force or effect." I.R.E. 1102; *State v. Zimmerman*, 121 Idaho 971, 829 P.2d 861 (1992).

adjudication if the facts presented by IDWR to the SRBA court establish something different than the original decreed amount.

IT IS SO RECOMMENDED.

DATED this 17 day of June, 1998.


Fritz X. Haemmerle, Special Master
Snake River Basin Adjudication

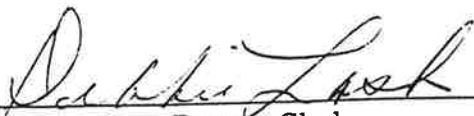
CERTIFICATE OF MAILING

I certify that a true and correct copy of the FINDINGS OF FACT AND CONCLUSIONS OF LAW was mailed on June 17, 1998, with sufficient first-class postage to the following:

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

Director of IDWR
P O Box 83720
Boise, Idaho 83720-0098

Michael J. Fleming
Route 1, Box 7
Hagerman, Idaho 83332


Debbie Lash, Deputy Clerk



DICK KAMPTZ-SCHNEIDER
GOVERNOR

KARL J. DEEMER
DIRECTOR

FAX Transmittal Cover Sheet

Number of pages including this one: 7

RECEIVED

MAR 05 2002

Department of Water Resources
Southern Region

Date: 3/5

To: Vicki

Fax No.: _____

From: Vicki

Fax No.: _____

Phone No.: _____

Subject: The others will be following shortly

(if I'm lucky)!

Thanks - V

In Addition: There is now a way to research water rights over the Internet. The system is a graphical or text query system and can be accessed from the IDWR home page:

<http://www.idwr.state.id.us>

From that link, select "Snake River Basin Adjudication" toward the lower left hand of the screen. Then select "Map" or "Text" on the next page.

"TEXT" lets you search water rights via Name, Legal, Source, etc.

Enter in the information you know. Information can be entered under more than one tab. After you have completed entering your information, select "Search"

"MAP" allows you to search water rights graphically.

Use the tools on the Left side of the screen to Zoom in and out. To find out what each button does, hold the cursor over the button for a second. To the Right side of the screen are different layers that can be turned on or off. As you zoom in to your place in question, different layers will appear on the right side of the screen.

A HELP function is available within the application or you can call 1-800-451-4129 or (208) 327-7906 for help.

RECEIVED

MAY 24 1999

Department of Water Resources

1999 MAY 24 AM 10: 57

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

Subcase: 36-00064B

Case No. 39576

ORDER ON MOTION TO ALTER OR
AMEND

I. PROCEDURAL BACKGROUND

Water right 36-00064B is claimed by Michael and Paul Fleming (Claimants). This matter is before the court on a *Motion to Alter or Amend* filed by the North Snake Ground Water District (NSGWD) of the court's *Findings of Fact and Conclusions of Law* (June 19, 1998). NSGWD alleges that the quantity for these rights should be based on the "actual beneficial" use of the rights. In support of the motion, NSGWD attached the *Affidavit of Jeff Peppersack*.

II. STANDARD OF REVIEW

A motion to alter or amend is treated as a motion under I.R.C.P. 59(e). The purpose of a motion to alter or amend is "correct errors both of fact and law that occurred in its proceedings." *First Security Bank of Idaho, N.A., v. Webster*, 119 Idaho 262, 266, 805 P.2d 468 (1991), citing *First Sec. Bank v. Neibur*, 98 Idaho 598, 603, 570 P.2d 276 (1977). "[M]otions must be directed to the status of the case as it existed when the court rendered the decision upon which the judgment is based." *Id. citing Coeur d'Alene Mining Co. v. First Nat'l Bank of N. Idaho*, 118 Idaho 812, 800 P.2d 1026 (1990).

III. DECISION

A. QUANTITY (ON-FILED QUANTITY)

Generally, affidavits cannot be offered as additional evidence in the context of a motion to alter or amend. *Id.* However, in this case, the *Affidavit of Jeff Peppersack (Affidavit)* merely directs the court's attention to errors made at trial. Therefore, the court will consider the *Affidavit*.

In reviewing the *Affidavit*, it is clear the court committed an error. The court found that the on-field requirement for this right was 0.038 cfs. A portion of that on-filed quantity included a pro rata conveyance loss of 0.008 cfs per acre. Deleting this amount from the court's prior findings, the proper on field requirement should be 0.03 cfs.

However, this error will not have any effect on the overall quantity determination. The total conveyance loss was 6.09 cfs. Adding the proper on-field requirement of 0.66 cfs (0.03 cfs multiplied by 22 acres) to the conveyance loss of 6.09 cfs, the total quantity should be reported as 6.75 cfs. However, because the claim was for 4.52 cfs and the claimant chose not to amend his claim, the total quantity remains at 4.52 cfs. Given the proper on-field requirement, the quantity should be reported as follows:

Quantity: 4.52 cfs

Of the total quantity, 3.86 is for conveyance loss. The same conveyance loss is shared and used in combination with all other water rights diverted out of the Buckeye Ditch.

Furthermore, the court finds that quantity listed under the "Quantity" and the "Purpose and Period of Use" element are not the same. Both quantities should be reported as 4.52 cfs.

B. ACTUAL AND REASONABLE BENEFICIAL USE

NSGWD alleges that this right should reflect a sprinkler irrigation quantity instead of a quantity based on gravity irrigation. If the quantity was based on sprinkler irrigation, NSGWD alleges that IDWR's MAD analysis would be different, and the total quantity would be less than 4.52 cfs. There is absolutely no support for this proposition. The *Affidavit* supplied by NSGWD reads as follows:

12. Thirty-six of the thirty-seven fields which serve as the basis for the regression analysis did not utilize sprinkler systems. The thirty-six fields all utilized surface or "gravity" irrigation systems. **The one four acre field which used sprinkler**

irrigation had an insignificant effect on the outcome of the regression analysis which was based on a total of approximately 350 acres.

Affidavit at 4-5 (emphasis added).

Based on NSGWD's own *Affidavit*, the court finds that the quantity reported for water right 36-00064B is based on the actual use of the water. Even if the court had taken sprinkler irrigation into consideration, the conclusion of IDWR is that this irrigation has an "insignificant effect on the outcome of the regression analysis."

C. IC § 42-220.

As recommended, the quantity for this right exceeds one inch per acre (.02 cfs). Under IC § 42-220, the court is required to make findings if an amount exceeds one inch per acre.

[N]o license or decree of the court allotting such water shall be issued confirming the right to the use of more than one second foot of water . . . unless it can be shown to the satisfaction of the department of water resources in granting such licenses, and to the court in making such decree, that a greater amount is necessary.

IC § 42-220. NSGWD alleges that the court failed to make such a finding under IC § 42-220 prior to issuing the recommendations. This argument lacks merit.

NSGWD's argument overlooks the interplay between IC §§ 42-220 and 42-1411(5). Under IC § 42-1441(5), the Director's Report is *prima facie* evidence of the water right. When the Director files a Director's Report or settles a subcase through an SF-5, the Director's findings constitute *prima facie* evidence. The term "*prima facie*" means that there is sufficient evidence before the court "to justify a finding of the matter in question by the trier of fact." D. Craig Lewis, IDAHO TRIAL HANDBOOK, § 10.2, at 102 (1st ed). "The determination of facts by the Director is presumptively correct." *In Re SRBA Case 39576* (Enlargement), 129 Idaho 454, 462, 926 P.2d 1301 (1996); *see also, In Re SRBA Case 39576* (24 Hagerman Subcases), 130 Idaho 736, 744, 947 P.2d 409 (1997). What this means is that the court can conclude from the Director's Report or an SF-5 that any water decreed in excess of one inch per acre is a beneficial use of water.

Since the findings of the Director are presumptively correct and entitled to *prima facie* weight, the party alleging facts different than the presumption has the burden of going forward with evidence to the contrary. "A Rule 301 presumption relieves the party in whose favor the presumption operates from having to adduce further evidence of the presumed fact until the opponent introduces

substantial evidence of the nonexistence of the fact." *Bongiovi v. Jamison*, 110 Idaho 734, 738, 718 P.2d 1172 (1986). Accordingly, the burden is on NSGWD to produce some evidence showing that the quantities contained in the SF-5 in excess of one inch per acre do not constitute a beneficial use. On this issue, NSGWD has produced no evidence

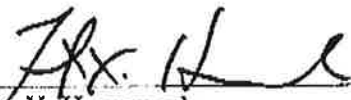
The purpose of a court making a finding under IC § 42-220 is to ensure that water rights decreed do, in fact, constitute a beneficial use. Under the adjudication statutory scheme, IDWR is a technical expert and is statutorily mandated to "make recommendations as to the extent of beneficial use." IC § 42-1401(B). Once a Director's Report is issued, a vast majority of the recommendations go uncontested. Some of these uncontested recommendations exceed one inch per acre. Where IDWR makes recommendations that are uncontested or enters into SF-5s in contested subcases, the court presumes that IDWR is fulfilling its statutory duty to make "recommendations as to the extent of beneficial use." As a matter of fact, IDWR's recommendation of more than one inch per acre is entitled to *prima facie* weight. The party in whose favor the presumption operates is relieved from producing any further evidence on the matter. Furthermore, the court is relieved from making any further factual findings based on the presumption.

For these reasons, the court finds that this water right which exceed one inch per acre (0.02 cfs) does constitute a beneficial use of water.

IV. CONCLUSION

For these reasons, NSGWD's *Motion to Alter or Amend* is **DENIED, IN PART, AND GRANTED, IN PART.**

DATED May 24, 1999.



Fritz X. Haemmerle
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

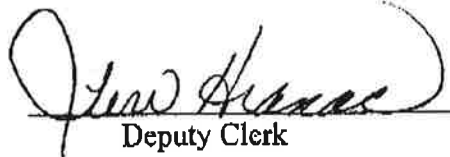
I certify that a true and correct copy of the *Order on Motion to Alter or Amend* was mailed on May 24, 1999, with sufficient first-class postage prepaid as follows:

Director of IDWR
PO Box 83720
Boise, ID 89720-0098

Dana Hofstetter
Beeman & Hofstetter
PO Box 1427
Boise, ID 83701-1427

Michael Fleming
933 E 2700 S
Hagerman, ID 83332

Paul F Fleming
PO Box 54
Hagerman, ID 83332


Deputy Clerk

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

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-000648

1999 MAY 24 AM 10:57
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: PAUL F FLENING
PO BOX 54
HAGERMAN, ID 83332

MICHAEL J. FLENING
933 E 2700 S
HAGERMAN, ID 83332

RECEIVED

MAY 24 1999

Department of Water

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 4.52 CFS

OF THE TOTAL QUANTITY, 3.86 CFS IS FOR CONVEYANCE LOSS. THE
SAME CONVEYANCE LOSS IS SHARED AND USED IN COMBINATION WITH ALL
OTHER WATER RIGHTS DIVERTED OUT OF THE BUCKEYE DITCH.

PRIORITY DATE: 09/10/1884

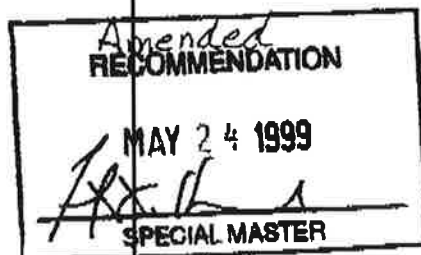
POINT OF DIVERSION: T07S R13E S11 SESENE Within Gooding County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	4.52 CFS

PLACE OF USE:	Irrigation	Within Gooding County
	T07S R13E S23 22.0 Acres Total	N6W 16.0

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

SRBA PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 36-000648

PAGE 1
May-24-1999

03/05/2002

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 36-64B V2

WATER RIGHT NUMBER: 36-64B V2

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MICHAEL J FLEMING ✓ 17826 HIGHWAY 30 BLISS, ID 833145066 (208)837-6453
Current Owner	PAUL F FLEMING ✓ PO BOX 54 HAGERMAN, ID 83332 (208)837-4420
Attorney	PATRICK D BROWN HEPWORTH LEZAMIZ & HOHNHORST 133 SHOSHONE ST N PO BOX 389 TWIN FALLS, ID 833030389 (208)734-7510

Priority Date: 09/10/1884

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BILLINGSLEY CREEK	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION ✓	2/15 to 11/30 ✓	0.720 CFS	
	<u>Total Diversion:</u>	0.720 CFS	

Location of Point(s) of Diversion

BILLINGSLEY CREEK	SE1/4SE1/4NE1/4	Sec. 11, Twp 07S, Rge 13E, B.M.
GOODING County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE	NW	SW	SE	Totals
07S	13E	23	NE	NW	SW	SE	19.0
			6.0	13.0			

Total Acres: 19

Conditions of Approval:

1. C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

Remarks:

Quant remark

Amended
FF & Cond
5-24-1999
PD 3/3/2002
DJK

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 36-64B V2

1. Explanatory WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.

Comments:

1. SCHULTZ 9/21/1992 NOTICE OF ERROR (NOE)

Comment: RECEIVED NOE 9/18/92. CHANGED NOE FLAG FROM BLANK TO A. CLAIM VERIFIED 8/5/92. DID NOT REVERIFY ANY PART OF CLAIM.

2. CHRISTEN 10/14/1992 RESPONSE TO NOE

Comment: THE RECOMMENDATION IS BASED UPON A FIELD EXAM WHERE FEWER ACRES THAN CLAIMED WERE FOUND TO BE IRRIGATED. NOE STATES "all" THEREFORE I HAVE RESPONDED WITH A STANDARD LETTER "amount recommended less than decreed amount." NO CHANGES RECOMMENDED AT THIS TIME. KKC 10-14-92.

3. SCHULTZ 2/19/1993 ADDED NEW ATTORNEY

Comment: RECEIVED NOTICE OF APPEARANCE FROM HEPWORTH NUNGESTER LEZAMIZ 2/10/93. CLAIM VERIFIED 10/14/92. DID NOT REVERIFY CLAIM.

4. CFRITSCH 6/29/1996 COPIED FROM REMARKS

Comment: 0.16 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT.

5. DTUTHILL 7/1/1996 COPIED FROM REMARKS

Comment: A DIVERSION RATE OF 0.56 CFS AT THE FIELD HEADGATE IS RECOMMENDED FOR THE PLACE OF USE DESCRIBED ABOVE.

6. SSHERMAN 9/2/1999 ADDRESS CHANGE

Comment: ADDRESS CHANGE BY CLAIMANT LETTER.

Dates and Other Information:

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Defendant:

Plaintiff:

Civil Case Number:

Judicial District:

Notice of Error Flag: RECEIVED - NO CHANGE TO RECOMMENDATION

State or Federal: S

Owner Name Connector: AND

Water District Number: 36A

Generic Max Rate Per Acre:

Generic Max Volume Per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Carey Act Number:

Mitigation Plan: False

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 36-64B V2

SubCase:

SubCase Number: 36-64B

Class: 2

SF5 Filed Date:

Special Master Recom Signed Date: 11/30/1998

Attorney Assigned: NICHOLAS B SPENCER

Adjudication Agent:

Basis of Claim:

Date Filed: 4/29/1993 Objection Status: Active

Department of Water Resources
Southern Region

In Re SRBA
Case No. 39576

**NOTICE OF COMPLETED
ADMINISTRATIVE PROCEEDINGS**

**Water Rights 36-00064B, 36-10446,
36-15094 and 37-10993**

X	Change of Address
_	Substitution of Party
_	I.C. 42-222 Transfer

Name of Claimant: MICHAEL J FLEMING
New Address: 17826 HIGHWAY 30
BLISS ID 83314-5066
Phone: (208) 837-6453

The Claimant has filed Objections or Responses to the following water rights: 36-00064B, 36-10446 and 36-15094

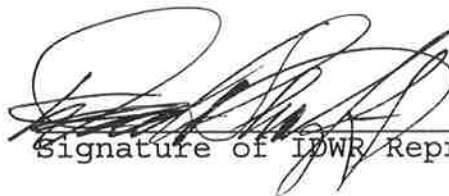
NOTICE OF COMPLETED
ADMINISTRATIVE PROCEEDING 36-00064B, 36-10446, 36-15094
9/30/1999 AND 37-10993

IDWR certifies that it has completed its investigation into the changes to the elements of the water rights listed above as set forth in the attached Amended Director's Reports for said water rights. No other changes have been made to the elements of these water rights except as set forth above.

IDWR has served copies of the Notice of Completed Administrative Transfer and Amended Director's Reports(s) on the claimant(s), prior claimants(s) and all parties in the subcases affected, if any, as reflected on the attached certificate of mailing.

DATED:

10/07/99

A handwritten signature in black ink, appearing to be "D. D. D.", written over a horizontal line.

Signature of IDWR Representative

CERTIFICATE OF MAILING

I certify that on 11-18-99 I mailed the original and copies of this form to the following persons, 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:
Each party in the subcase, or attorney of record:

MICHAEL J FLEMING
17826 HIGHWAY 30
BLISS ID 83314-5066

PAUL F FLEMING
PO BOX 54
HAGERMAN ID 83332
3. One Copy to:
Chief, Natural Resources Division
Office of the Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
4. One Copy to:
United States Dept. of Justice
Environment & Natural Resource Div.
550 West Fort Street, MSC 033
Boise, ID 83724

Sandy Egbert
Signature of person or attorney mailing the form

AJ5856NP

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

DATE: SEP-30-1999
PAGE: A-30

RIGHT NUMBER: 36-000648

NAME & ADDRESS: MICHAEL J FLEMING
17826 HIGHWAY 30
BLISS ID 83314-5066

PAUL F FLEMING
PO BOX 54
HAGERMAN ID 83332

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 0.72 CFS

PRIORITY DATE: 09/10/1884

POINT OF DIVERSION: T07S R13E S11 SESENE Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	02-15 11-30	0.72 CFS

PLACE OF USE: IRRIGATION Within GOODING County
T07S R13E S23 NENW 6 NWNW 13
19 ACRES TOTAL

EXPLANATORY MATERIAL: BASIS OF CLAIM - DECREE
WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.

RECEIVED

SEP 02 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

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

Department of Water Resources

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

August 24, 1999

MICHAEL J FLEMING
17826 HIGHWAY 30
BLISS ID 83314-5066

Re: Snake River Basin Adjudication (SRBA)
Water Rights #36-00064B, 36-10446, 36-15094, 37-00795A,
37-00796, 37-03155, 37-03157, 37-07559, 37-00798, 37-10993
& 47-10199

Change of Address

Dear Water Right Holders:

IDWR has been notified the address presently in our records is incorrect. Although we have reached you at the address above, we need your written confirmation this is your correct mailing address before we can change our records. Future notices related to your water rights can be sent only to the address on your water right or as otherwise changed by you.

Please sign your name at the bottom of this letter and return it to this office. Make corrections to your name and address if necessary and list any other water rights you may have before returning this letter by September 17, 1999. Thank you for your help.

If your mail delivery address changes in any form, please contact us in writing so we can update our records.

If there has been a change in ownership of the property connected with the water rights referenced above, please write down the name and address of the new owner(s) so we can send them a form to make this required change to the water right record.

Sincerely,

Sally Sherman
Technical Records Specialist
Adjudication Bureau

SS:region

#####

The address is correct as shown above or as otherwise changed.

Claimant Signature

208-837-6453

Telephone No.

RECEIVED

MAY 27 1998

Department of Water Resources
Snake River Basin

1998 MAY 26 PM 3:4

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
DISTRICT COURT-SRB
TWIN FALLS CO., IDAHO
FILED

In Re SRBA

Subcase: 36-00064B

Case No. 39576

ORDER SETTING HEARING

Please be advised that Special Master Fritz X. Haemmerle has set a hearing in the above listed subcase.

Friday, May 29, 1998 at 4:00 p.m.

SRBA District Court
253 3rd Avenue North
Twin Falls, Idaho

Parties may participate by phone if they contact the clerk at 208-736-3011 prior to the hearing.

DATED May 26, 1998.



FRITZ X. HAEMMERLE
Special Master
Snake River Basin Adjudication

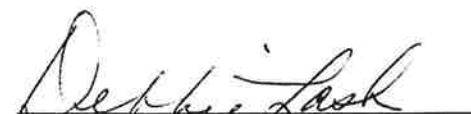
CERTIFICATE OF MAILING

I certify that a true and correct copy of ORDER SETTING HEARING was mailed on May 26, 1998, with sufficient first-class postage prepaid to the following:

Michael Fleming
933 E 2700 S
Hagerman, ID 83332

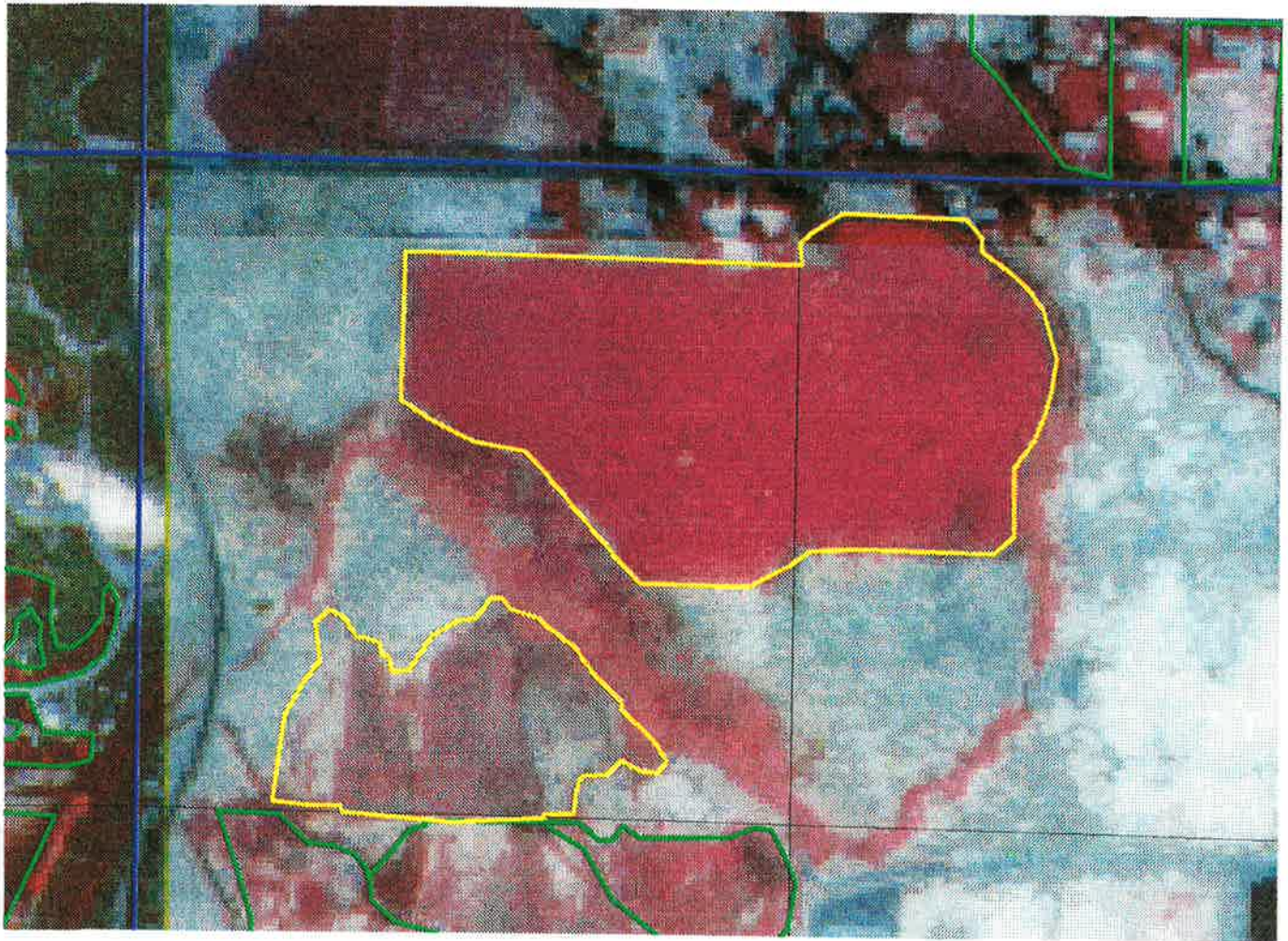
Director of IDWR
PO Box 83720
Boise, ID 83720-0098

Courtesy copy:
Steve Clelland
Department of Water Resources
1341 Fillmore, Suite 200
Twin Falls, Idaho 83301


Deputy Clerk

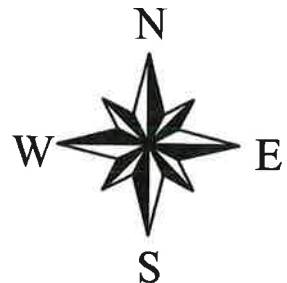
IDAHO DEPARTMENT OF WATER RESOURCES

36-00064B



660 0 660 Feet

TNS 7S, RNG 13E,
S23, NENW, NWNW



⊙ **Recommended Point of Diversion**

 **RECOMMENDED Place of use**

 **Section lines**

 **Quarter/Quarter Lines**

GIS PLACE OF USE PRESENTATION
1987 and/or 1988 NAPP PHOTOGRAPHY
DATE: APRIL 29, 1998
BY: STEVE CLELLAND

Exhibit 1

MEMO

TO: FRITZ HAEMMERLE, Special Master SRBA Court
FROM: STEVE CLELLAND
DATE: April 29, 1998

RE: ADDITIONAL CONVEYANCE LOSS CALCULATIONS

=====

Attached are the calculations you requested during the Fleming trial for the claim/subcase number 36-00064B.

I prepared two versions; 1) describes the second headgate as the sole and only diversion in the ditch system, 2) describes the flows assuming Mr. Fleming is using the recommended flow rates at both his headgates.

I have also calculated the total conveyance losses as a percentage of the flow for each scenario.

CONVEYANCE LOSS - WORSTELL

AGENT _____
 DATE _____
 CONVEYANCE OR
 SOURCE NAME _____
 RELATED CLAIMS -

scc
 29-Apr-98
 Billingsley Creek
 A36-000648

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	15400	0.6	2.00	0.23	0.17	0.17	1.3733	0.23	0.40
2				0.00		0.00	0.0000	0.00	0.00
3				0.00		0.00	0.0000	0.00	0.00
4				0.00		0.00	0.0000	0.00	0.00
5				0.00		0.00	0.0000	0.00	0.00
6				0.00		0.00	0.0000	0.00	0.00
7				0.00		0.00	0.0000	0.00	0.00
8				0.00		0.00	0.0000	0.00	0.00
9				0.00		0.00	0.0000	0.00	0.00
10				0.00		0.00	0.0000	0.00	0.00
11				0.00		0.00	0.0000	0.00	0.00
12				0.00		0.00	0.0000	0.00	0.00
13				0.00		0.00	0.0000	0.00	0.00
14				0.00		0.00	0.0000	0.00	0.00
15				0.00		0.00	0.0000	0.00	0.00
16				0.00		0.00	0.0000	0.00	0.00
17				0.00		0.00	0.0000	0.00	0.00
18				0.00		0.00	0.0000	0.00	0.00
19				0.00		0.00	0.0000	0.00	0.00
20				0.00		0.00	0.0000	0.00	0.00
TOTALS	15400			0.23	0.17			0.23	

2ND HEADGATE
 Single Delivery

$$\frac{.23}{.40} \times 100 = 57.5\%$$

Conveyance loss

CONVEYANCE LOSS - WORSTELL

AGENT _____
 DATE _____
 CONVEYANCE OR
 SOURCE NAME _____
 RELATED CLAIMS -

scc
 29-Apr-98
 Billingsley Creek
 A36-00064B

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	15400	2.5	2.00	0.97	0.17	0.17	5.7220	0.97	1.14
2				0.00		0.00	0.0000	0.00	0.00
3				0.00		0.00	0.0000	0.00	0.00
4				0.00		0.00	0.0000	0.00	0.00
5				0.00		0.00	0.0000	0.00	0.00
6				0.00		0.00	0.0000	0.00	0.00
7				0.00		0.00	0.0000	0.00	0.00
8				0.00		0.00	0.0000	0.00	0.00
9				0.00		0.00	0.0000	0.00	0.00
10				0.00		0.00	0.0000	0.00	0.00
11				0.00		0.00	0.0000	0.00	0.00
12				0.00		0.00	0.0000	0.00	0.00
13				0.00		0.00	0.0000	0.00	0.00
14				0.00		0.00	0.0000	0.00	0.00
15				0.00		0.00	0.0000	0.00	0.00
16				0.00		0.00	0.0000	0.00	0.00
17				0.00		0.00	0.0000	0.00	0.00
18				0.00		0.00	0.0000	0.00	0.00
19				0.00		0.00	0.0000	0.00	0.00
20				0.00		0.00	0.0000	0.00	0.00
TOTALS	15400			0.97	0.17			0.97	

2nd HEADGATE
 Single Delivery

85% Loss

CONVEYANCE LOSS - WORSTELL

AGENT _____
 DATE _____
 CONVEYANCE OR
 SOURCE NAME _____
 RELATED CLAIMS -

scc

29-Apr-98

Billingsley Creek
 A36-000648

REACH	LENGTH (FT)	AVE WIDTH (FT)	SEEPAGE (FT/DAY)	WORSTELL LOSS (CFS)	DELIVERY (CFS)	DELIVERY LEFT (CFS)	LOSS FACTOR	DELIVERY LOSS (CFS)	FLOW (CFS)
	15400	10.0	2.00	3.89	0.17	0.17	22.8880	3.89	4.06
1				0.00		0.00	0.0000	0.00	-0.00
2				0.00		0.00	0.0000	0.00	-0.00
3				0.00		0.00	0.0000	0.00	-0.00
4				0.00		0.00	0.0000	0.00	-0.00
5				0.00		0.00	0.0000	0.00	-0.00
6				0.00		0.00	0.0000	0.00	-0.00
7				0.00		0.00	0.0000	0.00	-0.00
8				0.00		0.00	0.0000	0.00	-0.00
9				0.00		0.00	0.0000	0.00	-0.00
10				0.00		0.00	0.0000	0.00	-0.00
11				0.00		0.00	0.0000	0.00	-0.00
12				0.00		0.00	0.0000	0.00	-0.00
13				0.00		0.00	0.0000	0.00	-0.00
14				0.00		0.00	0.0000	0.00	-0.00
15				0.00		0.00	0.0000	0.00	-0.00
16				0.00		0.00	0.0000	0.00	-0.00
17				0.00		0.00	0.0000	0.00	-0.00
18				0.00		0.00	0.0000	0.00	-0.00
19				0.00		0.00	0.0000	0.00	-0.00
20				0.00		0.00	0.0000	0.00	-0.00
TOTALS	15400			3.89	0.17			3.89	

96% Loss

2nd Head gate
 Single Delivery

CONVEYANCE LOSS - WORSTELL

AGENT _____
 DATE _____
 CONVEYANCE OR
 SOURCE NAME _____
 RELATED CLAIMS -

scc

29-Apr-98

Billingsley Creek
 A36-00064B

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	9900	0.6	2.00	0.15	0.47	0.64	0.2345	0.11	0.87
2	5500	0.6	2.00	0.08	0.17	0.17	0.4905	0.12	0.25
3				0.00		-0.00	0.0000	0.00	0.00
4				0.00		-0.00	0.0000	0.00	0.00
5				0.00		-0.00	0.0000	0.00	0.00
6				0.00		-0.00	0.0000	0.00	0.00
7				0.00		-0.00	0.0000	0.00	0.00
8				0.00		-0.00	0.0000	0.00	0.00
9				0.00		-0.00	0.0000	0.00	0.00
10				0.00		-0.00	0.0000	0.00	0.00
11				0.00		-0.00	0.0000	0.00	0.00
12				0.00		-0.00	0.0000	0.00	0.00
13				0.00		-0.00	0.0000	0.00	0.00
14				0.00		-0.00	0.0000	0.00	0.00
15				0.00		-0.00	0.0000	0.00	0.00
16				0.00		-0.00	0.0000	0.00	0.00
17				0.00		-0.00	0.0000	0.00	0.00
18				0.00		-0.00	0.0000	0.00	0.00
19				0.00		-0.00	0.0000	0.00	0.00
20				0.00		-0.00	0.0000	0.00	0.00
TOTALS	15400			0.23	0.64			0.23	1.12

1st & 2nd HEAD GATE
 combined Delivery

$$\frac{0.23}{1.12} = 20.5\% \text{ loss}$$

CONVEYANCE LOSS - WORSTELL

AGENT _____
 DATE _____
 CONVEYANCE OR
 SOURCE NAME _____
 RELATED CLAIMS -

scc

29-Apr-98

Billingsley Creek
 A36-00064B

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	9900	2.5	2.00	0.63	0.47	0.64	0.9771	0.46	1.61
2	5500	2.5	2.00	0.35	0.17	0.17	2.0436	0.51	0.52
3				0.00		-0.00	0.0000	0.00	-0.00
4				0.00		-0.00	0.0000	0.00	-0.00
5				0.00		-0.00	0.0000	0.00	-0.00
6				0.00		-0.00	0.0000	0.00	-0.00
7				0.00		-0.00	0.0000	0.00	-0.00
8				0.00		-0.00	0.0000	0.00	-0.00
9				0.00		-0.00	0.0000	0.00	-0.00
10				0.00		-0.00	0.0000	0.00	-0.00
11				0.00		-0.00	0.0000	0.00	-0.00
12				0.00		-0.00	0.0000	0.00	-0.00
13				0.00		-0.00	0.0000	0.00	-0.00
14				0.00		-0.00	0.0000	0.00	-0.00
15				0.00		-0.00	0.0000	0.00	-0.00
16				0.00		-0.00	0.0000	0.00	-0.00
17				0.00		-0.00	0.0000	0.00	-0.00
18				0.00		-0.00	0.0000	0.00	-0.00
19				0.00		-0.00	0.0000	0.00	-0.00
20				0.00		-0.00	0.0000	0.00	-0.00
TOTALS	15400			0.97	0.64			0.97	2.13

Combined Delivery

$$\frac{.97}{2.13} = 45.6\% \text{ Loss}$$

CONVEYANCE LOSS - WORSTELL

AGENT _____
 DATE _____
 CONVEYANCE OR
 SOURCE NAME _____
 RELATED CLAIMS -

scc
 29-Apr-98
 Billingsley Creek
 A36-00064B

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	9900	10.0	2.00	2.50	0.47	0.64	3.9083	1.84	4.53
2	5500	10.0	2.00	1.39	0.17	0.17	8.1743	2.05	1.56
3				0.00		-0.00	0.0000	0.00	0.00
4				0.00		-0.00	0.0000	0.00	0.00
5				0.00		-0.00	0.0000	0.00	0.00
6				0.00		-0.00	0.0000	0.00	0.00
7				0.00		-0.00	0.0000	0.00	0.00
8				0.00		-0.00	0.0000	0.00	0.00
9				0.00		-0.00	0.0000	0.00	0.00
10				0.00		-0.00	0.0000	0.00	0.00
11				0.00		-0.00	0.0000	0.00	0.00
12				0.00		-0.00	0.0000	0.00	0.00
13				0.00		-0.00	0.0000	0.00	0.00
14				0.00		-0.00	0.0000	0.00	0.00
15				0.00		-0.00	0.0000	0.00	0.00
16				0.00		-0.00	0.0000	0.00	0.00
17				0.00		-0.00	0.0000	0.00	0.00
18				0.00		-0.00	0.0000	0.00	0.00
19				0.00		-0.00	0.0000	0.00	0.00
20				0.00		-0.00	0.0000	0.00	0.00
TOTALS	15400			3.89	0.64			3.89	6.09

Combined Delivery

$$\frac{3.89}{6.09} = 63.9\% \text{ Loss}$$

MICHAEL SLIMAN

DAVID BUTLER

SLIMAN & BUTLER IRRIGATION

Box 491, Gooding, Idaho 83330

Phone: 934-8416

COPY

January 25, 1993

Mike Fleming
933 E 2700 S
Hagerman, Idaho 83332

Re: Pump capacity

Dear Mr. Fleming:

Pursuant to our phone conversation of January 22, I have estimated the capacity of your existing Berkeley B3TPM 20 HP centrifugal pump.

Using 70 11/64" nozzles, this pump will discharge approximately 434 GPM. This would be equal to 48.2 inches or .96 CFS. I have enclosed a copy of the pump curve, and indicated the appropriate design points reflected by this particular application.

If you have any questions or need further information, please don't hesitate to contact me.

Sincerely,

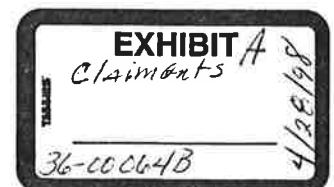
SLIMAN & BUTLER IRRIGATION, INC.


Michael Sliman

MS/en

Encl.

*Sprinkler
Irrigated
portion only*

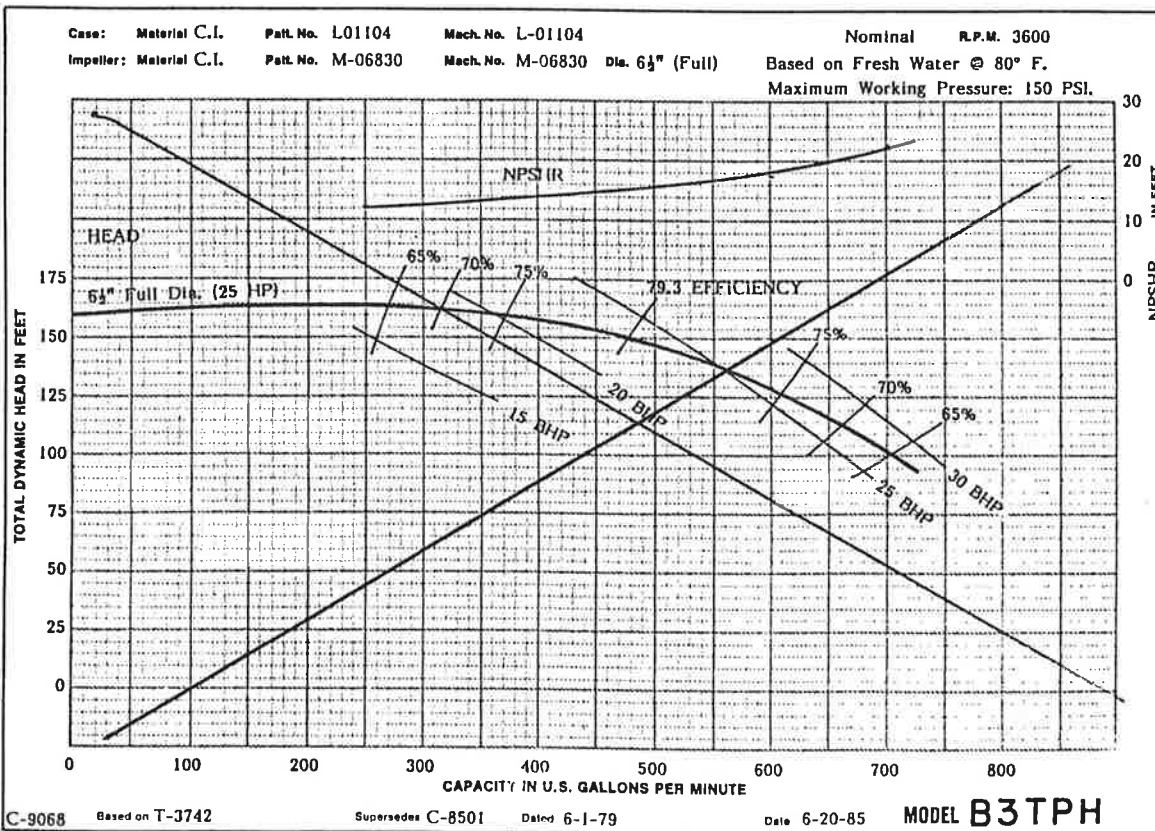
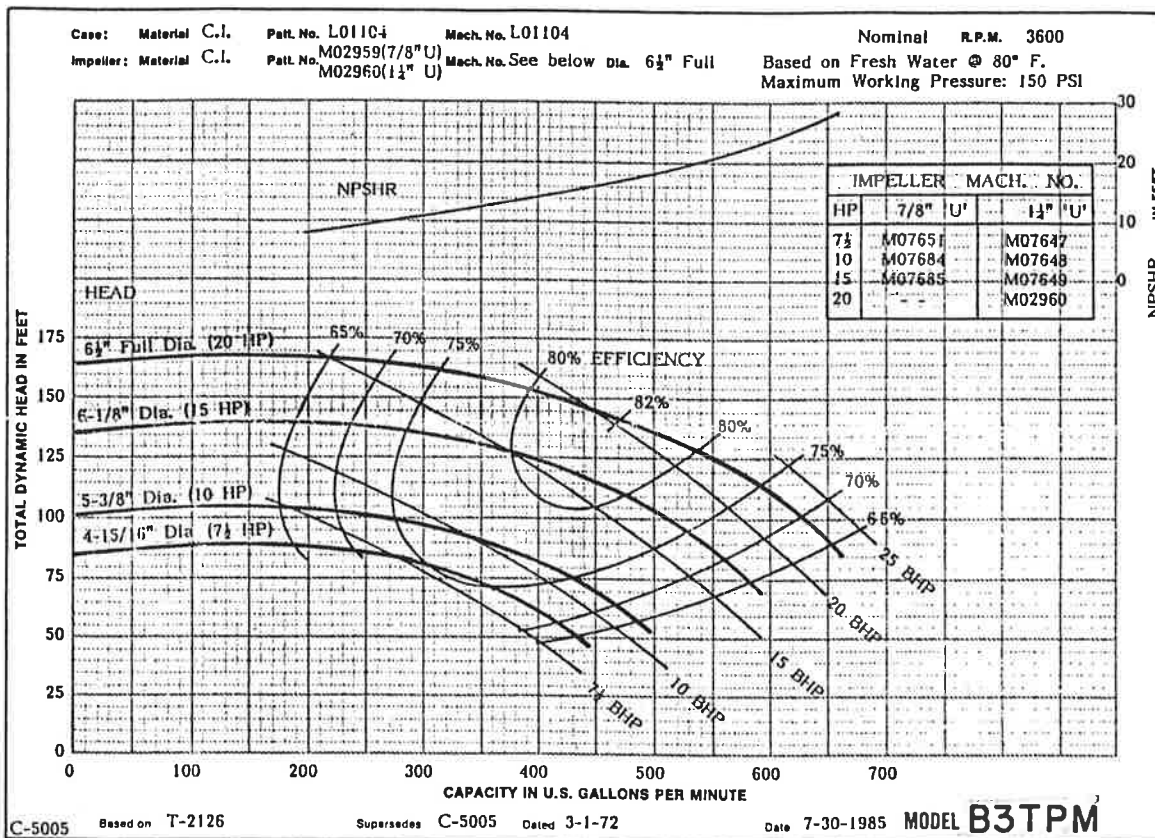




TYPE "B" RATING CURVES

MOTOR DRIVE

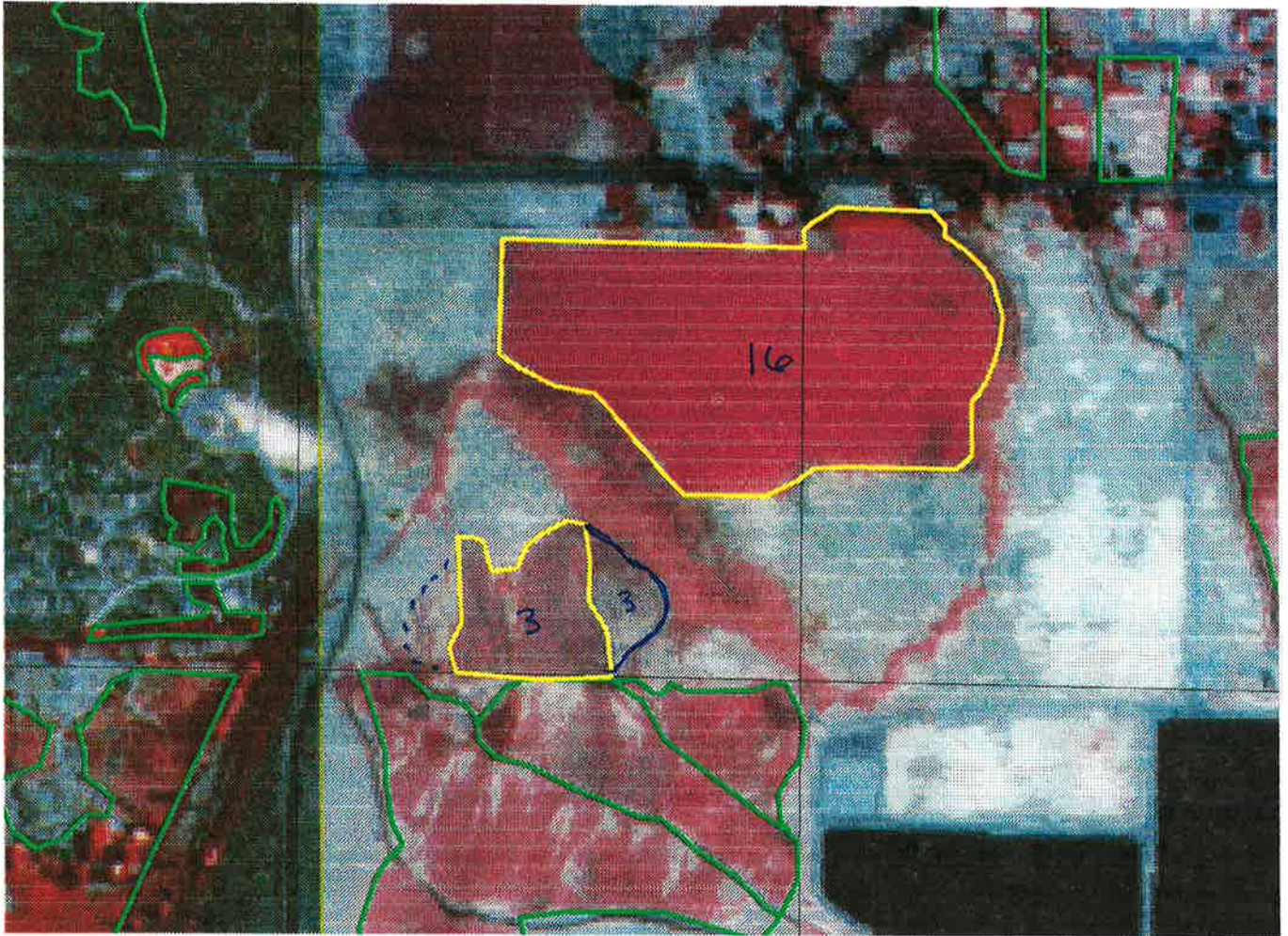
CURVE	4075
DATE	1-2-86
PAGE	4.02
SUPERSEDES	
All previously issued	
4075 Curves	



COPY

IDAHO DEPARTMENT OF WATER RESOURCES

36-00064B
FLEMING

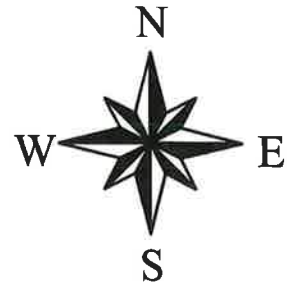


660 0 660 Feet

*added
acres per
Trial agreement
4/28/98
SCC*

= total 22 Ac

TNS 7S, RNG 13E
SEC 23, NENW, NWNW



⊙ 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 JANUARY 20, 1998
BY STEVE CLELLAND

SUBCASE NO. 36-00064B

	CLAIM (8/15/88)	AMENDED CLAIM	RECOMMENDATION	OBJECTION
NAME	Michael & Paul Fleming	N/A	Michael & Paul Fleming	Michael & Paul Fleming
BASIS OF CLAIM	Decree		Decree	
SOURCE	Billingsley Creek		Billingsley Creek	
QUANTITY	4.520 cfs		0.72 cfs	XX - requests as decreed and/or beneficially used, "whichever is greater "
PRIORITY DATE	9/10/1884		9/10/1884	
PURPOSE OF USE	Irrigation		Irrigation	MSJ requests stockwater, wildlife, recreation, aesthetics and "diversion system maintenance"
PERIOD OF USE	4/1 - 10/1		3/15 - 11/15	MSJ requests "Irrigation Season" and year round for other uses
POINT OF DIVERSION	T07S R13E S11		T07S R13E S11	
PLACE OF USE	T07S R13E S23 51.0 acres		T07S R13E S23 19.0 acres	XX - requests 50 acres
remarks	"Part of 36-00064 decree of 5.6 cfs, which has been split."		"Water is delivered through the Buckeye Ditch. A diversion rate of 0.56 cfs at the field headgate is recommended for the place of use described above. 0.16 cfs of this right is limited to use for conveyance losses in delivery of this right."	XX - requests that conveyance loss remark be struck. MSJ requests that all remarks be deleted.

CLAIM NUMBERS 36-00064BDATE 10-2-97

TRANSFER NUMBER _____

OBJECTION FILED _____

AGENT KKCTOTAL ACRES FROM RECOMMENDATION 19GEOGRAPHIC INFO SYSTEM 20

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>23</u>					<u>6</u>	<u>13</u>										<u>19</u>
GIS								<u>8</u>	<u>12.5</u>										<u>19.8</u>
RECOM																			
GIS																			
RECOM																			
GIS																			
RECOM																			
GIS																			
RECOM																			
GIS																			

UPDATED

POLYGON #

UPDATED

B36-DBPOU.DBF 10/2B36-DBPOD.DBF 10/2

POLYGON CREATED ON 604 ()

ATTRIBUTES OF B36-POU.SHP ()

ATTRIBUTES OF B36-POD.SHP (454)

source Buckeye Ditchunioned in 2 polygonsNorth Polygon - 514South " - 515

P/U CONFLICT yes () no ()

P/D CONFLICT yes () no ()

READY FOR DECREE yes () no ()

SENT FOR DECREE yes () no ()

IDAHO DEPARTMENT OF WATER RESOURCES

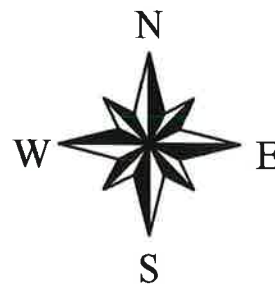
36-00064B
MICHAEL & PAUL FLEMING



660 0 6601320 Feet



**TNS 7S, RNG 13E,
SEC 23, N1/2NW1/4**



⊙ Recommended Point of Diversion



Recommended Place of use



Section lines

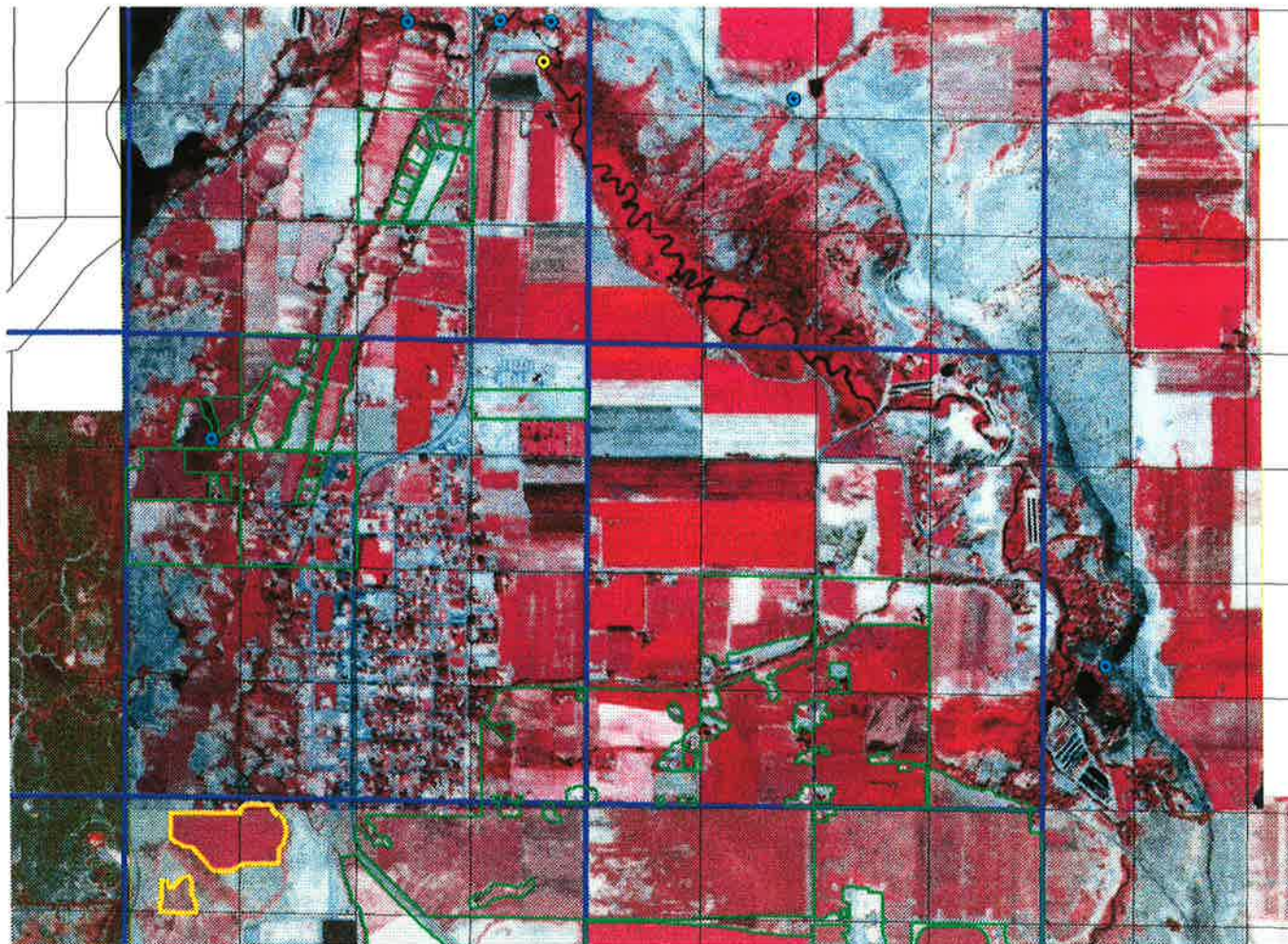


Quarter/Quarter Lines

GIS PLACE OF USE PRESENTATION
1987 and/or 1988 NAPP PHOTOGRAPHY
DATA ENTRY OCTOBER 2, 1997
BY KELLY K CHRISTENSEN

IDAHO DEPARTMENT OF WATER RESOURCES

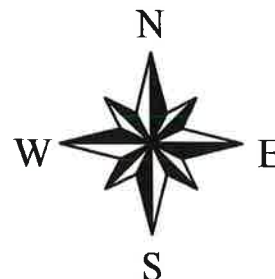
36-00064B
MICHAEL & PAUL FLEMING



660 0 6601320 Feet



**TNS 7S, RNG 13E,
SEC 23, N1/2NW1/4**



⊙ 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 OCTOBER 2, 1997
BY KELLY K CHRISTENSEN

RECEIVED

JUL 26 1996

Department of Water Resources

DEPT. OF W. RES.
TWIN FALLS, IDAHO
JUL 26 1996
OK

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: See Attached List
Case No. 39576)
ORDER REGARDING 24 SUBCASES
_____)

The court directs the Idaho Department of Water Resources (IDWR) to prepare a report regarding the aforementioned subcases to address each contested element of each subcase: (1) element contained in the International Mortgage Decree, (2) element contained in the claim, (3) element reported in the Director's Report, (4) element contained in a Supplemental Director's Report if different than the original Director's Report, (5) element contained in the objection if different than the claim, and (6) element requested on summary judgment if different than the claim. The report shall be due by August 15, 1996. A copy of the report shall be made available to Mr. Patrick Brown, attorney for the claimants/objectors.

DATED July 25, 1996.

Fritz X. Hammerle
FRITZ X. HAEMMERLE
Special Master
Snake River Basin Adjudication

LIST OF 24 HWRO SUBCASES

Subcase Nos:

36-00003A
36-00003C
36-00003E
36-00003F
36-00034B
36-00035J
36-00039C
36-00039E
36-00039J
36-00039N
36-00047
36-00061
36-00062
36-00063
36-00064B
36-00079
36-00085A
36-00086C
36-00092
36-00103F
36-00106
36-00108B
36-10283B
36-10409

See File 36-00003A
for complete document.
VK

Tracing from scanned NAPP AA70SW adjusted to 1:24,000

Tracing of N $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 23 T7S R13E 79.7 ac.

Tracing of land that appears irrigated in the
NENW of Sec. 23 8.1 ac.

Tracing of larger area of land that appears irrigated
in the NWNW of Sec. 23 9.2 ac.

Tracing of smaller area of land that appears
irrigated in the NWNW of Sec. 23 2.7 ac.

Irrigated acres determined by planimeter tracing

from NAPP AA70SW NENW 8.1 ac.

NWNW 11.9 ac

Total 20.0 ac

Tracing the ASCS photo in the claim file, the
planimeter reading for the large field was
16.1 ac. (ASCS shows 15.4 ac.) The smaller
fields totaled 3.2 ac. The total acres of
irrigated land shown on the ASCS photo is
19.3 ac.

Conclusion:

The recommended acres are very close to
what appears to be irrigated.

T75
R13E

36-00064823
NAPP AA TDSW
Area highlighted
in yellow is area
that appears to be
irrigated.

26

25

36

31

MEMORANDUM

TO: Claim Files, see below
FROM: Douglas Jones, Water Rights Supervisor, Adjudication Bureau
DATE: July 12, 1996
RE: "706" reports submitted to court

In response to an order from the court, resulting from the Motions for Summary Judgement filed on the subcases, IDWR has prepared the following documents:

- 1) DIRECTOR'S SUPPLEMENTAL REPORT
- 2) REPORT REGARDING QUANTIFICATION OF SMALL DOMESTIC AND STOCKWATER USES
- 3) REPORT REGARDING CONSUMPTIVE USE IN THE HAGERMAN AREA
- 4) REPORT REGARDING EVALUATION OF IRRIGATION DIVERSION RATES
- 5) HAZEN, W; GIBSON, G; NEIBLING, H; CROP WATER REQUIREMENTS IN THE HAGERMAN VALLEY; IN A REPORT TO HAGERMAN WATER RIGHT OWNERS ASSOCIATION
- 6) GUIDELINES FOR THE EVALUATION OF IRRIGATION DIVERSION RATES ("HUBBLE REPORT") IN A REPORT TO IDWR
- 7) EVALUATION WORKBOOK FOR IRRIGATION DIVERSION RATES
- 8) AFFIDAVITS FROM:
 - a. David B. Shaw
 - b. Steve Clelland: As to investigation of claims in the Hagerman area
 - c. Helen Harrington-Thornton: Regarding investigation of claims in the Hagerman area
 - d. Marci Sterling
 - e. Jeff Peppersack
 - f. David R. Tuthill, Jr
 - g. Carter Fritschle: Regarding planimeter measurements of claims 36-00064B and 36-00079
- 9) REPORTS REGARDING ... (each specific claim, 24 in all)

Submittals 1-8 can be referenced in the file cabinet section titled "SPECIAL REPORTS" which follows the irrigation claims within Basin 36. The reports regarding specific rights can found in the file jacket for that right.

CLAIMS

36-00003A	36-00003C	36-00003E	36-00003F	36-100034B
36-00035J	36-00039C	36-00039E	36-00039J	36-00039N
36-00047	36-00061	36-00062	36-00063	36-00064B
36-00079	36-00085A	36-00086C	36-00092	36-00103F
36-00106	36-00108B	36-10283B	36-10409	

MICROFILMED

DEC 04 1996

JUL -1 PM 3:17
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

REPORT REGARDING CLAIM TO WATER RIGHT NO. 36-00064B

In Re SRBA
Twin Falls County Civil Case No. 39576
Sub-Case No. 36-00064B

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Karl J. Dreher, Director
David B. Shaw, Adjudication Bureau Chief

July 1, 1996

COPY

MICROFILMED
DEC 04 1996

REPORT REGARDING CLAIM TO WATER RIGHT NO. 36-00064B

The Director of the Idaho Department of Water Resources (IDWR) submits this report regarding claim to water right no. 36-00064B in response to the request of Special Master Haemmerle, pursuant to Idaho Code §42-1412(4) and the court's Order Re: Contested Claims for Amounts Claimed in Excess of .02 CFS. This report was prepared under the supervision of Karl J. Dreher, Director, and David B. Shaw, the Adjudication Bureau Chief for IDWR. The following persons assisted in the preparation of the following portions of this report:

David B. Shaw, Adjudication Bureau Chief, reviewed and verified this Report Regarding Claim to Water Right No. 36-00064B. The Affidavit of David B. Shaw describes Mr. Shaw's education and work experience, and is incorporated by reference herein. Mr. Shaw also reviewed IDWR's Report Regarding Evaluation of Irrigation Diversion Rates, described below.

Jeff Peppersack, Adjudication Engineer, prepared and verified IDWR's Report Regarding Evaluation of Irrigation Diversion Rates, which is incorporated by reference herein. The Affidavit of Jeff Peppersack describes Mr. Peppersack's education and work experience, and is incorporated by reference herein. Mr. Peppersack also reviewed IDWR's Report Regarding Consumptive Use for Irrigation in the Hagerman Area, described below.

David R. Tuthill Jr., Acting Adjudication Bureau Chief, prepared IDWR's Report Regarding Consumptive Use for Irrigation in the Hagerman Area, which is incorporated by reference herein. Mr. Tuthill also reviewed this Report Regarding Claim To Water Right No. 36-00064B. The Affidavit of David R. Tuthill Jr. describes Mr. Tuthill's education and work experience, and also describes the use of planimeters for measuring the size of irrigated areas, and is incorporated by reference herein.

Marci S. Sterling, Adjudication Engineer, prepared and verified Appendix B, which describes the application of IDWR's methodology for evaluation of irrigation diversion rates to claim no. 36-00064B. Appendix B is attached hereto and incorporated by reference herein. The Affidavit of Marci S. Sterling describes Ms. Sterling's education and work experience, and is incorporated by reference herein.

Steven C. Clelland, Senior Water Resource Agent, investigated and prepared the preliminary recommendation for claim no. 36-00064B, and prepared Appendix C. The Affidavit of Steven C. Clelland describes Mr. Clelland's education and work experience, and is incorporated by reference herein. The affidavit also includes a general description of his investigation of claims in the Hagerman area. The Affidavit of Steven C. Clelland Regarding Claim No. 36-00064B describes Mr. Clelland's

investigation of the quantity and place of use of this water right; it is attached hereto and incorporated by reference herein.

Helen L. Harrington-Thornton, formerly Senior Water Resource Agent and currently Hydrogeologist, participated in the field examination for claim no. 36-00064B. The Affidavit of Helen L. Harrington-Thornton describes Ms. Thornton's education and work experience, and is incorporated by reference herein. The Affidavit of Helen L. Harrington-Thornton Regarding Claim No. 36-00064B describes her investigation of the quantity and place of use of this water right, and is attached hereto and incorporated by reference herein.

Carter Fritschle, Water Rights Supervisor, participated in the place of use review for claim no. 36-00064B. The Affidavit of Carter Fritschle Regarding Planimeter Measurements of Claim Nos. 36-00064B and 36-00079 is incorporated by reference herein.

I. INVESTIGATION AND RECOMMENDATION OF CLAIMS GENERALLY

IDWR's general methodology for the investigation and recommendation of claims is described in Appendix A, which is incorporated herein by reference.

II. WATER RIGHT NO. 36-00064B

A. Basis of Claim

Claim no. 36-00064B was filed with IDWR by Michael J. And Paul F. Fleming on August 15, 1988.¹ The claim is to a portion of a right decreed to Gertrude and Ben Homes in the *New International Mortgage* decree, entered in 1932.² The water right decreed to the Homes is numbered in IDWR's files as water right no. 36-00064. This right, along with numerous others, was decreed for "irrigation, domestic, power and other purposes." Another portion of right no. 36-00064 was claimed as 36-00064A, which IDWR recommended for disallowal.³

¹ The original notice of claim is currently located in the files of the SRBA District Court, attached to IDWR's response to the claimant's objection.

² *New International Mortgage Bank v. Idaho Power Co., et al.*, Equity No. 1602 (D.S.Id. 1932), at pp. 3-4.

³ This recommendation is also contested; the subcase is assigned to Special Master Dolan.

B. Name and Address of Claimant

The name of the claimant set forth in the claimant's motion for summary judgment is the same as recommended in the director's report. The address set forth in the claimant's motion for summary judgment for both Michael J. and Paul F. is the address in IDWR's files for Michael; IDWR's records show a different address for Paul.

C. Source of Water

The source of water set forth in the claimant's motion for summary judgment is Billingsley Creek. The source of water is described in the director's report as Billingsley Creek tributary to Snake River.

The director's report includes the body of water to which the source of the right is tributary for each water right in the director's report, except for rights to ground water. IDWR adopted this standard for the description of the source of water rights because there are so many instances, sometimes in the same administrative basin, where different surface water sources bear the same name.⁴

D. Date of Priority

The priority date set forth in the claimant's motion for summary judgment is the same as recommended in the director's report.

E. Point of Diversion

The point of diversion recommended in the director's report is the SESENE S11, T07S R13E. The point of diversion set forth in the claimant's motion for summary judgment is the same except that it says S23, which is the section in which the place of use is located. The recommended point of diversion is the same and as the claimed point of diversion, which is the heading for the Buckeye ditch, and the objection does not contest the point of diversion. The description of the point of diversion in S23 in the claimant's motion for summary judgment appears to be a typographical error.

F. Purpose of Use

⁴ IDWR relied upon the following in reaching its conclusion: Idaho Code §42-1411(2) (which provides that the director shall determine the source of the right to the extent the director deems appropriate and proper to define and administer water rights acquired under state law.

The purpose of use stated on the notice of claim and recommended in the director's report was irrigation. The objection did not contest the purpose of use. The claimant's motion for summary judgment seeks to add stockwater, wildlife, recreation, aesthetics, and "diversion system maintenance."⁵

The description of the purposes of use of this right in the decree is ambiguous in that it describes the purposes of use for the Homes right and other rights in the same list collectively as "irrigation, domestic, power and other purposes," rather than specifically identifying each purpose of use for each right.⁶ IDWR's investigation confirmed the use of water for irrigation purposes, as further described below in the sections addressing quantity and place of use. Neither the claimant nor IDWR's investigation has yielded information that would confirm the beneficial use of water for the other purposes listed in the motion, either pursuant to the right as originally appropriated or as currently used.⁷ Such information is necessary not only to confirm the use but to quantify the amount of water beneficially used for that purpose.

G. Quantity of Water Used

The notice of claim states a quantity of 4.52 cfs for irrigation. The quantity recommended in the director's report is 0.72 cfs for irrigation. The objection does not state the quantity claimed. The claimant's motion for summary judgment states a quantity of 4.52 cfs.

⁵ The filing fee for claims other than small domestic and stockwater claims consists of a \$50.00 flat fee, plus a variable fee of \$1.00 per acre for any claimed irrigation use, plus a per cfs variable fee for other claimed purposes of use. The filing fee paid for this claim was limited to the purposes of use claimed in the notice of claim. Filing fees are set forth in Idaho Code §24-1414 and IDWR's Adjudication Rules, IDAPA 37.03.01 *et seq.*

⁶ IDWR relied upon the following in reaching its conclusion: *Morgan v. Udy*, 58 Idaho 670, 79 P.2d 295 (1938) (a water right decree that omitted the description of the point of diversion necessarily determined the point of diversion but was ambiguous as to its location).

⁷ IDWR relies upon the following in reaching this conclusion: Idaho Code §42-1427 (which allows an ambiguity in a prior decree or license to be resolved based on current beneficial use); the statement of the Presiding Judge that this section "cannot change or exceed the previously decreed or recorded element of the decreed or licensed right" nor "be used to claim an expansion of use beyond the beneficial use existing at the time the right was originally memorialized in a decree or license," Revised Memorandum Decision and Order on Basin-Wide Issue 4, dated May 17, 1995, at page 9; and the statement of the Presiding Judge that, "the purpose of use is defined by the intentional application of water to an intended beneficial use of water," Memorandum Decision and Order Re: Basin-Wide Issue 5, dated April 26, 1996, at page 8.

1. Splits of Water Right No. 36-00064

As noted above, various portions of right no. 36-00064 were claimed by and recommended to various claimants. The splits are listed below. The first column shows the quantity claimed; the second column shows the quantity recommended in the director's report. Both portions are contested.

<u>Right no.</u>	<u>Claim</u>	<u>Report</u>
36-00064A*	0.278	0.00
36-00064B*	4.52	0.72
Total	4.798	0.72

This subcase is assigned to S.M. Dolan..

The quantity decreed for right no. 36-00064 in the *New International Mortgage* decree is 5.6 cfs. The total quantity of water claimed in both claims based on the decree is 4.798 cfs, which does not exceed the decreed amount. IDWR recommended a total of 0.72 cfs pursuant to the claims to portions of right no. 36-00064; this amount has not changed as a result of further proceedings in the subcases.

2. Quantity for Irrigation

As noted above, the director's report recommended a quantity of 0.72 cfs for irrigation. This includes 0.56 cfs for the on-farm diversion requirement (the amount of water needed at the place of use), and 0.16 cfs for conveyance losses (an additional amount of water needed at the point of diversion to deliver the amount needed at the place of use). The on-farm diversion requirement includes 0.02 cfs per acre for the 16 acres that are sprinkler-irrigated, and 0.08 cfs per acre for the remaining three irrigated acres.

IDWR's methodology for investigating and recommending claims to water for irrigation in excess of 0.02 cfs per acre is described in IDWR's Report Regarding Evaluation of Irrigation Diversion Rates.⁸ The application of that methodology to the three-acre portion of the recommended place of use is described in Appendix B. As to the three-acre portion, IDWR has conducted further analysis of the quantity for irrigation due to further information IDWR received subsequent to its original analysis, but its recommendation as to the three-acre portion remains the same. As to the other 16 acres, the recommendation is based in part on the fact that the lands are

⁸ IDWR relied upon the following in reaching its conclusions: Idaho Code §42-220 (which provides that no license or decree will be issued confirming a right to more than 0.02 cfs per acre for irrigation unless it can be shown that a greater amount is necessary) and Idaho Code §42-1402 (which limits the amount of water allotted by a decree to the amount of water beneficially used).

sprinkler-irrigated. At the time of its original recommendation, it was IDWR's experience that the on-farm requirement for sprinkler systems is rarely more than 0.02 cfs per acre; indeed, many sprinkler systems are designed with an application of 5/8 or 3/4 inch to an acre (0.0125 or 0.015 cfs per acre). Subsequent to the filing of the director's report, IDWR obtained further information indicating that some of those rare instances in which the on-farm requirement for sprinkler systems may be more than 0.02 cfs per acre may exist in some cases in the Hagerman area. IDWR therefore requested, and the claimant agreed to provide, the information necessary for IDWR to conduct further analysis of the irrigation requirements for the claimant's lands. This information has not been received; IDWR will supplement this report with the results of that analysis as soon as the information is received and it can complete the analysis.

As described in Appendix B, the application of IDWR's methodology for evaluation of irrigation diversion rates resulted in the recommendation of an additional 0.16 cfs for conveyance losses. IDWR determined the total conveyance losses for the ditch through which this right is delivered, and allocated that total among the various rights to water delivered through the same ditch. Further information as to the other rights delivered through the ditch is described in subsection 4 below.

3. Quantity for other purposes

As to the quantity for other purposes of use stated in the claimant's motion for summary judgment, neither the claimant nor IDWR's investigation has yielded information that would confirm the beneficial use of water for other purposes, as noted in section F above. Therefore, IDWR does not have information that would confirm the quantity used for the other purposes.

4. Other rights delivered through same ditch

As noted in Appendix B, IDWR determined the total conveyance losses for the ditch through which this right is delivered, and allocated that total among the various rights to water delivered through the same ditch. For this reason, IDWR previously proposed that contested water rights in the Hagerman area be grouped by ditch for scheduling purposes to facilitate resolution of quantity issues for those rights. Water right 36-00064B is delivered through the Buckeye ditch. Appendix C is a schematic which shows the water rights delivered through the Buckeye ditch, and which includes a variety of information as to the water rights listed.

H. Period of Year Water is Used for Each Purpose of Use

The notice of claim states a period of use of 04/01 to 10/01 for irrigation. The director's report recommends a period of use of 3/15 to 11/15 for irrigation. The claimant's objection does not contest the period of use. The claimant's motion for summary judgment states the period of use as "the irrigation season." The *New International Mortgage* decree does not state a period of use for irrigation.

The recommended season of use is consistent with season of use standards for irrigation developed by IDWR for various climatic regions throughout the state, which are based on a 75% chance of a 24 degree Fahrenheit frost. In addition, the director's report included general provision 12b, which allowed use of water for irrigation outside the season of use stated in the description of the individual right subject to certain conditions. In the Memorandum Decision and Order Re: Basin-Wide Issue 5, the Presiding Judge concluded that general provision 12 is not necessary and would not be decreed. This decision further provided that "all decrees for irrigation in the SRBA shall set the period of use as the "irrigation season." Order, pp. 15-16. The district court denied a subsequent motion for permission to appeal the decision. Pending any further proceedings on the decision, any further statement of the basis for IDWR's recommendation as to the season of use for irrigation appears to be unnecessary.

As to the season of use for other purposes of use stated in the claimant's motion for summary judgment, neither the claimant nor IDWR's investigation has yielded information that would confirm the beneficial use of water for other purposes, as noted in section F above. Therefore, IDWR does not have information that would confirm the season of use for the other purposes.

I. Legal Description of the Place of Use

The legal description under item 8 in the claimant's motion for summary judgment is the same as the legal description of the place of use for irrigation recommended in the director's report. The number of acres following the legal description is different than the number of irrigated acres per 40-acre subdivision recommended in the director's report. The notice of claim and the claimant's motion for summary judgment state 51 acres; the objection states 50 acres; the director's report recommends 19 acres.

IDWR Senior Water Resource Agents Steve Clelland and Helen Thornton confirmed the irrigation of no more than 19 acres by personal observation and aerial photography. The irrigated acres consisted of one 16-acre parcel that was sprinkler

-irrigated, and another 3-acre parcel that was flood-irrigated. The examination of the place of use for this claim is described in the Affidavit of Steven C. Clelland Regarding Claim No. 36-00064B, and the Affidavit of Helen L. Harrington-Thornton Regarding Claim No. 36-00064B. IDWR Water Rights Supervisor Carter Fritschle subsequently measured the irrigated area as shown on aerial photography; his measurements were consistent with the recommended place of use. Mr. Fritschle's review of the recommended place of use is described in the Affidavit of Carter Fritschle Regarding Claim No. 36-00064B.

As to the legal description of the place of use for other purposes of use stated in the claimant's motion for summary judgment, neither the claimant nor IDWR's investigation has yielded information that would confirm the beneficial use of water for other purposes, as noted in section F above. Therefore, IDWR does not have information that would confirm the place of use for the other purposes.

J. Annual Volume of Consumptive Use

The notice of claim states an annual volume of consumptive use of 151 AFY, or 3.0 AFY per irrigated acre. The annual volume of consumptive use recommended in the director's report is 57 AFY, or 3.0 AFY per irrigated acre. The claimant's objection contests the recommended consumptive use, but does not state an amount. The claimant's motion for summary judgment states an amount of 229.5 AFY, or 4.5 AFY per acre. The Affidavit of Charles E. Brockway, submitted by the claimant in support of the motion for summary judgment, states "that 3.75 acre feet per acre per annum is the amount of consumptive use that is reasonable [in the Hagerman area] based upon a yield of ten tons [of alfalfa] per acre." Applying this standard, the total annual consumptive use volume would be 71.25 AFY for the 19 recommended acres, or 191.25 for the claimed 51 acres.

IDWR developed standards for annual volume of consumptive use for the various climatic areas throughout the state. The standard for the area in which the claimant's place of use is located is 3.0 AFY. IDWR's recommendation is based on this standard. The development of IDWR's standards for annual volume of consumptive use is described in IDWR's Report Regarding Evaluation of Irrigation Diversion Rates. IDWR has conducted further analysis of the annual volume of consumptive use based on further information IDWR received subsequent to its original analysis. The further analysis is described in IDWR's Regarding Consumptive Use for Irrigation in the Hagerman Area. Based on this further analysis, IDWR recommends an annual volume of consumptive use of 3.5 AFY per acre, for a total of 66.5 AFY for the 19 recommended acres.

K. Conditions on the Exercise of the Right and Other Necessary Matters

The recommendation of this right in the director's report includes the following remarks:

WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.

A DIVERSION RATE OF 0.56 CFS AT THE FIELD HEADGATE IS RECOMMENDED FOR THE PLACE OF USE DESCRIBED ABOVE.

0.15 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT.

The claimant's objection seeks deletion of the last two remarks. The claimant's motion for summary judgment seeks deletion of both remarks.

In response to the request of the Presiding Judge, the director filed an Amended Director's Report for Reporting Area 3 (Basin 36), which substantially reduced the number of general provisions in the director's report. Attachment 2 to the amended report explains the changes made to the general provisions, and further explains changes to the list of recommended rights necessitated by the changes to the general provisions. The amended report deleted General Provision 16, which set forth certain provisions as to conveyance losses. The conveyance loss remark in the description of the individual right was a corollary to the general provision. As a result, the remark in the description of this right as to conveyance losses is no longer necessary. (Deletion of the remark does not change IDWR's recommendation as to the quantity for this right.)

In response to the request of the Presiding Judge, IDWR submitted IDWR's Report for September 19, 1995 Status Conference. In this report, IDWR indicated that it had reviewed its use of remarks in the description of the individual water right, both to address concerns identified by the court, and to separate explanatory material from material the Director recommends be included in the decree of water rights pursuant to the 1994 amendments to the adjudication statute.⁹ The remaining two remarks are explanatory material.

⁹ See Idaho Code §42-1411 (which addresses the form and content of director's reports).

State of Idaho)
) ss.
County of Ada)

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

That I am the Adjudication Bureau Chief for IDWR, that I have read the foregoing report, know its contents, and that the statements contained therein are true to the best of my knowledge and belief.



David B. Shaw

Subscribed and sworn to before me this 15th day of July, 1996.



Notary Public for Idaho
Residing at: Boise ID
My commission expires: 11-14-1998

Certificate of Service

I certify that on the 1st day of July, 1996, I hand-delivered copies of the foregoing document, including all attachments, to the following:

Patrick D. Brown
133 Shoshone St North
Twin Falls, ID 83303



Person delivering document(s)

investigation of the quantity and place of use of this water right; it is attached hereto and incorporated by reference herein.

Helen L. Harrington-Thornton, formerly Senior Water Resource Agent and currently Hydrogeologist, participated in the field examination for claim no. 36-00064B. The Affidavit of Helen L. Harrington-Thornton describes Ms. Thornton's education and work experience, and is incorporated by reference herein. The Affidavit of Helen L. Harrington-Thornton Regarding Claim No. 36-00064B describes her investigation of the quantity and place of use of this water right, and is attached hereto and incorporated by reference herein.

Carter Fritschle, Water Rights Supervisor, participated in the place of use review for claim no. 36-00064B. The Affidavit of Carter Fritschle Regarding Planimeter Measurements of Claim Nos. 36-00064B and 36-00079 is incorporated by reference herein. The affidavit also describes Mr. Fritschle's education and work experience.

I. INVESTIGATION AND RECOMMENDATION OF CLAIMS GENERALLY

IDWR's general methodology for the investigation and recommendation of claims is described in Appendix A, which is incorporated herein by reference.

II. WATER RIGHT NO. 36-00064B

A. Basis of Claim

Claim no. 36-00064B was filed with IDWR by Michael J. And Paul F. Fleming on August 15, 1988.¹ The claim is to a portion of a right decreed to Gertrude and Ben Homes in the *New International Mortgage* decree, entered in 1932.² The water right decreed to the Homes is numbered in IDWR's files as water right no. 36-00064. This right, along with numerous others, was decreed for "irrigation, domestic, power and other purposes." Another portion of right no. 36-00064 was claimed as 36-00064A, which IDWR recommended for disallowal.³

¹ The original notice of claim is currently located in the files of the SRBA District Court, attached to IDWR's response to the claimant's objection.

² *New International Mortgage Bank v. Idaho Power Co., et al.*, Equity No. 1602 (D.S.Id. 1932), at pp. 3-4.

³ This recommendation is also contested; the subcase is assigned to Special Master Dolan.

APPENDIX A

A. INVESTIGATION AND RECOMMENDATION OF CLAIMS GENERALLY

To promote the accuracy and consistency of water right decrees, and to minimize the burden on the court and the claimants in a water right adjudication, the state has made the specialized expertise of IDWR available through IDWR's investigation and reporting function.¹

The resources the state has made available for this function, however, are limited. IDWR has the duty to conduct a reasonable investigation within the spending authority granted by legislative appropriation. Those resources are not sufficient for IDWR to exhaustively investigate each and every potentially relevant fact regarding each and every claim and to make a conclusive determination of the water right. Rather, IDWR reviews the claim and the information already available to IDWR, and conducts such further investigation as is reasonable to determine whether there is sufficient information to support recommendation of the water right to be decreed.

To make the most efficient use of the available resources, IDWR must make determinations as to what is a reasonable level of investigation for various classes of claims prior to making a recommendation to the court regarding any particular claim. IDWR has employed two primary mechanisms to identify a reasonable level of investigation. First, the statutes set criteria and IDWR has developed standards for various types of uses, requiring less information to support a claim to water within those standards and more information to support a claim outside those standards. Second, IDWR has adopted a "tier" approach, identifying classes of claims which for various reasons merit further investigation.

Generally, with claims based on beneficial use², IDWR conducts a "licensing type" field exam, which includes confirmation of the source, point(s) of diversion, purpose(s) of use, place(s) of use, and an examination of the water delivery system and the quantity of water beneficially used. IDWR also contacts the claimant to obtain information supporting the priority date claimed. This level of examination is conducted because there has been no prior administrative or judicial

¹ Idaho Code §§ 42-1410 and 42-1411.

² Water rights based on beneficial use are sometimes referred to as constitutional rights or grandfather rights.

confirmation of the existence and extent of a water right based on beneficial use.³

Generally, for water rights that have been previously confirmed by license or decree, IDWR begins its examination by comparing the claim to information already available to IDWR. Other information includes, for example, IDWR's decree files; license, permit and transfer files; remotely sensed data, including Landsat imagery of irrigated acres and aerial photography; watermaster reports; applicable laws and IDWR's interpretation of those laws in light of the water resource policies of the state; etc. If there are discrepancies between the claim and information already available to IDWR, IDWR conducts further investigation to resolve the discrepancy, which generally includes a field exam and/or contacting the claimant for further information. Thus, where there has been a prior judicial or administrative confirmation of the existence and extent of a water right, IDWR uses information already available to IDWR to limit its review to issues identified by its discrepancy analysis.

Finally, IDWR uses both the court-ordered notice of error process⁴ and the statutory objection process to identify claims which merit further review. If this further review yields new information that supports a different description of the water right, then IDWR will revise its recommendation (in the case of a notice of error) or submit a supplemental director's report or offer a standard form 5 (in the case of an objection), consistent with the new information.⁵

Further information as to IDWR's standards and procedures for the investigation and recommendation is set forth in IDWR's Claim Investigation Manual, Field Examiner's Handbook, Administrative Memorandums, and

³ IDWR conducts a more summary investigation of beneficial use claims limited to domestic and/or stockwater use up to 0.24 cfs.

⁴ The notice of error process, as originally conceived and implemented, was limited to disagreements between the claimant and IDWR as to fairly straight-forward "errors", such as clerical errors or other readily verifiable matters. Based on its experience in the test basins, IDWR has subsequently recommended that the notice of error process be expanded to address any type of perceived error, as well as to address disagreements between claimants.

⁵ This "tiered" approach to determining a reasonable level of investigation is embodied in the statutory framework for water right adjudications. See §42-1410 (which provides for the discretion of the director in determining the level of IDWR's investigation, and allows but does not require the agency to conduct hearings), and §42-1412 (which authorizes IDWR to submit supplemental reports, and authorizes the court or the parties to request further investigation by IDWR in contested subcases). The tiered approach embodied in the statutory framework promotes efficiency and minimizes the burden on the court and the claimants by providing a report/objection process to identify disputed matters, and reserving the highest level of investigation for disputed matters.

B. METHODOLOGY TO DETERMINE IRRIGATED ACREAGE

The area of irrigated acreage can be determined by information obtained from scaled and non-scaled photographs of the place of use supplied by one of several U.S. government agencies. The use of aerial photography by the U.S. government dates back to 1937, when the U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service (ASCS, now known as the Farm Service Agency, or FSA) began photographing selected counties of the United States on a repetitive basis. This coverage continues today and aerial photos are used by the ASCS (FSA) to figure acreage planted on farms for purposes of managing farm programs. Photos used by IDWR typically include: ASCS photos and 35 mm color slides⁷; NAPP photos⁸; ortho-photoquads⁹; and U2

⁶ These documents set forth general standards and procedures and do not address all possible exceptions to the general standards and procedures. In addition, as a result of its experience in the test basins, statutory changes, judicial decisions, etc., IDWR has identified refinements and revisions to its standards and procedures for the investigation and recommendation of claims that have not yet been included in these documents.

⁷ Both the photos and slides are high oblique and vertical aerial photography. The ASCS photos are scaled and have selected features, such as roads, section lines, ditches, and field acreage superimposed on them by the ASCS. The color slides are simply color slides frequently taken with hand-held 35mm equipment. IDWR staff typically obtain copies (which are not scaled) of maps for lands claimed as the place of use during the investigation of the claims, either from the claimant or from the local ASCS office. Color slides may also be checked-out from the local ASCS office as needed; IDWR sometimes obtains the color slides as they are discarded by the local ASCS office.

⁸ NAPP (National Aerial Photography Program) photos are all color-infrared aerial photography. IDWR obtained coverage for most of the Snake River Basin, including all of the test basins; the photos are primarily from flights during 1987 and 1988, though some are from 1986 or 1989. The date of the flight is shown on the photo. NAPP photography is available from the U.S. Geological Survey Earth Resources Observation Systems (EROS) data center in Sioux Falls, South Dakota.

⁹ The full name for an ortho-photoquad is "orthographic photograph quadrangle." These are black and white photoimages prepared from aerial photographs that have been rectified to eliminate image displacement due to terrain relief that cover a systematically subdivided area of latitude and longitude. IDWR obtained coverage for most of the Snake River Basin, including all the test basins; the photos are primarily from flights during the 1970's. The date of the flight is shown on the quad sheet. Most of the orthophotos were obtained from the U.S. Geological Survey National Cartographic Information Center (NCIC) in Menlo Park, California. In some areas, maps were not available from U.S.G.S. but were available from other agencies, such as the United States Department of Agriculture, Forest Service.

aerial photos¹⁰.

A photographic "scale," like a map scale, is an expression that states that one unit of distance on a photograph represents a specific number of units of actual ground distance.

$$S = \text{Photo scale} = \frac{\text{Photo distance}}{\text{Ground distance}} = \frac{d}{D}$$

The scale may be expressed as unit equivalents, representative fractions, or ratios. For example, if 1 mm on a photo represents 25 m on the ground, the scale of the photo can be expressed as 1 mm = 25 m (unit equivalents), or 1/25,000 (representative fraction), or 1:25,000 (ratio).

The photo(s) used by IDWR personnel have varying scales. The ASCS photographs have map features drawn in by the ASCS. These photos are stated to be "not to scale," but do include the field acreage as determined by ASCS written on the places of use. NAPP photography is at a nominal scale of 1:40,000; U2 aerial photography is at a nominal scale of 1:120,000; and ortho-photoquads have a scale of 1:24,000.

To determine the area used, IDWR staff employed various transparent overlays, known as grid templates. These templates are available at most blueprint supply stores. One type consists of lines forming rectangles or squares of known area in the same scale that is utilized in the scaled photograph. The grid is placed over a scaled photograph and the area of a ground unit is estimated by counting grid units that fall within the unit to be measured.

Another commonly used grid is the dot grid, which is composed of uniformly spaced dots on a transparent overlay. The grid is placed over the photograph and the dots falling within the region to be measured are counted. The value assigned to each dot is dependent on the scale of the photograph. First, the number of acres per centimeter (or other measuring unit) is computed. This figure is then divided by the number of dots per measuring unit on the grid to obtain the acreage represented by each dot. For instance, a square 3.4 cm on each side containing 640 dots will cover 160 acres on a photo with a nominal

¹⁰ These photos are color-infrared aerial photography obtained by the National Aeronautics and Space Administration (NASA) Airborne Instrumentation Research Project, and available from EROS. IDWR obtained coverage of most of the southern portion of the Snake River Basin, most of which was flown in 1977. In addition, because the State of Idaho was part of an ongoing project with NASA to photograph selected areas, photography from various areas in various years is also available. The date of the flight is shown on the photo.

scale of 1:24000; 640 dots divided by 160 acres equals 4 dots to the acre, thus 1 dot equals 0.25 acres.

Because of its simplicity, the grid system is a practical method to determine the size of irrigated areas; it nonetheless requires some training and experience to be used effectively.

For non-scaled photos, such as the ASCS 35 mm photos, IDWR did not directly make acreage determinations. Instead, these photos were used to confirm whether the place of use and amount of irrigated acreage had changed for that year according to common landmarks visible in the photographs.

APPENDIX B

EVALUATION OF IRRIGATION DIVERSION RATE

WATER RIGHT NUMBER: 36-00064B

INTRODUCTION

This water right was recommended in the Director's Report with a diversion rate of 0.72 cfs. A portion of that total amount was recognized as the on-farm diversion requirement, and the remaining amount as conveyance loss. Based on IDWR's methodology to evaluate irrigation diversion rates, the quantity required on-farm was recommended as 0.56 cfs, or 0.029 cfs per acre for 19 acres, with an additional 0.16 cfs for conveyance loss. The total, 0.72 cfs, is equivalent to a total per acre rate of diversion of approximately 0.038 cfs per acre.

The original analysis indicated that 16 of the 19 total acres are sprinkler irrigated and that 3 acres are flood irrigated. The irrigation diversion rate determined at that time to be necessary for those 3 acres was 0.24 cfs.

Because IDWR has received new information and has refined the methodology since the time of the original analysis of irrigation diversion requirement, a revised analysis has been completed for the 3 acres of flood irrigated land. The revised analysis is based upon information already contained in the claim file and the new information detailed in this report. An expanded explanation of the methodology used is contained in the report entitled Report Regarding Evaluation of Irrigation Diversion Rates, dated July, 1996. Hereinafter, that report will be referred to as IDWR's Methodology Report.

Several factors must be considered when determining the necessity of an irrigation diversion rate greater than 0.02 cfs per acre. Those factors are crop types, irrigated acres, types of irrigation systems used, evapotranspiration estimates, field application efficiencies, and conveyance loss. These items are discussed in the following paragraphs, along with the results of the analysis.

IRRIGATED ACRES/CROPS

The property studied for this analysis includes 3 acres of pasture located just northeast of sewage disposal ponds and between the Buckeye and Bell Ditches, as shown in Figure 1 of the Attachments. The field is irrigated using wild flooding

method.¹ In general, IDWR does not consider irrigation by wild flooding method to be an acceptable irrigation practice. For cases such as those, analysis of systems is based on the use of furrow irrigation (corrugations) as a standard to determine the necessity of a diversion rate greater than 0.02 cfs per acre. Therefore, this right was analyzed based on the use of a corrugation system.

EVAPOTRANSPIRATION

Evapotranspiration is the amount of water evaporated from the soil plus the amount used by a crop during crop growth. IDWR's estimate used for evapotranspiration (ET) for the Hagerman area has been refined since the original analysis of required diversion rate was completed. Originally, the monthly consumptive irrigation requirements for the Bliss weather station were used, based on consumptive irrigation data estimated by Allen and Brockway². IDWR has since obtained information allowing adjustments to the values that more accurately represent conditions in the Hagerman area. This process is outlined in the section of IDWR's Methodology Report titled EVAPOTRANSPIRATION (CROP CONSUMPTIVE USE) and the resulting ET values are summarized in Table 1 of the Attachments.

The ET values used for pasture are shown under the column titled PAST in the same table as the one described above. For each month of the irrigation season, the values in the row titled 80PCT ET are used. This represents the 80th percentile value for ET. The reasoning behind the use of these particular ET numbers is further explained in the EVAPOTRANSPIRATION section of IDWR's Methodology Report.

FIELD APPLICATION EFFICIENCY

In order to calculate the field application efficiency, several elements must first be considered. Among these elements are the slope, approximate furrow lengths, furrow spacings, and set time for each field. Additionally, the soil information described below is necessary.

Soil Information

Some data unique to each soil type are required for the analysis, including the management allowed deficit (MAD) and intake family. The MAD is based on the maximum soil moisture deficit which will not cause the crop to exceed its stress point. Intake family is a classification of soils with similar water intake rate characteristics. The Natural Resources Conservation Service (NRCS), formerly Soil Conservation Service (SCS), compiles soil surveys describing the various soil types within the state and the locations where those soils may be found. The procedure used to determine

¹Information as to crop type and irrigation method was provided in claim file.

²Allen, R.G. and C.E. Brockway, Appendix E (unpublished)

the value of MAD and intake family using SCS data is described in the sections of IDWR's Methodology Report titled NET IRRIGATION APPLICATION and IRRIGATION APPLICATION SYSTEMS. In order to use the correct values for MAD and intake family, it is necessary to determine the worst-case significant soil for each field if more than one soil type is present in that field.

There is only one soil type present on the 3 acres of pasture described above. That soil type is Jestruck-Starbuck-Kecko Complex (JSK). Figure 1 shows the layout of the soil types as they relate to the location of the field described by this claim.

The JSK complex is actually a combination of three different soil types occurring in unknown locations throughout the complex. Since the locations are unknown, the lowest MAD was chosen to ensure that the crop will not be stressed. That value is 1.35 inches. The MAD values for JSK are provided in Tables 2, 3, and 4 of the Attachments. These tables were created using a spreadsheet developed by IDWR to simplify calculations to determine MAD and intake family.

There are two procedures described in the section of IDWR's Methodology Report entitled IRRIGATION APPLICATION SYSTEMS for determining intake family. The alternative procedure is considered a refinement for some soil conditions and is used where available. The furrow intake family for all the variations of JSK was found by both procedures to be 0.5. These intake families are also shown in Tables 2, 3, and 4.

Field Slope

Field slopes were determined based on USGS topographic maps. An estimate of the average slope from top end to bottom end of furrows was calculated for each field. To calculate these slopes, it was necessary to make a determination as to the direction of furrows. Those determinations were based on the available aerial photography³ and information in the claim file, where available. The field slope of the pasture was estimated to be 2 percent.

Furrow Lengths

The furrow lengths were determined using the same topographic maps and

³Photos used are all color-infrared aerial photography. They were obtained through projects coordinated by the federal government, including the National Aerial Photography Program (NAPP) and the National Aeronautics and Space Administration (NASA) Airborne Instrumentation Research Project.

NAPP photos used are: Photo No. 439-43, dated 8/1/1988; Photo No. 419-59, dated 6/25/1987; and Photo No. 419-61, dated 6/25/1987.

NASA photos used are: Photo No. 6134, Flight No. 75-131, FSR 706, dated 6/8/1975; Photo No. 2471, Flight No. 77-134, FSR 1049, dated 10/8/1977; Photo No. 3472, Flight No. 80-152, FSR 1462, dated 9/17/1980; and Photo No. 2314, Flight No. 83-095, FSR 1760, dated 6/7/1983.

aerial photos. If fields appeared to have a rectangular shape, an average length was used. If fields did not appear to have consistent furrow lengths throughout, several furrow lengths were evaluated for that field. For instance, furrow lengths for the pasture varied from approximately 300 feet to approximately 400 feet.

Use of cross-ditches or gated pipe to reduce the furrow length is an alternative irrigation practice which will improve the efficiencies of fields with high intake rate soils if set times and inflow rates are adjusted appropriately. This alternative is not considered reasonable if it would result in furrow lengths less than 300 feet. A length of 300 feet is considered by IDWR to be a minimum practical length for farm cultivation practices.

Furrow Spacing/Set Times

When the system efficiencies were calculated, 30 inch furrow spacings were used. Thirty inch furrow spacing is a common spacing and is a standard used by IDWR for consistency. In addition, 8 hour, 12 hour, and 24 hour set times were analyzed and compared. Eight, 12, and 24 hour set times were all examined to determine which of them would provide an optimum overall efficiency. Eight hour set times are considered acceptable irrigation practices which can be used during the peak water use period to improve application efficiencies.

Results

Field application efficiencies are estimated using a computer program developed by SCS for use with furrow irrigation and provided with the Hubble Report⁴. Efficiencies less than 15 percent or greater than 70 percent are outside the practical limits of the program. In cases where efficiency is estimated to be greater than 70 percent, an efficiency of 70 percent is used. In addition, the program does not recognize erosive flows or furrow carrying capacities. The limiting erosive flow is dependent on the slope of a particular field and must be calculated for each field. In this case, the limiting erosive flow would be 20 gpm. The practical carrying capacity of corrugations is 10 gpm. The term identified in the program as design application is equivalent to the MAD, as determined above. Refer to the section FIELD APPLICATION EFFICIENCY in IDWR's Methodology Report for more information regarding the methodology used in determining field application efficiency.

The furrow lengths for the 3 acre pasture vary between 300 and 400 feet. To develop an estimate of the overall efficiency for the field as a whole, efficiencies were estimated for both 300 and 400 foot furrow lengths. For both those lengths, the irrigation method using 8 hour set times and appropriate inflow rates provided an optimum efficiency. Those efficiencies were averaged, and an overall efficiency was

⁴The Hubble Report is a common name given to a pair of reports developed for IDWR in July, 1990 by Hubble Engineering, Inc. and Associated Earth Sciences, Inc. entitled "Guidelines for the Evaluation of Irrigation Diversion Rates" and "Evaluation Workbook for Irrigation Diversion Rates".

then used in the determination of the field irrigation requirement. That overall efficiency was calculated to be 56 percent. An analysis based on splitting the field to create shorter furrow lengths was not necessary, since it would result in furrows shorter than 300 feet throughout the field, which are below the limits set by IDWR. The results of these calculations are shown in Table 4 of the Attachments, which depicts the computer output generated by the SCS program.

ON-FARM IRRIGATION DIVERSION REQUIREMENT

The on-farm irrigation diversion requirement is the amount of water needed on the farm itself to provide adequate water to the crop(s) being grown. The procedure used to determine that amount is described in detail in the section of IDWR's Methodology Report titled ON-FARM IRRIGATION REQUIREMENT. The results of that procedure are provided in Table 5 of the Attachments. Table 5 was created using a spreadsheet developed by IDWR which utilizes the information detailed above and calculates the irrigation diversion requirement. The resulting maximum diversion rate requirement for the 3 acres of pasture was determined to be 0.08 cfs, or 0.026 cfs per acre.

CONVEYANCE LOSS

When water is conveyed through an earthen delivery ditch, a certain portion of the total flow is lost through seepage into the ground. The method used to estimate seepage losses is referred to as the Worstall method, which is further explained in the CONVEYANCE LOSS section of IDWR's Methodology Report. The Worstall method relies on the characteristics of the soil, the ditch width, and the ditch length to estimate the actual seepage losses of the ditch. IDWR has developed a spreadsheet which calculates the total conveyance loss estimate on a ditch and prorates that loss among the reaches of the ditch based on the total amount of water removed from each reach of the ditch and the location of each reach.

In the original analysis of conveyance loss for the Buckeye Ditch, delivery locations were identified along the entire ditch. In some cases, more than one right is supplied from a single reach of the ditch. The total conveyance loss estimate for all water use from that reach of the ditch was calculated using the spreadsheet based upon the Worstall method. If there were found to be multiple users removing water from the same reach of the ditch, the conveyance loss estimate for that reach was divided equally among those users. This approach was used along the entire length of the Buckeye Ditch.

It would not be practical or meaningful for IDWR to re-evaluate the conveyance loss attributable to this right for two primary reasons. First, because the Worstall method does not depend on total flow in a ditch, but rather the top width of the water surface and the ditch length, the total conveyance loss estimate for the ditch would

not change even if the determinations of individual water rights were to vary from IDWR's recommendations. The only change might be the allocation of the total conveyance loss among the individual water rights. However, not all of the water rights on the ditch are contested, and of those that are contested, not all are presently before the special master. In addition, no historical method for allocation of conveyance loss exists to use as a basis for distribution of conveyance losses for water rights along this ditch. For all these reasons, the recommended conveyance loss amount remains at 0.16 cfs.

IRRIGATION DIVERSION REQUIREMENT

The total irrigation diversion requirement is the sum of the on-farm irrigation diversion requirement and the conveyance loss. For this right, the total irrigation diversion requirement for the 3 acres of pasture is 0.08 cfs. If this is added to the 0.32 cfs already determined to be necessary for the other portion of the irrigation for this right, and added to the conveyance loss for the right, the total amount would be $0.08 + 0.32 \text{ cfs} + 0.16 \text{ cfs}$, or 0.56 cfs.

REFERENCES

- Allen, R.G., and C.E. Brockway, 1983, Estimating Consumptive Irrigation Requirements for Crops in Idaho, Idaho Water and Energy Resources Research Institute, University of Idaho, Appendix E (unpublished).
- Hubble Engineering, Inc. and Associated Earth Sciences, Inc., 1991, Guidelines for the Evaluation of Irrigation Diversion Rates, Idaho Department of Water Resources.
- Hubble Engineering, Inc. and Associated Earth Sciences, Inc., 1991, Evaluation Workbook for Irrigation Diversion Rates, Idaho Department of Water Resources.
- Idaho Department of Water Resources, 1996, Report Regarding Evaluation of Irrigation Diversion Rates, also referred to as IDWR's Methodology Report.
- National Aerial Photography Program, Color-infrared aerial photography, Flight dates June 25, 1987, August 1, 1988.
- Soil Conservation Service (now Natural Resources Conservation Service) - Gooding, Idaho office, 1992, Unpublished soil survey data.

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ATTACHEMENTS

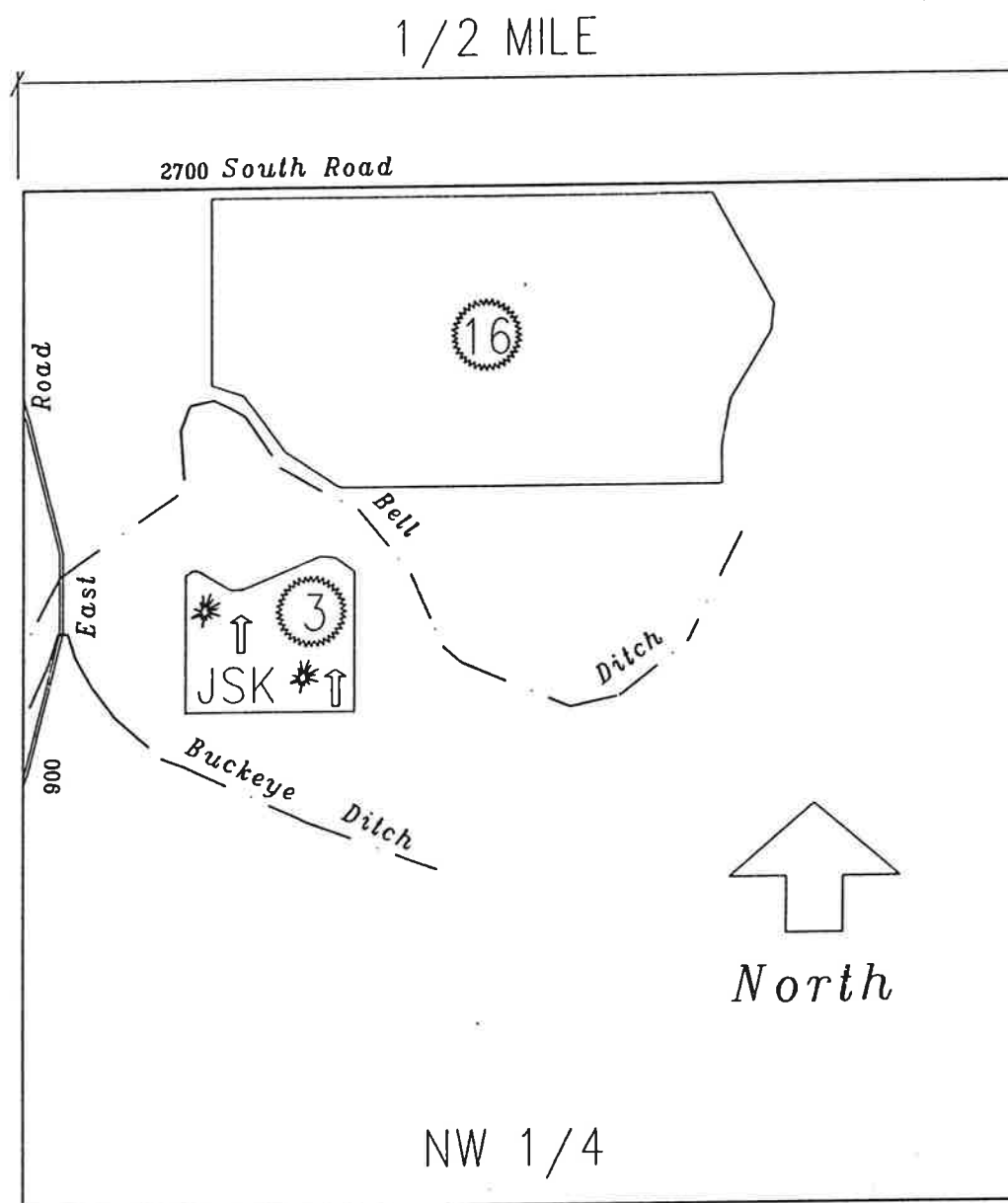
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FIGURE 1

T. 7 S., R. 13 E.
Section 23
Gooding County

Legend:

- ← Furrow Direction
- JSK Soil Type
- - - Soil Type Division Line
- - - Ditch
- 1/4 1/4 Line
- ③ Irrigated Acres
- * Pasture



Water Right No. 36-00064B

IDWR QUAD AA-69

RDH 6/96

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Table 1

80th Percentile values of monthly ET estimated for
the Hagerman Valley adjusted from the Bliss Station
(mm/day)

	MO	ETR	ALFH.	BEANS	F.CRN	SILGE	S.CRN	PEAS	POTAT	SBEET	SGRAN	WGRAN	PAST.	VEGES
AVE ET	4	5.28	3.30					1.60	1.58	1.58	1.65	4.82	3.27	
TMP ADJ	4	5.68	3.55					1.72	1.70	1.70	1.77	5.18	3.52	
ALT ADJ	4	5.75	3.59					1.74	1.72	1.72	1.80	5.25	3.56	
STDD ET	4	0.47	0.29					0.14	0.14	0.14	0.15	0.43	0.29	
ADJ STDD	4	0.80	0.49					0.24	0.24	0.24	0.26	0.73	0.49	
80PCT ET	4	6.42	4.01					1.94	1.92	1.92	2.01	5.86	3.97	
AVE ET	5	6.79	6.29	2.04	2.04	2.04	2.04	3.85	2.19	2.04	5.11	6.79	5.23	2.07
TMP ADJ	5	7.18	6.65	2.16	2.16	2.16	2.16	4.07	2.31	2.16	5.40	7.18	5.53	2.19
ALT ADJ	5	7.27	6.73	2.18	2.18	2.18	2.18	4.12	2.34	2.18	5.47	7.27	5.60	2.21
STDD ET	5	0.49	0.46	0.15	0.15	0.15	0.15	0.28	0.16	0.15	0.37	0.49	0.38	0.15
ADJ STDD	5	0.80	0.75	0.25	0.25	0.25	0.25	0.46	0.26	0.25	0.61	0.80	0.62	0.25
80PCT ET	5	7.94	7.37	2.39	2.39	2.39	2.39	4.51	2.56	2.39	5.98	7.94	6.12	2.42
AVE ET	6	8.41	7.32	3.26	3.66	3.66	3.53	6.82	5.77	3.91	8.39	8.41	6.47	4.40
TMP ADJ	6	8.82	7.68	3.42	3.84	3.84	3.70	7.15	6.05	4.10	8.80	8.82	6.79	4.62
ALT ADJ	6	8.93	7.77	3.46	3.89	3.89	3.75	7.24	6.13	4.15	8.91	8.93	6.87	4.67
STDD ET	6	0.47	0.41	0.18	0.21	0.21	0.20	0.38	0.32	0.22	0.47	0.47	0.36	0.25
ADJ STDD	6	1.27	1.11	0.49	0.57	0.57	0.54	1.03	0.86	0.59	1.27	1.27	0.97	0.68
80PCT ET	6	10.00	8.71	3.87	4.36	4.36	4.20	8.11	6.85	4.65	9.98	10.00	7.69	5.24
AVE ET	7	8.54	6.94	7.37	7.68	7.68	7.47	2.99	7.17	8.14	7.05	6.80	6.57	6.57
TMP ADJ	7	8.89	7.22	7.67	7.99	7.99	7.78	3.11	7.46	8.47	7.34	7.08	6.84	6.84
ALT ADJ	7	9.00	7.31	7.77	8.09	8.09	7.87	3.15	7.56	8.58	7.43	7.17	6.92	6.92
STDD ET	7	0.26	0.21	0.23	0.24	0.24	0.23	0.09	0.22	0.25	0.22	0.21	0.20	0.20
ADJ STDD	7	0.58	0.47	0.51	0.53	0.53	0.51	0.20	0.49	0.56	0.49	0.47	0.44	0.44
80PCT ET	7	9.49	7.71	8.20	8.54	8.54	8.30	3.32	7.97	9.05	7.84	7.56	7.30	7.30
AVE ET	8	7.18	5.41	4.97	6.63	6.63	6.38		5.57	7.06	1.47	1.32	5.53	5.72
TMP ADJ	8	7.50	5.65	5.19	6.92	6.92	6.66		5.82	7.37	1.53	1.38	5.77	5.97
ALT ADJ	8	7.59	5.72	5.25	7.01	7.01	6.74		5.89	7.46	1.55	1.40	5.84	6.05
STDD ET	8	0.33	0.25	0.23	0.30	0.30	0.29		0.26	0.32	0.07	0.06	0.25	0.26
ADJ STDD	8	0.70	0.53	0.49	0.64	0.64	0.62		0.55	0.68	0.15	0.13	0.53	0.55
80PCT ET	8	8.18	6.17	5.66	7.54	7.54	7.26		6.35	8.04	1.68	1.50	6.29	6.51
AVE ET	9	5.60	3.67	0.77	4.19	4.19			3.29	4.86			4.32	3.83
TMP ADJ	9	5.90	3.87	0.81	4.42	4.42			3.47	5.12			4.55	4.04
ALT ADJ	9	5.97	3.92	0.82	4.47	4.47			3.51	5.19			4.61	4.09
STDD ET	9	0.41	0.27	0.06	0.31	0.31			0.24	0.36			0.32	0.28
ADJ STDD	9	0.66	0.43	0.10	0.50	0.50			0.39	0.58			0.52	0.45
80PCT ET	9	6.53	4.28	0.90	4.89	4.89			3.84	5.67			5.04	4.47
AVE ET	10	3.73	1.26		1.04					2.48			2.88	
TMP ADJ	10	4.02	1.36		1.12					2.67			3.10	
ALT ADJ	10	4.07	1.37		1.13					2.70			3.14	
STDD ET	10	0.35	0.12		0.10					0.24			0.27	
ADJ STDD	10	0.47	0.16		0.14					0.32			0.36	
80PCT ET	10	4.46	1.51		1.25					2.98			3.45	

ET and standard deviation data (AVE ET and STDD ET) for Bliss weather station taken from Appendix E (unpublished) of Brockway, C.E., and R.G. Allen, 1983, Estimating Consumptive Irrigation Requirements for Crops in Idaho, Idaho Water and Energy Resources Research Institute.

Adjustments to standard deviation (ADJ STDD) based on Allen & Brockway Report, pp. 18, and Allen, R.G., and J.L. Wright, 1983, Variation Within Measured and Estimated Consumptive Use Requirements, Proceedings of the Irrigation and Drainage Specialty Conference of the American Society of Agricultural Engineers, Jackson Hole, Wyoming, July 20-22, 1983, pp. 1-12.

Temperature adjustment (TMP ADJ) based on temperature differences between Bliss and Hagerman and temperature sensitivity of ET estimates given in Brockway, C.E., G.S. Johnson, J.L. Wright, and A.L. Coiner, 1985, Remote Sensing for Irrigated Crop Water Use - Phase 1, Water Resources Research Institute, pp. 101-107.

Altitude adjustment (ALT ADJ) based on Doorenbos, J., and W.O. Pruitt, 1977, Crop Water Requirements, Food and Agriculture Organization of the United Nations, p. 59.

80th percentile ET values (80PCT ET) calculated based on Walpole, R.E., and R.H. Meyers, 1985, third edition, PROBABILITY AND STATISTICS FOR ENGINEERS AND SCIENTISTS, New York: Macmillan Publishing Company, pp. 132-144 and 574.

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Table 2

SOIL CHARACTERISTICS

initials: JP

date: 11/20/92

Soil Type = JSK - 1

VFSL

Source of Soils Data =

SCS - GOODING

soil depth (inches)		AWC (in/in)		PH		organic (%)		soil depth (ft)	AWC (inches)	intake family	
lower	upper	lower	upper	lower	upper	lower	upper			flood	furrow
0	7	0.1	0.14	6.6	7.3	0.7	1	1	1.47	1.5	0.5
7	29	0.11	0.14					2	2.97		
29	33	0	0					3	3.59		
33	37	0	0					4	3.59	alternate	
								5	3.59	method	
										1.5	0.5

Management Allowed Deficit (MAD)

crop	root depth (ft)	stress point	MAD (inches)
alfalfa (hay or seed)	5	0.5	1.80
corn (field or silage)	4	0.5	1.80
grain (winter or spring)	4	0.5	1.80
pasture (or grass hay)	3	0.5	1.80
other (enter below)			
beets	5	0.5	1.80
mint	3	0.5	1.80
beans	2	0.4	1.19
potatoes	3	0.35	1.26

For definition of terms, refer to the sections called NET IRRIGATION APPLICATION and IRRIGATION APPLICATION SYSTEMS of the IDWR report titled Report Regarding Evaluation of Irrigation Diversion Rates, dated July, 1996.

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Table 3

SOIL CHARACTERISTICS

initials: JP

date: 11/20/92

Soil Type = JSK - 2

VFSL

Source of Soils Data =

SCS - GOODING

soil depth (inches)		AWC (in/in)		PH		organic (%)		soil depth (ft)	AWC (inches)	intake family	
lower	upper	lower	upper	lower	upper	lower	upper			flood	furrow
0	4	0.1	0.16	6.6	7.3	0.7	1	1	1.76	1.5	0.5
4	17	0.13	0.18					2	2.69		
17	18	0.13	0.18					3	2.69		
18	22	0	0					4	2.69	alternate	
								5	2.69	method	
										1.5	0.5

Management Allowed Deficit (MAD)

crop	root depth (ft)	stress point	MAD (inches)
alfalfa (hay or seed)	5	0.5	1.35
corn (field or silage)	4	0.5	1.35
grain (winter or spring)	4	0.5	1.35
pasture (or grass hay)	3	0.5	1.35
other (enter below)			
beets	5	0.5	1.35
mint	3	0.5	1.35
beans	2	0.4	1.08
potatoes	3	0.35	0.94

For definition of terms, refer to the sections called NET IRRIGATION APPLICATION and IRRIGATION APPLICATION SYSTEMS of the IDWR report titled Report Regarding Evaluation of Irrigation Diversion Rates, dated July, 1996.

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Table 4

SOIL CHARACTERISTICS

initials: JP

date: 11/20/92

Soil Type = JSK - 3

VFSL

Source of Soils Data =

SCS - GOODING

soil depth (inches)		AWC (in/in)		PH		organic (%)		soil depth (ft)	AWC (inches)	intake family	
lower	upper	lower	upper	lower	upper	lower	upper			flood	furrow
0	6	0.12	0.14	7.4	8.4	1	2	1	1.62	1.5	0.5
6	53	0.13	0.15					2	3.30		
53	62	0.03	0.12					3	4.98		
								4	6.66	alternate	
								5	7.89	method	
										1.5	0.5

Management Allowed Deficit (MAD)

crop	root depth (ft)	stress point	MAD (inches)
alfalfa (hay or seed)	5	0.5	3.94
corn (field or silage)	4	0.5	3.33
grain (winter or spring)	4	0.5	3.33
pasture (or grass hay)	3	0.5	2.49
other (enter below)			
beets	5	0.5	3.94
mint	3	0.5	2.49
beans	2	0.4	1.32
potatoes	3	0.35	1.74

For definition of terms, refer to the sections called NET IRRIGATION APPLICATION and IRRIGATION APPLICATION SYSTEMS of the IDWR report titled Report Regarding Evaluation of Irrigation Diversion Rates, dated July, 1996.

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Table 5

INTAKE FAMILY	DESIGN APPLIC. Inches	FURROW SLOPE Ft/Ft	FURROW SPACING Feet	FURROW LENGTH Feet	INFLOW RATE Gpm	APPROXIMATE INFLOW TIME Hours	ADVANCE TIME Minutes	GROSS IRRIGATION APPLICATION	NET IRRIGATION APPLICATION	RUNOFF Inches	DEEP PERC. In.	IRRIGATION EFFICIENCY %
								Inches	Inches			
0.50	1.35	.020	2.50	400	3.0	8	49.0	2.31	2.08	0.12	0.84	58.44 *
0.50	1.35	.020	2.50	400	2.5	12	61.9	2.89	2.74	0.03	1.51	46.76
0.50	1.35	.020	2.50	400	2.5	24	61.9	5.77	4.67	1.00	3.42	23.38
0.50	1.35	.020	2.50	300	2.5	8	32.7	2.57	2.08	0.42	0.80	52.60 *
0.50	1.35	.020	2.50	300	2.0	12	42.5	3.08	2.72	0.28	1.45	43.83
0.50	1.35	.020	2.50	300	1.5	24	65.8	4.62	4.38	0.14	3.13	29.22

Average efficiency = $(58 + 53) / 2 = 56\%$

Use of this program and input requirements are described in the FIELD APPLICATION EFFICIENCY section of the IDWR report titled Report Regarding Evaluation of Irrigation Diversion Rates, dated July, 1996.

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FIELD IRRIGATION REQUIREMENT

initials: MS Claimant = Fleming
 date: 06/28/96 Weather Station = Bliss/Hagerman

crop	acres	irrig. system	eff. (%)	Monthly ET (mm/day)								AVE IR season (mm/yr)	net irrig. app. (in)	ET ratio	irrig. freq. (days)	Gross Irrigation Application (peak period ET/eff. in mm/day)										season (mm/yr)
				mar	apr	may	jun	jul	aug	sep	oct					mar	apr	may	jun	jul	aug	sep	oct			
cor	3	cor	56		3.97	6.12	7.69	7.3	6.29	5.04	3.45		1.35	1.13	3.9		8.01	12.35	15.52	14.73	12.69	10.17	6.96			

Summary 3

8.01 12.35 15.52 14.73 12.69 10.17 6.96

Peak Gross Irrigation Application (mm/day) = 15.52
 On-Farm Irrigation Requirement (cfs/acre) = 0.026
 Total On-Farm Irrigation Requirement (cfs) = 0.08
 Irrigation Diversion Volume (ft/yr) = 0.00
 Total Irrigation Diversion Volume (ac-ft/yr) = 0

State of Idaho)
) ss.
County of Ada)

Marci S. Sterling, being first duly sworn, upon oath, deposes and says:

That I am an Engineer for the Adjudication Bureau of IDWR, that I prepared the foregoing appendix, know its contents, and that the statements contained therein are true to the best of my knowledge and belief.

Marci S. Sterling
Marci S. Sterling

Subscribed and sworn to before me this 1st day of July, 1996.

L. Sherman
Notary Public for Idaho
Residing at: Boise ID
My commission expires: 11-14-1998

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BUCKEYE DITCH (lower)

34B- OBJ.- Fleming- 9/10/1884
(Brown, atty.)
claimed- irr.- 4.52 for 51 ac.
rec'd- irr.- 0.72 for 19 ac.
D.R. = 0.56
C.L. = 0.16

35E- OBJ.- Vargo- 9/10/1884

HUBBLE
(Brown, atty.)
claimed- irr.- 0.20 for 10 ac.
rec'd- irr.- 0.20 for 5 ac.
D.R. = 0.20

91A- no obj. (Ellston)- 9/10/1884

HUBBLE
claimed- irr.- 0.64 for 16 ac.
rec'd- irr.- 0.64 for 12 ac.
D.R. = 0.64

91B- no obj. (Fobes)- 9/10/1884

HUBBLE
claimed- irr.- 0.16 for 4 ac.
rec'd- irr.- 0.16 for 4 ac.
D.R. = 0.13
C.L. = 0.03

108M- Messersmith/Boothwell- 9/10/1884

HUBBLE
claimed- no records found
rec'd- irr.- 2.95 for 53.2
D.R. = 2.81
C.L. = 0.41

108N- Brooks- 9/10/1884

HUBBLE
claimed- irr.- 0.06 for 2.3
rec'd- irr.- 0.16 for 2.3
D.R. = 0.15
C.L. = 0.01

108J- Gridlev- 9/10/1884

HUBBLE
claimed- irr.- 1.46 for 5 ac.
rec'd- irr.- 0.17 for 3 ac.
D.R. = 0.16
C.L. = 0.01

35J- OBJ.- Slomson- 9/10/1884

(Brown, atty.)
claimed- irr.- 0.40 for 20 ac.
rec'd- irr.- 0.12 for 3 ac.
C.L. = 0.03

35J- OBJ.- Slomson- 9/10/1884

(Brown, atty.)
claimed- no record found
rec'd- irr.- 0.40 for 9 ac.
D.R. = 0.34
C.L. = 0.06

36- OBJ.- Brown- 3/30/1884

HUBBLE
claimed- irr.- 2.40 for 40 ac.
stock- 0.05 (125 range)
rec'd- irr.- 1.05 for 40 ac.
stock- 0.05 summer
0.24 winter
C.L. = 0.19
D.R. = 0.86

4- no obj. (Peterson)- 3/30/1884

claimed- irr.- 2.40 for 34 ac.
rec'd- irr.- 0.37 for 34 ac.
C.L. = 0.19

C- OBJ.- Babington- 9/10/1884

(Brown, atty.)
claimed- irr.- 0.30 for 10 ac.
rec'd- irr.- 0.30 for 10 ac.
C.L. = 0.10

OBJ.- Simcoe- 9/10/1884

(Brown, atty.)
claimed- irr.- 0.80 for 40 ac.
rec'd- irr.- 0.80 for 40 ac.

35E- OBJ.- Brown- 9/10/1884

AMNESTY
claimed- 3/8/1902
irr.- 0.24 for 8 ac.
rec'd- irr.- 0.10 for 3 ac.
C.L. = 0.04
(combined with 34E)
(8 ac. place of use)

35C- no obj. (Vargo)- 9/10/1884

claimed- 3/8/1902
irr.- 0.02 for 0.5 ac.
rec'd- dom.- 0.02

35C- no obj. (Hoffman)- 9/10/1884

claimed- 9/4/1884
dom.- 0.02
rec'd- dom.- 0.02

35H- no obj. (Drage)- 9/10/1884

claimed- records not found
rec'd- irr.- 0.20 for 5 ac.
C.L. = 0.10

87- no obj. (Peterson)- 3/30/1884

HUBBLE
claimed- irr.- 2.40 for 31 ac.
rec'd- irr.- 2.40 for 31 ac.
D.R. = 1.55
C.L. = 0.35

3A- OBJ.- Rea- 9/10/1884

(Brown, atty.)
claimed- irr.- 1.60 for 13 ac.
stock- 0.04 (19 range)
rec'd- irr.- 0.41 for 13 ac.
stock- 0.02 summer
0.17 winter
C.L. = 0.15

35B- OBJ.- Sturtevant- 9/10/1884

claimed- irr.- 0.60 for 13 ac.
rec'd- irr.- 0.30 for 13 ac.
C.L. = 0.04

3B- OBJ.- Kingston- 9/10/1884

(Brown)
claimed- irr.- 7.16 for 129 ac.
stock- 0.05 (200 range)
fish- 7.16
rec'd- irr.- 5.00 for 129 ac.
stock- 0.05 summer
1.80 winter
D.R. = 3.25
C.L. = 1.75

3K- no obj. (Gardner)- 9/10/1884

(Brown, atty.)
claimed- irr.- 0.71 for 10 ac.
rec'd- record not found

3L- no obj. (Babington)- 9/10/1884

(Brown, atty.)
claimed- irr.- 1.97 for 27.5 ac.
stock- 0.04
fish- 4.00
rec'd- record not found

3M- no obj. (Simcoe)- 9/10/1884

(Brown, atty.)
claimed- irr.- 1.32 for 18.5 ac.
rec'd- record not found

3D- no obj. (Harrison)- 9/10/1884

HUBBLE
claimed- irr.- 0.24 for 10 ac.
rec'd- irr.- 0.24 for 2 ac.
D.R. = 0.24

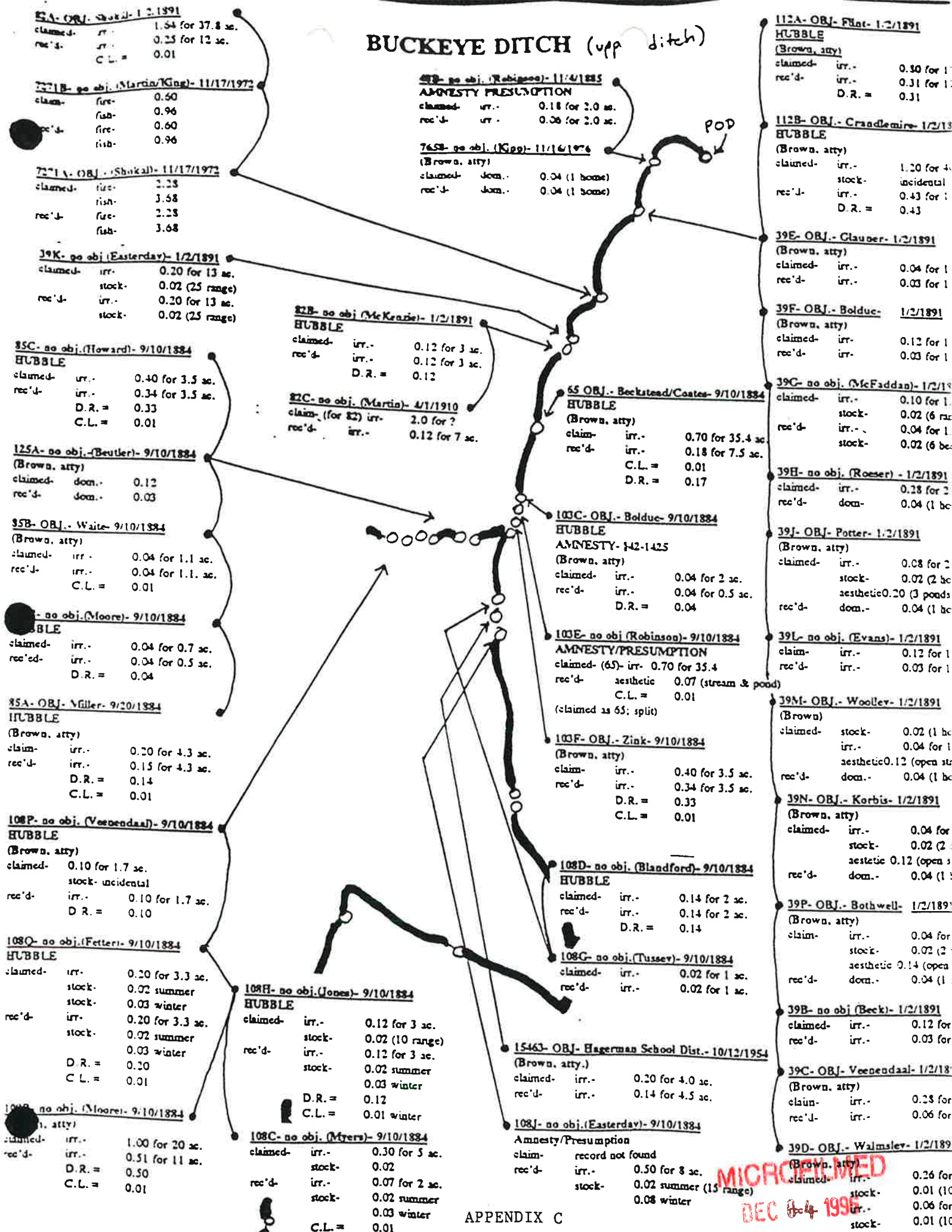
3H- OBJ.- Buckeye Farms- 9/10/1884

(Rosholt, atty.)
claimed- irr.- 12.0 for 445
rec'd- irr.- 8.37 for 224
C.L. = 3.89
(combined with I)

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APPENDIX C

BUCKEYE DITCH (upper ditch)



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DEC 8 1990

ALAN G. LANCE
Attorney General
State of Idaho

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

BRENT KING
CHARLES L. HONSINGER
Deputy Attorneys General
Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098
Telephone: (208)327-5458
Fax: (208)327-5400

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 No. 36-00064B
	)	
Case No. 39576	)	AFFIDAVIT OF STEVE CLELLAND
	)	REGARDING CLAIM NO. 36-00064B
	)	
STATE OF IDAHO	)	
	) ss.	
County of Twin Falls	)	

I, STEVE CLELLAND, being first duly sworn on oath, depose and state as follows:

1. I am a Senior Water Resource Agent with the Idaho Department of Water Resources (IDWR).
2. My work address is Idaho Department of Water Resources (IDWR), Southern Regional Office, 222 Shoshone St. East, Twin Falls, ID 83301-6105. I reside in Twin

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Falls, Idaho.

3. My educational background and work history both outside and within IDWR are detailed in my Affidavit of Steve Clelland as to the Investigation of Claims in the Hagerman Area.

4. As part of my duties as a senior water agent, I investigated the acreage claimed as irrigated pursuant to claim no. 36-00064B. The pertinent details of that investigation are as follows:

A. On August 10, 1990, IDWR water agent Helen Thornton and I conducted a field examination to determine the irrigated acreage claimed pursuant to claim no. 36-00064B.

B. During that field examination, I observed two irrigated parcels within the area claimed as irrigated pursuant to this claim. I observed one larger irrigated parcel and one smaller irrigated parcel that was south and west of the larger parcel and between the Bell and Buckeye ditches. I also observed that no other land was irrigated by water delivered pursuant to this claim. I observed no indication of any means to apply water to any other land; no indication of cultivation of any other land; and no indication of vegetation other than natural foliage on any other land.

C. Upon returning to the office, I found that the pertinent NAPP photograph was consistent with my observations as to areas both irrigated and unirrigated on this tract of land.

D. The pertinent ASCS map from showed that the larger irrigated parcel was 15.4 acres in size and the smaller irrigated parcel was 3.8 acres in size (the ASCS map

showed this smaller parcel as two parcels each 1.9 acres in size). However, I had observed that an area of the smaller parcel was not actually irrigated. I observed a slope to this area, making irrigation impractical using the existing delivery system. I observed no indication of cultivation on this area; and no indication of vegetation on the area other than natural foliage. I estimated this small unirrigated area to be approximately one acre in size based on the size of surrounding parcels as shown by the ASCS map. Therefore, adding the approximately three acres making up the irrigated area of the smaller parcel to the 15.4 acres making up the irrigated area of the larger parcel yielded a total irrigated area approximating 19 acres.

5. As part of my duties as a senior water agent, I investigated the quantity of water delivered pursuant to claim no. 36-00064B. The pertinent details of that investigation are as follows:

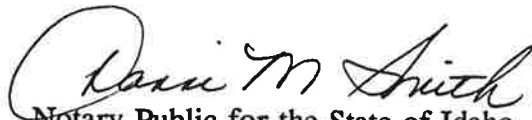
1. During my field examination of August 10, 1990, I observed that the larger parcel to which water was delivered pursuant to this right was sprinkler irrigated. I observed that the smaller three acre parcel was flood irrigated and that the crop planted in that parcel was pasture.

DATED this 1st day of July, 1996.



STEVE CLELLAND

SUBSCRIBED AND SWORN to before me this 1st day of July, 1996.



Notary Public for the State of Idaho

Residing at: Boise

My commission expires: 12-5-2000

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

BRENT KING
CHARLES L. HONSINGER
Deputy Attorneys General
Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098
Telephone: (208)327-5458
Fax: (208)327-5400

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 No. 36-00064B
	)	
Case No. 39576	)	AFFIDAVIT OF HELEN THORNTON
	)	REGARDING CLAIM NO. 36-00064B
	)	

STATE OF IDAHO	)
	) ss.
County of Ada	)

I, HELEN THORNTON, being first duly sworn on oath, depose and state as follows:

1. I am currently a Hydrogeologist with the Idaho Department of Water Resources (IDWR). At the relevant time for purposes of this affidavit, I was employed as a Senior Water Resource Agent with IDWR.

2. My work address is Idaho Department of Water Resources (IDWR), 1301 N. Orchard, Boise, ID 83706. I reside in Boise, Idaho.

3. My educational background and work history both outside and within IDWR are detailed in my Affidavit of Helen Thornton as to the Investigation of Claims in the

Hagerman Area.

4. As part of my duties as a senior water agent, I investigated the acreage claimed as irrigated pursuant to claim no. A36-00064B. The pertinent details of that investigation are as follows:

A. On August 10, 1990, IDWR water agent Steve Clelland and I conducted a field examination to determine the irrigated acreage claimed pursuant to claim no. 36-00064B.

B. During that field examination, I observed two irrigated parcels within the area claimed as irrigated pursuant to this claim. I observed one larger irrigated parcel and one smaller irrigated parcel that was south and west of the larger parcel. I also observed that no other land was irrigated by water delivered pursuant to this claim. I observed no indication of any means to apply water to any other land; no indication of cultivation of any other land; and no indication of vegetation other than natural foliage on any other land.

5. As part of my duties as a senior water agent, I investigated the quantity of water delivered pursuant to claim no. 36-00064B. The pertinent details of that investigation are as follows:

A. During my field examination of August 10, 1990, I observed that the larger parcel to which water was delivered pursuant to this right was sprinkler irrigated.

DATED this 1st day of July, 1996.

Helen L. Harrington-Thornton
HELEN L. HARRINGTON-THORNTON

SUBSCRIBED AND SWORN to before me this 1st day of July, 1996.

J. Sherman
Notary Public for the State of Idaho
Residing at: Boise ID
My commission expires: 11-14-1998

R PROOF

CVR

MAPS

PHOTOS

MISC

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OCT 12 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. 36-00064B -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)

2. Person who filed objection:

Name: MICHAEL J FLEMING
Address: ROUTE 1 BOX 7
HAGERMAN ID 83332

Name: PAUL F FLEMING
Address: PO BOX 54
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. |X| Quantity: I respond to the objection concerning:
- 3a. |X| The total quantity of water used in cubic feet per second.
- 3b. |X| The total quantity of water stored in acre feet per year.
9. |X| Place of Use: I respond to the objection concerning:
- 9b. |X| The number of irrigated acres within each forty (40) acre subdivision.
10. |X| Consumptive Use: I respond to the objection concerning the annual volume of consumptive use.

11. |X| Remarks: I respond to the objection concerning the "remarks" listed with the water right.

14. |X| 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 3a., and all allegations of the objection regarding those items, IDWR responds as follows: (1) it recommended the amount of water it determined was being beneficially used; (2) the claimants are not entitled to any amount greater than that which is beneficially used (Idaho Code Secs. 42-104 and 42-1402); (3) 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 (4) 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 items 3 and 3b., and all allegations of the objection regarding those items, IDWR responds that the recommended water right was not claimed, and therefore could not be recommended, as a storage right either in whole or in part. The claimants' objection to these items is in error.

In response to Statement of the Objection 9 and 9b., and all allegations of the objection regarding those items, IDWR responds that the recommended water right accurately describes the total number of acres within each 40 acre subdivision upon which IDWR found water was beneficially used for irrigation under this water right. IDWR further responds that the claimants originally claimed 51 irrigated acres; per their objection, they now claim 50 irrigated acres.

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

(Over)

acquired under state law and recommended in the director's report. (3) Idaho Code Sec. 42-1401A(2) provides that the quantification of consumptive use "is included as a rebuttable presumption in a decree only for the purpose of transfers pursuant to section 42-222, Idaho Code"; therefore, the consumptive use recommended for this water right is included solely for use in future transfer proceedings. (4) The annual volume of consumptive use claimed and recommended for this right is 3 acre feet per acre. This is the maximum volume of water consumed by the most water consumptive crop (pasture) that can be grown in the area during the period of year when water is used for irrigation, as provided for by Idaho Code Sec. 42-1401A(2). (5) 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. (6) 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 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 the sentence listed in Changes to the Director's Report, whereby the claimants attempt 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 claimants' notice of claim, the claimants improperly seek 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.

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".

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. A36-00064B	4
IDWR'S Response to Answer, Affirmative Defenses, and Prayer for Relief of Claimant	4

(Over)

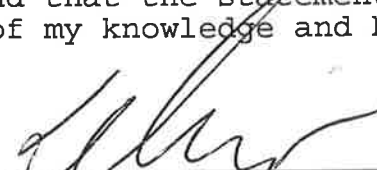
VERIFICATION (Must be Completed)

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 30th day of August,
1993.



Notary Public for Idaho

Residing at: _____

My Commission expires: _____

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

CERTIFICATE OF MAILING

I hereby certify that on the 31st day of August, 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:

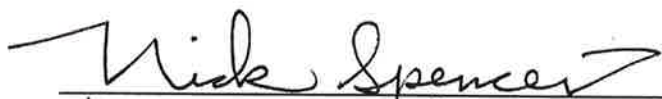
See No. 3

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: 39576

Ident. Number: A36-00064B
Date Received: 8/15/1988
Receipt No: S001436
Received By: [Signature]

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: MICHAEL J. FLEMING 208-837-4934
Address: RT 1 BOX 7
HAGERMAN, ID 83332

AND/OR

Name: PAUL F. FLEMING 208-837-4420
Address: P.O. BOX 54
HAGERMAN, ID 83332

2. Date of Priority: SEP 10, 1884

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	SE	NE			GOODING

5. Description of diverting works:
OPEN DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	10/01	4.520		

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

8. Total consumptive use is 153.0 Acre Feet Per Annum.

9. Non-irrigation uses:
S/150 HOLSTEIN HEIFERS AND BEEF CATTLE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	13E	23	NE	NW		IRR	40.0
			NW	NW		IRR	11.0
					Section Acres		51.0
					Total Acres		51.0

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:
SEE REMARKS

14. Remarks:
PART OF 36-0064 DECREE OF 5.6 CFS, WHICH HAS BEEN SPLIT.

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

Decree Plaintiff

vs

Decree Defendant

(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.

MICROFILMED
MICROFILMED
OCT 12 1994
JAN 21 1993

15 14
22 23

Michael V. Jo
Fleming

51 acres

23
26

PROFILMED
PROFILMED
21 1993

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

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- 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.



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

15-Jan-1993

MICHAEL J FLEMING
933 E 2700 S
HAGERMAN ID 83332

RE: Copy of SRBA File(s): 36-00064B, 36-10446, 36-15094

Dear Mr. Fleming:

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:

\$8.67

Sincerely,


Jeanie Robertson
Records Clerk

Encl:

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RECEIVED

JAN 13 1993

Department of Water Resources
Southern Region Office

1/13/93
(Date)

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

36-000648
36-15094
36-10446

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 _____.

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,

Michael J Fleming
(Name)

~~933 E 2700 S~~ 933 E 2700 S
(Address)

Hagerman Idaho 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

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OCT 12 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. A36-00064B
(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,

36-00064B -0001/
93-04-0068

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

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OCT 12 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: Michael J. Fleming and Paul F. Fleming

Address: Route 1, Box 7 P.O. Box 54

Hagerman, ID 83332 Hagerman, ID 83332

Briefly describe your interest in this water right:

Priority date September 10, 1884 pursuant to

New International Mortgage Bank v. Idaho

Power Company Decree dated March 22, 1932

2. Owner of the water right:

Name: Michael J. Fleming and Paul F. Fleming

Address: Route 1, Box 7 P.O. Box 54

Hagerman, ID 83332 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)

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.

See page 7.

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 Owner's, Inc.'s

Compendium "A"

VERIFICATION (Must be Completed)

State of Idaho

County of Gooding

Michael J + Paul F Fleming, 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.

Michael J Fleming
Signature of person filing objection

By: [Signature]
(Attorney signing in representative capacity)

Subscribed and sworn to before me this 22 day of April,
1993.

Supanne K. Kusew
Notary Public for Idaho
Residing at: Hagerman, Idaho
My Commission Expires: 8-4-98

(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: Michael J. Fleming and Paul F. Fleming

Owner's address: Route 1, Box 7 P.O. Box 54

Hagerman, ID 83332 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, 3b and 10 - IDWR recommends an amount less than decreed and/or beneficially used. A reduction in water right would constitute a taking.

Box 9 - Director's Report fails to accurately state the place of use.

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

CHANGES TO DIRECTOR'S REPORT, page 4

Expand quantity to comply with decree and/or beneficial use, whichever is greater; Place of use: change to 50 acres; Remarks-strike remarks after "A diversion rate of 0.56 cfs . . ."

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

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.

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,

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.

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OFFICE OF THE ATTORNEY GENERAL

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.

(WATER\21530ANS)

NOTICE OF ERROR

RESPONSE

CORRECTED R PROOF

*no changes recommended at
this time 10-14-92 KKC*



MICROFILMED

JAN 21 1993

NOTICE OF ERROR FORM

AUG-24-1992

RECEIVED

SEP 18 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 the address above with your proposed recommendation.

to be printed

YOUR DEADLINE FOR FILING

IS: SEP-24-1992

1. Water right number:

36-000648

2. Name: Michael J Fleming

Address:

933 E 2700 S Hagerman

Weekday Telephone Number:

837-6453

TEAR AT PERFORATIONS AND COMPLETE FORM ON OTHER SIDE

MICROFILMED

JAN 21 1993

(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:

ALL

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

5. Describe why you disagree with the proposed recommendation:

6. Date:

SIGNATURE _____



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

14-Oct-1992

MICHAEL J FLEMING
933 E 2700 S
HAGERMAN ID 83332

RE: RESPONSE TO NOTICE OF ERROR FOR CLAIM 36-00064B

Dear Mr Fleming

As you did not supply specifics in your notice of error nor did you supply additional information to justify a change in the department's proposed recommendation, I will explain in general the basis for the recommendation as it stands.

Under Idaho law, a water right is limited to the amount of water beneficially used for the purposes for which the water right was established. The amount of water beneficially used is limited to the amount that is actually used and is reasonably required. For irrigation purposes, a reasonable amount is the amount required using irrigation methods that are reasonably efficient under current circumstances. If the amount of a water right shown in a decree is greater than the amount that is beneficially used, then the portion that is not beneficially used is forfeited.

The amount proposed to be recommended for your claim is based on the amount of water determined to be beneficially used for the recommended uses, based on available data and current methods of analysis. To support recommendation of a greater amount, you will need to submit evidence of beneficial use of a greater amount to IDWR.

If you still disagree with IDWR's recommendations, you will have an opportunity to file an objection to the Director's Report with the court. When the Director's Report is filed with the court, you will be mailed a notice that will contain more information about the objection process. As part of the objection process, IDWR will work with the claimants to resolve disputed issues, including efforts to obtain additional data which will be shared with the water users.

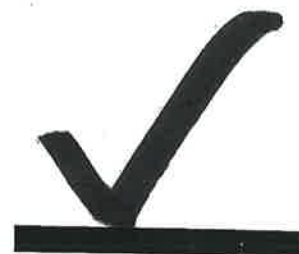
Sincerely

Kelly K Christensen
Sr Water Resource Agent

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JAN 21 1993

R PROOF



CVR



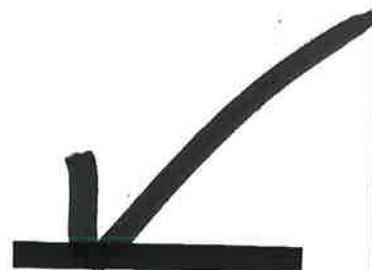
MAPS



PHOTOS



MISC



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JAN 21 1983

Water Right Number - R36-000648 Prefix Translation: RESEARCH Old (D) Number -

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

*** C - CURRENT OWNER ***

FLEMING PAUL F 1 - PO BOX 54
2 -
3 -
City- HAGERMAN State- ID Zip- 83332
Phone - 208-837-4420

FLEMING MICHAEL J 1 - RT 1 BOX 7
2 -
3 -
City- HAGERMAN State- ID Zip- 83332
Phone - 208-837-4934

+ - - Priority Date - - + + - - Region - - + + - - Stage - - + + - - Status - - - +

09/10/1884 ERROR IN REGION D - DECREED

+ - - - - 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	0.720	

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +

0.720 57.0

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

Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County
07S	13E	23	NE NW		6.0	01	IRRIGATION	(47) GOODING
07S	13E	23	NW NW		13.0	01	IRRIGATION	(47) GOODING

Total Acres: 19.0

+ - - Diversion Means - OPEN DITCH, PUMP & SPRINKLERS; 3 AC. FLOOD IRR.

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - NONE

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

WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.
A DIVERSION RATE OF 0.56 CFS AT THE FIELD HEADGATE IS
RECOMMENDED FOR THE PLACE OF USE DESCRIBED ABOVE.

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JAN 21 1993

Water right number - R36-000648

Prefix Translation: RESEARCH

+ - - - - Remarks - - - - -
0.16 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE
LOSSES IN DELIVERY OF THIS RIGHT.

+ - - - - Old Water Right Numbers - - - - -
3600064

+ - - - - Conditions of Approval - - - - -
No Conditions of Approval found.

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

+ - - - - Comments - - - - -
No Comments Found

+ - - Audit Fields - - +
08/05/92 WORSTELL

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

Court Report Filing	- 00/00/0000	Field Inspection Made	- 00/00/0000	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 08/05/1992	Old Judicial District	-
Claim Received Date	- 08/15/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S001436	Water District	- 36A
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- AND/OR	Presumption Flag	-
				Notice of Error Flag	-

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JAN 21 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

12:55:45
06/29/90

PAGE: 14
QUICKLOOK INFORMATION

CLAIM NUMBER: A36-00064B

WR ELEMENT	FIELD EXAM Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	VERIFIED BY CODE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE			<i>↑</i>			<i>SW</i> <i>8-5-92</i>	<i>DB</i>	
POINT OF DIV	Y		<i>SCC/HHT</i> <i>8-10-90</i>	<i>N</i> <i>(Y)</i> <i>10 Ac.</i>	<i>1,5</i>			
SOURCE				<i>N</i>				
PLACE OF USE	Y		<i>SCC/HHT</i> <i>8-10-90</i>	<i>(Y)</i>	<i>1,2,4,5</i>			
DIV. AMOUNT CFS/VOLUME	Y			<i>(Y)</i>	<i>6 DECREE</i>			
CONSUMPTIVE USE	-			<i>(Y)</i>				
PURPOSES				<i>N</i>				
PERIOD OF USE	Y			<i>(Y)</i>	<i>6.</i>			
BASIS OF CLAIM	Y			<i>N</i>				
REMARKS			<i>↓</i>	<i>(Y)</i>	<i>6.</i>			

"VERIFIED BY" CODES

TOPO MAP/ORTHO-PQ = 1
ASCS MAP = 2
WATERMASTER RECORDS = 3
NAPP PHOTOS = 4
FIELD EXAM = 5
OTHER (SEE REMARKS) = 6

THESE CODES ARE USED TO INDICATE HOW THE FIELD EXAMINER VERIFIED THE INFORMATION
USED FOR THIS FIELD EXAMINATION. INDICATED ARE ALL CODES WHICH APPLY.

MICROFILMED
JAN 21 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

12:55:45
06/29/90

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A36-00064B

LAST: FLEMING
ADDRESS: P.O. BOX 54
CITY: HAGERMAN
PHONE NUMBER: 208-837-4420

FIRST: PAUL F.

STATE: ID ZIP: 83332

OWNER CODE: C

LAST: FLEMING
ADDRESS: RT. 1 BOX 7
CITY: HAGERMAN
PHONE NUMBER: 208-837-4934

FIRST: MICHAEL J.

STATE: ID ZIP: 83332

OWNER CODE: C

FIELD EXAM REQUIRED?

VERIFICATION REQUIRED DUE TO REMARKS?

NO REMARKS IN CLAIM

DATABASE
N

FIELD
EXAMINER

MICROFILMED
JAN 21 1993

CONTACT PERSON: None

PHONE NUMBER: () -

DATE OF FIELD EXAM: 8/10/90

APPOINTMENT MADE: Y() N()

TIME: : A() P()

ACCOMPANIED BY: _____

PHONE NUMBER: () -

RELATIONSHIP TO CLAIMANT: _____

DIRECTIONS TO PROPERTY / REMARKS:

MICROFILMED
JAN 21 1993

A. AJ CLAIM: # A36-00064B PRIORITY DATE: 09-10-1884 STAGE: D

B. WR RECORD: # 36-00064 PRIORITY DATE: 09-10-1884 STAGE: D

C. FIELD EXAM REQUIRED?

DUE TO PRIORITY DATE DISCREPANCY? (Y/N)

DATABASE
N

FIELD
EXAMINER
N

ARE THERE OBVIOUS REASONS TO QUESTION THE PRIORITY DATE CLAIMED? Y() N(X)
IF YES EXPLAIN.

REMARKS: _____

=====

RECOMMENDED PRIORITY DATE:
09-10-1884

REVIEWED BY last _____

DATE 8-10-90 _____

=====

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A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A36-00064B	07S	13E	11		SE	NE		GOODING

OTHER AJ CLAIMS WITH SAME AJ POD

A PREFIX	R PREFIX
A36-00025	NONE
A36-00087	
A36-07658	
A36-10409	

WR RECORDS IN SAME 40 ACRE TRACT

36-00003
36-00005
36-00019
36-00021
36-00024
36-00025
36-00026
36-00027
36-00034
36-00035A
36-00035B
36-00039A
36-00039B
36-00040
36-00051
36-00052
36-00065
36-00067
36-00071
36-00076
36-00077
36-00082
36-00083
36-00085
36-00087
36-00088
36-00089
36-00090
36-00091
36-00094
36-00095
36-00096
36-00103
36-00108
36-00112A
36-00112B
36-00113B
36-00113C
36-00113D
36-00125
36-04008
36-04115
36-04261
36-07271
36-07658
36-07739

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JAN 21 1993

36-07834
36-07840
36-07853
36-07875
36-07957
36-08058
36-08319
36-08335

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
36-00064	07S	13E	11		SE	NE		GOODING

OTHER WR RECORDS WITH SAME WR POD

AJ CLAIMS IN SAME 40 ACRE TRACT
A PREFIX R PREFIX

36-00003	A36-00025	NONE
36-00005	A36-00087	
36-00019	A36-07658	
36-00021	A36-10409	
36-00024	A36-00051D	
36-00025	A36-10119	
36-00026	A36-10120	
36-00027	A36-10751	
36-00034	A36-10752	
36-00035A	A36-10755	
36-00035B	A36-10061	
36-00039A	A36-00103B	
36-00039B	A36-00108A	
36-00040	A36-00003G	
36-00051	A36-00027	
36-00052	A36-00039C	
36-00065	A36-00090E	
36-00067	A36-00051B	
36-00071	A36-00076A	
36-00076	A36-00089B	
36-00077	A36-00089D	
36-00082	A36-10283	
36-00083	A36-10312	
36-00085	A36-00090A	
36-00087	A36-00003D	
36-00088	A36-00090B	
36-00089	A36-00090C	
36-00090	A36-00090D	
36-00091	A36-00090F	
36-00094	A36-00108F	
36-00095	A36-00125A	
36-00096	A36-00026	
36-00103	A36-00051C	
36-00108	A36-00071A	
36-00112A	A36-00089A	
36-00112B	A36-00108C	
36-00113B	A36-00108D	
36-00113C	A36-00108E	

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JAN 21 1993

36-00113D
36-00125
36-04008
36-04115
36-04261
36-07271
36-07658
36-07739
36-07834
36-07840
36-07853
36-07875
36-07957
36-08058
36-08319
36-08335

A36-00108H
A36-04008
A36-04115
A36-04261
A36-00113B
A36-10316
A36-10588
A36-00039J
A36-00096A
A36-00113F
A36-00113G
A36-10559
A36-00048B
A36-00048C
A36-10223
A36-00103A
A36-00003B
A36-00003C
A36-00003E
A36-00003F
A36-00003J
A36-00039G

MICROFILMED
JAN 21 1993

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

C. FIELD EXAM REQUIRED?

	DATABASE	FIELD EXAMINER
DUE TO POD DISCREPANCY? (Y/N)	Y	<u>Y</u>
DUE TO SOURCE DISCREPANCY? (Y/N)	N	<u> </u>

REMARKS:

Buckeye
POD is ~~BOO~~ Ditch. Headgate to stilling basin to pump to
5" mainline. to wheelines. Pasture is flood w/ ditches.

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	COUNTY
<u>7S.</u>	<u>13E.</u>	<u>11</u>	<u>SE</u>	<u>SE</u>	<u>NE</u>	<u>---</u>	<u>47</u>

~~Bell~~ Buckeye
Ditch

change
claim

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

REVIEWED BY: Sec

DATE: 11-21-90

VIA Buckeye DITCH

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JAN 21 1993

A. ROOT WATER RIGHT NUMBERS: A36-00064A
A36-00064B

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
07S	13E	23	NE	NW		FLEMING, PAUL F. BIG SPRING WATER USER'S ASSN. CITY OF HAGERMAN HOMES, BEN IORNS, HATTIE	A36-00064B /40.0 A36-00022 / A36-02465 /	- / - / - / 36-00064 / 36-00157 /	34.0	6.0	6.0
07S	13E	23	NW	NW		FLEMING, PAUL F. CITY OF HAGERMAN HOMES, BEN	A36-00064B /11.0 A36-02465 /	- / - / 36-00064 /	35.0	13.0	13.0
TOTAL ACRES							A36-00064B	51.00	69.00		19.0

ARE IRRIGATED ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, Y() N(X)
IF YES SEE ATTACHED SHEET:

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE
Y

FIELD
EXAMINER
Y

PRESUMPTION FLAG:

REMARKS:

It appears from map that original claim reversed acreage in
quarter-quarters. confirmed by field, NAPP + ASCS photo.

RECOMMENDATIONS:

TOTAL ACRES: 19.0

REVIEWED BY: See

DATE: 11-21-90

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JAN 21 1993

A. AJ CLAIMED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
A36-00064B IRRIGATION	FROM 04-01 TO 10-31	4.520 CFS
TOTAL DIVERSION RATE/VOLUME CLAIMED		4.520 CFS

B. WR RECORDED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
36-00064 IRRIGATION	FROM TO	5.600 CFS
TOTAL DIVERSION RATE/VOLUME CLAIMED		5.600 CFS

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

	DATABASE	FIELD EXAMINER
DUE TO WATER-USE DISCREPANCY? (Y/N)	N	<u>N</u>
DUE TO DIVERSION RATE DISCREPANCY? (Y/N)	Y	<u>Y</u> Excess water
DUE TO PERIOD FROM/TO DISCREPANCY? (Y/N)	Y	<u>N</u>

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y(✓) N()

RECOMMEND TO WR STANDARDS OR OTHER?

Y() N(✓) Explain in remarks, below.

REMARKS:

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JAN 21 1993

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

Y() N()

AJ TOTAL CLAIMED DIVERSION RATE: 4.520 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 5.600 CFS

*** IF NO or IF STATUTORY CLAIM or BENEFICIAL USE then flow measurement required. ***
** If an amount smaller than the original diversion rate is **
** claimed and an exam is NOT required, explain in remarks. **

FLOW MEASUREMENT REQUIRED?

FIELD
DATABASE EXAMINER

DUE TO STAGE OR DIVERSION RATE DISCREPANCY? (Y/N) Y

Need methodology for rate.

wheel lines.

*gravity @ pasture between
Buckeye & Bell ditches*

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B.

FLOW MEASUREMENT

MEASUREMENT METHOD _____, SEE ATTACHED CALCULATIONS.

C. ARE OTHER WATER RIGHTS USED? Y() N() IF YES COMPLETE OVERLAP REVIEW.

OTHER RIGHTS LISTED IN CLAIM: NONE

NO CLAIMS FOUND WITH SAME POU AND IRRIGATION USAGE

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

CLAIM NO.	PURPOSES	NAME	MONTH/DAY	RATE	VOLUME
A36-00022	DOMESTIC	BIG SPRING WATER USER'S ASSN.	FROM 01-01 TO 12-31	5.860 CFS	
A36-00022	FISH PROPAGATION	BIG SPRING WATER USER'S ASSN.	FROM 01-01 TO 12-31	7.000 CFS	
A36-00022	STOCKWATER	BIG SPRING WATER USER'S ASSN.	FROM 01-01 TO 12-31	5.860 CFS	
A36-02465	MUNICIPAL	CITY OF HAGERMAN	FROM 01-01 TO 12-31	4.000 CFS	

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D. RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE

ACRES 19 x 0.02 CFS/ACRE = 0.38 CFS
(Taken from p/u review)

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y() N()

*** IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y() N() ***

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = 153.0 AF/A

ACRES 19 x CONSUMPTIVE VOL. AF/A FOR AREA 3.0 =
TOTAL CONSUMPTIVE USE 57 AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = AF/A

ACRES 19 x DIVERSION VOL. AF/A FOR AREA 4.0 =
TOTAL DIVERSION VOLUME 76 AF/A

N/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y() N()

REMARKS: (Include limitations on CONSUMPTIVE USE for combined rights.)

1b. CALCULATIONS

$$(16 \times 0.02 = 0.32)$$

16 acres - sprinkled = 0.32

3 acres - flood = 0.24

(See Irrigation Analysis Worksheet) 0.56 FIR

Recommended:

0.24 C.L. 0.16 conveyance loss

TOTAL = 0.72 cfs

~~WR. supplied = $\frac{5.6 \text{ cfs}}{70 \text{ Ac.}} = 0.08 \text{ cfs/Ac.}$~~



15

Hagerman



per
field Exam
8-10-90
sec/HNT

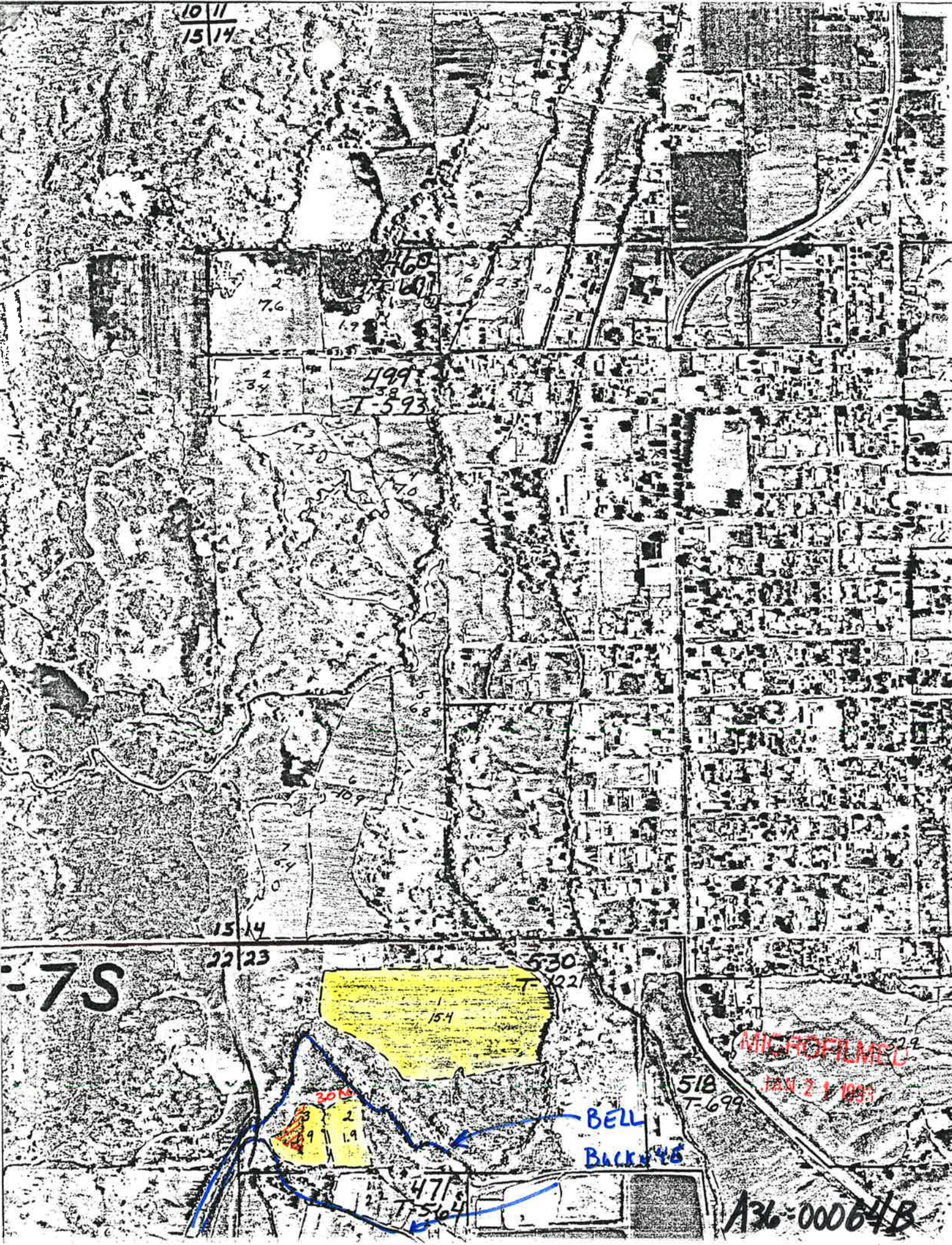
M A N

R13E

A36-00064B

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JAN 21 1993

10/11
15/14



MICROFILMED
JAN 21 1991

BELL
BACK 48

136-00064B



22 23

Michael J. Fleming

Paul J. Fleming

Main Line 51 acres

Red River

23

26

MICROFILMED
1993 2-1-1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director



View SE

Lower
Pasture

NON-IRRIGATED

PHOTOS BY
SCC
8/90



View East

UPPER PASTURE

Below Buckeye
Ditch

3 Acres

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RECOMMENDATIONS:

REC. PURPOSES	REC. PERIOD FROM TO	REC. DIV RATE CFS	REC. DIV VOL. AF/A	REC. CONS. USE
IRRIGATION	04-01 10-01	DATABASE EXAMINER 4.520 1.52 <u>.72</u>	DATABASE EXAMINER 76 N/A	DATABASE EXAMINER 153.0 57 <u>153.0</u>
TOTAL FOR THIS RIGHT				

REVIEWED BY: Sec

DATE: 11-21-90

Sec 8-5-92

F01 = Buehse D.
D02 = .16 cfs
SHR = .56 cfs

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A. CHECK ONLY THE FOLLOWING THAT APPLY:

	ACCEPTED AS CLAIMED	NEEDS REVIEW
OWNERSHIP _____	()	()
FORFEIT/ABANDON _____	()	()
ADDITIONAL DIV. AMOUNT _____	()	()

legal review

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 36-00064

TOTAL DIVERSION RATE OF WR SPLITS

DATABASE
5.600

EXAMINER

CFS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
A36-00064	A36-00064A	0.278	-		36-00064	5.600
A36-00064	A36-00064B	4.520	-		36-00064	5.600
TOTAL CFS		4.798				5.600

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)
IF NO, is the written review sheet attached? (Y/N)

DATABASE
N

FIELD
EXAMINER
N

REMARKS:

See Split Review A36-00064

AUTHENTICATION:

SIGNATURE: _____

DATE: _____

NAME OF FIELD EXAMINER: _____

TITLE: _____

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SYSTEM CLAIM NUMBERS

R36 00064B

INITIALS

Ca

DATE

8-5-92

**PRESUMPTION
CODE**

FOI

Buckeye Ditch

Do2

0.16 cfs

SHR

0.56 cfs

Water Dist. 36A

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JAN 21 1993

IRRIGATION ANALYSIS WORKSHEET

CLAIM NO. A36-00064B
 DATE 7/8/92
 AGENT HHT

CLAIMANT/SYSTEM DESCRIPTION Fleming
 IRRIGATION SYSTEM ----- Gravity / wild Flooding
 ANALYSIS METHOD ----- BORDER / FURROW
 TYPE OF CROP ----- Pasture
 MAXIMUM PROFILE DEPTH ----- 36" 29" INCHES
 INTAKE FAMILY ----- 1.5

 SOIL TYPE SJK ----- SYSTEM TOTAL
 ACRES PER TYPE 3 ----- 3 ACRES
 SOIL PROFILE WHC 3.59 -----
 DESIGN IRR $\frac{1}{2}$ WHC 1.80 -----

 CROP REQUIREMENT:

REPORT AREA & FIGURE NO. ----- Beiss 10-8

DAILY CROP REQUIREMENT:

6.44 (MM/DAY) / 25.4 (FACTOR IN MM/IN) ----- 0.25 IN/DAY

ACTUAL ROTATION PRACTICED ----- 7 DAYS

DRY DAY ROTATION ----- IRR DAY ROTATION -----

THEORETICAL ROTATION:

1.80 DESIGN IRR / 0.25 CROP REQ = 7.20 DAYS

 DESCRIPTION OF FIELD:

AVERAGE LENGTH RUN ----- 420 ³²⁷ 326.7

TOTAL WIDTH OF FIELD ----- 400

CHECK 400 L * 420 W / 43,560 = 3.8 ACRES

% SLOPE ----- 5%

BORDER WIDTH ----- 19'

400 WIDTH OF FIELD / 7 DAYS OF ROTATION $\div 3$ = 19'

FURROW / CORRUGATION WIDTH -----

SET TIME ----- 6 ~~12~~

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GRADED BORDER EVALUATION

Job name: FLEMING
By: HHT

Location: A36-00064B BUCKEYE
Date: Jul 29, 1992

Roughness coefficient (n)= 0.250 Intake family (If)=1.50
Slope (S)= 0.0500 ft/ft Border width (W)= 19 ft
Net application (Fn)= 1.80 inches Border length (L)= 327 ft
Inflow time (Ti)= 8 hours, 0 minutes

Flow per Border (cfs)	Unit Flow (cfs/ft)	Gross Application (in)	Deep Percolation (in)	Runoff (in)	Application Efficiency (percent)	Notes
0.22		Gross depth is less than required gross application depth				
0.23		Gross depth is less than required gross application depth				
0.24	0.013	13.35	11.12	0.43	13.5	(4)
0.25	0.013	13.91	11.12	0.99	12.9	(4)
0.26	0.014	14.46	11.12	1.55	12.4	(4)

(4) Less than minimum recommended depth of flow.

Claimed: 4.52

Recommend 0.24 + C.L.

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CONVERSATION MEMORANDUM

EMPLOYEE: KKC

FILE 36 - 00064B

RE: wild flooding data from claimant

DATE

NAME OF PARTY

Paul Fleming 837-4420

called 7-8-92 7:00 AM no answer

" 7-23-92 11:20 AM no answer

7-27-92 8:04 pm no answer HHT

8:39 pm no answer HHT

7-29-92 Unable to contact claimant. Therefore assume
practices similar to other irrigators in the area -

7 day rotation

12 hour sets

HHT

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JAN 21 1993

See 8-3-92

CONVEYANCE LOSS - WORSTELL

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
2	600	10.0	2.00	0.15	1.02	18.77	0.0081	0.02	26.55
3	1400	10.0	2.00	0.35	0.24	17.75	0.0199	0.01	25.38
4	800	10.0	2.00	0.20	0.44	17.51	0.0115	0.02	24.79
5	1100	10.0	2.00	0.28	0.17	17.07	0.0163	0.01	24.14
6	1200	10.0	2.00	0.30	0.10	16.90	0.0179	0.01	23.70
7	300	10.0	2.00	0.08	1.22	16.80	0.0045	0.11	23.29
8	1000	10.0	2.00	0.25	0.16	15.58	0.0162	0.02	22.00
9	500	10.0	2.00	0.13	0.50	15.42	0.0082	0.06	21.58
10	2200	10.0	2.00	0.56	4.13	14.92	0.0373	0.62	20.96
11	5500	10.0	2.00	1.39	0.20	10.79	0.1288	0.06	16.27
12	1700	10.0	2.00	0.43	0.09	10.59	0.0406	0.03	14.68
13	3900	10.0	2.00	0.99	0.34	10.50	0.0938	0.14	14.16
14	600	10.0	2.00	0.15	0.27	10.16	0.0149	0.12	12.84
15	1500	10.0	2.00	0.38	0.62	9.89	0.0383	0.29	12.42
16	1600	10.0	2.00	0.40	1.00	9.27	0.0436	0.51	11.42
17	600	10.0	2.00	0.15	0.30	8.27	0.0183	0.16	10.01
18	300	10.0	2.00	0.08	3.25	7.97	0.0095	1.75	9.56
19	3000	10.0	2.00	0.76	0.24	4.72	0.1606	0.17	6.24
20	3000	10.0	2.00	0.76	4.48	4.48	0.1692	3.89	5.24
TOTALS	31600			7.98	18.83			7.98	

Buckeye Ditch

Conveyance loss shared by

36-00091A

36-00091B

36-00108E

36-00064B

0.16 cfs per right

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

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