

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: A36-00090D
Date Received: 8/10/1988
Receipt No: S001384
Received By: lw

COPY

**FOR YOUR FILES
DO NOT RETURN**

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

1. Name: S.A. CULBERTSON 208-837-4472
Address: RT 1 BOX 379
HAGERMAN, ID 83332

AND/OR

Name: MILDRED CULBERTSON 208-837-4472
Address: RT 1 BOX 379
HAGERMAN, ID 83332

2. Date of Priority: JUN 01, 1927

3. Source: SPRING Trib. to: BILLINGSLEY CREEK

4. Point of Diversion:

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

5. Description of diverting works:
CEMENT HEADBOX WITH 2.5" PIPE TO USERS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.020		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
D/1 HOUSE

A36-00090D

Page 1

Date: 08/10/88

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10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	13E	11	SE	NE		DOMEST	

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:
5 USERS ON SAME SYSTEM.

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

Decree Plaintiff

vs

Decree Defendant

16. Signature(s)

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

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s): Mildred Culbertson Date: Aug 10, 1988

Date: _____

State of Idaho)
County of T.F.) SS.

Subscribed and sworn (or affirmed) before me this 10th day
of August 19 88 Lou White
Notary Public

Seal

Residing at T.F.
My Commission Expires 5/95

INPUT: AJ_SELECTION:HHT-NOA-BROWN2.SEL

TYPE OF ACTION: ADD

MODIFY ALL FIELDS FLAG:

LAST NAME: BROWN

ADDRESS LINE 1: HEPWORTH NUNGESTER LEZAMIZ

ADDRESS LINE 3: PO BOX 389

CITY: TWIN FALLS

FIRST NAME: PATRICK D

ADDRESS LINE 2:133 SHOSHONE ST N

STATE: ID ZIP: 833030389

PHONE NUMBER: (208) 734-7510

36-00003A ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00011A ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00033D ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00033E ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00051C ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00051E ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00055AA ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00064A ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00090D ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00090E WATER RIGHT HAS ONE ATTORNEY OWNER CODE - NOT ADDED
36-00104A ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-02008 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-02009 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-02588 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-10308 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-10309 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-10310 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-10314 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-10409 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-10588 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-10706 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-00003A ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-00011A ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-00033D ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
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A36-10310 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-10312 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-10314 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-10409 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-10588 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-10706 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE

added on first supplement

added on first supplement

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1 HEPWORTH, NUNGESTER & LEZAMIZ,
2 CHARTERED
3 133 Shoshone St. North
4 P.O. Box 389
5 Twin Falls, ID 83303-0389
6 Telephone: (208)734-7510
7 Attorneys for Claimant
8 (PPK\21530SUP.NO2\lmr)

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FEB 25 1993

Department of Water Resources
Adjudication Bureau

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

12 * * * * *

13 In Re the General Adjudication)
14 of Rights to the Use of Water)
15 from the Snake River Basin)
16 Water System)

Case No. 39576

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

HAGERMAN WATER RIGHT OWNERS,
INC. AND ITS INDIVIDUAL
MEMBERS' SECOND SUPPLEMENTAL
NOTICE OF APPEARANCE

22 Petitioner,)

23 vs.)

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

Respondents.)

* * * * *

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



Hepworth,
Nungester,
& Lezamiz

SECOND SUPPLEMENTAL NOTICE OF APPEARANCE - 1

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

3	Mallane, Thomas	A36-00055AA
4	Mavencamp, John V.	A36-00104A
	Pothier, Norman	A36-00064A
	Vader, Loren	A36-10706
5	Vader, Loren	A36-02588
	Culbertson, Stowe Allen & Mildred Sue	A36-00090D
6	Culbertson, Stowe Allen & Mildred Sue	A36-10409
	Barnard, Clifton R.	A36-02008
7	Barnard, Clifton R.	A36-02009
	Rea, Edna Mae & Bell, Verl C.	A36-00003A
8	Rea, Edna Mae & Bell, Verl C.	A36-000033E
	Sauer, Roy E.	A36-00033D
	Jensen, Darrell W.	A36-10308
9	Jensen, Darrell W.	A36-10309
	Jensen, Darrell W.	A36-10310
10	Jensen, Darrell W.	A36-00011A
	Robinson, Creed & Saundra	A36-00090E
11	Robinson, Creed & Saundra	A36-10588
	Zabala, Ignacio Nick	A36-00051C
12	Zabala, Ignacio Nick	A36-10312-00051E
	Zabala, Ignacio Nick	A36-10314

13 Dated this 24 day of February, 1993.

14 HEPWORTH, NUNGESTER & LEZAMIZ,
15 CHARTERED

16 By: 
Patrick D. Brown
17 Attorneys for Respondents

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 he caused to be mailed a copy of the
23 above and foregoing SECOND SUPPLEMENTAL NOTICE OF APPEARANCE on the



Hepworth,
Nungester,
& Lezamiz

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1 ~~2A~~ day of February, 1993, to:

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

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

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

10 
11 Patrick D. Brown



Hepworth,
Nungester,
& Lezamiz

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OCT 12 1994

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT
(REGIONAL)

Water Right Number - 36-00090D Prefix Translation: WATER RIGHT Old (D) Number -

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

*** A - ATTORNEY ***
BROWN PATRICK D 1 - HEPWORTH NUNGESTER LEZAMIZ
2 - 133 SHOSHONE ST N
3 - PO BOX 389
City- TWIN FALLS State- ID Zip- 833030389
Phone - 208-734-7510

*** C - CURRENT OWNER ***
CULBERTSON MILDRED 1 - PO BOX 386
2 -
3 -
City- HAGERMAN State- ID Zip- 83332
Phone - 208-000-0000

*** D - DIR RPT OWNER ***
CULBERTSON S A 1 - RT 1 BOX 379
2 -
3 -
City- HAGERMAN State- ID Zip- 83332
Phone - 208-837-4472

CULBERTSON MILDRED 1 - RT 1 BOX 379
2 -
3 -
City- HAGERMAN State- ID Zip- 83332
Phone - 208-837-4472

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
06/01/1927 ERROR IN REGION D - DECREED

+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
SPRING BILLINGSLEY CREEK

+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County

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

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

43 - DOMESTIC 01/01 12/31 0.020

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
0.020 0.0

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

07S 13E 11 NE NE 43 DOMESTIC (47) GOODING

Total Acres:

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Court Report Filing	- 11/02/1992	Field Inspection Made	- 09/11/1990	Civil Case Number	- 39576
Objection Filed Date	- 04/29/1993	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 09/10/1993	Verified Date	- 00/00/0000	Old Judicial District	-
Claim Received Date	- 08/10/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S001384	Water District	-
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- AND/OR	Presumption Flag	-
				Notice of Error Flag	- B

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COPY

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

In Re SRBA

Case No. 39576

NOTICE OF COMPLETED
ADMINISTRATIVE PROCEEDINGS

SUB CASE NO. 36-00090D

IDWR has completed the following Administrative proceeding: **SUBSTITUTION OF PARTY**

Does the change in "ownership" result in a splitting of the water right claimed? ☐ Yes ☒ No

FROM: Claimant/Seller(s):

Name and Address of Claimant/Seller(s):
S A AND MILDRED CULBERTSON
RT 1 BOX 379
HAGERMAN ID 83332

Phone: 837-4472

TO: Claimant/Purchaser(s):

Name and Address of Claimant/Purchaser(s):
MILDRED CULBERTSON
PO BOX 386
HAGERMAN ID 83332

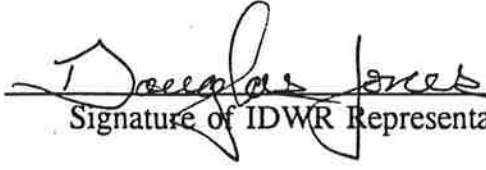
Phone:

The Claimant has filed Objections or Responses to the following water rights: 36-10409 and 36-00090D

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 Report(s)* on the claimant(s), prior claimant(s) and all parties in the subcases affected, if any, as reflected on the attached certificate of mailing.

DATED: 8/9/1996


Signature of IDWR Representative

NOTICE OF COMPLETED
ADMINISTRATIVE PROCEEDING
5/21/96

Water Right(s): 36-00090D

Page 1
MICROFILMED
DEC 03 1996

CERTIFICATE OF MAILING

I certify that on August 9, 1996, 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
PO Box 2707
Twin Falls ID 83303-2707
2. One Copy to:
Claimant/Seller for Substitution of Party or attorney of record:
PATRICK D BROWN
HEPWORTH LEZAMIZ &
HOHNHORST
PO BOX 389
TWIN FALLS ID 83303-0389
3. One Copy to:
Claimant/Purchaser for Substitution of Party or attorney of record:
MILDRED CULBERTSON
PO BOX 379
HAGERMAN ID 83332
4. One Copy to:
Each party in the subcase or attorney of record:
5. One Copy to:
Chief Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise ID 83711-4449
6. One Copy to:
United States Dept Of Justice
Environment & Natural Resource Div
550 West Fort Street MSC 033
Boise ID 83724



Signature of person or attorney mailing the form

AJ5856NP

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

DATE: AUG-8-1996

PAGE: A-2

RIGHTS FROM: SOURCE: SPRING

1992 AUG -9 PM 3:20
TRIBUTARY: BILLINGSLEY CREEK

RIGHT NUMBER: 36-00090D

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

NAME & ADDRESS: MILDRED CULBERTSON
PO BOX 386
HAGERMAN ID 83332

SOURCE: SPRING

TRIBUTARY: BILLINGSLEY CREEK

QUANTITY: 0.02 CFS

THE QUANTITY FOR NON-IRRIGATION USE IS LIMITED TO THE AMOUNT BENEFICIALLY
USED FOR: DOMESTIC 1 HOUSE

PRIORITY DATE: 06/01/1927

POINT OF DIVERSION: T07S R13E S11 NESENE Within GOODING County

PURPOSE AND

PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
DOMESTIC		01-01 12-31	0.02 CFS

PLACE OF USE: DOMESTIC Within GOODING County
T07S R13E S11 NENE

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

PARCEL NO. RP07S13E110410

THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF
DIVERSION DESCRIBED ABOVE: 36-00090A, 36-00090B, 36-00090C,
36-00090E & 36-00090G.

EXPLANATORY MATERIAL: BASIS OF CLAIM - DECREE

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DEC 03 1996



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033

Fax (208) 736-3037

August 7, 1996

PHILIP E. BATT
Governor

KARL J. DREHER
Director

MILDRED CULBERTSON
PO BOX 386
HAGERMAN ID 83332

RE: SRBA Claim(s) 36-00090D and 36-10409

Dear Ms. Culbertson:

Pursuant to the change in ownership request that has been submitted to the Department, we have changed the record of current ownership to you. Please find the enclosed copies of the computer record of the claim(s) noting the change in claimant. Review these records and if there is an error, or you have any questions, please contact this office.

Also enclosed is your copy of the Notice of Completed Administrative Proceeding the department filed with the SRBA Court. This conforms with Administrative Order 11 which requires IDWR to report to the court all changes to claims in basins where a Director's Report has been filed.

Sincerely,

Trish Fawcett
Technical Records Specialist

enc.

cc: Patrick Brown

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MAY 31 1996

Department of Water Resources
East Southern Region
PM

Section 11, 1/4 of NE 1/4 of NE 1/4, Govt. Lot, BM.
Lot , Block , Subdivision/Townsite .

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

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

- ☒ Attach proof of ownership, describe proof attached: Decree of Divorce

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

- | | | | |
|-----|--|---|----------------------------------|
| [] | Signature of New Owner/Claimant(s) | <u>Mildred Culbertson</u> | Date <u>5/30/96</u> |
| | | <u> </u> | Date <u> </u> |
| [] | Signature of Former Owner/Claimant(s): | <u> </u> | Date <u> </u> |
| | | <u> </u> | Date <u> </u> |

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

Claim Numbers of Split, if any:

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

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DEC 03 1996

PAULA BROWN SINCLAIR
Attorney at Law
303 Shoshone Street North
Post Office Box 2322
Twin Falls, Idaho 83303-2322
Telephone: (208) 733-3300

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

JUL 27 1993

Attorney for Defendant

By _____ Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE _____ Deputy Clerk

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STOWE ALLEN CULBERTSON,

Plaintiff/Counterdefendant,

vs.

MILDRED SUE CULBERTSON,

Defendant/Counterclaimant.

Case No. CV93-1334

DECREE OF DIVORCE

THE COURT, having reviewed the Stipulation for Entry of Decree of Divorce signed by counsel for the parties, having jurisdiction of the parties and the subject matter, being fully advised in the premises and finding good cause appearing therefore:

IT IS HEREBY ORDERED AND DECREED:

1. The bonds of matrimony now existing between the Plaintiff and Defendant are dissolved on the grounds of irreconcilable differences, and the Plaintiff is awarded an absolute Decree of Divorce from the Defendant.

2. No debts remaining outstanding from the marriage. Each party shall be responsible for those debts incurred by themselves since the date of separation on April 20, 1993.

3. The parties have acquired community property during the course of the marriage, which property which is hereby awarded as follows:

To Plaintiff, as his sole and separate property

1973 Ford pickup;
His pipefitter's retirement and death benefits; and
Plaintiff's clothing and personal effects including the
following:

Bedroom furniture

DECREE OF DIVORCE - 1

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Camping tent
Sleeping bags (3)
Fishing gear and worm prods
Hammer
Crow bar
Lineman's pliers
Cast iron dutch oven
Cast iron griddle
Wooden bowls
Presto Lite Tank and accessories
Propane tank and accessories
VCR
Television (19")
Mounted vice-grinder
Cooler
Beer bottles
Broiler oven
Kitchen utensils - lunch box and inside utensils
Playboy books
Bible
Cookbook
Savage Semi-Auto 22 rifle

To Defendant, as her sole and separate property

All household furnishings not otherwise listed herein;
Defendant's retirement account with Spears;
Defendant's automobile;
All savings accounts and certificates of deposit of the
parties; and
All of her clothing and personal effects.

4. During the course of the marriage, the parties acquired community property located at 950 East Justice Grade, Hagerman, Idaho, and more particularly described as:

Exhibit "A"

Said real property shall be and hereby is awarded to the Defendant as her sole and separate property, subject to the debt thereon. Plaintiff shall have the right to reside there until July 31, 1993.

5. Plaintiff owns separate property consisting of mineral rights in Louisiana which are hereby reaffirmed as his sole and separate property.

DATED this 27 day of July, 1993.

Charles R. Brambach
Magistrate

DECREE OF DIVORCE - 2

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DEC 03 1996

Beginning at a point 478.5 feet East of the Southwest corner of the Northeast Quarter of the NE $\frac{1}{4}$ Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 11, Township 7- R13 E.B.M. thence North 152.4 feet, thence North 79 degrees 22' East 53 feet, thence South 29 degrees 43' East 200.6' to South line of said 40 acres, thence West along the line 155.3 feet to the place of beginning, containing 0.37 acres, more or less

R PROOF

CVR

MAPS

PHOTOS

MISC

UNRECORDED

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. 36-00090D -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: MILDRED CULBERTSON
Address: RT 1 BOX 379
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

1. |X| Name and Address: I respond to the objection concerning the name and/or address of the owner of the water right.
3. |X| Quantity: I respond to the objection concerning:
- 3a. |X| The total quantity of water used in cubic feet per second.
4. |X| Priority Date: I respond to the objection concerning the priority date.
10. |X| Consumptive Use: I respond to the objection concerning the annual volume of consumptive use.
14. |X| Other: I respond to the objection concerning:
ALL MATTERS RAISED IN THE CLAIMANT'S ANSWER,
AFFIRMATIVE DEFENSES, AND PRAYER FOR RELIEF.

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection item 1, and all allegations regarding this item, IDWR responds as follows: No notice of change of ownership has been filed with IDWR by the owner of the right as required by Idaho Code Sec. 42-1409(7). IDWR therefore lacks sufficient information to form a belief as to the truth of the matter asserted. Upon the filing of a notice of change of ownership, IDWR will correct the name and address of the owner of this water right accordingly. The claimant may also need to file a Standard Form 3 with the SRBA Court.

In response to Statement of the Objection items 3 and 3.a, and all allegations of the objection regarding those items, IDWR responds as follows: (1) it recommended the amount of water it determined was being beneficially used; (2) the claimant is 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 further response to this objection item, IDWR responds that it recommended this element of the water right as claimed. The objection fails to state the change sought in the recommended amount; this portion of the objection should therefore be stricken.

In response to Statement of the Objection item 4, and all allegations of the objection regarding this item, IDWR responds that it recommended the priority date of this right as claimed and as decreed. The claimant is precluded by the doctrine of res judicata from asserting a priority date earlier than the decreed priority date.

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) General Provision 9 of the director's report states: "Where consumptive use is not stated for a right or a portion of a right, the consumptive use for that right or that portion of the right is so small that it is deemed de minimus". (4) IDWR did not include a consumptive use volume in its recommendation for this right because the consumptive use for this water right is deemed to be de minimus. (5) No consumptive use volume was claimed for this right. (6) 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. (7) 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 14, and all allegations of the objection regarding that item, see attached "IDWR's Response to Answer Affirmative Defenses and Prayer for Relief of Claimant".

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

CHANGES TO THE DIRECTOR'S REPORT

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

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

No. of
Pages

Notice of Claim No. A36-00090D

3

IDWR's Response to Answer, Affirmative Defenses and Prayer
for Relief of Claimant

4

(Over)

RESPONSE TO OBJECTION NO. 36-00090D -0001 - PAGE 5

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OCT 12 1994

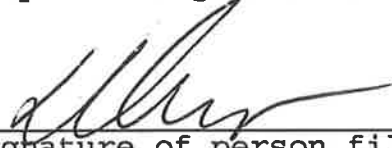
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

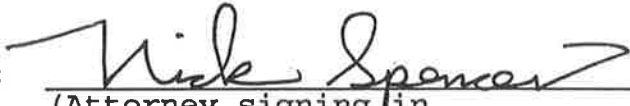
David B. Shaw, being first duly sworn, upon oath, deposes and says:

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



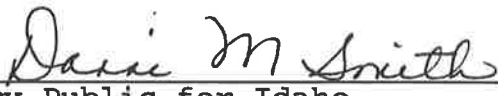
Signature of person filing response

By:



(Attorney signing in
representative capacity)

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



Notary Public for Idaho

Residing at: _____

My Commission expires: _____

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

CERTIFICATE OF MAILING

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

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

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

See No. 3

Name: S A CULBERTSON
Address: RT 1 BOX 379
HAGERMAN ID 83332

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

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: NOV-14-1997
PAGE: A-1-----
RIGHTS FROM: SOURCE: SPRING TRIBUTARY: BILLINGSLEY CREEK

RIGHT NUMBER: 36-00090D

NAME AND ADDRESS: MILDRED CULBERTSON
PO BOX 386
RT 1 BOX 379
HAGERMAN ID 83332MILDRED CULBERTSON
PO BOX 386
HAGERMAN ID 83332S A CULBERTSON
RT 1 BOX 379
HAGERMAN ID 83332

SOURCE: SPRING TRIBUTARY: BILLINGSLEY CREEK

QUANTITY: 0.02 CFS

THE QUANTITY FOR NON-IRRIGATION USE IS LIMITED TO THE AMOUNT BENEFICIALLY
USED FOR DOMESTIC 1 HOUSETHE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 06/01/1927

POINT OF DIVERSION: T07S R13E S11 NESENE Within GOODING County

PURPOSE AND

PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	DOMESTIC 1 HOUSE	01-01 12-31	0.02 CFS

PLACE OF USE: DOMESTIC Within GOODING County
T07S R13E S11 NENE

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

PARCEL NO: R007S13E110A10

THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF

VERIFIED BY RG 11-14-97

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

DATE: NOV-14-1997

PAGE: A-2

36-00090D (CONT.)

DIVERSION DESCRIBED ABOVE: 36/00090A, 36/00090B, 36/00090C,
36/00090E & 36/00090G.

EXPLANATORY MATERIAL: BASIS OF CLAIM - DECREE
PARCEL NO. RP07S13E110410

THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF
DIVERSION DESCRIBED ABOVE: 36-00090A, 36-00090B, 36-00090C,
36-00090E & 36-00090G.

RECEIVED

JAN 02 1998

Department of Water Resources
Southern Region

OCT 20 1997

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA

Case No. 39576

SUBCASE(S) 36-00090D

SPECIAL MASTER'S REPORT

A notice of claim was filed for this water right pursuant to I.C. § 42-1409 (1990). The Director of the State of Idaho Department of Water Resources examined the claim and his *Report* contained a recommendation of the elements of this water right.

- ☐ There were no objections to this claim; however, this claim is used in combination with another claim which is the subject of an objection.
- ☒ All objections to this claim were resolved by stipulation of the parties at hearing or with a *Standard Form 5*. All parties to the subcase and IDWR have signed the *Standard Form 5*.
- ☐ All objections to this claim were resolved at trial. The court made oral findings of fact and conclusions of law at the trial and they are incorporated herein reference.

Therefore, based on the file and record herein, IT IS RECOMMENDED that this claim be decreed with the elements as set forth in the attached *Special Master's Recommendation for Partial Decree*.

DATED: October 20, 1997

Alex. H. ...
Special Master
Snake River Basin Adjudication

RECEIVED

JAN 02 1998

Department of Water Resources
Southern Region

OCT 20 1997

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA

Case No. 39576

)
)
)
)

SUBCASE(S): 36-00090D

NOTICE OF ISSUANCE and SERVICE

Special Master FRITZ X. HAEMMERLE issued a *SPECIAL MASTER'S REPORT AND RECOMMENDATION* for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 9.

The documents were served only on parties to the subcase and IDWR. They were not served on the Presiding Judge. Parties to this subcase may file a *Motion to Alter or Amend* with the Special Master, but must do so within 14 days of the date of the *SPECIAL MASTER'S REPORT AND RECOMMENDATION*.

I certify that a true and correct copy of the *SPECIAL MASTER'S REPORT AND RECOMMENDATION* were hand delivered to the following:

Representative of IDWR:

Charles Hensinger

Mildred Culbertson
Claimant/Attorney

Claimant/Attorney

Representative of U.S. Dept. of Justice

Party/Attorney

Party/Attorney

DATED October 20, 1997

Jim Alberdi
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

Subcase(s) 36-000900

STANDARD FORM 5

Case 39576

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

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

The parties and IDWR agree and stipulate that the element of this water right should be described per the attached. The parties and IDWR have further indicated their concurrence by initialing each of the attached pages.

Date: Oct. 20, 1997

Barbara Brown Charles 2. Honsinger
IDWR Concurrence

Mildred Culbertson
Claimant

Mildred Culbertson
Objector

Claimant/Attorney

Objector/Attorney

Claimant/Attorney

Objector/Attorney

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

DATE: OCT-16-1997
PAGE: A-1

TS FROM: SOURCE: SPRING TRIBUTARY: BILLINGSLEY CREEK

T NUMBER: 36-000900

AND ADDRESS: MILDRED CULBERTSON
PO BOX 386
RT 1 BOX 379
HAGERMAN ID 83332

MILDRED CULBERTSON
PO BOX 386
HAGERMAN ID 83332

S A CULBERTSON
RT 1 BOX 379
HAGERMAN ID 83332

RCE: SPRING TRIBUTARY: BILLINGSLEY CREEK

NTITY: 0.02 CFS

THE QUANTITY FOR NON/IRRIGATION USE IS LIMITED TO THE AMOUNT BENEFICIARILY
USED FOR DOMESTIC 1 HOUSE

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

ORITY DATE: 06/01/1927

NT OF DIVERSION: T07S R13E S11 NESENE Within GOODING County

PURPOSE AND RIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	DOMESTIC 1 HOUSE	01-01 12-31	0.02 CFS

ACE OF USE: DOMESTIC Within GOODING County
T07S R13E S11 NENE

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

PARELY NO/ RPO7S13E110410

THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF

RB
me
C.2.4

5-000900 (CONT.)

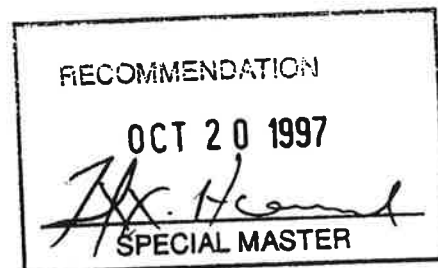
**DIVERSION DESCRIBED ABOVE: 36/00090A, 36/00090B, 36/00090E,
36/00090E & 36/00090B/**

XPLANATORY MATERIAL:

BASIS OF CLAIM - DECREE

PARCEL NO. RP07S13E110410

THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF
DIVERSION DESCRIBED ABOVE: 36-00090A, 36-00090B, 36-00090C,
36-00090E & 36-00090G.



RLB
sync
C.2.1K

SUBCASE NO. 36-00090D

	CLAIM (8/10/88)	AMENDED CLAIM	RECOMMENDATION	OBJECTION
NAME	S.A. & Mildred Culbertson *	N/A	S.A. & Mildred Culbertson	XX - right in Mildred Culbertson only.
BASIS OF CLAIM	Decree		Decree	
SOURCE	Spring		Spring	
QUANTITY	0.02 cfs		0.02 cfs	XX requests as decreed and beneficially used, "if greater".
PRIORITY DATE	6/1/1927		6/1/1927	XX - requests 6/26/1881
PURPOSE OF USE	Domestic		Domestic	
PERIOD OF USE	1/1 - 12/31		1/1 - 12/31	
POINT OF DIVERSION	T07S R13E S11		T07S R13E S11	
PLACE OF USE	T07S R13E S11		T07S R13E S11	
remarks	"5 users on same system."		"Parcel No. RP07S13E110410. The following rights are also diverted through point of diversion described above: 36-00090A, 36-00090B, 36-00090C, 36-00090E & 36-00090G."	

* NCAP filed - S.A. & Mildred Culbertson to Mildred Culbertson only.

R PROOF

CVR

MAPS

PHOTOS

MISC

MICROFILMED

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. 36-00090D -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: MILDRED CULBERTSON
Address: RT 1 BOX 379
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

1. |☒| Name and Address: I respond to the objection concerning the name and/or address of the owner of the water right.
3. |☒| Quantity: I respond to the objection concerning:
- 3a. |☒| The total quantity of water used in cubic feet per second.
4. |☒| Priority Date: I respond to the objection concerning the priority date.
10. |☒| Consumptive Use: I respond to the objection concerning the annual volume of consumptive use.
14. |☒| Other: I respond to the objection concerning:

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

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection item 1, and all allegations regarding this item, IDWR responds as follows: No notice of change of ownership has been filed with IDWR by the owner of the right as required by Idaho Code Sec. 42-1409(7). IDWR therefore lacks sufficient information to form a belief as to the truth of the matter asserted. Upon the filing of a notice of change of ownership, IDWR will correct the name and address of the owner of this water right accordingly. The claimant may also need to file a Standard Form 3 with the SRBA Court.

In response to Statement of the Objection items 3 and 3.a, and all allegations of the objection regarding those items, IDWR responds as follows: (1) it recommended the amount of water it determined was being beneficially used; (2) the claimant is 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 further response to this objection item, IDWR responds that it recommended this element of the water right as claimed. The objection fails to state the change sought in the recommended amount; this portion of the objection should therefore be stricken.

In response to Statement of the Objection item 4, and all allegations of the objection regarding this item, IDWR responds that it recommended the priority date of this right as claimed and as decreed. The claimant is precluded by the doctrine of res judicata from asserting a priority date earlier than the decreed priority date.

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) General Provision 9 of the director's report states: "Where consumptive use is not stated for a right or a portion of a right, the consumptive use for that right or that portion of the right is so small that it is deemed de minimus". (4) IDWR did not include a consumptive use volume in its recommendation for this right because the consumptive use for this water right is deemed to be de minimus. (5) No consumptive use volume was claimed for this right. (6) 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. (7) 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 14, and all allegations of the objection regarding that item, see attached "IDWR's Response to Answer Affirmative Defenses and Prayer for Relief of Claimant".

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

CHANGES TO THE DIRECTOR'S REPORT

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

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

No. of
Pages

Notice of Claim No. A36-00090D

3

IDWR's Response to Answer, Affirmative Defenses and Prayer
for Relief of Claimant.

4

(Over)

RESPONSE TO OBJECTION NO. 36-00090D -0001 - PAGE 5

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OCT 12 1994

9/13/93
ENCLOSURE

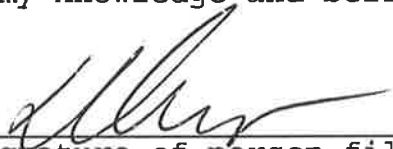
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

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

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

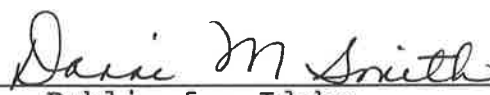


Signature of person filing response

By: 

(Attorney signing in
representative capacity)

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



Notary Public for Idaho
Residing at: _____
My Commission expires: _____

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

CERTIFICATE OF MAILING

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

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

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

See No. 3

Name: S A CULBERTSON
Address: RT 1 BOX 379
HAGERMAN ID 83332

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: A36-00090D
Date Received: 8/10/1988
Receipt No: S001384
Received By: lw

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: S.A. CULBERTSON 208-837-4472
Address: RT 1 BOX 379
HAGERMAN, ID 83332

AND/OR

Name: MILDRED CULBERTSON 208-837-4472
Address: RT 1 BOX 379
HAGERMAN, ID 83332

2. Date of Priority: JUN 01, 1927

3. Source: SPRING Trib. to: BILLINGSLEY CREEK

4. Point of Diversion:

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

5. Description of diverting works:
CEMENT HEADBOX WITH 2.5" PIPE TO USERS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.020		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
D/1 HOUSE

A36-00090D

Page 1

Date: 08/10/88

MICROFILMED
JAN 21 1989

MICROFILMED

OCT 12 1994

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	13E	11	SE	NE		DOMEST	

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:
5 USERS ON SAME SYSTEM.

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

Decree Plaintiff

vs

Decree Defendant

MICROFILMED
OCT 12 1994

MICROFILMED
OCT 12 1994

(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.

OCT 12 1994

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

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

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

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

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

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

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

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

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

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

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

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



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

01-Feb-1993

MILDRED CULBERTSON
RT 1 BOX 379
HAGERMAN ID 83332

RE: Copy of SRBA File(s): 36-00090D, 36-10409

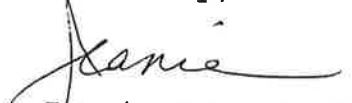
Dear Ms. Culbertson:

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:

\$3.84

Sincerely,


Jeanie Robertson
Records Clerk

Encl:

MICROFILMED
OCT 12 1994

RECEIVED

JAN 20 1993

Department of Water Resources
Southern Region Office

January 16, 1993
(Date)

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

Dear Idaho Department of Water Resources:

Please provide me with a copy of all information included in my file as it relates to water right number 36-10409 + 36-00090D.

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,

Mildred Culbertson
(Name)

Ranch # 1 Box 379
(Address)

Nagerman, ID 83332
(City, State, Zip Code)

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

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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. A36-00090D
(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,

36-00090D -0001/
93-04-0085

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)

MICROFILMED
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: Mildred Culbertson

Address: Route 1, Box 379

Hagerman, Idaho 83332

Briefly describe your interest in this water right:

Decreed water right pursuant to New Inter-

national Mortgage Bank vs. Idaho Power Co.

dated 3-20-32 with a priority date of 6-26-1881

2. Owner of the water right:

Name: Mildred Culbertson

Address: Route 1, Box 379

Hagerman, Idaho 83332

3. If this objection is filed by an attorney:

Attorney Name: Hepworth, Nungester & Lezamiz

Attorney Address: P. Parker & Patrick D. Brown

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

Attorney Phone No.: (208)734-7510; Fax: (208)734-4115

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.

The report should be changed to reflect the decreed and

beneficially used right if greater; Mildred Culbertson only

owner; priority date 6/26/1881; consumptive use changed

accordingly

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

☒

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

Right Owners, Inc.'s compendium "A".

VERIFICATION (Must be Completed)

State of Idaho

County of Gooding

Mildred Culbertson, 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.

Mildred Culbertson
Signature of person filing objection

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

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

Suzanne H. Jensen
Notary Public for Idaho
Residing at: Hagerman, Idaho
My Commission Expires: 8-4-98

(Over)

MICROFILMED
OCT 12 1994

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:

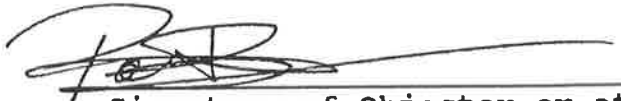
Owner name: Mildred Culbertson
Owner's address: Route 1, Box 379
Hagerman, Idaho 83332

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 1 - See Paragraph 2, page 2 for correct name and/or address.

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

Box 4 - IDWR recommends a junior priority date which is not supported by the previously decreed right or the date of first beneficial use.

CHANGES TO DIRECTOR'S REPORT, page 4

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

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.

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)

R PROOF



CVR



MAPS



PHOTOS



MISC

MICROFILMED
JAN 21 1993



VERIFIED BY

SC

Old (D) Number -

Water Right Number - R36-00090D

Prefix Translation: RESEARCH

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

+ - First Name - - +

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

*** C - CURRENT OWNER ***
CULBERTSON

MILDRED

1 - RT 1 BOX 379

2 -

3 -

City- HAGERMAN

State- ID Zip- 83332

Phone - 208-837-4472

CULBERTSON

S A

1 - RT 1 BOX 379

2 -

3 -

City- HAGERMAN

State- ID Zip- 83332

Phone - 208-837-4472

+ - - Priority Date - - +
06/01/1927+ - - Region - - - +
ERROR IN REGION+ - - Stage - - - +
D - DECREED

+ - - Status - - - - +

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

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

Code	Description	Period From	Period To	Water Use	Diversion Rate	Diversion Volume
43 - DOMESTIC		01/01	12/31		0.020	

+ - Total Div. Rate - +	+ - Total Div. Volume - +	+ - Total Consumptive Use - +	+ - KW Usage - +
0.020		0.0	

Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County
07S	13E	11	NE NE			43	DOMESTIC	(47) GOODING

Total Acres:

+ - - Diversion Means - CEMENT HEADBOX WITH 2.5" PIPE TO USERS

+ - - Non-Irrigation Use - DOMESTIC 1 HOUSE

+ - - Other Rights for Same Use - NONE

+ - - Remarks - - - - - +
PARCEL NO. RP07S13E110410
THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF
DIVERSION DESCRIBED ABOVE: 36-00090A, 36-00090B, 36-00090C,
36-00090E & 36-00090G.

MICROFILMED
JAN 21 1993

Water right number - R36-00090D

Prefix Translation: RESEARCH

```

+ - - - - Old Water Right Numbers - - - - - +
+ - - - - Old Water Right Numbers - - - - - +
    3600090
+ - - - - Conditions of Approval - - - - - +
    No Conditions of Approval found.
+ - - - - Decree Plaintiff - - - - + - - - - Decree Defendant - - - - + - - - - Decree Date - - +
                                         00/00/0000
+ - - - - Comments - - - - - +
Date: 02/22/1991 User Id: SRBA Subject: COPIED FROM REMARKS
5 USERS ON SAME SYSTEM. PARCEL NO. RP07S13E110410
+ - - Audit Fields - - +
    08/03/92 CLELLAND
+ - - - - Adjudication Rights Dates and Flags Area - - - - - +

```

Court Report Filing	- 00/00/0000	Field Inspection Made	- 09/11/1990	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 08/03/1992	Old Judicial District	-
Claim Received Date	- 08/10/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S001384	Water District	-
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- AND/OR	Presumption Flag	-
				Notice of Error Flag	-

MICROFILMED

JAN 21 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

00:00:13
08/24/90

PAGE: 11
QUICKLOOK INFORMATION

CLAIM NUMBER: A36-00090D

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			9-11-90 SCL/HHT	N		SC 8-3-92	DB	SC 8-3-92
POINT OF DIV				N				
SOURCE				N				
PLACE OF USE				(Y)	5,1			
DIV. AMOUNT CFS/VOLUME				N				
CONSUMPTIVE USE				N				
PURPOSES				N				
PERIOD OF USE				N				
BASIS OF CLAIM				N				
REMARKS	Y			N				

"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

00:00:13
08/24/90

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A36-00090D

LAST: CULBERTSON
ADDRESS: RT 1 BOX 379
CITY: HAGERMAN
PHONE NUMBER: 208-837-4472

FIRST: S.A.

STATE: ID ZIP: 83332

OWNER CODE: C

LAST: CULBERTSON
ADDRESS: RT 1 BOX 379
CITY: HAGERMAN
PHONE NUMBER: 208-837-4472

FIRST: MILDRED

STATE: ID ZIP: 83332

OWNER CODE: C

FIELD EXAM REQUIRED?

VERIFICATION REQUIRED DUE TO REMARKS?

DATABASE
Y

FIELD
EXAMINER

CLAIM REMARKS: 5 USERS ON SAME SYSTEM.

MICROFILMED
JAN 21 1993

CONTACT PERSON: _____

PHONE NUMBER: (____) ____-____

DATE OF FIELD EXAM: 9/11/90

APPOINTMENT MADE: Y(____) N(____)

TIME: ____:____ A(____) P(____)

ACCOMPANIED BY: _____

PHONE NUMBER: (____) ____-____

RELATIONSHIP TO CLAIMANT: _____

DIRECTIONS TO PROPERTY / REMARKS:

SCC & HHT spoke to Mrs Culbertson to see if she used the John Bell
Ditch. She mentioned this water use from the spring only.
No Diversion or pump found in John Bell Ditch for the lawn & Garden.

UNRECORDED
JAN 21 1993

A. AJ CLAIM: # A36-00090D PRIORITY DATE: 06-01-1927 STAGE: D

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

REMARKS:

=====

RECOMMENDED PRIORITY DATE:

REVIEWED BY

DATE

12-18-90

MICROFILMED

JAN 21 1993

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A36-00090D	07S	13E	11	NE	SE	NE		GOODING

OTHER AJ CLAIMS WITH SAME AJ POD

WR RECORDS IN SAME 40 ACRE TRACT

A PREFIX	R PREFIX
A36-00051D	NONE
A36-10119	
A36-10120	
A36-10751	
A36-10752	
A36-10755	
A36-10061	
A36-00103B	
A36-00108A	
A36-00003G	
A36-00027	
A36-00039C	
A36-00090E	
A36-00051B	
A36-00076A	
A36-00089B	
A36-00089D	
A36-10283	
A36-10312	
A36-00090A	
A36-00003D	
A36-00090B	
A36-00090C	
A36-00090F	
A36-00108F	
A36-00125A	
A36-00026	
A36-00051C	
A36-00071A	
A36-00089A	
A36-00108C	
A36-00108D	
A36-00108E	
A36-00108H	
A36-04008	
	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
	36-00064
	36-00065
	36-00067
	36-00071
	36-00076
	36-00077
	36-00082
	36-00083
	36-00085
	36-00087
	36-00088
	36-00089
	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: SPRING

TRIB: BILLINGSLEY CREEK

REMARKS:

=====

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	COUNTY
07S	13E	11	NE	SE	NE		GOODING

SOURCE:

TRIB:

REVIEWED BY:

DATE: 12-18-90

MICROFILMED

JAN 21 1993

A. ROOT WATER RIGHT NUMBERS: A36-00090A
A36-00090B
A36-00090C
A36-00090D
A36-00090E
A36-00090F
A36-00090G

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
7S	13E	11	SE	NE		CULBERTSON, S.A.	A36-00090D /	-			
TOTAL ACRES						A36-00090D					

DOMESTIC ONLY

PRESUMPTION FLAG:

REMARKS:

Change claim to add NENE

RECOMMENDATIONS:

TOTAL ACRES: 9

REVIEWED BY: SCL

DATE: 12-18-90

MICROFILMED

JAN 21 1993

A. AJ CLAIMED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
A36-00090D DOMESTIC	FROM 01-01 TO 12-31	.020 CFS
TOTAL DIVERSION RATE/VOLUME CLAIMED		.020 CFS

PRESUMPTION FLAG:

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y(☒) N(☐)

RECOMMEND TO WR STANDARDS OR OTHER?

Y(☐) N(☒) Explain in remarks, below.

REMARKS:

MICROFILMED

JAN 21 1993

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

Y() N(☒)

AJ TOTAL CLAIMED DIVERSION RATE: 0.020 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 0.500 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?

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

FIELD
DATABASE EXAMINER
Y

B. FLOW MEASUREMENT
MEASUREMENT METHOD _____, SEE ATTACHED CALCULATIONS.

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

OTHER RIGHTS LISTED IN CLAIM: ~~SEE REMARKS~~ NONE

NO RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION

MICROFILMED

JAN 21 1993

change claim

RECOMMENDATIONS:

REC. PURPOSES	REC. PERIOD FROM TO	REC. DIV RATE CFS	REC. DIV VOL. AF/A	REC. CONS. USE
DOMESTIC	01-01 12-31	DATABASE 0.020 EXAMINER	DATABASE 0.0 EXAMINER	DATABASE 0.0 EXAMINER
TOTAL FOR THIS RIGHT		0.020		0.0

REVIEWED BY: SC

DATE: 12-18-90

SC 8-3-92

MICROFILMED

JAN 21 1993

(F06) =

36-00090 A, B, C, E, G

A. CHECK ONLY THE FOLLOWING THAT APPLY:

ACCEPTED AS CLAIMED	NEEDS REVIEW
()	()
()	()
()	()

OWNERSHIP _____
FORFEIT/ABANDON _____
ADDITIONAL DIV. AMOUNT _____

=====

AUTHENTICATION:

SIGNATURE: _____

DATE: _____

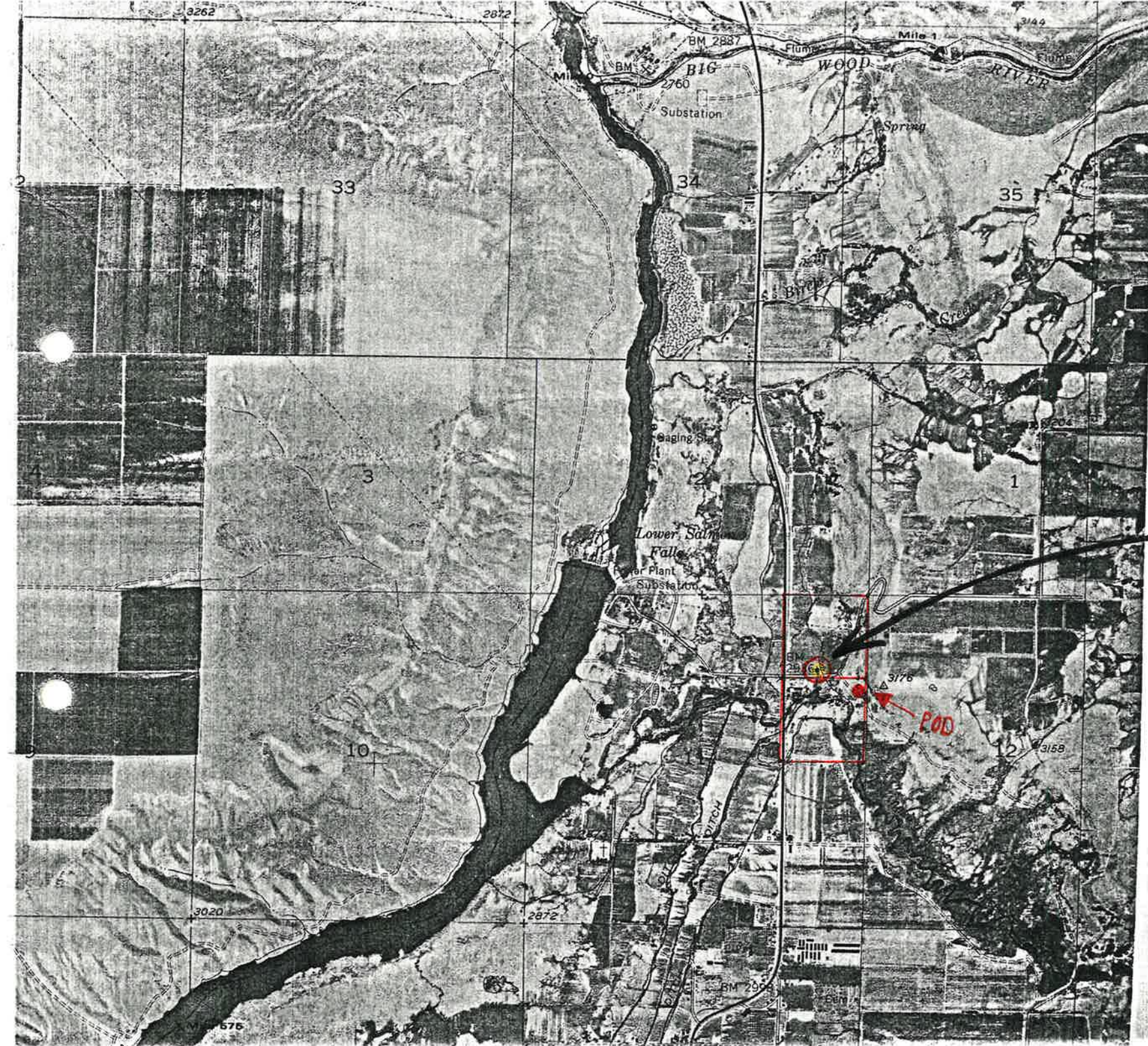
NAME OF FIELD EXAMINER: _____

TITLE: _____

=====

MICROFILMED

JAN 21 1993



3262 2872 3144
Mile 1
Flume
Flume
3/44
BM 2837
BIG
2760
Substation
Spreng
34
35
33
4
3
1
10
12
3020
2872
576
BM 2956
DITCH
Lower Salmon Falls
Power Plant
Substation
3176
3158
PO4
POD

T6S
T7S

PO4
CULBERTSON
A36-00090D

[illegible]

MICROFILMED

JAN 21 1993

Mildred Culbertson
Route #1 Box 379
Hagerman, ID 83332



ALWAYS
USE ZIP CODE

RECEIVED

JAN 20 1993

Department of Water Resources
Southern Region Office

Idaho Department of Water Resources
222 Main St. East
Twin Falls, ID 83301

WATER RIGHT NUMBER - A36-000900

ADJ. FLAG TRANSLATION: ADJUDICATION TEMPORARY WORK AREA

+ - - - - CONDITIONS OF APPROVAL - - - - -
NO CONDITIONS OF APPROVAL FOUND.

+ - - - - DECREE PLAINTIFF - - - + + - - - - DECREE DEFENDANT - - - + + - DECREE DATE - +
00/00/0000

+ - - - - COMMENTS - - - - -
NO COMMENTS FOUND

+ - - AUDIT FIELDS - 08/10/88 WHITE 10/03/89 REFUNDML 06/07/90 HARRINGT

+ - - - - 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	-	00/00/0000	OLD JUDICIAL DISTRICT	-	
CLAIM RECEIVED DATE	-	08/10/1988	LAST AMENDED DATE	-	00/00/0000	TEMPORARY RIGHT	-	P
CLAIMS TAPE ERROR FLG	-		RECEIPT NUMBER	-	S001384	WATER DISTRICT	-	
FEE EXEMPT FLAG	-		PDU OWNERSHIP FLAG	-	Y	FEDERAL/STATE INDICATOR	-	S
			NAME CONNECTOR	-	AND/OR	PRESUMPTION FLAG	-	

RP 07S13E110410

DATA ENTRY 2/22/91
ENTERED SW 12/31/90
CHECKED 3/4/91

JB 2/21/91

"Verified By"
Topo Map/Ortho-PQ
ASCS Map
Watermaster Records
NAPP Photos
Field Exam
Other (See Remarks)
County Records
Witness Statement
Project Records
IDWR Records

CERTIFIED
DEC 27 1990
WATER EXAMINER

VERIFIED
NOV 30 1990

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

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

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

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

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

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

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

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

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

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

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

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



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

01-Feb-1993

MILDRED CULBERTSON
RT 1 BOX 379
HAGERMAN ID 83332

RE: Copy of SRBA File(s): 36-00090D, 36-10409

Dear Ms. Culbertson:

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:

\$3.84

Sincerely,

A handwritten signature in cursive script, appearing to read 'Jeanie', is written over a horizontal line.

Jeanie Robertson
Records Clerk

Encl:

MICROFILMED
OCT 12 1994

RECEIVED

JAN 20 1993
Department of Water Resources
Southern Region Office

January 16, 1993
(Date)

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

Dear Idaho Department of Water Resources:

Please provide me with a copy of all information included in my file as it relates to water right number 36-10409 + 36-00090D.

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,

Mildred Culbertson
(Name)

Route # 1 Box 379
(Address)

Wagerman, ID 83332
(City, State, Zip Code)

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

MICROFILMED
OCT 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. A36-00090D
(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,

36-00090D -0001/
93-04-0085

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.

MICROFILMED

(Over)

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: Mildred Culbertson
Address: Route 1, Box 379
Hagerman, Idaho 83332

Briefly describe your interest in this water right:

Decreed water right pursuant to New Inter-
national Mortgage Bank vs. Idaho Power Co.
dated 3-20-32 with a priority date of 6-26-1881

2. Owner of the water right:

Name: Mildred Culbertson
Address: Route 1, Box 379
Hagerman, Idaho 83332

3. If this objection is filed by an attorney:

Attorney Name: Hepworth, Nungester & Lezamiz
Attorney Address: P. Parker & Patrick D. Brown
P.O. Box 389, Twin Falls, ID 83303
Attorney Phone No.: (208)734-7510; Fax: (208)734-4115

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.

The report should be changed to reflect the decreed and
beneficially used right if greater; Mildred Culbertson only
owner; priority date 6/26/1881; consumptive use changed
accordingly

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



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

Right Owners, Inc.'s compendium "A".

VERIFICATION (Must be Completed)

State of Idaho

County of Gooding

Mildred Culbertson, 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.

Mildred Culbertson
Signature of person filing objection

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

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

Suzanne H. Jensen
Notary Public for Idaho
Residing at: Hagerman, Idaho
My Commission Expires: 8-4-98

(Over)

MICROFILMED

OCT 12 1994

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: Mildred Culbertson

Owner's address: Route 1, Box 379

Hagerman, Idaho 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 1 - See Paragraph 2, page 2 for correct name and/or address.

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

Box 4 - IDWR recommends a junior priority date which is not supported by the previously decreed right or the date of first beneficial use.

CHANGES TO DIRECTOR'S REPORT, page 4

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

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.

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)

R PROOF



CVR



MAPS



PHOTOS



MISC

MICROFILMED
JAN 21 1993



VERIFIED BY SC
Old (D) Number -

Water Right Number - R36-00090D

Prefix Translation: RESEARCH

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

*** C - CURRENT OWNER ***
CULBERTSON

MILDRED

1 - RT 1 BOX 379

2 -

3 -

City- HAGERMAN

State- ID Zip- 83332

Phone - 208-837-4472

1 - RT 1 BOX 379

2 -

3 -

City- HAGERMAN

State- ID Zip- 83332

Phone - 208-837-4472

CULBERTSON

S A

+ - - Priority Date - - +
06/01/1927

+ - - - Region - - - +
ERROR IN REGION

+ - - - Stage - - - +
D - DECREED

+ - - - Status - - - +

+ - - - - Source - - - - +
SPRING

+ - - - - Tributary - - - - +
BILLINGSLEY CREEK

+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County

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

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
43 - DOMESTIC 01/01 12/31 0.020

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
0.020 0.0

+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County
07S 13E 11 NE NE 43 DOMESTIC (47) GOODING

Total Acres:

+ - - Diversion Means - CEMENT HEADBOX WITH 2.5" PIPE TO USERS

+ - - Non-Irrigation Use - DOMESTIC 1 HOUSE

+ - - Other Rights for Same Use - NONE

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

PARCEL NO. RP07S13E110410
THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF
DIVERSION DESCRIBED ABOVE: 36-00090A, 36-00090B, 36-00090C,
36-00090E & 36-00090G.

MICROFILMED
JAN 21 1993

Water right number - R36-00090D

Prefix Translation: RESEARCH

```
+ - - - - Old Water Right Numbers - - - - - +
+ - - - - Old Water Right Numbers - - - - - +
      3600090
+ - - - - Conditions of Approval - - - - - +
      No Conditions of Approval found.
+ - - - - Decree Plaintiff - - - +      + - - - - Decree Defendant - - - +      + - Decree Date - +
                                          00/00/0000
+ - - - - Comments - - - - - +
Date: 02/22/1991 User Id: SRBA      Subject: COPIED FROM REMARKS      PARCEL NO. RP07S13E110410
5 USERS ON SAME SYSTEM.
+ - - Audit Fields - - +
      08/03/92 CLELLAND +
+ - - - - Adjudication Rights Dates and Flags Area - - - - - +

Court Report Filing - 00/00/0000      Field Inspection Made - 09/11/1990      Civil Case Number - 39576
Objection Filed Date - 00/00/0000      Field Inspection Flag -
Response Filed Date - 00/00/0000      Verified Date - 08/03/1992      Old Case Number -
Claim Received Date - 08/10/1988      Last Amended Date - 00/00/0000      Old Judicial District -
                                          Receipt Number - S001384      Temporary Right - P
                                          POU Ownership Flag - Y      Water District -
                                          Name Connector - AND/OR      Federal/State Indicator - S
                                          Notice of Error Flag -
```

MICROFILMED

JAN 21 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

08/24/90

PAGE: 11
QUICKLOOK INFORMATION

CLAIM NUMBER: A36-00090D

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			9-11-90 SCL/HHR	N		SCW 8-3-92	OB	SCW 8-3-92
POINT OF DIV				N				
SOURCE				N				
PLACE OF USE				(Y)	5,1			
DIV. AMOUNT CFS/VOLUME				N			Y	
CONSUMPTIVE USE				N				
PURPOSES				N				
PERIOD OF USE				N				
BASIS OF CLAIM				N				
REMARKS	Y							

"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.

FILED
JAN 21 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

00:00:15
08/24/90

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A36-00090D

LAST: CULBERTSON
ADDRESS: RT 1 BOX 379
CITY: HAGERMAN
PHONE NUMBER: 208-837-4472

FIRST: S.A.

STATE: ID ZIP: 83332

OWNER CODE: C

LAST: CULBERTSON
ADDRESS: RT 1 BOX 379
CITY: HAGERMAN
PHONE NUMBER: 208-837-4472

FIRST: MILDRED

STATE: ID ZIP: 83332

OWNER CODE: C

FIELD EXAM REQUIRED?

FIELD
EXAMINER
DATABASE
Y

VERIFICATION REQUIRED DUE TO REMARKS?

CLAIM REMARKS: 5 USERS ON SAME SYSTEM.

MICROFILMED

JAN 21 1993

CONTACT PERSON: _____

PHONE NUMBER: (____) ____-____

DATE OF FIELD EXAM: 9/11/90

APPOINTMENT MADE: Y(____) N(____)

TIME: ____:____ A(____) P(____)

ACCOMPANIED BY: _____

PHONE NUMBER: (____) ____-____

RELATIONSHIP TO CLAIMANT: _____

DIRECTIONS TO PROPERTY REMARKS:

Scc & HHT spoke to Mrs Culbertson to see if she used the John Bell
Ditch. She mentioned this water use from the spring only.
No Diversion or pump found in John Bell Ditch for the lawn & Garden.

RECEIVED
JAN 21 1993

A. AJ CLAIM: # A36-00090D PRIORITY DATE: 06-01-1927 STAGE: D

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

REMARKS: _____

=====

RECOMMENDED PRIORITY DATE:

REVIEWED BY - OK See

DATE 12-18-90

=====

REPRODUCTION

JAN 21 1990

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A36-00090D	07S	13E	11	NE	SE	NE		GOODING

OTHER AJ CLAIMS WITH SAME AJ POD

WR RECORDS IN SAME 40 ACRE TRACT

A PREFIX R PREFIX

A36-00051D NONE

A36-10119

A36-10120

A36-10751

A36-10752

A36-10755

A36-10061

A36-00103B

A36-00108A

A36-00003G

A36-00027

A36-00039C

A36-00090E

A36-00051B

A36-00076A

A36-00089B

A36-00089D

A36-10283

A36-10312

A36-00090A

A36-00003D

A36-00090B

A36-00090C

A36-00090F

A36-00108F

A36-00125A

A36-00026

A36-00051C

A36-00071A

A36-00089A

A36-00108C

A36-00108D

A36-00108E

A36-00108H

A36-04008

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
36-00064
36-00065
36-00067
36-00071
36-00076
36-00077
36-00082
36-00083
36-00085
36-00087
36-00088
36-00089
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: SPRING

TRIB: BILLINGSLEY CREEK

REMARKS:

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	COUNTY
07S	13E	11	NE	SE	NE		GOODING

SOURCE: OK TRIB:

REVIEWED BY: See DATE: 12-13-90

MICROFILMED

JAN 21 1993

A. ROOT WATER RIGHT NUMBERS: A36-00090A
A36-00090B
A36-00090C
A36-00090D
A36-00090E
A36-00090F
A36-00090G

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
7S	13E	11	SE	NE		CULBERTSON, S.A.	A36-00090D /	-	DOMESTIC ONLY		
TOTAL ACRES						A36-00090D					

PRESUMPTION FLAG:

REMARKS:

Change claim to add NENE

RECOMMENDATIONS:

TOTAL ACRES:

REVIEWED BY:

DATE: 12-18-90

MICROFILMED

JAN 21 1993

A. AJ CLAIMED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
A36-00090D DOMESTIC	FROM 01-01 TO 12-31	.020 CFS
TOTAL DIVERSION RATE/VOLUME CLAIMED		.020 CFS

PRESUMPTION FLAG:

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y(☒) N(☐)

RECOMMEND TO WR STANDARDS OR OTHER?

Y(☐) N(☒)

Explain in remarks, below.

REMARKS:

MICROFILMED

JAN 21 1993

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

Y() N(☒)

AJ TOTAL CLAIMED DIVERSION RATE: 0.020 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 0.500 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
Y

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

B. FLOW MEASUREMENT

MEASUREMENT METHOD _____, SEE ATTACHED CALCULATIONS.

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

OTHER RIGHTS LISTED IN CLAIM: ~~SEE REMARKS~~ NONE

NO RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION

MICROFILMED

JAN 21 1993

Change Claim

RECOMMENDATIONS:

REC. PURPOSES	REC. PERIOD		REC. DIV		REC. DIV		REC. CONS.	
	FROM	TO	RATE	CFS	VOL.	AF/A	USE	
DOMESTIC	01-01	12-31	DATABASE	EXAMINER	DATABASE	EXAMINER	DATABASE	EXAMINER
			0.020				0.0	
TOTAL FOR THIS RIGHT			0.020				0.0	

REVIEWED BY: See

DATE: 12-18-90

SW 8-3-92

MICROFILMED

JAN 21 1993

(F06)

36-00090 A, B, C, E, G

A. CHECK ONLY THE FOLLOWING THAT APPLY:

OWNERSHIP _____
FORFEIT/ABANDON _____
ADDITIONAL DIV. AMOUNT _____

ACCEPTED
AS CLAIMED

()
()
()

NEEDS
REVIEW

()
()
()

AUTHENTICATION:

SIGNATURE: _____

DATE: _____

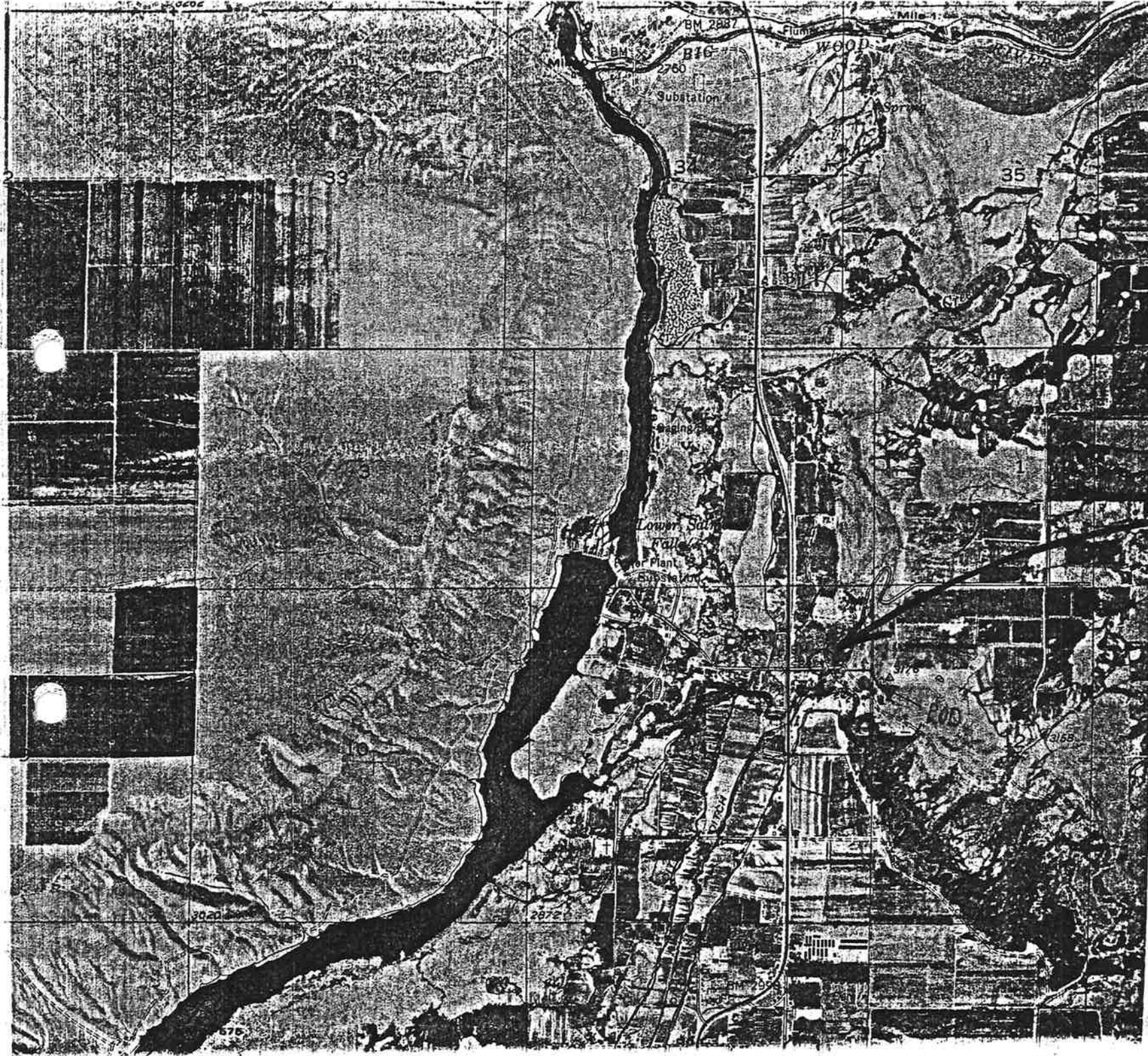
12-18-90

NAME OF FIELD EXAMINER: _____

TITLE: _____

MICROFILMED

JAN 27 1993



T6S
T7S

PO4

CULBERTSON

A36-00090D

[illegible]

MICROFILMED

JAN 21 1993

OLC (C) NUMBER -

+ - - - - - ADDRESS - - - - - +

STATE- IC ZIP- 83232

+ - - - - STATLS - - - - +

+ - - - - - - - - TRIBUTARY - - - - - - - - - - - - - - +
BILLINGSLEY CREEK

JAN 21 1993

WATER RIGHT NUMBER - A35-000900

ADJ. FLAG TRANSLATION: ADJUDICATION TEMPORARY WORK AREA

----- CONDITIONS OF APPROVAL -----
NO CONDITIONS OF APPROVAL FOUND.

----- DECREE PLAINTIFF ----- +
+ ----- DECREE DEFENDANT ----- +
+ ----- DECREE DATE ----- +
00/00/0000

----- COMMENTS -----
NO COMMENTS FOUND

----- AUDIT FIELDS ----- 08/10/88 WHITE 10/08/89 REFUNDML 06/07/90 HARRINGT

----- 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	- 00/00/0000	OLD JUDICIAL DISTRICT	-
CLAIM RECEIVED DATE	- 08/10/1988	LAST AMENDED DATE	- 00/00/0000	TEMPORARY RIGHT	- P
CLAIMS TAPE ERROR FLG	-	RECEIPT NUMBER	- S001384	WATER DISTRICT	-
FEE EXEMPT FLAG	-	POL OWNERSHIP FLAG	- Y	FEDERAL/STATE INDICATOR	- S
		NAME CONNECTOR	- AND/OR	PRESUMPTION FLAG	-

RP 07S13E110410

DATA ENTRY 2/22/91
ENTERED SW 12/31/90
CHECKED 3/4/91

10 2/21/91

"Verified By"
Topo Map/Ortho-PQ
ASCS Map
Watermaster Records
NAPP Photos
Field Exam
Other (See Remarks)
County Records
Witness Statement
Project Records
IDWR Records

CERTIFIED
DEC 27 1990
WATER EXAMINER

VERIFIED
NOV 30 1990