

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: **A36-00099**
Date Received: 7/22/1988
Receipt No: S001058
Received By: _____

AMENDED

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

AMENDED

1. Name: BOB PORTER 208-733-7759
Address: 598 SUNRISE N
TWIN FALLS ID 83301

AND/OR

Name: FRED SURBAUGH 208-733-7759
Address: 598 SUNRISE N
TWIN FALLS ID 83301

2. Date of Priority: APR 1, 1888

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

4. Point of Diversion:

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

5. Description of diverting works:
VIA SANDS DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	8.000		
RECREATION	01/01	12/31	8.000		
WILDLIFE	01/01	12/31	8.000		
AESTHETIC	01/01	12/31	8.000		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
RECREATION PROVIDES HUNTING AND FISHING SINCE 1920

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
07S	13E	15	SW		NE		IRR	22.0
			SW		NE		REC	
			SE		NE		IRR	31.0
			SE		SW		IRR	5.0
			SE		SW		REC	
			NE		SE		IRR	16.0
			NE		SE		REC	
			NW		SE		IRR	2.0
			NW		SE		REC	
			SW		SE		IRR	23.0
			SE		SE		IRR	6.0
							Section Acres	105.0
							Total Acres	105.0

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:
A36-00100

14. Remarks:

RECREATION PONDS PROVIDED HUNTING & FISHING SINCE AT LEAST 1920.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: / /

NEW INTERNATIONAL MORTGAGE BA
Decree Plaintiff

IDAHO POWER COMPANY
vs Decree Defendant

16. Signature(s)

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

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s): _____ Date: _____
_____ Date: _____

State of Idaho)
County of _____) SS.

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

Notary Public

Seal

Residing at _____

My Commission Expires _____

ORIGINALIN 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 36-00099Date Received 1/9/98Receipt Number 5020824**RECEIVED****JAN 09 1998**Department of Water Resources
Southern Region*Amended*
**NOTICE OF CLAIM
TO A
WATER RIGHT****ACQUIRED UNDER STATE LAW**

Please type or print clearly

1. Name of Claimant (s)

Bob Porter & Fred Surbaugh
Hagerman Gun ClubPhone (208) 733-7759

Mailing Address

598 Sunrise North Twin Falls, ID Zip 83301

2. Date of Priority (Only one (1) per claim)

April 1, 1888

3. Source of water supply (a)

Billingsley Creek

which is tributary to (b)

Snake River

4. a. Location of existing point of diversion is: Township

7S

Range

13E

Section

11NW

1/4 of

SW

1/4 of

NE

1/4, Govt. Lot,

B.M., County of

Gooding

Additional points of diversion if any: _____

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

Township _____

Range _____

Section _____

1/4 of _____

1/4 of _____

1/4,

Govt. Lot _____

B.M., County of _____

ending point is: Township _____

Range _____

Section _____

1/4 of _____

1/4 of _____

1/4, Govt. Lot _____

B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. Via Sands Ditch

6. Water is claimed for the following purposes:

(both dates are inclusive) (cfs) (acre feet)

For Irrigation purposes from Irrigation Season to amount 8.0 or

For Recreation purposes from 1/1 to 12/31 amount 8.0 or

For Wildlife purposes from 1/1 to 12/31 amount 8.0 or

For Aesthetics purposes from 1/1 to 12/31 amount 8.0 or

7. Total quantity claimed (a) 8.0 (cfs) and/or (b) (acre feet)

8. Total consumptive use claimed is acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Recreational ponds have provided hunting & fishing since at least 1920.

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
7S	13E	15			22	31								5	16	2	23	6	105
7S	13E	15			R									R	R	R			

Total number of acres irrigated 105

11. In which county (ies) are lands listed above as place of use located? Gooding

12. Do you own the property listed above as place of use? Yes X No
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.
36-00100 or None ()

14. Remarks:

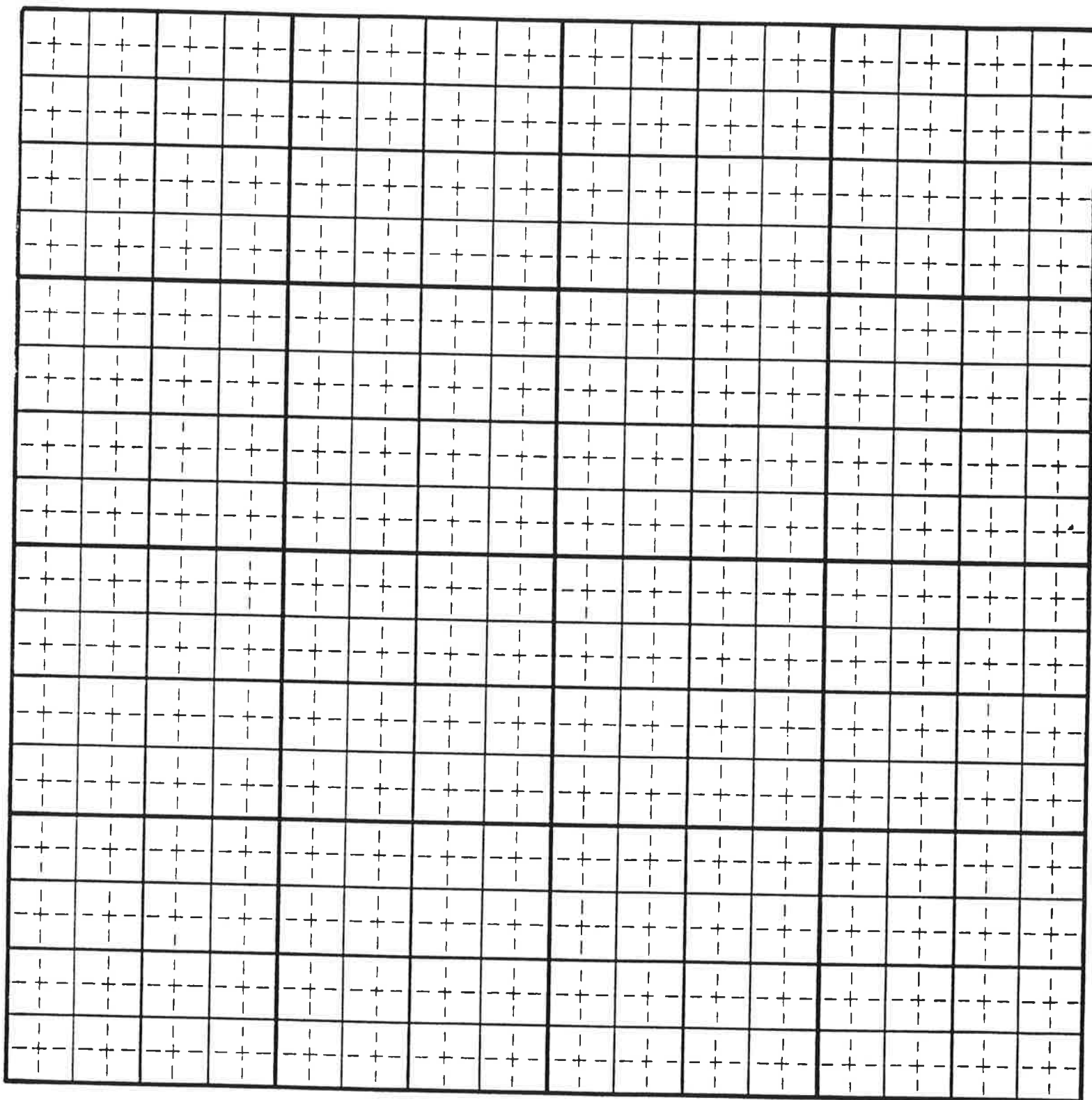
Porter & Surbaugh

36-00099

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

Scale: 2 inches equals 1 mile

see attached map



Last Name Porter & Surbaugh Ident No. 36-00099

Copies: White-State, Yellow-Claimant

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

If applicable provide IDWR Water Right Number 36-00099

Court _____ Case Number _____ Decree Date March 22, 1932

Plaintiff vs Defendant New In41 Mortgage Bank v. Idaho Power

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

Signature of Claimant (s) _____ Date _____

_____ Date _____

For Organizations: I do solemnly swear or affirm that I am Attorney in Fact

of Hagerman Gun Club Title _____ that I have signed the foregoing

document in the space below as Attorney in Fact Title _____ of Hagerman Gun Club Organization _____

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

Signature of Authorized Agent [Signature]

Title and Organization Attorney in Fact, Hagerman Gun Club Date _____

State of Idaho/or _____)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 22nd day of December 19 97

SEAL

Notary Public Deanna L. McMillan

Residing at Jerome, Id

My Commission Expires 8/24/2001

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, Patrick D. Brown, Hepworth, Lezamiz & John Barst will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature [Signature]

Address 133 Shoshone St. N., P.O. Box 389, Twin Falls, ID 83303-0389

Date 12/22/97

Last Name Porter & Surbaugh Ident. Number 36-00099

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That We, Hagerman Gun Club (Porter & Surbaugh), of Twin Falls, County of Twin Falls, State of Idaho, have made, constituted and appointed and by these presents do make, constitute and appoint Patrick D. Brown of the law firm of Hepworth, Lezamiz & Hohnhorst, Chtd. of Twin Falls, Idaho, as power of attorney.

Said attorney is to act in our name, place and stead, and for our use and benefit in regard to all matters involving our ownership, or the adjudication thereof, of water rights pursuant to claim(s) filed in the Snake River Basin Adjudication, Civil Case No. 39576, Fifth Judicial District, State of Idaho.

My attorney is specifically authorized to execute all necessary or proper documents on our behalf in regard to the adjudication of the above mentioned water rights or claim(s), and to negotiate, compromise, or settle all matters relating to the Snake River Basin Adjudication.

This Power of Attorney shall remain in full force and effect until written notice of its revocation or notice of our death is received by any party relying upon this document.

This Power of Attorney shall be not be affected by our disability. It is our intent that this Power of Attorney shall continue in full force and effect in the event of our incapacity.

We further provide that photocopies of this Power of Attorney are to be given equal dignity, full affect, and recognition as if it were the original.

WITNESS my hand this 8th day of ~~December~~ ^{January} 1998, 1997.

Hagerman Gun Club
by Dr. Bob Porter, Bob Porter

STATE OF IDAHO)
) ss.
County of Twain Hails)

On this 8th day of ~~December~~ ^{January} 1998, 1997, before me, the undersigned, a notary public in and for said county and state, personally appeared Bob Porter, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

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

Selma L. McMillan
NOTARY PUBLIC FOR IDAHO
Residing at: Jerome, Id
My Commission Expires: 8/24/2001

(71408poa.)llm

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: A36-00099
Date Received: 7/22/1988
Receipt No:
Received By: ADm

COPY
FOR YOUR FILES
DO NOT RETURN

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

1. Name: BOB PORTER 208-734-3455
Address: 562 SHOUP AVE. WEST
TWIN FALLS, ID 83301

AND/OR
Name: FRED SURBAUGH 208-734-3455
Address: 562 SHOUP AVE. WEST
TWIN FALLS, ID 83301

2. Date of Priority: APR 01, 1888

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

4. Point of Diversion:

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

5. Description of diverting works:
VIA SANDS DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	8.000		

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

8. Total consumptive use is 294.0 Acre Feet Per Annum.

9. Non-irrigation uses:

A36-00099

Page 1

Date: 07/22/88

MICROFILMED
OCT 12 1994

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
07S	13E	15	SW		NE		IRR	22.0
			SE		NE		IRR	31.0
			SE		SW		IRR	5.0
			NE		SE		IRR	16.0
			NW		SE		IRR	2.0
			SW		SE		IRR	16.0
			SE		SE		IRR	6.0
							Section Acres	98.0
							Total Acres	98.0

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:
A36-00100 AND CLAIMS FOR WILDLIFE

14. Remarks:

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

NEW INTERNATIONAL MORTGAGE BAN
Decree Plaintiff

vs

IDAHO POWER COMPANY
Decree Defendant

16. Signature(s)

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

Number of attachments: 1

For Individuals:

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

Signature of Claimant(s): [Signature] Date: 22 Aug 88
Date: _____

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 22 day
of July 19 88 [Signature]
Notary Public

Seal

Residing at Kimberly, ID
My Commission Expires 6/30/92

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

TOTAL RECORDS IN SELECTION FILE: 116

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OCT 12 1994

RECEIVED
FEB 10 1993
Department of Water Resources

1 HEPWORTH, NUNGESTER & LEZAMIZ,
2 CHARTERED
3 133 Shoshone St. North
4 P.O. Box 389
5 Twin Falls, ID 83303-0389
6 Telephone: (208)734-7510
7 Attorneys for Claimant
8 (PPK\HAGERMAN.NOA\lmr)
9

10 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 * * * * *

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

Case No. 39576

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

NOTICE OF APPEARANCE

Petitioner,

vs.

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

Respondents.

* * * * *

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



Hepworth,
Nungester,
& Lezamiz

NOTICE OF APPEARANCE - 1

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OCT 12 1994

1 Users, Inc. and its individual members:

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



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OCT 12 1994

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



Hepworth,
Nungester,
& Lezamiz

MICROFILMED

OCT 12 1994

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

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

12 DATED This 9 day of February, 1993.

13 HEPWORTH, NUNGESTER & LEZAMIZ

14
15 By Patrick D. Brown
16 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 she caused to be mailed a copy of
23 the above and foregoing NOTICE OF APPEARANCE on the 9 day of



Hepworth,
Nungester,
& Lezamiz

1 February, 1993, to:

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

6 Clive Strong
7 Chief Natural Resources Division
8 Office of Attorney General
9 Statehouse
10 Room 210
11 Boise, Idaho 83720

12 David Shaw
13 Adjudications Bureau Chief
14 Department of Water Resources
15 1301 North Orchard
16 Boise, Idaho 83706

17 United States Department of Justice
18 Environment and Natural Resources Division
19 550 West Fort Street, Box 33
20 Boise, ID 83734

21 
22 Patrick D. Brown
23



Hepworth,
Nungester,
& Lezamiz

MICROFILMED
OCT 12 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 1, 1993

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

Re: Notice of Appearance

Dear Mr. Brown:

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

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

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

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

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

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OCT 12 1994

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

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

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

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OCT 12 1994

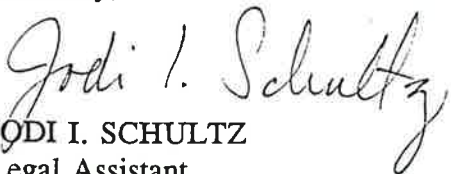
Mr. Patrick D. Brown
March 1, 1993
Page 4

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

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

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

Sincerely,



JODI I. SCHULTZ

Legal Assistant

Idaho Department of Water Resources

cc: IDWR Southern Region

MICROFILMED

OCT 12 1994

VERIFIED BY HH

Water Right Number - R36-00099

Prefix Translation: RESEARCH

Old (D) Number -

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

*** C - CURRENT OWNER ***

SURBAUGH

FRED

1 - 562 SHOUP AVE W

2 -

3 -

City- TWIN FALLS

State- ID Zip- 83301

Phone - 208-734-3455

PORTER

BOB

1 - 562 SHOUP AVE W

2 -

3 -

City- TWIN FALLS

State- ID Zip- 83301

Phone - 208-734-3455

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - - +
04/01/1888 17 SOUTHERN D - DECREED+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
BILLINGSLEY CREEK SNAKE RIVER+ - - - - Point of Diversion - - - - - +
TwN Rng Sec Tract Lot RFlg County

07S 13E 11 NW SW NE (47) GOODING

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

01 - IRRIGATION

04/01

10/31

1.310

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
1.310 159.0+ - - - - Place of Use - - - - - +
TwN Rng Sec Tract Lot Acres Code Description County

07S	13E	15	SW NE		13.0	01	IRRIGATION	(47) GOODING
07S	13E	15	SE NE		25.0	01	IRRIGATION	(47) GOODING
07S	13E	15	NE SE		8.0	01	IRRIGATION	(47) GOODING
07S	13E	15	NW SE		2.0	01	IRRIGATION	(47) GOODING
07S	13E	15	SW SE		5.0	01	IRRIGATION	(47) GOODING

Total Acres: 53.0

+ - - Diversion Means - VIA SANDS DITCH

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - NONE

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

Water right number - R36-00099

Prefix Translation: RESEARCH

+ - - - - Remarks - - - - - +
WATER IS DELIVERED THROUGH SANDS DITCH.
0.25 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE
LOSSES IN DELIVERY OF THIS RIGHT, 36-07233 AND 36-07172.

+ - - - - Old Water Right Numbers - - - - - +
No Old Water Right Numbers Found

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

+ - - - - Decree Plaintiff - - - + + - - - - Decree Defendant - - - + + - Decree Date - +
NEW INTERNATIONAL MORTGAGE BANK IDAHO POWER COMPANY 00/00/0000

+ - - - - Comments - - - - - +
Date: 01/15/1991 User Id: BEDKE Subject: SCC-STAFF REVIEW
Date: 01/15/1991 User Id: BEDKE Subject: SCC-STAFF REVIEW

+ - - Audit Fields - - +
08/17/92 THORNTON

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

Court Report Filing	- 00/00/0000	Field Inspection Made	- 00/00/0000	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 08/17/1992	Old Judicial District	-
Claim Received Date	- 07/22/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S001058	Water District	- 36A
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- AND/OR	Presumption Flag	-
				Notice of Error Flag	-

Water Right Number - R36-00099

Adj. Flag Translation: RESEARCH

Old (D) Number -

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

*** C - CURRENT OWNER ***
PORTER

BOB

1 - 562 SHOUP AVE. W.
2 -
3 -

City- TWIN FALLS State- ID Zip- 83301

Phone - 208-734-3455

SURBAUGH

FRED

1 - 562 SHOUP AVE. W.
2 -
3 -

City- TWIN FALLS State- ID Zip- 83301

Phone - 208-734-3455

+ - - Priority Date - - +
04/01/1888

+ - - - Region - - - +
17 Error in Region

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

+ - - - Status - - - - +

+ - - - - Source - - - - - +
BILLINGSLEY CREEK

+ - - - - - Tributary - - - - - +
SNAKE RIVER

+ - - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County (Blank if no Index Code)

07S 13E 11 NW SW NE (47) GOODING

+ - - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
01 - IRRIGATION ~~03/15~~ ^{4/1} ~~11/15~~ ^{10/31} ~~2.280~~ ^{1.31} ~~228.00~~ ¹⁵⁹

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
~~2.280~~ ^{1.31} ~~228.00~~ ^{171.0}

+ - - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County
07S 13E 15 SW NE 13.0 01 IRRIGATION (47) GOODING
07S 13E 15 SE NE 25.0 01 IRRIGATION (47) GOODING
~~07S 13E 15 SE SW 8.0 01 IRRIGATION (47) GOODING~~
07S 13E 15 NE SE 2.0 01 IRRIGATION (47) GOODING
07S 13E 15 NW SE 5.0 01 IRRIGATION (47) GOODING
07S 13E 15 SW SE 01 IRRIGATION (47) GOODING
07S 13E 15 SE SE 01 IRRIGATION (47) GOODING

Total Acres: 53.0

+ - - Diversion Means - VIA SANDS DITCH

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - ~~R36-00100~~ NONE

Water right number - R36-00099

Adj. flag translation: RESEARCH

+ - - - - Remarks - - - - -
No Remarks found.

+ - - - - Old Water Right Numbers - - - - -
No Old Water Right Numbers Found

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

+ - - - - Decree Plaintiff - - - + + - - - - Decree Defendant - - - + + - Decree Date - +
NEW INTERNATIONAL MORTGAGE BANK IDAHO POWER COMPANY 00/00/0000

+ - - - - Comments - - - - -
Date: 01/15/1991 User Id: BEDKE Subject: SCC-STAFF REVIEW

+ - - Audit Fields - - +
BEDKE

+ - - - - Water Rights Dates and Flags Area - - - - -
Temporary Right -P Receipt Number - S001058 Water District - 36A

Water Right Number - A36-00099

Adj. Flag Translation: Adjudication Temporary Work Area Old (D) Number -

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

*** C - CURRENT OWNER ***
PORTER

BOB

1 - 562 SHOUP AVE. WEST ^{W.} _{DB}
2 -
3 -
City- TWIN FALLS State- ID Zip- 83301
Phone - 208-734-3455
1 - 562 SHOUP AVE. WEST _{DB}
2 -
3 -
City- TWIN FALLS State- ID Zip- 83301
Phone - 208-734-3455

SURBAUGH

FRED

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +
04/01/1888 17 D - DECREED+ - - - - - Source - - - - - + + - - - - - Tributary - - - - - +
BILLINGSLEY CREEK SNAKE RIVER+ - - - - - Point of Diversion - - - - - +
TwN Rng Sec Tract Lot RFlg County Stream Index (Blank if no Index Code)
07S 13E 11 NW SW NE (47) GOODING+ - - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
01 - IRRIGATION 03/15 11/15 8.000+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - + + - Total Consumptive Use - + + - KW Usage - +
8.000 294.0+ - - - - - Place of Use - - - - - +
TwN Rng Sec Tract Lot Acres Code Description County
07S 13E 15 SW NE 22.0 01 IRRIGATION (47) GOODING
07S 13E 15 SE NE 31.0 01 IRRIGATION (47) GOODING
07S 13E 15 SE SW 5.0 01 IRRIGATION (47) GOODING
07S 13E 15 NE SE 16.0 01 IRRIGATION (47) GOODING
07S 13E 15 NW SE 2.0 01 IRRIGATION (47) GOODING
07S 13E 15 SW SE 16.0 01 IRRIGATION (47) GOODING
07S 13E 15 SE SE 6.0 01 IRRIGATION (47) GOODING

Total Acres: 98.0

+ - - Diversion Means - VIA SANDS DITCH

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - A36-00100 AND CLAIMS FOR WILDLIFE _{DB}

Water right number - A36-00099

Adj. flag translation: Adjudication Temporary Work Area

+ - - - - Remarks - - - - - +
No Remarks found.

+ - - - - Old Water Right Numbers - - - - - +
No Old Water Right Numbers found.

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

+ - - - - Decree Plaintiff - - - + + - - - - Decree Defendant - - - + + - Decree Date - +
NEW INTERNATIONAL MORTGAGE BANK IDAHO POWER COMPANY 00/00/0000

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

+ - - Audit Fields - 07/22/88 MERRITT

+ - - - - 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 - 01/21/1985	Old Judicial District -
Claim Received Date - 07/22/1988	Last Amended Date - 00/00/0000	Temporary Right - P
Claims Tape Error Flg -	Receipt Number - S001058	Water District - 36A
Fee Exempt Flag -	POU Ownership Flag - Y	Federal/State Indicator - S
	Name Connector - AND/OR	Presumption Flag -

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

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-00099

2001 JAN 30 PM 3:22
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: BOB PORTER
FRED SURBAUGH
562 SHOUP AVE WEST
TWIN FALLS, ID 83301

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 2.83 CFS

0.48 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE
LOSSES IN DELIVERY OF THIS RIGHT, 36-07172 AND 36-07233.
USE OF THIS RIGHT WITH RIGHTS 36-07172 AND 36-07233 IS
LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 13.2 CFS.

PRIORITY DATE: 04/01/1888

POINT OF DIVERSION: T07S R13E S11 NWSWNE Within Gooding County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	02-15 TO 11-30	2.83 CFS

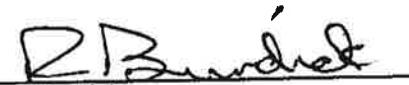
PLACE OF USE:	Irrigation	Within Gooding County
	T07S R13E S15	SENE 25.0
	SWNE 11.0	NWSE 3.0
	NESE 14.0	SESE 5.0
	SWSE 6.0	
	64.0 Acres Total	

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

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

RULE 54(b) CERTIFICATE

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


Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

RECEIVED

JUL 12 1999

Department of Water Resources

RECEIVED

JUL 26 1999

Department of Water Resources

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

In Re SRBA

Subcase 36-00099

Case 39576

STANDARD FORM 5

This form is used to report the stipulated elements of one 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 to the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

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

Date: July 8, 1999

Josephine P. Beeman 7/19/99
IDWR Concurrence

Josephine P. Beeman 8 July 1999
Attorney for North Snake Ground
Water District, May Farms, Ltd. and
Faulkner Land and Livestock Co.

Bob Porter
Bob Porter, Claimant/Objector
Hagerman Gun Club

Gregory C. Wednesday
Attorney for Cranney Bros, Kevin
Michaelson and Doug Grant

Fred Surbaugh
Fred Surbaugh, Claimant/Objector
Hagerman Gun Club

Deputy Attorney General
Deputy Attorney General for the Idaho
Department of Fish and Game

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

DATE: July 8, 1999
PAGE: A-1

RIGHTS FROM: SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

RIGHT NUMBER: 36-00099

NAME AND ADDRESS: BOB PORTER
FRED SURBAUGH
598 SUNRISE W.
TWIN FALLS, ID 83301

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 2.83 CFS

0.48 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE
LOSSES IN DELIVERY OF THIS RIGHT, 36-07233 AND 36-07172.

USE OF THIS RIGHT WITH RIGHT NOS. 36-07172 AND 36-07233
IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 13.2 CFS.

PRIORITY DATE: 04/01/1888

POINT OF DIVERSION: T07S R13E S11 NWSWNE Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	2.83 CFS

PLACE OF USE: IRRIGATION Within GOODING County
T07S R13E 15 NESE 14 NWSE 3 SWSE 6 SESE 5
SWNE 11 SENE 25
64 ACRES TOTAL

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

JPB

act

Jim

EJP
AHL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23 day of July 1999, I caused to be served a true and correct copy of the foregoing STANDARD FORM 5 by the method indicated.

Drs. Porter and Surbaugh
598 Sunrise N.
Twin Falls, Idaho 83301

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile:

Michael C. Creamer
Givens Pursley LLP
P.O. Box 2720
Boise, Idaho 83701-2720

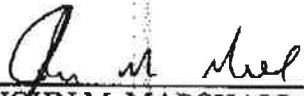
- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____

Dana Hofstetter
Beeman & Hofstetter
P.O. Box 1427
Boise, Idaho 83701-1427

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☐ Statehouse Mail

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail



JOHN M. MARSHALL
Deputy Attorney General

REQUEST FOR HEARING ON DETERMINATION OF PERMISSIVE REVIEW BY THE PRESIDING JUDGE
- Page 1

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 36-99 V2

WATER RIGHT NUMBER: 36-99 V2

<u>Owner Type</u>	<u>Name and Address</u>
Attorney	PATRICK D BROWN HEPWORTH LEZAMIZ & HOHNHORST 133 SHOSHONE ST N PO BOX 389 TWIN FALLS, ID 833030389 (208)734-7510
Current Owner	BOB PORTER 598 SUNRISE N TWIN FALLS, ID 83301 (208)733-7759
Current Owner	FRED SURBAUGH 598 SUNRISE N TWIN FALLS, ID 83301 (208)733-7759

Priority Date: 04/01/1888 ✓

Basis: Decreed

Status: Active

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

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	2/15	11/30 ✓	1.310 CFS	
	<u>Total Diversion:</u>		1.310 CFS	2.83 ✓

Location of Point(s) of Diversion

BILLINGSLEY CREEK	NW1/4SW1/4NE1/4	Sec. 11, Twp 07S, Rge 13E, B.M.
GOODING County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
07S	13E	15			13.0	25.0									8.0	2.0	5.0		53.0
					11										14	3	6	5	64 ac

Total Acres: 53

Conditions of Approval:Remarks:

Rec updated per SFS
 JPH
 4/16/02

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 36-99 V2

1. Explanatory WATER IS DELIVERED THROUGH SANDS DITCH.
0.25 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY
OF THIS RIGHT, 36-07233 AND 36-07172.

Comments:

1. BEDKE 1/15/1991 SCC-STAFF REVIEW
Comment: SCC-STAFF REVIEW
2. CLELLAND 10/21/1992 NOE REPSONSE
Comment: LETTER SENT FOR REDUCED DECREED IRRIGATION. I SPOKE TO DR. PORTER ON THE PHONE
AND SUGGESTED HE CONTACT JEFF PEPPERSACK FOR A FIELD TRIAL.
3. SSHERMAN 12/30/1997 NOTICE OF APPEARANCE
Comment: NOA FROM PAT BROWN APPEARING FOR PORTER & SURBAUGH.
4. SCLELLAN 1/12/1998 CHANGE OF ADDRESS
Comment: PER AMENDMENT OF CLAIM.

Dates and Other Information:

Decreed Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Defendant:
Plaintiff:
Civil Case Number:
Judicial District:
Notice of Error Flag: RECEIVED - NO CHANGE TO RECOMMENDATION
State or Federal:
Owner Name Connector: 0
Water District Number: 36A
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust: False
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: AND

SubCase:

SubCase Number: 36-99
Class: 2
SF5 Filed Date: 7/23/1999
Special Master Recom Signed Date: 7/26/1999
Attorney Assigned: NICHOLAS B SPENCER
Adjudication Agent:
Basis of Claim:
Date Filed: 4/29/1993 Objection Status: Active
Date Filed: 7/31/1998 Objection Status: Active



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

July 6, 2001

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

BOB PORTER
FRED SURBAUGH
PO BOX 1808
TWIN FALLS ID 83303-1808

9-5-01
response

RE: Snake River Basin Adjudication (SRBA)
Water Rights #36-99, 36-100, 36-7172, 36-7233, 36-10249

Dear Water Right Holders:

Mail sent to you by the SRBA Court was returned to the SRBA Court by the Postal Service. We received the returned mail on July 2. The Postal Service advised us your address has changed to the above address. We have enclosed the returned mail.

Although we have reached you at the address above, we need your written confirmation this is your correct mailing address before we can change our records.

Please sign your name at the bottom of this letter and return it to this office. Make corrections to your name and address if necessary before returning this letter, **list any other water rights you have**, and return this letter by July 31, 2001. Thank you for your help.

If your mail delivery address changes in any form, please contact us in writing so we can update our records. Be sure to list your water right numbers.

If there has been a change in ownership of the property connected with the water rights referenced above, please call this office toll-free at 1/800-451-4129 to obtain a form to make this required change to the water right records.

Sincerely,

Sally Sherman
Sally Sherman

Technical Records Specialist
Adjudication Bureau

RECEIVED

SEP 21 2001

Department of Water Resources
Southern Region

SS:region

Enclosure:

Returned Mail

#####

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

Water Right Holder's Signature

Telephone No.

STATE OF IDAHO
District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

36-99
36-100
36-7172
36-7233
36-10249

Bob Porter
Fred Surbqugh
562 Shoup Avenue West
Twin Falls, ID 83301



36-00099
36-00000

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

SUR5562 833012004 1999 06 02/03/01
FORWARD TIME EXP RTN TO SEND
FRED SURBAUGHN LDR
PO BOX 1806
TWIN FALLS ID 83303-1806

RETURN TO SENDER

In Re SRBA

83303/2707
83301-1806



RECEIVED

DEC 28 2000

Department of Water Resources
Southern Region

1999 MAR -3 PM 3:49

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 TWIN FALLS COUNTY

In Re SRBA

Case No. 39576

) Subcase Nos. 36-00006, 36-00007,
) 36-00008, 36-00022, 36-00023,
) 36-00047, 36-00068, 36-00069,
) 36-00099, 36-00100, and 36-00106
)

) ORDER GRANTING IDAHO
) DEPARTMENT OF FISH & GAME'S
) MOTION TO SHORTEN TIME
)

On February 12, 1999, the Court heard the *Idaho Department of Fish & Game's Motion to Shorten Time*. For good cause shown, IT IS ORDERED that the *Motion to Shorten Time* is hereby GRANTED.

IT IS FURTHER ORDERED that the following schedule shall apply to all pending Motions for Summary Judgment filed in the above-referenced subcases prior to February 12, 1999 and any Motions for Summary Judgment adopting these pending motions.

(1) **February 17, 1999, 5 p.m.** – Deadline to file motions adopting Motions for Summary Judgment pending as of February 12, 1999.

(2) **February 22, 1999, 5 p.m.** – Deadline for service of Respondents' Response Briefs. Respondents must serve their Response Briefs on the Claimants by

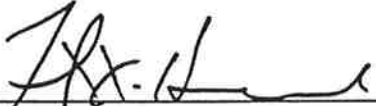
overnight mail delivery to ensure receipt by the Claimants no later than **5 p.m. on February 23, 1999.**

(3) **February 23, 1999, 5 p.m.** – Deadline for service of Claimants' Response Briefs. Claimants must serve their Response Briefs on all Respondents by overnight mail delivery to ensure receipt by the Respondents no later than **5 p.m. on February 24, 1999.**

(4) **March 1, 1999, 5 p.m.** – Deadline for service of all Reply Briefs.

(5) **March 8, 1999, 10 a.m.** – Hearing at the Snake River Basin Adjudication Courthouse in Twin Falls, Idaho on all summary judgment motions covered by this order.

ENTERED this 3 day of ^{March}~~February~~, 1999.



Special Master Fritz X. Haemmerle

RECEIVED

MAR 09 1999

Department of Water Resources

William Strange, Big Springs Water Users Assoc.,
C-CAN Partners, John W. Jones, Jr., Hagerman
Gun Club (Porter & Surbaugh), River Grove Farms, Inc.

PARKER, WARR & BROWN, LLP
Patrick D. Brown
812 Shoshone Street East
Twin Falls, ID 83301
Telephone: (208)735-8812

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

In Re SRBA	)	Subcase Nos. 36-00006, 36-00007,
	)	36-00008, 36-00022, 36-00023,
	)	36-00047, 36-00068, 36-00069,
Case No. 39576	)	36-00099, 36-00100, 36-00106,
	)	
	)	<u>MOTION TO COMPEL AND</u>
	)	<u>FOR SANCTIONS</u>
	)	

COME NOW, the Claimants in the above listed Subcases, and move the Court under I.R.C.P. 37(a) for Order Compelling Responses to Interrogatories and Requests for Production against each Respondent. The Claimants also move the Court for entry of an Order sanctioning the attorneys who signed the Interrogatory and Request for Production Responses pursuant to I.R.C.P. 11(a) and I.R.C.P. 37(a).

This Motion is supported by the Brief and the Affidavit of Counsel with the Interrogatory and Request for Production Responses being filed contemporaneously with this Motion.

COPY

Oral argument is requested.

Dated this 4th day of March, 1999.

PARKER, WARR & BROWN, LLP

By: 

Patrick D. Brown

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 812 Shoshone St. East, Twin Falls, Idaho 83301, and one of the attorneys for the claimants in this matter, certifies that on the 5th day of March, 1999, he served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)

Director of IDWR
P. O. Box 83720
Boise, ID 83701-2139

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)

Jeffrey Fereday
Givens Pursley, LLP
277 N. 6th St, Ste. 200
P. O. Box 2720
Boise, ID 83701-2720

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)

Josephine P. Beeman
Dana L. Hofstetter
Beeman & Hofstetter, P.C.
P.O. Box 1427
Boise, ID 83701-1427

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)

RECEIVED

JUL 28 1999

Department of Water Resources

RECEIVED

AUG 05 1999

Department of Water Resources
Southern Region

South File
SC

1999 JUL 26 AM 11:08

DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO

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

In Re SRBA

Case No. 39576

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

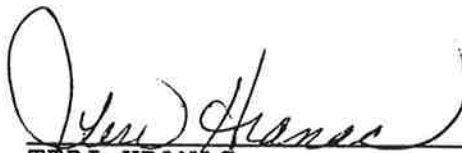
Water Right(s): 36-00099

On July 26, 1999, Special Master FRITZ X HAEMMERLE issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

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

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

DATED July 26, 1999.


TERI HRANAC
Deputy Clerk

1999 JUL 26 AM 11:06
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO

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

In Re SRBA	)	SPECIAL MASTER'S REPORT
	)	
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
_____	)	FOR WATER RIGHT 36-00099

I. FINDINGS OF FACT

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

All objections to this water right were resolved by stipulation of the parties with a *Standard Form 5*. All parties to the subcase and IDWR are signatories to the *Standard Form 5*.

As to season of use, IDWR has informed the court that it intends to recommend February 15 through November 30 as the season of use in the Hagerman Valley in a forthcoming Director's Report. All parties, including the claimants, will be able to object to that recommendation when the Director's Report is filed. Until that time, the court will recommend February 15 through November 30 for the irrigation use in this water right, with the understanding that the season of use for the irrigation claims is not final.

II. CONCLUSIONS OF LAW

Therefore, based on the file and record herein, IT IS RECOMMENDED that this water right be decreed with the elements as set forth in the *Partial Decree Pursuant to I.R.C.P. 54(b) for Water Right 36-00099*.

DATED: July 26, 1999.



FRITZ X. HAEMMERLE, Special Master
Snake River Basin Adjudication

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

In Re SRBA)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-00099

1999 JUL 26 AM 11: L

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

NAME AND ADDRESS: BOB PORTER
FRED SURBAUGH
562 SHOUP AVE WEST
TWIN FALLS, ID 83301

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 2.83 CFS

0.48 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE
LOSSES IN DELIVERY OF THIS RIGHT, 36-07172 AND 36-07233.
USE OF THIS RIGHT WITH RIGHTS 36-07172 AND 36-07233 IS
LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 13.2 CFS.

PRIORITY DATE: 04/01/1888

POINT OF DIVERSION: T07S R13E S11 NWSWNE Within Gooding County

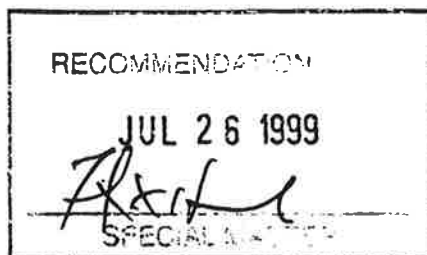
PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	02-15 TO 11-30	2.83 CFS

PLACE OF USE:	Irrigation		Within Gooding County
	T07S R13E S15	NESE 14.0	NWSE 3.0
		SWSE 6.0	SESE 5.0
		SWNE 11.0	SENE 25.0
	64.0 Acres Total		

RULE 54(b) CERTIFICATE

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

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



1999 JUL 26 AM 11:08
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA)

Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 36-00099

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on July 26, 1999, with sufficient first-class postage prepaid to the following:

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

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

CERTIFICATE OF MAILING

PAGE 1
07/26/99

6/9/94

COMMUNICATION DOCUMENTATION

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Georgia Satterlee

DATE

December 3, 1997 8:49am

CUSTOMER

Jayne @ Land Title/Escrow

SUBJECT: 36-00099,-07172,-07233

phone call (x) walk-in (.)

She requested the above claims, sent her profile reports via fax number 934-5890.

SUBCASE NO. 36-00099

	CLAIM (7/22/88)	AMENDED CLAIM	RECOMMENDATION	OBJECTION
NAME	Bob Porter 562 Shoup Ave. West Twin Falls, ID 83301 Fred Surbaugh 562 Shoup Ave. West Twin Falls, ID 83301	N/A	Bob Porter &/or Fred Surbaugh	XX Dr. Robert Porter 598 Sunrise Blvd. N. Twin Falls, ID 83301 Dr. Fred Surbaugh 3359 Woodridge Twin Falls, ID 83301
BASIS OF CLAIM	Decree		Decree	
SOURCE	Billingsley Creek		Billingsley Creek	
QUANTITY	8.000 cfs		1.31 cfs	XX maximum quantity: as decreed with consumptive use changed accordingly
PRIORITY DATE	4/1/1888		4/1/1888	
PURPOSE OF USE	Irrigation		Irrigation	
PERIOD OF USE	3/15 - 11/15		3/15 - 11/15	XX 1/1 -12/31
POINT OF DIVERSION	T07S R13E S11		T07S R13E S11	
PLACE OF USE	T07S R13E S15 98 acres		T07S R13E S15 53 acres	XX as claimed for a total of 98 acres
REMARKS			A measuring device of a type approved by IDWR shall be maintained as a part of the diverting works. Lockable controlling works of a type acceptable to IDWR shall be permanently installed and maintained as part of the diverting works. Water is delivered through the Buckeye Ditch. Property is also known as lot 03, blk 02, Willowbrook Subdiv..	XX strike all appearing after "Sands Ditch";

CLAIM NUMBERS 36-00099
36-00100

DATE 10/6
AGENT 10/6

TRANSFER NUMBER _____
OBJECTION FILED Yes
TOTAL ACRES FROM RECOMMENDATION 53
GEOGRAPHIC INFO SYSTEM 54

RIGHT NO				NE				NW				SW				SE			
	TNS	RNG	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
RECOM	75	13E	15			13	25									8	2	5	53
GIS						11.9	25.1									10.4	2.2	4.3	53.9
RECOM																			
GIS																			
RECOM																			
GIS																			
RECOM																			
GIS																			
RECOM																			
GIS																			
RECOM																			
GIS																			

UPDATED

POLYGON # _____ UPDATED

B36-DBPOU.DBF _____

POLYGON CREATED ON 604 (✓) _____

B36-DBPOD.DBF _____

ATTRIBUTES OF B36-POU.SHP (*) 90/6/97

ATTRIBUTES OF B36-POD.SHP (456) 10/6/97

*POLY-ID # = 524 525 526 527 528 529 530 531 532
370 1.0 2.2 1.2 6.2 1.0 1.6 0.7 1.1

533 534
1.2 0.7

POD-ID #456 = Sands Ditch Headgate

P/U CONFLICT yes () no (X)

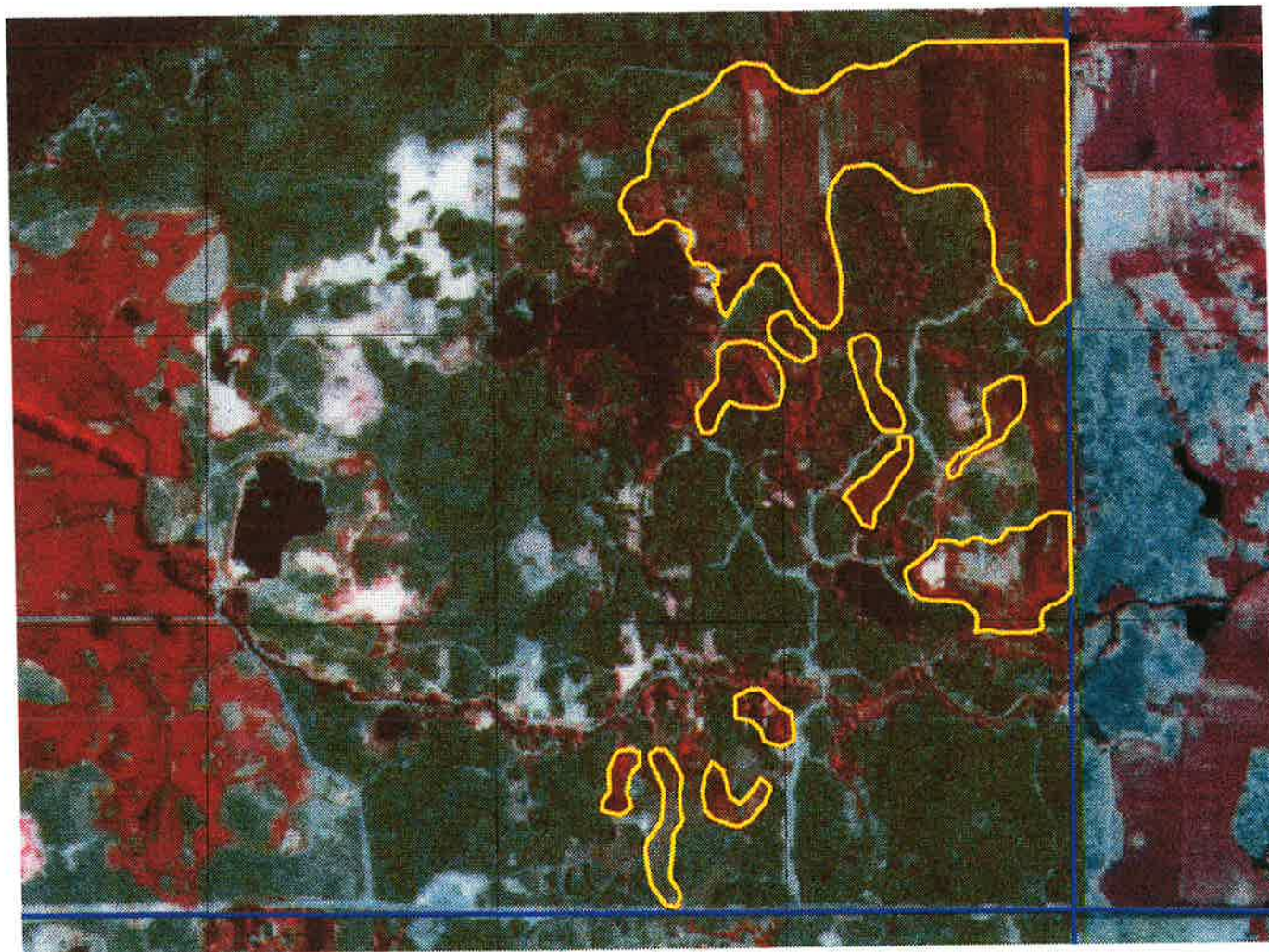
P/D CONFLICT yes () no (X)

READY FOR DECREE yes () no ()

SENT FOR DECREE yes () no ()

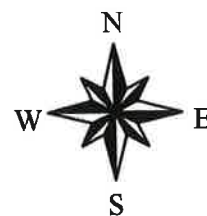
IDAHO DEPARTMENT OF WATER RESOURCES

**36-00099, 36-00100
PORTER & SURBAUGH**



660 0 660 1320 1980 2640 Feet

TNS 7S, RNG 13E, SEC 15



⊙ RECOMMENDED POINT OF DIVERSION



RECOMMENDED PLACE OF USE



SECTION LINES &/OR TRACT LINES



QUARTER/QUARTER LINES

GIS PLACE OF USE PRESENTATION
1987 and/or 1988 NAPP PHOTOGRAPHY
DATA ENTRY OCTOBER 1997
BY DOUGLAS JONES

NAME:

Mr. Ron - Pat Brown

DATE:

5/20/96

ADDRESS:

CITY/ZIP:

Twin Falls 83301

PHONE:

734-7510

(please print)

I HAVE REQUESTED TO REVIEW AND/OR OBTAIN COPIES OF THE FOLLOWING DOCUMENTS ON FILE WITH THE DEPARTMENT OF WATER RESOURCES.

ADJUDICATION
CLAIM NUMBERS

ALLOCATION WATER
RIGHT NUMBERS

OTHER
DOCUMENTS

A36-00099

RESEARCH SUBJECT: _____

COPIES MADE OF: _____

10 COPIES OR LESS: FREE

NUMBER OF COPIES MADE: 83

FEE DUE @ \$0.05 PER COPY: \$4.15

OTHER FEES: _____

RECEIPT NUMBER: 5019151

ASSISTING AGENT: HLB

CK NO. 18694

Brett Legg
(customer signature)

RECEIVED

MAY 20 1996

Department of Water Resources
Southern Region

MICROFILMED
DEC 03 1996

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. 36-00099 -0001

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

RESPONSE TO OBJECTION

Petitioner,)

vs.)

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

Respondents.)
_____)

I. GENERAL INFORMATION

1. Person responding to objection:

Name: R. KEITH HIGGINSON, DIRECTOR

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

Briefly describe your interest in this water right:

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

(Over)

MICROFILMED
OCT 12 1994

2. Person who filed objection:

Name: BOB PORTER
Address: FRED SURBAUGH
562 SHOUP AVE WEST
TWIN FALLS ID 83301

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.
8. |X| Period of Year: I respond to the objection concerning the period of year when water is used or is necessary for the purpose stated.
9. |X| Place of Use: I respond to the objection concerning:
- 9a. |X| The legal description of the place of use.
- 9b. |X| The number of irrigated acres within each forty (40) acre subdivision.
10. |X| Consumptive Use: I respond to the objection concerning the annual volume of consumptive use.

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

14. |X| Other: I respond to the objection concerning:

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

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection 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 response to Statement of the Objection item 8, and all allegations of the objection regarding that item, IDWR responds as follows: (1) The decree asserted by the claimant does not contain a period of use decreed for this water right. (2) Idaho Code Sec. 42-1411(2)(g) requires the director to determine the period of use of each water right acquired under state law that is recommended in the director's report. (3) IDWR has developed irrigation season of use standards for various climatic areas throughout the state based on a 75% chance of a 24 degree fahrenheit frost. (4) The irrigation season of use cannot exceed the period in which water may be beneficially used. (5) The period of the year during which this water right may be used is

(Over)

consistent with the standard irrigation season of use for the area in which the place of use of this water right is located.

(6) Water may be used for irrigation outside the standard season of use, subject to the conditions set forth in general provision 12b of the director's report. (7) 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. (8) The eventual decree by the SRBA Court of the irrigation season of use will not constitute a taking because the right is limited to the period in which water may be beneficially used. IDWR further responds that it recommended the season of use as claimed. By now seeking a year-round season of use, the claimant improperly seeks to use the objection process to amend the notice of claim. A claimant must obtain leave of court to amend a claim after the director's report is filed, just as a party must obtain leave of court to file a late claim after the director's report is filed. Once leave of the court is granted, IDWR can investigate the amended claim and make an appropriate recommendation to the court.

In response to Statement of the Objection 9 and 9.a, and all allegations of the objection regarding those items, IDWR responds that the recommended water right accurately describes the place of use of the right.

In response to Statement of the Objection 9 and 9.b, and all allegations of the objection regarding those items, IDWR responds that the recommended water right accurately describes the total number of acres within each 40 acre subdivision upon which IDWR found water was beneficially used for irrigation under this water right.

In response to Statement of the Objection item 10 and all allegations of the objection regarding that item, IDWR responds as follows: (1) The decree asserted by the claimant did not set an annual volume of consumptive use for this water right. (2) Idaho Code Sec. 42-1411(2)(i) requires the director to determine the annual volume of consumptive use for each water right acquired under state law and recommended in the director's report. (3) Idaho Code Sec. 42-1401A(2) provides that the quantification of consumptive use "is included as a rebuttable presumption in a decree only for the purpose of transfers pursuant to section 42-222, Idaho Code"; therefore, the consumptive use recommended for this water right is included solely for use in future transfer proceedings. (4) The annual volume of consumptive use claimed and recommended for this right is 3 acre feet per acre. This is the maximum volume of water consumed by the most water consumptive crop (pasture) that can be

grown in the area during the period of year when water is used for irrigation, as provided by Idaho Code Sec. 42-1401A(2). (5) The recommendation of the director to the SRBA Court as to how the right should be decreed does not constitute a taking because it is simply a recommendation and not a final determination of the right. (6) The eventual decree by the SRBA Court of the amount of water beneficially used, even if less than the amount previously decreed, will not constitute a taking because the right is limited to that amount beneficially used.

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

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

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

CHANGES TO THE DIRECTOR'S REPORT

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

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

(Over)

No. of
Pages

Notice of Claim No. A36-00099

4

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

4

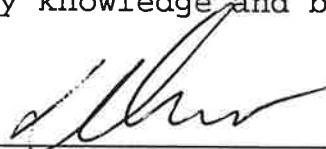
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

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

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



Signature of person filing response

By:



(Attorney signing in
representative capacity)

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



Notary Public for Idaho

Residing at: _____

My Commission expires: _____

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

(Over)

CERTIFICATE OF MAILING

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

1. Original to:

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

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

See No. 3

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

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

4. One copy to:

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



Signature of Respondent or attorney
mailing on Respondent's behalf

C 72
(6050)

10/11
15/14

C 294
(6750)

C 94
(6130)
B 8.1

C 231
(6442)

C 227
(6380)

A 16
C 9.7

6

5

16

22 23

"NOT TO SCALE"

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OCT 12 1994

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A36-00099
Date Received: 7/22/1988
Receipt No:
Received By: AD

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: BOB PORTER 208-734-3455
Address: 562 SHOUP AVE. WEST
TWIN FALLS, ID 83301

AND/OR
Name: FRED SURBAUGH 208-734-3455
Address: 562 SHOUP AVE. WEST
TWIN FALLS, ID 83301

2. Date of Priority: APR 01, 1888

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

4. Point of Diversion:

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

5. Description of diverting works:
VIA SANDS DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	8.000		

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

8. Total consumptive use is 294.0 Acre Feet Per Annum.

9. Non-irrigation uses:

A36-00099

Page 1

Date: 07/22/88

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JAN 25 1993

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OCT 12 1994

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
07S	13E	15	SW		NE		IRR	22.0
			SE		NE		IRR	31.0
			SE		SW		IRR	5.0
			NE		SE		IRR	16.0
			NW		SE		IRR	2.0
			SW		SE		IRR	16.0
			SE		SE		IRR	6.0
							Section Acres	98.0
							Total Acres	98.0

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:
A36-00100 AND CLAIMS FOR WILDLIFE

14. Remarks:

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

NEW INTERNATIONAL MORTGAGE BAN
Decree Plaintiff

vs

IDAHO POWER COMPANY
Decree Defendant

MICROFILMED
JAN 25 1993
MICROFILMED
OCT 12 1994

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: 1

For Individuals:

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

Signature of Claimant(s): [Signature] Date: 22 July 88
Date: _____

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 22 day
of July 19 88 [Signature]
Notary Public

Seal

Residing at Kimberly, ID
My Commission Expires 6/30/92

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

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

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

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OCT 12 1994

- 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

17-Mar-1993

SUSAN WALMSLEY
HAGERMAN WATER RIGHTS OWNERS
PO BOX 306
HAGERMAN ID 83332

RE: Copy of SRBA File(s): 36-00099, 36-00100, 36-07172, 36-07233,
36-10249

Dear Ms. Walmsley:

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:

\$14.92

Sincerely,

Jeanie
Jeanie Robertson
Records Clerk

Encl:

cc: Robert J Porter
562 Shoup Ave W
Twin Falls ID 83301

Porter

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cwr.

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OCT 12 1994

Twin Falls Orthopedic Associates, P.A.

Orthopedic & Fracture Surgery

Rodney D. Swartling, M.D.

Robert J. Porter, II, M.D.

John W. Howar, M.D.

Frederick L. Surbaugh, M.D.

David P. Murray, M.D.

RECEIVED

MAR 08 1993

Department of Water Resources
Southern Region Office

March 3, 1993

Idaho Dept. of Water Resources
Southern Region
222 Shoshone St. E.
Twin Falls, ID 83301-6602

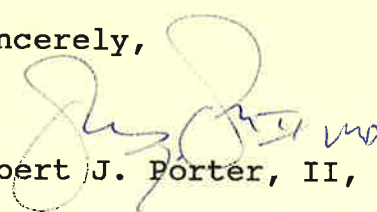
Dear Sir:

I would like for you to send copies of all information included in my file as it relates to water right numbers A36-00100, A36-00099, A36-07233, A36-07172, and A36-10249 to Susan Walmsley, Hagerman Water Rights Owners, P. O. Box 306, Hagerman, ID 83332.

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

Please send me the bill for these copies at 562 Shoup Ave. W., Twin Falls, ID 83301.

Sincerely,


Robert J. Porter, II, M. D.

RJP/jvb



562 Shoup Ave. West
Twin Falls, Idaho 83301
Telephone (208) 734-3455
24 Hours a Day

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OCT 12 1994

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JUN 01 1993

Department of Water Resources
Adjudication Bureau

1993 MAY 28 PM 2:41

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 the General Adjudication of Rights
to the Use of Water From the Snake River
Basin Water System.

Case Nos. 36-00099; 36-00100;
36-0172; and 36-07233

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

ORDER REQUIRING
DESIGNATION OF COUNSEL

Petitioner,

36-00099 -0001/
93-05-0049

vs.

The United States; the State of Idaho; and
all Claimants to the Use of Water From
the Snake River Basin Water System,

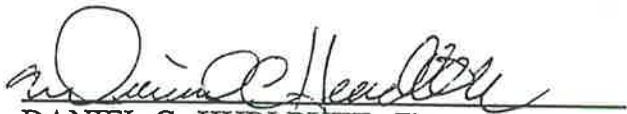
Respondents.

April 29, 1993, objections as to Water Rights Numbers 36-00099; 36-00100; 36-07172; and 36-07233 were filed by the law firm of Hepworth, Nungester & Lezamiz, Twin Falls, Idaho, on behalf of Bob Porter and Fred Surbaugh.

April 30, 1993, objections to the same water rights numbers were filed by the law firm of Rosholt, Robertson and Tucker, Boise, Idaho, also on behalf of Bob Porter and Fred Surbaugh.

IT IS ORDERED that Bob Porter and Fred Surbaugh designate, in writing, their counsel for purposes of proceeding on these objections which must be filed on or before 5:00 p.m., June 7, 1993. The Designation of Counsel shall be served on all counsel who have filed objections on behalf of Bob Porter and Fred Surbaugh and shall follow the General Docket Sheet Procedure.

DATED May 28, 1993.


DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER REQUIRING DESIGNATION OF COUNSEL** was mailed on May 28, 1993, in an envelope with sufficient first-class postage to the following:

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

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

Patrick D. Brown
Hepworth, Nungester & Lezamiz
P. O. Box 389
Twin Falls, ID 83303-0389

James C. Tucker
Rosholt, Robertson & Tucker
P.O. Box 2139
Boise, ID 83702-2139

Bob Porter and Fred Surbaugh
526D Shoup Ave. W.
Twin Falls, ID 83301

By 
Deputy Clerk

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

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

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.

Case No. A36-00099
(You must insert the
water right number you
are objecting to)

OBJECTION

36-00099 -0001/
93-04-0092

INSTRUCTIONS

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

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

(Over)

OBJECTION - 1

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OCT 12 1994

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

I. GENERAL INFORMATION

Please fill in the following information:

1. Person objecting:

Name: Bob Porter or Fred Surbaugh

Address: 562 Shoup Ave. West

Twin Falls, ID 83301

Briefly describe your interest in this water right:

Judicial Decree right pursuant to New

International Mortgage Bank v. Idaho Power

Company dated 3/22/1932 with a priority date

of 04/01/1888

2. Owner of the water right:

Name: See Exhibit "B" attached

Address: _____

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.

Place of use: as claimed for a total of 98 acres; Names & addresses as set forth in Exhibit "B" attached hereafter;

Remarks: strike all appearing after "Sands Ditch"; Period of use: 01/01 - 12/31; Maximum quantity: as decreed with 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"

Exhibit "B", Owners, page 1

VERIFICATION (Must be Completed)

State of Idaho

County of Blaine

Robert J. Porter II

(Name of person filing objection)

sworn, upon oath, deposes and says:

, being first duly

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.

[Signature]
Signature of person filing objection

By: [Signature]

(Attorney signing in representative capacity)

Subscribed and sworn to before me this 19 day of April, 1993.



LINDA M. ROUSSEAU

NOTARY PUBLIC - STATE OF IDAHO

Residing at _____, Idaho

Linda M. Rousseau
Notary Public for Idaho

Residing at: Blaine, Idaho

My Commission Expires: 9-11-93

(Over)

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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 23 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: Bob Porter or Fred Surbaugh

Owner's address: 562 Shoup Avenue West

Twin Falls, ID 83301

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 8 - IDWR recommends a period of use less than decreed and/or beneficially used. A reduction in water right would constitute a taking.

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

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

CHANGES TO DIRECTOR'S REPORT, page 4

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.

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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)

HAGERMAN DUCK CLUB MEMBERS

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(208) 733-7759 (home)
(208) 734-3455 (office)

EXHIBIT B

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OCT 12 1994

Dr. Fred Surbaugh
3359 Woodridge
Twin Falls ID 83301
(208) 733-9127

Mike Cord
P.O. Box 3962
Ketchum ID 83340
(208) 726-2770

(Hagerman.dc)

MICROFILMED
OCT 12 1994

NOTICE OF ERROR



RESPONSE



CORRECTED R PROOF

No


MICROFILMED

JAN 25 1993

AUG-24-1992

NOTICE OF ERROR FORM

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

Idaho Department of Water Resources

Statehouse Mail

Boise, Idaho 83720-9000

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

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

1. Water right number: 36-00099
2. Name: Fred Surbaugh
Bob Porter
Address: 562 Shoup Ave. W.
Twin Falls, ID 83301

Weekday Telephone Number: 734-3455

RECEIVED

SEP 24 1992

Department of Water Resources

MICROFILMED

JAN 25 1993

TEAR AT PERFORATIONS AND COMPLETE FORM ON OTHER SIDE

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

3. Describe the portion of proposed recommendation with which you disagree:
 - a) Period of Use
 - b) Quantity of Water
 - c) Place of Use/Total Acres
4. Describe the changes you wish to have made in the proposed recommendation:
 - a) Period of Use as claimed
 - b) Quantity of water as decreed & claimed
 - c) Place of use/total acres as claimed
5. Describe why you disagree with the proposed recommendation:
 - a) Recommended period of use may restrict maximum beneficial use of the water.
 - b) Claimants are entitled to the amount of water decreed & claimed.
 - c) Recommended place of use contains error.
6. Date: 9/24/92

SIGNATURE



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

INTER-DEPARTMENT MEMO

TO: JEFF PEPPERSACK

FROM: STEVE CLELLAND

1993
SUBJECT: Summer FIELD Study

DATE: 10-26-92

I am passing on this letter as suggested by Dr. Porter. .
I have included portions of his file copies to
help you review his situation.

If you need more info let me know.
At this point this is mainly for your planning
purposes.

* For your information

() Response required

Steve Clelland
signature

Twin Falls Orthopedic Associates, P.A.

Orthopedic & Fracture Surgery

Rodney D. Swartling, M.D.
Robert J. Porter, II, M.D.
John W. Howar, M.D.
Frederick L. Surbaugh, M.D.
David P. Murray, M.D.

RECEIVED

OCT 26 1992

Department of Water Resources
Southern Region Office



562 Shoup Ave. West
Twin Falls, Idaho 83301
Telephone (208) 734-3455
24 Hours a Day

October 21, 1992

Steve Clelland
Idaho Dept. of Water Resources
220 Shoshone St. E.
Twin Falls, ID 83301

Dear Steve:

I'm writing this letter to substantiate the gist of our conversation on the telephone yesterday. The reason I called you was to formally protest the IDWR's recommendation to cut back our water rights from 8 CFS. My second protest involves the IDWR cutting us back from 98 acres of land to 53 irrigated acres.

I specifically wanted the Dept. of Water Resources to meet with me in Hagerman to get a firsthand look at this very unusual property. Specifically, the property is 265 acres of very irregular, old basalt and lava flow ground. This ground is extremely porous, and sink holes crop up with great regularity. In fact, the sink hole problem is of such a magnitude that two gravel pits have been established, and we have had to purchase a backhoe as well as a dump truck in order to transport the gravel and sand to the areas of the sink holes. The water, of course, runs straight down the sink hole and back into the Snake River just above the Lower Salmon Dam. My hired man assures me there is no way that 1 CFS of water can be transported to the areas we irrigate without completely drying up. This measly amount of water, in fact, would not allow us to irrigate our land at all.

Again, I would like someone from the Dept. of Water Resources to come to our land, and I can easily show where we have been irrigating at least 100 acres of land in excess of the past 10 years. This past summer was an exception because we only got half of our normal amount of water out of the Sands Ditch.

You told me in our conversation that your department is overburdened with work at the current time and would be unable to visit our land in Hagerman by the 1st of November, which I understand is some sort of cutoff date. Let me reassure you we are available to meet with you on any day or any weekend during daylight hours between now and the 1st of November.

MICROFILMED
JAN 25 1993

Steve Clelland
October 21, 1992
Page 2

You told me to contact Jeff Peppersack in Boise who will be doing some actual irrigation studies in the summer of 1993. Hopefully you can forward a copy of this letter to Jeff so he can contact me in order that we may have him address the aforementioned problems on our property. We would be very willing to work with Jeff next summer so we can demonstrate to the resource department the peculiarities of our Hagerman soil.

If you feel this letter does not represent a good portion of our phone conversation, please dictate a letter to me concerning any discrepancies.

Sincerely,



Robert J. Porter, II, M. D.

RJP/jvb

cc: James C. Tucker
Rosholt, Robertson & Tucker
Attorneys at Law
P. O. Box 1906
Twin Falls, ID 83303-1906

MICROFILMED
JAN 25 1993



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

OCTOBER 21, 1992

FRED SURBAUGH
BOB PORTER
562 SHOUP AVE W
TWIN FALLS ID 83301

RE: NOTICE OF ERROR RESPONSE FOR 36-00099 & 36-00100

Dear Dr. Porter & Dr. Surbaugh,

This letter is in response to the Notice(s) of Error (NOE) you recently filed with IDWR regarding the Director's proposed recommendation of the claim(s) listed above. Your NOE questions the basis for recommendation of an amount that is less than the amount shown in a previous decree and disallowal of a claim to a previously decreed water right.

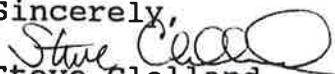
Under Idaho law, a water right is limited to the amount of water beneficially used for the purposes for which the water right was established. The amount of water beneficially used is limited to the amount that is actually used and is reasonably required. For irrigation purposes, a reasonable amount is the amount required using irrigation methods that are reasonably efficient under current circumstances. If the amount of a water right shown in a decree is greater than the amount that is beneficially used, then the portion that is not beneficially used is forfeited. In the case of 36-00100, if the water right shown in a decree is no longer beneficially used, the water right is forfeited.

The amount proposed to be recommended for your claim is based on the amount of water determined to be beneficially used for the recommended uses, based on available data and current methods of analysis. To support recommendation of a greater amount and as I mentioned to Dr. Porter on the phone, you may coordinate with IDWR staff in Boise to run field trials in the Hagerman valley during the 1993 season. The person to contact is Jeff Peppersack at 327-7900.

The season of use has been extended by the Director to the season you claimed of 3/15 to 11/15.

If you still disagree with IDWR's recommendations, you will have an opportunity to file an objection to the Director's Report with the court. When the Director's Report is filed with the court, you will be mailed a notice that will contain more information about the objection process.

Sincerely,


Steve Clelland

Senior Water Agent

MICROFILMED

JAN 25 1993

R PROOF



CVR



MAPS



PHOTOS



MISC



MICROFILMED

JAN 25 1993

Water Right Number - R36-00099 Prefix Translation: RESEARCH Old (D) Number -

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

*** C - CURRENT OWNER ***
PORTER

BOB

1 - 562 SHOUP AVE W

2 -

3 -

City- TWIN FALLS

State- ID Zip- 83301

Phone - 208-734-3455

SURBAUGH

FRED

1 - 562 SHOUP AVE W

2 -

3 -

City- TWIN FALLS

State- ID Zip- 83301

Phone - 208-734-3455

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
04/01/1888 17 SOUTHERN D - DECREED+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
BILLINGSLEY CREEK SNAKE RIVER

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

Twn Rng Sec Tract Lot RFlg County

07S 13E 11 NW SW NE (47) GOODING

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
01 - IRRIGATION 04/01 10/31 1.310+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
1.310 159.0+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County

07S	13E	15	SW NE	13.0	01	IRRIGATION	(47) GOODING
07S	13E	15	SE NE	25.0	01	IRRIGATION	(47) GOODING
07S	13E	15	NE SE	8.0	01	IRRIGATION	(47) GOODING
07S	13E	15	NW SE	2.0	01	IRRIGATION	(47) GOODING
07S	13E	15	SW SE	5.0	01	IRRIGATION	(47) GOODING

Total Acres: 53.0

+ - - Diversion Means - VIA SANDS DITCH

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - NONE

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JAN 25 1993
AKC

Water right number - R36-00099

Prefix Translation: RESEARCH

+ - - - - Remarks - - - - - +
WATER IS DELIVERED THROUGH SANDS DITCH.
0.25 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE
LOSSES IN DELIVERY OF THIS RIGHT.

+ - - - - Old Water Right Numbers - - - - - +
No Old Water Right Numbers Found

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

+ - - - - Decree Plaintiff - - - + + - - - - Decree Defendant - - - + + - Decree Date - +
NEW INTERNATIONAL MORTGAGE BANK IDAHO POWER COMPANY 00/00/0000

+ - - - - Comments - - - - - +
Date: 01/15/1991 User Id: BEDKE Subject: SCC-STAFF REVIEW
Date: 01/15/1991 User Id: BEDKE Subject: SCC-STAFF REVIEW

+ - - Audit Fields - - +
08/04/92 CHRISTEN

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

Court Report Filing	- 00/00/0000	Field Inspection Made	- 00/00/0000	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 08/04/1992	Old Judicial District	-
Claim Received Date	- 07/22/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S001058	Water District	- 36A
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- AND/OR	Presumption Flag	-
				Notice of Error Flag	-

MICROFILMED

JAN 25 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

17:19:12
06/29/90

PAGE: 14
QUICKLOOK INFORMATION

CLAIM NUMBER: A36-00099

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			Sc/HHT	N		HHT 8/4/92	DB D	KKC 8-4-92
POINT OF DIV	Y		8-90	N				
SOURCE				N				
PLACE OF USE	Y			N	1,2,4,5			
DIV. AMOUNT CFS/VOLUME				Y	6. DECADE			
CONSUMPTIVE USE				Y				
PURPOSES				Y				
PERIOD OF USE	Y			N				
BASIS OF CLAIM				N				
REMARKS				N				

lat
7-18-90

"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
JUN 29 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

17:19:12
06/29/90

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A36-00099

LAST: PORTER
ADDRESS: 562 SHOUP AVE. W.
CITY: TWIN FALLS
PHONE NUMBER: 208-734-3455

FIRST: BOB

STATE: ID ZIP: 83301

OWNER CODE: C

LAST: SURBAUGH
ADDRESS: 562 SHOUP AVE. W.
CITY: TWIN FALLS
PHONE NUMBER: 208-734-3455

FIRST: FRED

STATE: ID ZIP: 83301

OWNER CODE: C

FIELD EXAM REQUIRED?

VERIFICATION REQUIRED DUE TO REMARKS?

NO REMARKS IN CLAIM

DATABASE
N

FIELD
EXAMINER

MICROFILMED
JAN 25 1993

CONTACT PERSON: _____

PHONE NUMBER: (____) ____-____

DATE OF FIELD EXAM: ____/____/____

APPOINTMENT MADE: Y(____) N(____)

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

ACCOMPANIED BY: _____

PHONE NUMBER: (____) ____-____

RELATIONSHIP TO CLAIMANT: _____

DIRECTIONS TO PROPERTY / REMARKS:

*No one was home when we arrived - we looked around at the various ponds
& fields.*

MICROFILMED
JAN 25 1993

A. AJ CLAIM: # A36-00099 PRIORITY DATE: 04-01-1888 STAGE: D
B. WR RECORD: # 36-00099 PRIORITY DATE: 04-01-1888 STAGE: D

C. FIELD EXAM REQUIRED?
DUE TO PRIORITY DATE DISCREPANCY? (Y/N) DATABASE N FIELD EXAMINER N

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

REMARKS:

=====

RECOMMENDED PRIORITY DATE:
04-01-1888

REVIEWED BY lat

DATE 7-18-90

=====

MICROFILMED

JAN 25 1993

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A36-00099	07S	13E	11	NW	SW	NE		GOODING

OTHER AJ CLAIMS WITH SAME AJ POD

A PREFIX	R PREFIX
A36-00036	NONE
A36-10566	
A36-07233	
A36-07271	
A36-00006	
A36-00007	
A36-00110A	
A36-00081A	
A36-07172	
A36-00037C	
A36-00080A	
A36-00100	
A36-00111A	
A36-00113G	

WR RECORDS IN SAME 40 ACRE TRACT

36-00006
36-00007
36-00036
36-00037
36-00066
36-00079
36-00080
36-00081
36-00097
36-00098
36-00100
36-00101
36-00110
36-00111
36-00113B
36-00113D
36-00140
36-00141
36-00142
36-00143
36-00144
36-00145
36-00146
36-00147
36-00148
36-00150
36-00151
36-02082
36-07081
36-07172
36-07229
36-07233
36-07271
36-07565
36-07838

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
36-00099	07S	13E	11		SW	NE		GOODING

OTHER WR RECORDS WITH SAME WR POD

AJ CLAIMS IN SAME 40 ACRE TRACT

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JAN 25 1993

36-00006	A36-10080	NONE
36-00007	A36-07229	
36-00036	A36-00113E	
36-00037	A36-00141	
36-00066	A36-00066	
36-00079	A36-00066A	
36-00080	A36-00079	
36-00081	A36-07081	
36-00097	A36-07565	
36-00098	A36-10543	
36-00100	A36-00021A	
36-00101	A36-00021B	
36-00110	A36-00037A	
36-00111	A36-00036	
36-00113B	A36-10566	
36-00113D	A36-07233	
36-00140	A36-07271	
36-00141	A36-00006	
36-00142	A36-00007	
36-00143	A36-00110A	
36-00144	A36-00081A	
36-00145	A36-07172	
36-00146	A36-00037C	
36-00147	A36-00080A	
36-00148	A36-00100	
36-00150	A36-00111A	
36-00151	A36-00113G	
36-02082		
36-07081		
36-07172		
36-07229		
36-07233		
36-07271		
36-07565		
36-07838		

MICROFILMED

JAN 25 1993

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

C. FIELD EXAM REQUIRED?

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

REMARKS:

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	COUNTY
<u>7S</u>	<u>13E</u>	<u>11</u>	<u>NW</u>	<u>SW</u>	<u>NE</u>	<u>—</u>	<u>Gooding</u>

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

REVIEWED BY: kat DATE: 7-18-90

VIA Sands Ditch

MICROFILMED
APR 22 1993

A. ROOT WATER RIGHT NUMBERS: A36-00099

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
07S	13E	15	SW	NE		PORTER , BOB	A36-00099 /22.0	36-00099 /	22.0	13	13
						PORTER , BOB	A36-07172 /	- /			
						PORTER , BOB	A36-00100 /22.0	- /			
						PORTER , BOB	A36-07233 /	- /			
						SANDS , MARTHA A.		36-00140 /			
07S	13E	15	SE	NE		PORTER , BOB	A36-00099 /31.0	36-00099 /	31.0	25	25
						PORTER , BOB	A36-07172 /	- /			
						PORTER , BOB	A36-07233 /	- /			
						PORTER , BOB	A36-00100 /31.0	- /			
						SANDS , MARTHA A.		36-00140 /			
07S	13E	15	SE	SW		PORTER , BOB	A36-00099 / 5.0	- /	9.0	0	0
						COOK , RICHARD L.	A36-02002 / 9.0	36-02002 /10.0			
						BIG BEND IRRIGATION & MINING	CA36-02007 /10.0	- /			
						BIG BEND IRRIGATION & MINING	CA36-00192 /10.0	36-00192 /			
						PORTER , BOB	A36-07172 /	- /			
						COOK , RICHARD L.	A36-00097 / 9.0	- /			
						COOK , RICHARD L.	A36-00098 / 9.0	- /			
						PORTER , BOB	A36-00100 / 5.0	- /			
						COOK , RICHARD L.	A36-00101 / 9.0	36-00101 /			
						BIG BEND IRRIGATION & MINING	CA36-00133 /10.0	36-00133 /			
						COOK , RICHARD L.	A36-00141 / 9.0	- /			
						PORTER , BOB	A36-07233 /	- /			
07S	13E	15	NE	SE		PORTER , BOB	A36-00099 /16.0	36-00099 /	16.0	8	8
						PORTER , BOB	A36-07172 /	36-07172 /			
						PORTER , BOB	A36-07233 /	36-07233 /			
						PORTER , BOB	A36-00100 /16.0	- /			
07S	13E	15	NW	SE		PORTER , BOB	A36-00099 / 2.0	36-00099 /	2.0	1.5	2
						PORTER , BOB	A36-07172 /	36-07172 /			
						PORTER , BOB	A36-07233 /	36-07233 /			
						PORTER , BOB	A36-00100 / 2.0	- /			
						SANDS , MARTHA A.		36-00141 /			
07S	13E	15	SW	SE		PORTER , BOB	A36-00099 /16.0	- /	16.0	5	5
						PORTER , BOB	A36-10249 /	- /			
						PORTER , BOB	A36-07172 /	- /			
						PORTER , BOB	A36-07233 /	- /			
						PORTER , BOB	A36-00100 /16.0	36-00100 /			
						SANDS , MARTHA		36-02002 / 5.0			
07S	13E	15	SE	SE		PORTER , BOB	A36-00099 / 6.0	36-00099 /	3.0	0	0
						PORTER , BOB	A36-07172 /	36-07172 /			
						PORTER , BOB	A36-00100 / 6.0	- /			
						PORTER , BOB	A36-07233 /	- /			
TOTAL ACRES							A36-00099	98.00	99.00		57 53

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

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE
Y

FIELD
EXAMINER
Y

PRESUMPTION FLAG:

REMARKS:

Landsat info is ~~in error~~ - see NAPP photo
- field exam shows that landsat data has included riparian areas around ponds & delivery ditches. The field Exam information more correctly identifies deliberate irrigation efforts.

MICROFILMED
JAN 25 1993

RECOMMENDATIONS:

TOTAL ACRES:

57.0

REVIEWED BY:

SCC

DATE:

1-2-91

A. AJ CLAIMED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
A36-00099 IRRIGATION	FROM 03-15 TO 11-15	8.000 CFS
TOTAL DIVERSION RATE/VOLUME CLAIMED		8.000 CFS

B. WR RECORDED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
36-00099 IRRIGATION	FROM TO	8.000 CFS
TOTAL DIVERSION RATE/VOLUME CLAIMED		8.000 CFS

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JAN 25 1993

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

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

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y(X) N()

RECOMMEND TO WR STANDARDS OR OTHER?

Y() N(X) Explain in remarks, below.

REMARKS:

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

Y(☒) N(☐)

AJ TOTAL CLAIMED DIVERSION RATE: 8.000 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 8.000 CFS

*** IF NO or IF STATUTORY CLAIM or BENEFICIAL USE then flow measurement required. ***

** If an amount smaller than the original diversion rate is **

** claimed and an exam is NOT required, explain in remarks. **

FLOW MEASUREMENT REQUIRED?

FIELD

DATABASE EXAMINER

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

N

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JAN 25 1993

B.

FLOW MEASUREMENT

MEASUREMENT METHOD _____, SEE ATTACHED CALCULATIONS.

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

OTHER RIGHTS LISTED IN CLAIM: A36-00100

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

CLAIM	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A36-00099	BILLINGSLEY CREEK	PORTER , BOB	8.000	0.081		
A36-00100	BILLINGSLEY CREEK	PORTER , BOB	1.200	0.012		
A36-02007	TUCKER SPRINGS, UPPER	BIG BEND IRRIGATION & MINING C	4.000	0.006	2895.90	4.58
A36-00192	TUCKER SPRINGS, LOWER	BIG BEND IRRIGATION & MINING C	15.000	0.017	10859.70	12.35
A36-00097	BILLINGSLEY CREEK	COOK , RICHARD L.	1.500	0.016		
A36-00098	BILLINGSLEY CREEK	COOK , RICHARD L.	7.000	0.076		
A36-00101	BILLINGSLEY CREEK	COOK , RICHARD L.	2.000	0.021		
A36-00133	TUPPER SPRINGS, UPPER	BIG BEND IRRIGATION & MINING C	20.000	0.022	14479.60	16.47
A36-00141	BILLINGSLEY CREEK	COOK , RICHARD L.	6.000	0.065		

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

CLAIM NO.	PURPOSES	NAME	MONTH/DAY	RATE	VOLUME
A36-07172	STOCKWATER	PORTER , BOB	FROM 01-01 TO 12-31	.020 CFS	
A36-07172	DOMESTIC	PORTER , BOB	FROM 01-01 TO 12-31	.020 CFS	
A36-07172	WILDLIFE	PORTER , BOB	FROM 01-01 TO 12-31	4.000 CFS	
A36-07233	WILDLIFE	PORTER , BOB	FROM 01-01 TO 12-31	9.200 CFS	
A36-10249	DOMESTIC	PORTER , BOB	FROM 01-01 TO 12-31	.040 CFS	

D. RATE/VOLUME CALCULATIONS: (IRRIGATION)

1b. CALCULATIONS

1a. IRRIGATION RATE
ACRES 57 x 0.02 CFS/ACRE = 1.14 CFS
(Taken from p/u review)

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

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

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = 294.0 AF/A

ACRES 57 x CONSUMPTIVE VOL. AF/A FOR AREA 3 =

TOTAL CONSUMPTIVE USE 171 AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = AF/A

ACRES 57 x DIVERSION VOL. AF/A FOR AREA 4 =

TOTAL DIVERSION VOLUME 228 AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y() N()

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

See Irrigation Analysis
Sheet for Basis of
Recommendation on div. ~~Rate~~

Recommended — 1.06
1"/ac.

Conveyance loss 0.25
1.31
Total

UNRECORDED

JAN 25 1993

RECOMMENDATIONS:

REC. PURPOSES	REC. PERIOD FROM TO	REC. DIV RATE CFS	REC. DIV VOL. AF/A	REC. CONS. USE
IRRIGATION	03-15 11-15	DATABASE EXAMINER 8.000 <u>2.28</u>	DATABASE EXAMINER 228 <u>228</u>	DATABASE EXAMINER 294.0 <u>177</u>
TOTAL FOR THIS RIGHT		8.000		294.0

REVIEWED BY: SLC

DATE: 1-2-91

MICROFILMED
JAN 25 1993

WR proportional Rate $\frac{8.0 \text{ cfs}}{200 \text{ A\&.}} = 0.04 \text{ cfs}$ (allow rate)

NOTE: Portions of this right appear to have been abandoned as irrigation use and re-established as wildlife rights under licenses 36-7172 + 36-7233.

A. CHECK ONLY THE FOLLOWING THAT APPLY:

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

Legal Review
Excess Flow

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 36-00099

TOTAL DIVERSION RATE OF WR SPLITS	DATABASE 8.000	EXAMINER _____	CFS
-----------------------------------	-------------------	-------------------	-----

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
-	A36-00099	8.000	-		36-00099	8.000
TOTAL CFS		8.000				8.000

DIVERSION RATE REVIEW

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

DATABASE Y	FIELD EXAMINER <i>OK</i>
---------------	--------------------------------

REMARKS:

AUTHENTICATION:

SIGNATURE: *Steve Cello* DATE: 1-2-91
NAME OF FIELD EXAMINER: _____ TITLE: _____

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MARK AND CONDITION CODE WORKSHEET

SYSTEM CLAIM NUMBERS

R3U 00099

AGENT

INITIALS

DATE _____

8/4/92

**CLAIM NO.
OR ENTRY
ORDER**

REMARK
CODE

ENTRY DATA

**CONDITION
CODE**

**STAGE
OR
STATUS**

**PRESUMPTION
CODE**

F01	Sands Ditch
D02	0.25

[illegible]

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CONVEYANCE LOSS - WORSTELL

REACH	LENGTH (FT)	AVE WIDTH (FT)	SEEPAGE (FT/DAY)	WORSTELL LOSS (CFS)	DELIVERY (CFS)	DELIVERY LEFT (CFS)	LOSS FACTOR	DELIVERY LOSS (CFS)	FLOW (CFS)
1	200	10.0	2.00	0.05	0.61	11.93	0.0042	0.00	15.29
2	900	10.0	2.00	0.23	0.44	11.32	0.0201	0.01	14.63
3	1300	10.0	2.00	0.33	0.21	10.88	0.0302	0.01	13.96
4	200	10.0	2.00	0.05	0.34	10.67	0.0047	0.02	13.42
5	700	10.0	2.00	0.18	0.22	10.33	0.0171	0.02	13.03
6	600	10.0	2.00	0.15	0.84	10.11	0.0150	0.08	12.64
7	600	10.0	2.00	0.15	0.55	9.27	0.0164	0.06	11.65
8	1400	10.0	2.00	0.35	0.24	8.72	0.0406	0.04	10.94
9	2900	10.0	2.00	0.73	1.06	8.48	0.0864	0.25	10.35
10	4500	10.0	2.00	1.14	7.42	7.42	0.1532	2.88	8.56
11				0.00		0.00	0.0000	0.00	-0.00
12				0.00		0.00	0.0000	0.00	-0.00
13				0.00		0.00	0.0000	0.00	-0.00
14				0.00		0.00	0.0000	0.00	-0.00
15				0.00		0.00	0.0000	0.00	-0.00
16				0.00		0.00	0.0000	0.00	-0.00
17				0.00		0.00	0.0000	0.00	-0.00
18				0.00		0.00	0.0000	0.00	-0.00
19				0.00		0.00	0.0000	0.00	-0.00
20				0.00		0.00	0.0000	0.00	-0.00
TOTALS	13300			3.36	11.93			3.36	

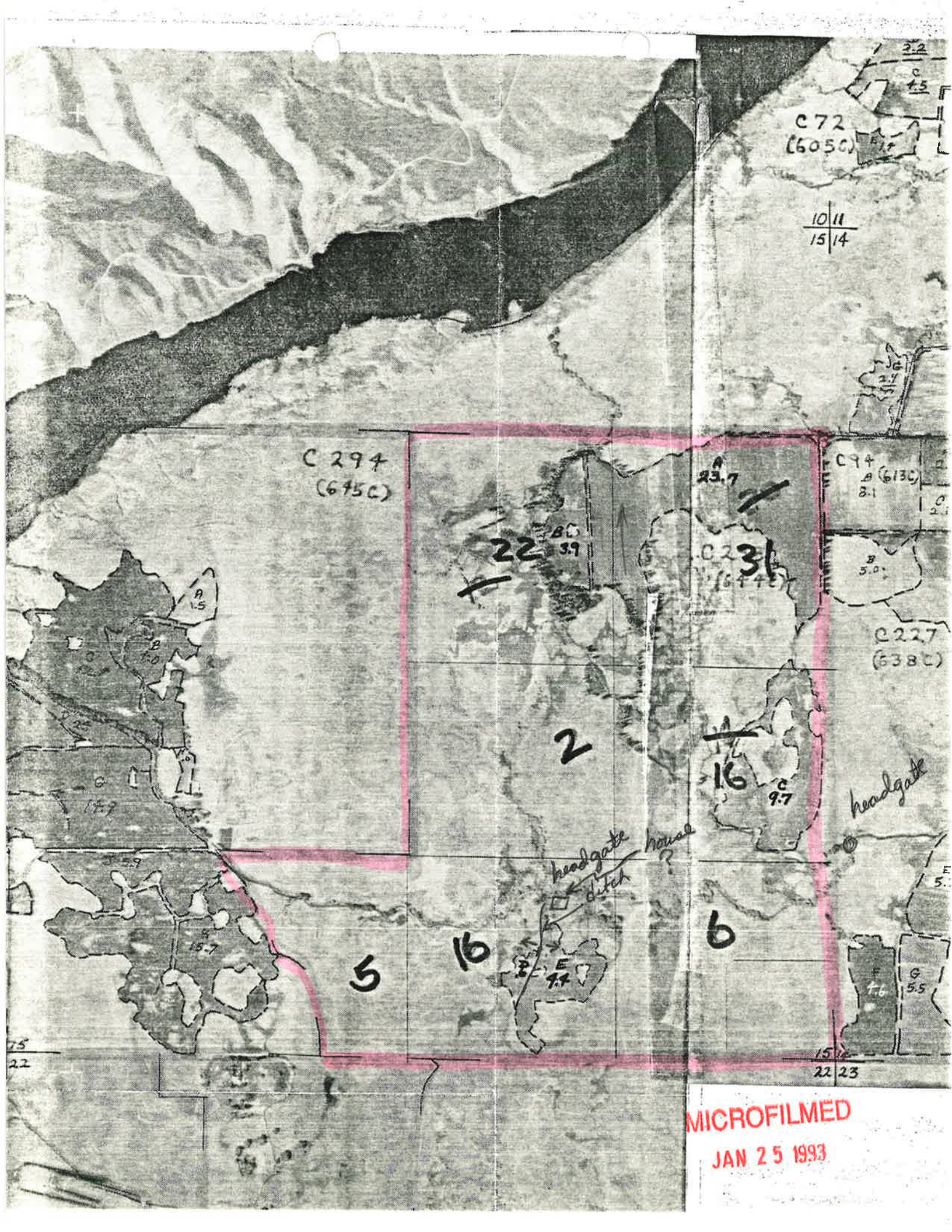
REACH = SECTION OF CHANNEL
 LENGTH = LENGTH OF REACH, THE CHANNEL CAN BE DIVIDED INTO EQUAL LENGTH REACHES
 OR ACTUAL LENGTHS BETWEEN DELIVERY POINTS
 AVE WIDTH = AVERAGE TOP WIDTH OF REACH
 SEEPAGE = SOIL SEEPAGE RATE OF REACH
 WORSTELL LOSS = CONVEYANCE LOSS IN REACH BASED ON WORSTELL METHOD
 DELIVERY = TOTAL DELIVERIES IN REACH
 DELIVERY LEFT = SUM(DELIVERIES OF CURRENT AND REMAINING REACHES)
 LOSS FACTOR = WORSTELL LOSS/DELIVERY LEFT
 DELIVERY LOSS = SUM(LOSS FACTORS OF CURRENT AND PREVIOUS REACHES) X DELIVERY,
 REPRESENTS THE LOSSES ASSIGNED TO THE DELIVERIES IN THE REACH
 FLOW = TOTAL FLOW AT BEGINNING OF EACH REACH

SANDS DITCH

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36-00099



C 72
(605C)

10	11
15	14

C 294
(645C)

22 39

A 23.7

C 94
(613C)
B 2.1

C 231
(644C)

C 227
(638C)

2

16

headgate

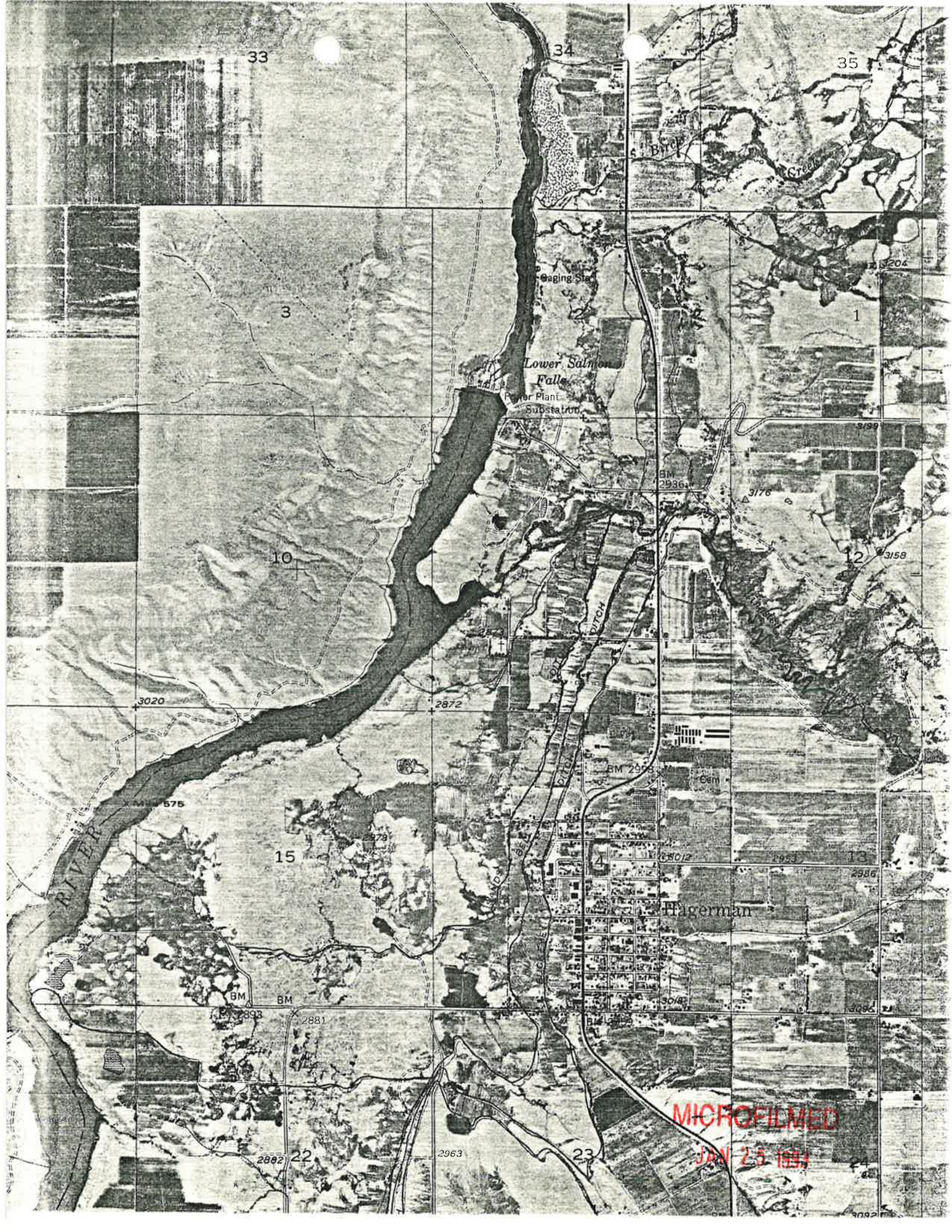
headgate
ditch
house

5

16

6

MICROFILMED
JAN 25 1993



C 72
(6050)

10/11
15/14

C 294
(6750)

C 94
(6130)
8.1

22
39

23.7

C 231
(6440)

C 227
(6380)

(13)

SWNE

(25)

SENE

2

16

9.7

(1.5)

NWSE

(8)

NESE

5

16

2
E
9.7

6

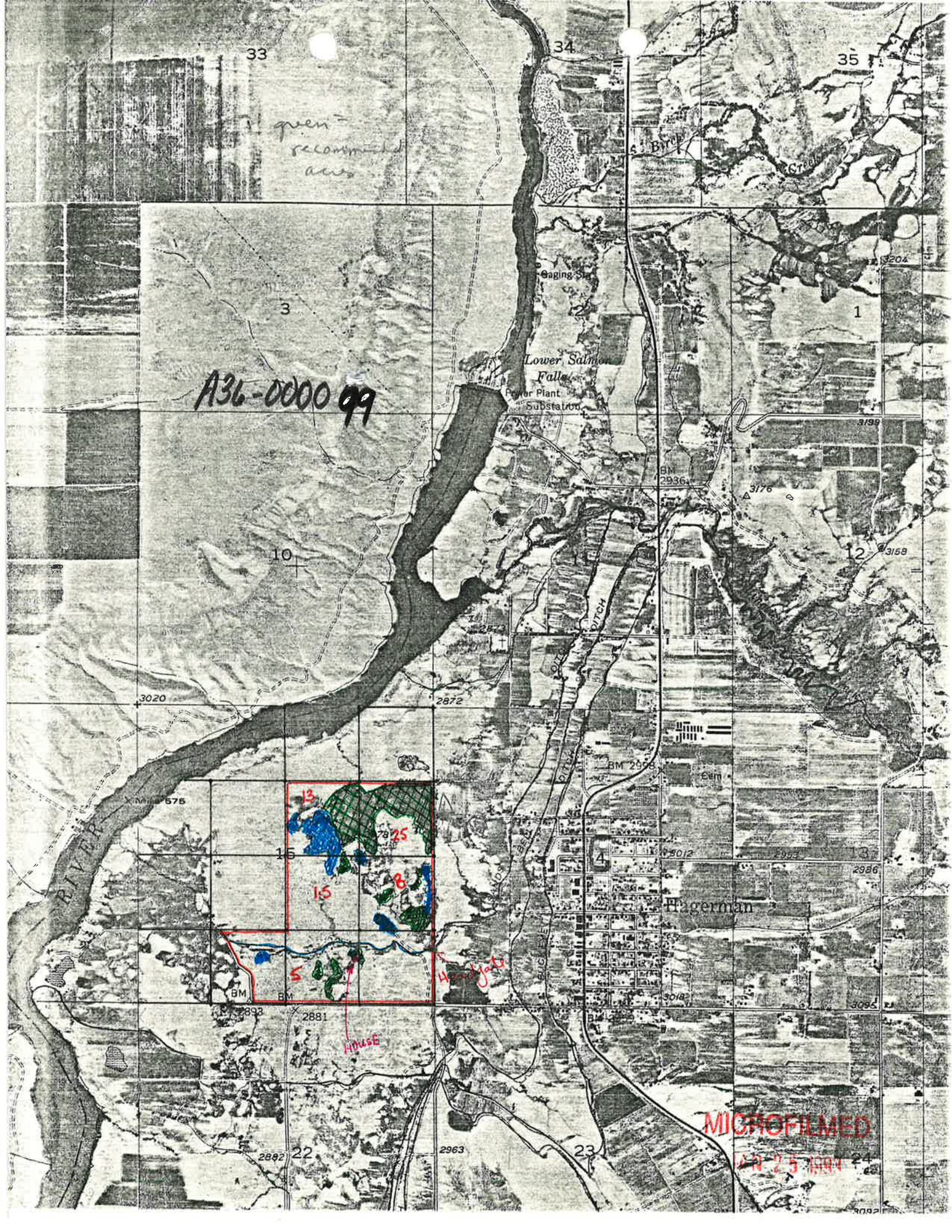
(5)

SWSE

SESE

22 23

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A36-00099
JAN 25 1993



33

34

35

3

1

A36-0000 99

10

12

3020

2872

BM 2936

15

BM 2938

Hagerman

BM 2939

2881

HOUSE

2892

22

2963

23

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no overlap

RIGATION ANALYSIS WORKSHE.

CLAIM NO. A36-0009.9DATE 7/15/92AGENT HHHCLAIMANT/SYSTEM DESCRIPTION Bob Porter 734-3455 orthopedicsIRRIGATION SYSTEM GravityANALYSIS METHOD BORDER / FURROWTYPE OF CROP Corn, fieldMAXIMUM PROFILE DEPTH 48" INCHESINTAKE FAMILY .55

SOIL TYPE KOB SYSTEM TOTALACRES PER TYPE 53 ACRESSOIL PROFILE WHC 4.88DESIGN IRR $\frac{1}{2}$ WHC 2.44

CROP REQUIREMENT:

REPORT AREA & FIGURE NO. Bliss 10-8

DAILY CROP REQUIREMENT:

6.79 (MM/DAY) / 25.4 (FACTOR IN MM/IN) 0.27 IN/DAYACTUAL ROTATION PRACTICED 9.0 DAYSDRY DAY ROTATION PART 0 IRR DAY ROTATION 9

THEORETICAL ROTATION:

2.44 DESIGN IRR / 0.27 CROP REQ = 9.0 DAYS

DESCRIPTION OF FIELD:

AVERAGE LENGTH RUN 855TOTAL WIDTH OF FIELD 2700CHECK 855 L * 2700 W / 43,560 = 53 ACRES% SLOPE 10%~~BORDER WIDTH~~ N/A~~2700 WIDTH OF FIELD / 9 DAYS OF ROTATION (300)~~FURROW / CORRUGATION WIDTH 30"SET TIME 24 Hrs

allow 12 Hrs.

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Porter

7-22-92

SCC

INTAKE FAMILY <If> = 0.55
 DESIGN APPLICATION <Fn> = 2.44 INCHES
 FURROW SLOPE <S> = 0.010 FEET/FOOT
 FURROW SPACING <W> = 2.50 FEET
 FURROW LENGTH <L> = 855 FEET
 INFLOW RATE <Q> = 7 GPM/FURROW
 APPLICATION TIME <Ti> = 12 HOURS

ADVANCE TIME <TT> = 161.0 MINUTES; OR 2.7 HOURS
 GROSS APPLICATION <FG> = 3.78 INCHES
 NET APPLICATION <Fx> = 3.30 INCHES
 RUNOFF <RO> = 0.02 INCHES
 DEEP PERCOLATION <DP> = 1.32 INCHES
 EFFICIENCY <E> = 64.51 %

TO CHANGE:	PRESS	(EXISTING)
Design Application	<1>	2.44 in
Furrow Slope	<2>	0.010 ft/ft
Furrow Spacing	<3>	2.50 ft
Furrow Length	<4>	855 ft
Furrow Intake Family	<5>	0.55
Inflow Rate	<6>	7 gpm/furrow
Inflow Time	<7>	12 hours <ANALYSIS MODE>

TO PRINT: DATA/WITH HEADING PRESS:<8/9>

NEW DESIGN PRESS <10>, NEW ANALYSIS PRESS <11>, QUIT PRESS <12>?

$$F.I.R. = 4.2 \frac{C.U.}{EFF.}$$

$$= 4.2 \frac{0.27}{64.51}$$

$$= 0.018 \text{ cfs/Ac.}$$

allow 0.02 cfs

$$53 \times 0.02 \text{ cfs/Ac} = 1.06 \text{ cfs}$$

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Pg/1082

CONVERSATION MEMORANDUM

EMPLOYEE: AKC

FILE A36-00099

RE: irr practices

DATE 7-16-92

NAME OF PARTY Porter - 734-3455 (work number)

Called @ 11:30. He is going into surgery and will call back later.

Bob does not know the irr practices. He has hired Bob Jones to do the irr. 837-6445

He stated that they now irrigate closer to 100 acres. that they have broken out additional sage brush

Called Bob Jones 7-17-92

Property irrigated from two separate divisions from Sands Ditch. mostly corrugate @ 30" (est) spacings.

Property South of Sands ditch irrigated from div point near home & Ditch runs south. it takes about 4 days to irr patch. 1/2 5 dry days ~~per 3/10~~

9 day =
Rotation

Acres now greater than originally claimed. 24 has cores pasture east of house. (not identified on home possibly not existing in 87).

Crops are Predominately corn & Wheat. Some sold areas have trees & Rose Bushes.

NORTH OF SANDS DITCH.

Prop irr independently of above desc. prop. PD is just outside east Border of Property line. Crops predominately corn/wheat; some trees & bushes for birds

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NORTH OF SANDS IRR Practices:

Major North field predominately corrugate (small plot on side flooded pasture)

Ditch Sys. = main ditch diverted into feeder ditches with plastic dam sets to divert in to corrugates @ 30" (no pipes/tubing).

part 6 days

it takes 6 days to cover north field @ 36 $\times$ 24 hr sets each set covers up to 27 corrugates.

part 3 day

Field sets dry for 2 to 3 days while outlaying patches are irrigated

Rot = 9 days

{ net result is continuous irrigation, no days where water is not going somewhere }
consider all north of Sands Ditch to be corrugated.

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JAN 25 1993