

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: A36-02338

Date Received: 8/31/1988

Receipt No: 2002408

Received By: CH

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: OPAL HOLMES FISHER 208-344-4517  
Address: 1605 PROMONTORY ROAD  
BOISE, ID 83702

2. Date of Priority: AUG 05, 1954

3. Source: UNNAMED SPRINGS Trib. to: BILLINGSLEY CREEK

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 of | Lot | County  |
|----------|-------|---------|--------|--------|--------|-----|---------|
| 07S      | 14E   | 18      | SW     | SW     | SW     | 4   | GOODING |

5. Description of diverting works:  
SPRING FLOWS INTO LAKE, DIVERTED BY CANAL TO FISH HATCHERY.

6. Water is used for the following purposes:

| Purpose          | From  | To    | C.F.S  | (or) | A.F.A. |
|------------------|-------|-------|--------|------|--------|
| FISH PROPAGATION | 01/01 | 12/31 | 54.680 |      |        |

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:  
FISH HATCHERY.

10. Place of Use:

| Township | Range | Section | 1/4 of | 1/4 of | Lot | Use  | Acres |
|----------|-------|---------|--------|--------|-----|------|-------|
| 07S      | 14E   | 18      | SW     | SW     | 4   | FISH |       |

11. Place of use in counties: GOODING

A36-02338

Page 1

Date: 08/31/88

MICROFILMED

JAN 27 1993

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:  
NONE

14. Remarks:  
THE WATER IS LEASED TO THE FISH HATCHERY.

15. Basis of Claim: LICENSE  
Water Right Number: 27082

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): Opal Holmes Fisher Date: 8-31-88  
\_\_\_\_\_ Date: \_\_\_\_\_

State of Idaho )  
County of Ada ) SS.

Subscribed and sworn (or affirmed) before me this 31<sup>st</sup> day  
of August 19 88 Carter Fritsch  
Notary Public

Seal

Residing at Eagle, Id.  
My Commission Expires 3-21-94

T75  
R14E



RECEIVED

NOV 21 2001

Department of Water Resources  
Southern Region

RECEIVED

NOV 16 2001

Department of Water Resources

2001 NOV 13 PM 1:25

CLERK OF 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

Water Rights: 36-2338, 36-2414,  
36-4011, 36-2734 &  
(late claim) 36-15476

NOTICE OF COMPLETED  
ADMINISTRATIVE  
PROCEEDING

PD  
Issued  
7/14/2007

IDWR has completed the following administrative proceeding:

- ☐ Address change
- ☒ Substitution of Party
- ☐ IC § 42-222 transfer
- ☐ Point of diversion ☐ Place of use
- ☐ Period of use ☐ Nature of use
- ☐ Split of water right ☐ Change in ownership
- ☐ Other

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

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

DATED: Nov 8, 2001

Signature of IDWR Representative

## CERTIFICATE OF MAILING

I certify that on November 8, 2001, I delivered the original and copies of this form, including all attachments, to the following persons, postage prepaid if required and addressed as follows:

### 1. Original to:

Clerk of the District Court  
Snake River Basin Adjudication  
P.O. Box 2707  
Twin Falls, ID 83303-2707

☐ overnight mail  
☒ regular mail  
☐ hand-delivered  
☐ facsimile

### 2. Copies to:

Clive Strong  
Off ice of the Attorney General  
P.O. Box 44449  
Boise, ID 83711-4449

☐ overnight mail  
☐ regular mail  
☒ hand-delivered  
☐ facsimile

United States Dept of Justice  
Environment & Natural Resource Div  
550 West Fort Street MSC 033  
Boise ID 83724

☐ overnight mail  
☒ regular mail  
☐ hand-delivered  
☐ facsimile

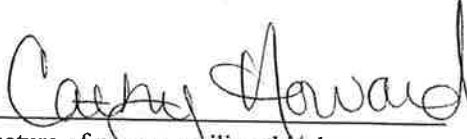
### 3. Copies to all parties to the subcase:

Idaho State Building Authority  
P.O. Box 2802  
Boise, ID 83701

☐ overnight mail  
☒ regular mail  
☐ hand-delivered  
☐ facsimile

Aqua Life, Inc.  
Rt. 5, Box 5053  
Buhl, ID 83316

☐ overnight mail  
☒ regular mail  
☐ hand-delivered  
☐ facsimile

  
Signature of person mailing this document

11/08/2001

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

2001 NOV 13 PM 1:25

RIGHT NUMBER: 36-2338

NAME AND ADDRESS: IDAHO STATE BUILDING AUTHORITY  
PO BOX 2802  
BOISE ID 83701

HISTORIC POINT-SRDA  
TWIN FALLS CO., IDAHO  
FILED

SOURCE: SPRINGS

TRIBUTARY: BILLINGSLEY CREEK

QUANTITY: 54.680 CFS  
39,518.00 AFY

USE OF THIS RIGHT WITH RIGHT NO. 36-02414 IS LIMITED TO A TOTAL COMBINED  
DIVERSION RATE OF 58.68 CFS.^^^

PRIORITY DATE: 08/05/1954

POINT OF  
DIVERSION:

T07S R14E S18 SENSW Lot 3 Within GOODING County  
T07S R14E S18 NESWS Lot 4 Within GOODING County

PURPOSE AND  
PERIOD OF USE:

PURPOSE OF USE  
FISH PROPAGATION

PERIOD OF USE  
1/01 12/31

QUANTITY  
54.680 CFS  
39,518.00 AFY

PLACE OF USE:

FISH PROPAGATION Within GOODING County  
T07S R14E S18 Lot 4 SWSW

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

FACILITY VOLUME 381,656 CUBIC FEET.^^^  
RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO  
SECTION 42-1425, IDAHO CODE.

RECEIVED

OCT 29 2001

**STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP**

Department of Water Resources

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.  
Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

*See for complete documents*

| Water Right No(s).        | Adjudication Claim No(s). | Split | Water Right No(s). | Adjudication Claim No(s). | Split |
|---------------------------|---------------------------|-------|--------------------|---------------------------|-------|
| ✓ 36-4011                 |                           |       |                    |                           |       |
| ✓ 36-2734                 |                           |       |                    |                           |       |
| ✓ 36-15476 <i>1/10/01</i> |                           |       |                    |                           |       |
| ✓ 36-2414                 |                           |       |                    |                           |       |
| ✓ 36-2338                 |                           |       |                    |                           |       |

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NOV 13 2001

Department of Water Resources  
Southern Region

2. The following **REQUIRED** information must be submitted with this form:

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):  
**PLAT OF PROPERTY** or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).  
**OR**  
If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s) AquaLife, Inc.  
RT 5 Box 5053, Buhl, Idaho 83316
4. New Owner/Claimant(s) Idaho State Building Authority  
Name Connector (Check One): [ ] and, [ ] or, [ ] and/or  
P.O. Box 2802  
Boise, Idaho 83701  
(208) 345-6057
5. Date you acquired the property September 28, 2001

*OK to Change ~~stuff~~ 10/6/01  
records changed 11-7-01. as  
INCAP prepared.*

6.

If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

| DESCRIPTION OF YOUR PORTION OF WATER RIGHT<br>(If the right(s) will not be split, skip this area and proceed to item 7) |                                                                        |                                                               |
|-------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|---------------------------------------------------------------|
| Water Right and/or Adjudication Claim Number _____                                                                      |                                                                        |                                                               |
| Water Use                                                                                                               | Diversion Rate or Volume<br>(cubic feet per second or acre-feet annum) | Description<br>(acres, number and type of stock, homes, etc.) |
| Irrigation                                                                                                              | _____                                                                  | _____                                                         |
| Stock                                                                                                                   | _____                                                                  | _____                                                         |
| Domestic                                                                                                                | _____                                                                  | _____                                                         |
| Other                                                                                                                   | _____                                                                  | _____                                                         |
| <b>Total</b>                                                                                                            | _____                                                                  | _____                                                         |

| DESCRIPTION OF YOUR PORTION OF WATER RIGHT<br>(If the right(s) will not be split, skip this area and proceed to item 7) |                                                                        |                                                               |
|-------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|---------------------------------------------------------------|
| Water Right and/or Adjudication Claim Number _____                                                                      |                                                                        |                                                               |
| Water Use                                                                                                               | Diversion Rate or Volume<br>(cubic feet per second or acre-feet annum) | Description<br>(acres, number and type of stock, homes, etc.) |
| Irrigation                                                                                                              | _____                                                                  | _____                                                         |
| Stock                                                                                                                   | _____                                                                  | _____                                                         |
| Domestic                                                                                                                | _____                                                                  | _____                                                         |
| Other                                                                                                                   | _____                                                                  | _____                                                         |
| <b>Total</b>                                                                                                            | _____                                                                  | _____                                                         |

7.

Signature of New Owner(s) or Claimant(s)  
(include title of applicable)

*Idaho State Building Authority*  
*John McNeulman, Executive Director*

For Snake River Basin Adjudication Claims, Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

#### For Office Use Only

Received by J. Mann Date 10-29-01 Fee \_\_\_\_\_  
 Received by J. Mann Date 10-29-01 Receipt No. 0057428  
 Processed by \_\_\_\_\_ AJ Date \_\_\_\_\_ WR \_\_\_\_\_ Date \_\_\_\_\_

36-4011, -2734, -15476, -2414, -2338

Aqua Life Corp.

Jason R. Miciak  
ROLIG & PETERSON, L.L.P.  
Attorneys at Law  
P.O. Box 2749  
102 Main Avenue South, Suite 6  
Twin Falls, Idaho 83303-2749  
Telephone: (208) 733-5500  
FAX: (208) 733-5553

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OCT 22 1999

Department of Water Resources

**COPY**

RECEIVED

OCT 27 1999

Department of Water Resources  
Southern Region

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. )

Case No. 39576 )

NOTICE OF APPEARANCE

COMES NOW Aqua Life Corp., as Claimant in Subcase Nos. 36-02338, 36-02414, 36-02734 and 36-04011 and declares its intent to participate in issues filed in In Re. SRBA, Case No. 39576 commonly referred to as the "main case." This Notice of Appearance is intended to include a request to be included in the Court's Certificate of Mailing for Expedited Issues and Hearings.

DATED This 20<sup>th</sup> day of October, 1999.

ROLIG & PETERSON, L.L.P.

By:   
Jason R. Miciak

*Blank prefix records changed 5-99,  
'R's' changed 10-22-99.  
/s/*

## CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I am a resident attorney of the State of Idaho and that on the \_\_\_\_\_ day of October, 1999, I served a copy of the foregoing document upon the following:

C. Thomas Arkoosh  
ARKOOSH LAW OFFICES  
P.O. Box 32  
Gooding, ID 83330

Douglas R. Whipple  
BYINGTON, HOLLOWAY, WHIPPLE  
& JONES, CHTD.  
P.O. Box 188  
Burley, ID 83318

J.R. Simplot Company  
c/o Terry T. Uhling  
P.O. Box 27  
Boise, ID 83707-0027

Daniel Steenson  
Charlie Honsinger  
RINGERT, CLARK CHTD.  
P.O. Box 2773  
Boise, ID 83701-2773

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DONOHUE LAW OFFICE  
2213 Grant Avenue  
Boise, ID 83706-4511

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ELAM & BURKE, P.A.  
P.O. Box 1539  
Boise, ID 83701

U.S. Department of Justice  
Environment & Natl. Resources  
550 West Fort Street, MSC 033  
Boise, ID 83724

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FILLMORE BELLISTON & ISRAELSEN  
4692 North 300 West, Ste. 200  
Provo, UT 84604

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HOLDEN, KIDWELL, HAHN & CRAPO  
P.O. Box 50130  
Idaho Falls, ID 83405

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FLETCHER LAW OFFICE  
P.O. Box 248  
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Jeffrey C. Fereday  
GIVENS PURSLEY, LLC  
P.O. Box 2720  
Boise, ID 83701

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GOODMAN & BOLLAR  
P.O. Box D  
717 7th Street  
Rupert, ID 83350

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GRAHAM & DUNN  
1420 Fifth Ave., 33 Floor  
Seattle, WA 98101-2390

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GROVER & ARCHIBALD  
P.O. Box 36  
215 Farnsworth Way  
Rigby, ID 83442-0036

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Richard B. Burleigh  
HAWLEY, TROXELL, ENNIS & HAWLEY  
P.O. Box 1617  
Boise, ID 83701

Terry G. Hogue  
HOGUE & DUNLAP  
P.O. Box 460  
Hailey, ID 83333

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MOORE, SMITH, BUXTON & TURCKE  
999 Main Street, Suite 910  
Boise, ID 83702

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HOLLAND & HART  
P.O. Box 2527  
Boise, ID 83701

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HOLLIFIELD & BEVAN  
P.O. Box 66  
Twin Falls, ID 83303-0066

C. Timothy Hopkins  
John D. Hansen  
HOPKINS, RODEN, CROCKETT, et al.  
P.O. Box 51219  
Idaho Falls, ID 83405-1219

Gray A. Young  
Terry T. Uhling  
J.R. SIMPLOT COMPANY  
P.O. Box 27  
Boise, ID 83707

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LING, NIELSEN & ROBINSON  
P.O. Box 396  
Rupert, ID 83350

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MOORE SMITH BUXTON & TURCKE  
999 Main St., Ste. 910  
Drawer A  
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P.O. Box 1545  
999 Main St., Ste. 911  
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Parma, ID 83660-0628

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David J. Cummings  
NATIVE AMERICAN RIGHTS FUND  
1506 Broadway  
Boulder, CO 80302

David J. Cummings  
K. Heidi Gudgell  
NEZ PERCE TRIBAL EXEC. COMM.  
P.O. Box 305  
Lapwai, ID 83540

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

Ron Leydet  
P.O. Box 521  
Mountain Home, ID 83647

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

Patrick D. Brown  
109 S. Adams  
Jerome, ID 83338

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ROSHOLT, ROBERTSON & TUCKER  
P.O. Box 1906  
Twin Falls, ID 83303-1906

Patrick D. Madigan  
ROSHOLT, ROBERTSON & TUCKER  
P.O. Box 2139  
Boise, ID 83701-2139

Ron Kerl  
SERVICE, GASSER & KERL  
P.O. Box 6009  
Pocatello, ID 83205

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SHOSHONE-BANNOCK TRIBES  
P.O. Box 306  
Fort Hall, ID 83203

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RACINE, OLSON, NYE, COOPER & BUDGE  
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Pocatello, ID 83204-1391

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RIGBY, KAM & MOELLER, CTD.  
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Rexburg, ID 83440-0250

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ROOT & SCHINDLER  
410 17th Street, Ste. 460  
Denver, CO 80202

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Weiser, ID 83672

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Ontario, OR 97914

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216 W. State St.  
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Vale, OR 97918

William J. Brockman  
3500 East 2900 North  
Kimberly, ID 83341

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P.O. Box 1427  
Boise, ID 83702-5509

Douglas B.L. Endreson  
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CHAMBERS, SACHSE & ENDRESON  
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Washington, DC 20005

James P. Speck  
SPECK & AANESTAD  
P.O. Box 987  
120 East Ave.  
Ketchum, ID 83340

Brad A. Flinders  
STUNZ, FONDA, NICHOLS, KIYUNA,  
HORTON & FLINDERS LLP  
106 Main St., P.O. Box 1565  
Nyssa, OR 97913

Mark Potter  
Susan Potter  
220 Willow Lane  
Hagerman, ID 83332

by depositing a true copy thereof in the United States mail, postage prepaid.

  
JASON R. MICIAK

Water Right Number - 36-02338 Prefix Translation: WATER RIGHT Old (D) Number - 27082  
+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

\*\*\* A - ATTORNEY \*\*\*  
MICIAC

JASON R

1 - ROLIG & PETERSON LLP  
2 - PO BOX 2749  
3 -  
City- TWIN FALLS State- ID Zip- 833032749  
Phone - 208-733-5500

\*\*\* C - CURRENT OWNER \*\*\*  
AQUA LIFE INC

1 - RT 5 BOX 5053  
2 -  
3 -  
City- BUHL State- ID Zip- 83316  
Phone - 208-733-4250

\*\*\* D - DIR RPT OWNER \*\*\*  
FISHER

OPAL HOLMES

1 - 1605 PROMONTORY ROAD  
2 -  
3 -  
City- BOISE State- ID Zip- 83702  
Phone - 208-344-4517

\*\*\* O - ORIGINAL OWNER \*\*\*  
FISHER DEC

VARDIS

1 -  
2 -  
3 -  
City- HAGERMAN State- ID Zip- 83332  
Phone - 208-000-0000

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +  
08/05/1954 17 SOUTHERN L - LICENSE

+ - - - - Source - - - - + + - - - - - Tributary - - - - - +  
SPRINGS BILLINGSLEY CREEK

+ - - - - Point of Diversion - - - - - +  
TwN Rng Sec Tract Lot RFlg County  
07S 14E 18 SE NW SW 3 (47) GOODING  
NE SW SW 4 (47) GOODING

+ - - - - Water Use - - - - - +  
Code Description Period From Period To Diversion Rate Diversion Volume  
19 - FISH PROPAGATION 01/01 12/31 54.680 39518.00

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +  
54.680 39518.00 0.0

+ - - - - Place of Use - - - - - +  
TwN Rng Sec Tract Lot Acres Code Description County  
07S 14E 18 SW SW 4 19 FISH PROPAGATION (47) GOODING

Total Acres:

36-02338

|                      |              |                       |              |                         |         |
|----------------------|--------------|-----------------------|--------------|-------------------------|---------|
| Court Report Filing  | - 11/02/1992 | Field Inspection Made | - 00/00/0000 | Civil Case Number       | - 39576 |
| Objection Filed Date | - 02/05/1997 | Field Inspection Flag | -            | Old Case Number         | -       |
| Response Filed Date  | - 00/00/0000 | Verified Date         | - 00/00/0000 | Old Judicial District   | -       |
| Claim Received Date  | - 08/31/1988 | Last Amended Date     | - 00/00/0000 | Temporary Right         | - P     |
|                      |              | Receipt Number        | - C002408    | Water District          | -       |
|                      |              | POU Ownership Flag    | - N          | Federal/State Indicator | - S     |
|                      |              | Name Connector        | - OR         | Presumption Flag        | - C     |

RECEIVED

MAY - 7 1999

COPY

Aqua Life Corp.

Department of Water Resources

1999 APR 30 PM 4: 03

DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO

FILED —————

Jason R. Miciak  
ROLIG & PETERSON, L.L.P.  
Attorneys at Law  
P.O. Box 2749  
102 Main Avenue South, Suite 6  
Twin Falls, Idaho 83303-2749  
Telephone: (208) 733-5500  
FAX: (208) 733-5553

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. | ) | Subcase Nos. 36-02338, 36-02414, |
|                     | ) | 36-02734, and 36-04011           |
| Case No. 39576      | ) |                                  |
|                     | ) | <u>NOTICE OF SUBSTITUTION</u>    |
|                     | ) | <u>OF COUNSEL</u>                |
| _____               | ) |                                  |

TO: The above-entitled court and to the parties and their counsel:

YOU ARE HEREBY NOTIFIED that pursuant to Rule 11(b)(1), Idaho Rules of Civil Procedure, the firm of Rolig and Peterson, L.L.P., is hereby substituted as counsel for Aqua Life Corp., in place of Arkoosh Law Office.

DATED This \_\_\_\_ day of April, 1999.

ARKOOSH LAW OFFICE

By: \_\_\_\_\_  
C. Tom Arkoosh

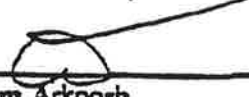
DATED This 29 day of April, 1999.

ROLIG & PETERSON, L.L.P.

By:   
Jason R. Miciak

DATED This 29 day of April, 1999.

ARKOOSH LAW OFFICE

By: 

C. Tom Arkoosh

DATED This \_\_\_\_ day of April, 1999.

ROLIG & PETERSON, L.L.P.

By: \_\_\_\_\_

Jason R. Miciak

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SEP 09 1998

Department of Water Resources  
Southern Region

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AUG 27 1998

Department of Water Resources

1998 AUG 25 AM 8:34

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

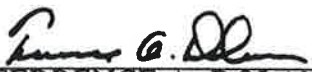
Subcases 36-02338, 36-02414, 36-02734  
and 36-04011

ORDER GRANTING MOTION TO  
VACATE AND RESET HEARING

On August 18, 1998, the North Snake Ground Water District filed its *Motion to Vacate and Reset Hearing*. The hearing is currently set for August 27, 1998. The *Motion* stated that claimant Aqua Life, Inc., wished to vacate the hearing to engage in settlement discussions. Objector Buckeye Farms, Inc., does not oppose the *Motion*.

THEREFORE, it is ordered that the District's *Motion* is **granted**. The hearing on the District's *Motion to Alter or Amend* is **reset** to **Friday, October 23, 1998, 10:00 a.m.**, at the SRBA Courthouse, 253 3rd Avenue North, Twin Falls, Idaho.

DATED August 25, 1998.

  
TERRENCE A. DOLAN  
Special Master  
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO VACATE AND RESET HEARING was mailed on August 25, 1998, 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

Director of IDWR  
Box 83720  
Boise, Idaho 83720-0098

Josephine Beeman  
Box 1427  
Boise, Idaho 83701-1427

John K. Simpson  
Box 2139  
Boise, Idaho 83701-2139

C. Thomas Arkoosh  
Box 32  
Gooding, Idaho 83330-0032

  
Deputy Clerk



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
1341 FILLMORE STREET, SUITE 200  
TWIN FALLS, ID 83301-3380  
PH. (208) 736-3033

Date 10/15/98

Name TERRY SCANLAN, SCANLAN ENGINEERING

Address 600 E RIVER PARK LN SUITE 105, BOISE

Phone 383-4140

ID 83706

| No. of<br>Copies | Materials               | Cost            |
|------------------|-------------------------|-----------------|
| 537              | @.05                    | \$26.85         |
|                  | FILES # <u>36-02338</u> |                 |
|                  | <u>36-02414</u>         |                 |
|                  | <u>36-02734</u>         |                 |
|                  | <u>36-04011</u>         |                 |
|                  |                         |                 |
| TOTAL            |                         | \$ <u>26.85</u> |

Please find enclosed the form(s) and/or information you requested. The charge, if any, is indicated above.

If we may be of further assistance, please contact us.

Sincerely,

Cheryl Cather, SRBA RECORDS CLERK

# INFORMATION REQUEST

NAME:

Matt Howard

DATE:

5-13-98

ADDRESS:

Beeman & Hysketter

CITY/ZIP:

Boise

PHONE:

(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 NUMBERSALLOCATION WATER  
RIGHT NUMBERSOTHER  
DOCUMENTSA36-0401A36-02734A36-2414A-36 2338

RESEARCH SUBJECT:

Agua life

COPIES MADE OF:

all the above claims10 COPIES OR LESS: FREENUMBER OF COPIES MADE: 435FEES DUE @ \$0.05 PER COPY: 21.75

OTHER FEES: \_\_\_\_\_

RECEIPT NUMBER: \_\_\_\_\_

Phone in to Vicki Kelly  
(customer signature)

ASSISTING AGENT: DA

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APR 15 1998

Department of Water Resource  
Southern Region

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APR 10 1998

Department of Water Resources  
Adjudication Bureau

1998 APR -8 AM 11:06

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILEDIN 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): 36-02338

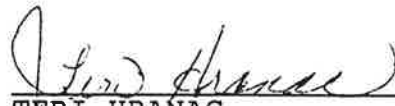
36-02414 36-02734 36-04011

On April 08, 1998, Special Master TERRENCE A. DOLAN 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 April 08, 1998.



TERI HRANAC  
Deputy Clerk

1998 APR -8 AM 11: 06  
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     | ) | Subcases 36-02338, 36-02414, |
|                | ) | 36-02734 and 36-04011        |
| Case No. 39576 | ) |                              |
|                | ) | SPECIAL MASTER'S REPORT      |

---

**Findings of Fact**

**36-02338**

Opal H. Fisher filed a *Notice of Claim to a Water Right* under 36-02338 on August 31, 1988, claiming 54.68 cfs from "unnamed springs" for year 'round fish propagation with a priority date of August 31, 1988, based on a license. On November 2, 1992, the Director of the Idaho Department of Water Resources filed his *Director's Report for Reporting Area 3* (Basin 36) recommending the claim as filed.

**36-02414**

Aqua Life Corporation, Route 5, Box 5053, Buhl, Idaho 83316, filed a claim under 36-02414 on August 31, 1988, claiming 4 cfs from "unnamed stream" for year 'round fish propagation with a priority date of December 21, 1959, based on a license. The *Director's Report* recommended the claim as filed.

**36-02734**

Clear Springs Trout Company filed a claim under 36-02734 on August 26, 1988, for 100 cfs from Billingsley Creek for year 'round fish propagation with a priority date of October 5, 1965, based on a license. The *Director's Report* recommended the claim as filed.

**36-04011**

Aqua Life, Inc., filed a claim under 36-04011 on September 1, 1988, for 50 cfs from Billingsley Creek for year 'round fish propagation with a priority date of December 1, 1965, based on beneficial use. The *Director's Report* recommended 12 cfs.

### Proceedings

Buckeye Farms, Inc., was granted leave to file late objections to all four (4) of Aqua Life's claims on March 24, 1997, objecting to quantity and the water rights being recommended at all. On July 8, 1997, Aqua Life Corporation was granted leave to file a late objection to quantity in 36-04011. Just before trial on all objections, the parties filed a joint *Stipulation and Motion to Dismiss*. On February 26, 1998, an *Order Granting Motion to Dismiss* was entered dismissing all objections.

### Conclusions of Law

Aqua Life, Inc., or Aqua Life Corporation, is entitled to partial decrees adjudicating water rights under 36-02338, 36-02414, 36-02734 and 36-04011 as described in the attached *Special Master's Recommendations for Partial Decrees for Water Rights 36-02338, 36-02414, 36-02734 and 36-04011*.

DATED April 8, 1998.



---

TERRENCE A. DOLAN  
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 36-02338

1998 APR -8 AM 11:06

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILED

NAME & ADDRESS: AQUA LIFE INC  
RT 5 BOX 5053  
BUHL ID 83316

SOURCE: SPRINGS TRIBUTARY: BILLINGSLEY CREEK

QUANTITY: 54.68 CFS  
39518.0 AFY

USE OF THIS RIGHT WITH RIGHT NO. 36-02414 IS LIMITED TO A  
TOTAL COMBINED DIVERSION RATE OF 58.68 CFS.

PRIORITY DATE: 08/05/1954

POINT OF DIVERSION: T07S R14E S18 LOT 3 (SENWSW) Within GOODING County  
LOT 4 (NESWSW)

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE   | PERIOD OF USE | QUANTITY                 |
|-------------------------------|------------------|---------------|--------------------------|
|                               | FISH PROPAGATION | 01-01 12-31   | 54.68 CFS<br>39518.0 AFY |

PLACE OF USE: FISH PROPAGATION Within GOODING County  
T07S R14E S18 Lot 4 (SWSW)

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.

\_\_\_\_\_  
DANIEL C. HURLBUTT, JR.  
PRESIDING JUDGE  
Snake River Basin Adjudication

RECOMMENDATION

APR 8 1998

*James G. Bell*

SPECIAL MASTER

1998 APR -8 AM 11: 06

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 )

CERTIFICATE OF MAILING

Case No. 39576 )

Water Right(s): 36-02338  
36-02414 36-02734 36-04011

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 April 08, 1998, with sufficient first-class postage prepaid to the following:

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

AQUA LIFE INC  
Represented by:  
C. THOMAS ARKOOSH  
116 4TH AVENUE WEST  
PO BOX 32  
GOODING, ID 83330  
Phone: 208-934-8872

CERTIFICATE OF MAILING

PAGE 1  
04/08/98

BUCKEYE FARMS, INC.

Represented by:

JOHN K. SIMPSON

P O BOX 2139

BOISE, ID 83701-2139

Phone: 208-336-0700

  
\_\_\_\_\_  
TERI HRANAC  
Deputy Clerk

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MAR 06 1998

Department of Water Resources  
Southern Region

RECEIVED  
MAR 03 1998  
Department of Water Resources

1998 FEB 26 PM 2:00

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     | ) | Subcases <b>36-02338</b> , 36-02414, 36-02734 |
|                | ) | and 36-04011                                  |
| Case No. 39576 | ) |                                               |
|                | ) | ORDER GRANTING MOTION                         |
|                | ) | TO DISMISS and ORDER                          |
|                | ) | VACATING TRIAL                                |

Trial on late objections filed by claimant Aqua Life, Inc., and by Buckeye Farms was set for February 26, 1998. However, on February 25, 1998, Buckeye Farms filed with the SRBA Court a *Motion to Dismiss*.

The *Motion* seeks dismissal of Buckeye Farms' objections based on an attached *Stipulation* signed by both parties. In the *Stipulation*, the parties said they "desire to bring an end to the litigation among them and reach final understanding and agreement concerning the exercise of their respective rights."

What then followed in the *Stipulation* was a rotation agreement specifying how the parties would exercise their respective water rights. Finally, the parties agreed that: "All the provisions of this agreement, including all benefits and burdens shall run with the water right claims, permits and applications described herein."

Several issues were not addressed in the *Stipulation*. For instance, there was no mention of the claimant's objections, the matter of costs and attorney fees and the concurrence of IDWR in final resolution of the subcases.

It is clear from the *Stipulation*, plus representations of the parties at the pre-trial conference held on February 17, 1998, that the parties intend to seek dismissal of *all* objections in the subcases with each party to bear their own expenses. Further, such dismissal will result in the claims being decreed as they were recommended in the *Director Report*.

John K. Simpson  
Rosholt, Robertson & Tucker  
1221 West Idaho Street, Suite 600  
Boise, ID 83702  
(208) 336-0700  
(208) 344-6034 Facsimile

Attorney for Buckeye Farms

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MAR 06 1998

Department of Water Resources  
Southern Region

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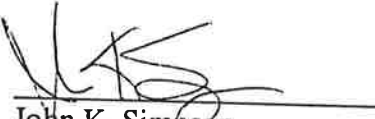
FEB 27 1998

OFFICE OF THE  
ATTORNEY GENERAL

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    | ) | Subcases          | 36-02338, 36-02734 |
|                | ) |                   | 36-02414, 36-04011 |
| Case No. 39576 | ) |                   |                    |
|                | ) | MOTION TO DISMISS |                    |
|                | ) |                   |                    |
|                | ) |                   |                    |

COMES NOW Buckeye Farms, by and through its attorneys of record, Rosholt, Robertson & Tucker, hereby moves this Court for an order dismissing the objections filed in the above captioned subcases. In support of this motion Buckeye Farms attaches the stipulation agreed to by the parties to the subcase. Attached to this motion is an Order for the Courts consideration and signature, dismissing the objections of Buckeye Farms in this matter.

  
John K. Simpson

MAIL12884



MOTION TO DISMISS

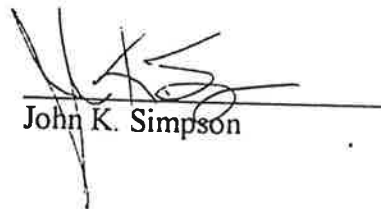
# CERTIFICATE OF MAILING

I certify that a true and correct copy of the MOTION TO DISMISS was mailed on February 17, 1998, postage pre-paid to the following:

C. Thomas Arkoosh  
Aqua Life  
Box 32  
Gooding, ID 83330

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

Director of IDWR  
Box 83720  
Boise, ID 83720-0098



John K. Simpson

2-35

SOUTHERN

ORIGINAL

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

Sub-Case No. 36-02338, 36-02734  
36-02414, 36-04011

CASE NO. 39576

RECEIVED

STIPULATION

RECEIVED

MAR 02 1998

FEB 26 1998

Department of Water Resources  
Southern Region

RECITALS  
A.

Department of Water Resources  
Adjudication Bureau

WHEREAS, Buckeye Farms possesses decreed irrigation water rights, and permits  
and applications for permits for the use of water from Billingsley Creek.

B.

WHEREAS, AquaLife is the owner of existing water rights, permits and claims for  
fish propagation, as described in Snake River Basin Adjudication ("SRBA") Claim Nos. 36-  
02338, 36-02734, 36-02414, and 36-04011

C.

WHEREAS, the parties recognize that continued litigation in the above captioned sub-  
cases is expensive, time consuming and detrimental to community relations, and the parties  
desire to bring an end to the litigation among them and reach final understanding and  
agreement concerning the exercise of their respective water rights.

NOW THEREFORE, in compromise and settlement of this litigation, the parties to  
this agreement Buckeye Farms and AquaLife, individually or by and through their respective  
counsel hereby stipulate and agree on terms consistent with those set forth in this stipulation.  
The parties stipulate and agree to the exercise their respective water rights from Billingsley

STIPULATION

Creek at or above the AquaLife facility as follows:

1. The parties recognize that Buckeye Farms owns an irrigation water right identified as SRBA Claim No. 36-00018, senior in priority to the water rights claimed by AquaLife.
2. The parties agree that as of the date of this agreement Buckeye Farms has additional claims to water diverted from Billingsley Creek via the Curren ditch in the form of permits and applications.
3. Buckeye Farms and AquaLife agree that in compromise and settlement of Buckeye Farms' objections to SRBA Claims Nos. 36-02338, 36-02734, 36-02414, and 36-04011, AquaLife will subordinate its water rights, SRBA Claims Nos. 36-02734 and 36-04011, to Buckeye Farms' non-irrigation SRBA Claims, permits and applications up to the amount mutually agreed upon of 35 cubic feet per second ("cfs") during the months October, November, December, and January of 1998 and 1999. Following the expiration of this time period, AquaLife will continue to subordinate the above stated rights, if the parties are successful in acquiring a substitute source of water for Buckeye Farms' Billingsley Creek water claims identified in Paragraph 2 above and Buckeye is able to leave water in Billingsley Creek in accordance with Paragraph 4 below.
4. If at the end of calendar year 1999 the parties have been unable to procure a substitute source of water in accordance with the terms and conditions set forth herein, this agreement will continue in force from year to year until the parties are successful in obtaining substitute water, or the parties mutually

FEB 23 98 14:26 FROM RUSHOLT ROBERTSON TO 3275400 PAGE 1034

agree to terminate the agreement. This agreement shall be terminated only by the express consent of both parties in writing.

5. Buckeye Farms and AquaLife agree that in compromise and settlement of Buckeye Farms' objections to SRBA Claims Nos. 36-02338, 36-02734, 36-02414, and 36-04011, Buckeye Farms agrees to leave 15 cfs of water right #36-00018 in Billingsley Creek during the period February 1- June 1 for the water years 1998 and 1999 to allow the parties sufficient time to cooperate in efforts to obtain substitute water in order to mitigate for reduced water flows in Billingsley Creek. If the parties are successful in acquiring a substitute source of water for Buckeye Farms' Billingsley Creek water claims, Buckeye Farms will continue to leave water in Billingsley Creek given the following conditions: (1) the parties recognize that it is reasonably necessary to provide a sufficient amount of water for the continued operation and maintenance of Buckeye Farms' pipeline, and thereby agree that a flow of 5 cfs at the Curren ditch headgate is sufficient to meet these needs under Buckeye Farms' water rights from Billingsley Creek; (2) that a reliable, continuous substitute flow of at least 20cfs is available; and (3) the water is provided at no additional cost to Buckeye Farms or AquaLife.
6. The parties further agree that in seeking a substitute source of water for Buckeye Farms' water rights out of Billingsley Creek via the Curren Ditch, the parties will cooperate in assessing a potential call on junior groundwater rights impacting the flows from the Curren Tunnel. If the parties determine that their respective rights are impaired, and substitute water or other forms

FEB 25 98 14:27 FROM RUSHOLT ROBERTSON TO 3275400 PAGE.005

of mitigation is not available, the parties will work together in seeking the appropriate administrative or legal relief.

This agreement shall be effective and binding upon the parties hereto and shall be binding upon and inure to the benefit of the successors, heirs, assignees or personal representatives of the parties hereto upon the signature of all of the parties. All the provisions of this agreement, including all benefits and burdens shall run with the water rights claims, permits and applications described herein.

This agreement may be signed in counterpart, all of which together, will all purposes, constitute one agreement, binding on the parties, notwithstanding that all parties may not have signed the same copy of the stipulation.

This agreement shall be filed in the records of the Clerk and Recorder for Gooding County.

DATED this 17<sup>th</sup> day of February 1998.

For: AquaLife

  
By: Ken Ellis

STATE OF IDAHO )  
County of Gooding ) ss.

On the 17<sup>th</sup> day of February, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared Ken Ellis, known to me to be the person whose name is subscribed in the instrument, and acknowledged to me that he executed the same.

STIPULATION

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

Brenda S. Buttal  
A Notary Public in and for  
the County of Gooding  
State of Idaho.

For Buckeye Farms, Inc.

Brian Barsotti  
By: Brian Barsotti

STATE OF IDAHO )  
 )  
County of Blaine ) ss.

On the 21<sup>st</sup> day of Feb., 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared Brian Barsotti, known to me to be the person whose name is subscribed in the 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.

Theresa Dietrich  
A Notary Public in and for  
the County of Blaine  
State of Idaho.



John K. Simpson  
Rosholt, Robertson & Tucker  
1221 West Idaho Street, Suite 600  
Boise, ID 83702  
(208) 336-0700  
(208) 344-6034 Facsimile

Attorney for Buckeye Farms

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    | ) | Subcases          | 36-02338, 36-02734 |
|                | ) |                   | 36-02414, 36-04011 |
| Case No. 39576 | ) |                   |                    |
|                | ) | MOTION TO DISMISS |                    |
|                | ) |                   |                    |
|                | ) |                   |                    |

---

COMES NOW Buckeye Farms, by and through its attorneys of record, Rosholt, Robertson & Tucker, hereby moves this Court for an order dismissing the objections filed in the above captioned subcases. In support of this motion Buckeye Farms attaches the stipulation agreed to by the parties to the subcase. Attached to this motion is an Order for the Courts consideration and signature, dismissing the objections of Buckeye Farms in this matter.

  
John K. Simpson

MOTION TO DISMISS

FEB 23 98 14:28 FROM RUSHOLT ROBERTSON TO 3275400 PAGE.003

**CERTIFICATE OF MAILING**

I certify that a true and correct copy of the MOTION TO DISMISS was mailed on February 17, 1998, postage pre-paid to the following:

C. Thomas Arkoosh  
Aqua Life  
Box 32  
Gooding, ID 83330

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

Director of IDWR  
Box 83720  
Boise, ID 83720-0098

  
John K. Simpson

**MOTION TO DISMISS**

FEB 23 98 14:28 FROM ROSHOLT ROBERTSON TO 3275400 PAGE.003

John K. Simpson  
Rosholt, Robertson & Tucker  
1221 West Idaho Street, Suite 600  
Boise, ID 83702  
(208) 336-0700  
(208) 344-6034 Facsimile

Attorney for Buckeye Farms

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    | ) | Subcases                      | 36-02338, 36-02734 |
|                | ) |                               | 36-02414, 36-04011 |
| Case No. 39576 | ) |                               |                    |
|                | ) | ORDER GRANTING BUCKEYE FARMS' |                    |
|                | ) | MOTION TO DISMISS             |                    |
|                | ) |                               |                    |
|                | ) |                               |                    |

On February \_\_\_\_, 1998, Buckeye Farms, by and through its attorneys of record, Rosholt, Robertson & Tucker, filed a Motion to Dismiss its objections in subcase nos. 36-02338, 36-02414, 36-02734, and 36-04011. Attached to this Motion was a Stipulation signed by the parties regarding a shared use of water from Billingsley Creek. At the pre-trial conference held February 17, 1998, the parties represented that this agreement resolved all differences between the parties with respect to these subcases.

Therefore, it is ordered that Buckeye Farms' Motion to Dismiss its objections is granted.

DATED this \_\_\_\_ day of February, 1998.

\_\_\_\_\_  
Terrance A. Dolan  
Special Master  
Snake River Basin Adjudication

ORDER GRANTING BUCKEYE FARMS'  
MOTION TO DISMISS

ROBERT WOODRICKSON TO 3275400 PAGE 01070

**CERTIFICATE OF MAILING**

I certify that a true and correct copy of the MOTION TO DISMISS was mailed on \_\_\_\_\_ day of February, 1998, postage pre-paid to the following:

C. Thomas Arkoosh  
Aqua Life  
Box 32  
Gooding, ID 83330

John K. Simpson  
Buckeye Farms  
P.O. Box 2139  
Boise, ID 83701-2139

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

Director of IDWR  
Box 83720  
Boise, ID 83720-0098

\_\_\_\_\_  
Deputy Clerk

**ORDER GRANTING BUCKEYE FARMS'  
MOTION TO DISMISS**

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APR 07 1997

Department of Water Resources  
Southern Region

RECEIVED

MAR 26 1997

Department of Water Resources

1997 MAR 24 PM 4:50

DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

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

Subcases 36-02338, 36-02414,  
36-02734 and 36-04011

ORDER GRANTING MOTION TO  
FILE LATE OBJECTIONS

### Motion

On February 5, 1997, Buckeye Farms filed its *Motion to File Late Objections* in the above four subcases. Aqua Life, Inc., is the claimant in each subcase.<sup>1</sup> The *Motion* alleged that Buckeye Farms holds irrigation water rights senior to Aqua Life's fish propagation claims from Billingsley Creek- 36-02734 and 36-04011. However, in the non-irrigation season, Buckeye Farms' various non-irrigation claims are junior to Aqua Life's claims.

The *Motion* also included two other of Aqua Life's fish propagation claims- 36-02338 and 36-02414. Instead of Billingsley Creek, these two claims were to water from Tupper Springs and Big Springs/Fisher Springs. The two claims were included in the *Motion* because water from Billingsley Creek and the springs is allegedly "intermixed for purposes of discharge."

All four of Aqua Life's claims were recommended for adjudication in the *Director's Report for Reporting Area 3 (Basin 36)*, filed November 2, 1992. No objections were filed within the objection period.

Buckeye Farms stated that the Director's recommendations were based on IDWR's investigations between 1988 and 1990 or 1991. Since then, at least five years have elapsed. Buckeye Farms then alleged: "It is during this time period [1992-1996] that actual use at the facility

<sup>1</sup> Aqua Life, Inc., or Aqua Life Corp. were listed as the claimants for three of the claims. Opal H. Fisher was reported as the claimant of 36-02338. During the hearing on the *Motion*, it was stated that the correct claimant in all four subcases is Aqua Life, Inc. Presumably, then, Aqua Life is the successor in interest to Ms. Fisher.

gives rise to forfeiture of certain rights or portions of rights.”

Buckeye Farms based its allegation of forfeiture or partial forfeiture on monthly discharge monitoring reports (DMR's) filed by Aqua Life with EPA and DEQ. David B. Shaw's affidavit attached to the *Motion* concluded that discharge figures for the period 1992-1996, indicate only a small portion of Aqua Life's four claims were being put to beneficial use (60 cfs of the total 170.6 cfs recommended).

Finally, Buckeye Farms argued that it had shown good cause to file late objections because: 1) its failure to object was not wilful; 2) evidence of forfeiture was “newly discovered” after the objection period; 3) allowing a late claim will not prejudice Aqua Life; and 4) Buckeye Farms has alleged a meritorious position.

### Hearing

Buckeye Farms' *Motion to File Late Objections* was heard on March 14, 1997, at the SRBA Court, Twin Falls, Idaho. John K. Simpson appeared for Buckeye Farms and C. Tom Arkoosh for Aqua Life. Charles L. Honsinger appeared by telephone for IDWR.

Counsel for Aqua Life presented testimony by Kenneth Ellis, president of Aqua Life, and Rick Eggleston. Mr. Eggleston is the operator of Gold Springs which leases the facilities from Aqua Life. Aqua Life also offered into evidence Aqua Life Exhibits 1-3, plus a copy of *Fort Hall Water Users Ass'n v. U.S.*, 129 Idaho 39, 921 P.2d 739 (1996).

Mr. Ellis testified that he has been involved with operation of the facility from 1980 until June, 1994, as lessee and then owner. Water from Billingsley Creek is *not* intermixed with water from Tupper Springs and Big Springs, as Mr. Shaw stated in his affidavit. Creek water and spring water are measured and reported separately even though there is one permit for both sites. Mr. Ellis said that Aqua Life's use of spring rights does not affect Buckeye Farms. In the last ten years, there was never a five year period when all the available creek water was not used when water quality (temperature and oxygen) was acceptable. Further, there was only one month when all the water available from Big Springs was not used. Between 1989 and 1994, water flows dropped and water temperatures increased. Mr. Ellis' efforts to get more water from George Lemmon, the water master, got no direct results.

Rick Eggleston testified that he took over operation of the facilities in June, 1994, under the name “Gold Springs.” Upstream water users, such as Buckeye Farms, have no lockdown devices

at their diversions along Billingsley Creek. As a result of diversions by junior appropriators during 1994-1995, the facility never used more than 80 cfs. Since Aqua Life's successful "call" on Billingsley Creek in December, 1996, Gold Springs has used over 100 cfs- sometimes as high as 156 cfs.<sup>2</sup>

## The Law

### 1. Good Cause

*SRBA Administrative Order 1, Rules of Procedure*(AO-1), does not provide guidance for review of motions to file late *objections*. AO-1 only refers to late *claims* which are reviewed under the criteria of I.R.C.P. 55(c), "Setting aside default judgment."<sup>3</sup> However, customary practice in the SRBA court has been to apply the same criteria to both late claims and late objections. Hence, Buckeye Farms' *Motion* will be considered under Rule 55(c):

For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

Idaho courts follow a dual-track standard to determine when a party is entitled to relief from default. A party wanting to set aside a clerk's entry of default need only show "good cause" under Rule 55(c). If a final judgment by default has been entered, then a party must, in addition to good cause, satisfy the requirements of Rule 60(b). That is, the party must show some basis such as newly discovered evidence.

A motion to set aside a default judgment presents the trial court with a factual determination. *Reeves v. Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981). In determining whether to set aside a default judgment, a standard of liberality must be applied rather than one of strictness and the party moving to vacate a default judgment must be given the benefit of any genuine doubt. *Johnson v. Pioneer Title Co. of Ada County*, 104 Idaho 727, 662 P.2d 1171 (App. 1983). A motion to set aside a default judgment is addressed to the sound discretion of the trial court whose decision will not be reversed in the absence of abuse of that discretion. However, it would be an abuse of discretion for the trial court to grant such a motion without an adequate legal basis for doing so. *Newbold v.*

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<sup>2</sup> The recommendations in the Director's Report for Aqua Life's diversions from Billingsley Creek (36-02734 and 36-04011) total 112 cfs.

<sup>3</sup> AO-1 (amended 9/30/96), 4, e, (2), (e), p. 7.

*Arvidson*, 105 Idaho 663, 672 P.2d 231 (1983).

The very language in Rule 55(c) and Rule 60(b) suggests a different standard to set aside an entry of default versus a default judgment. The Idaho Court of Appeals recognized that the Rule 55(c) “good cause” standard may be more lenient than the Rule 60(b) standard. *McFarland v. Curtis*, 123 Idaho 931, 854 P.2d 274 (App. 1993).

Whether part of good cause or in addition to it, Idaho courts have imposed further requirements. First, a party must show that he or she has acted in good faith and exercised due diligence in the prosecution of his or her rights, such as an ordinarily prudent person would exercise under similar conditions. *Council Improvement Co. v. Draper*, 16 Idaho 541, 102 P. 7 (1909), and *Kovachy v. DeLeusomme*, 122 Idaho 973, 842 P.2d 309 (App. 1992). Second, a party must show a meritorious defense to set aside a default. *Thomas v. Stevens*, 78 Idaho 266, 300 P.2d 811 (1956).

A party who seeks to set aside a default has the burden of supplying detailed facts of the proposed defense. *Smith Electric, Inc. v. Crandlemire*, 100 Idaho 172, 595 P.2d 321 (1979). At a hearing on the motion, a party need not produce documents to *prove* a defense. It is sufficient if the movant *pleads* with particularity facts which, if proven, would constitute a meritorious defense. *State v. One 1990 Geo Metro*, 126 Idaho 675, 889 P.2d 109 (App. 1995). The policy of requiring a showing of a meritorious defense is founded on the doctrine that it would be an idle exercise for a court to set aside a default if, in fact, there is no real justiciable controversy. *Reeves v. Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981).

## **2. Standing**

In the SRBA, “claimant” means anyone asserting ownership of rights, and who has filed a claim, to the use of water in Idaho. I.C. § 42-1401A (1), and AO-1, 2, d, p. 1. A claimant is also a “party to the adjudication.” AO-1, 2, p, p. 2. Any claimant may file an objection to a water right. I.C. § 42-1412 (1). When a party to the adjudication files an objection, they become an “objector” and a “party to a subcase.” AO-1, 2, m, and o, p. 2. Any water right which is the subject of a post-Director’s Report pleading, like an objection, becomes a “subcase.” AO-1, 2, x, p. 2.

## **Discussion**

Aqua Life argued that, while Buckeye Farms may have standing to object to Aqua Life’s creek rights (36-02734 and 36-04011), it lacks standing to object to the spring rights (36-02338 and 36-02414). After all, Aqua Life diverts its spring water a considerable distance downstream from

Buckeye Farms and that water is not intermixed with creek water. Therefore, as Mr. Ellis said, Aqua Life's use of water from Tupper Springs and Big Springs does not affect Buckeye Farms. In support of that argument, Aqua Life offered the Idaho Supreme Court's holding in the *Fort Hall* case.

In *Fort Hall*, the court held that a non-Indian water users' association was not a "claimant" in the SRBA because it did not assert ownership of water rights. The United States claimed ownership of the water rights on its own behalf. The association was merely contractually permitted to have *use* of the water. Therefore, because the association was not a claimant in the SRBA, it lacked standing to object to the 1990 Fort Hall Indian Water Rights Agreement.

*Fort Hall* does not stand for the proposition that one must prove their water right is affected to have standing to object in the SRBA. Rather, one must show that they are a *claimant* as defined by I.C. § 42-1401A, (1). That is, one must have asserted ownership of rights to use water in Idaho or be someone on whose behalf such ownership was asserted.

Buckeye Farms has standing to object to Aqua Life's spring and creek claims because it has claimed ownership of rights to use water in Idaho. Court records show that Buckeye Farms is the claimant in eight contested subcases. It may also be a claimant in uncontested claims not now before the court.

The court is satisfied that Buckeye Farms has acted in good faith and exercised due diligence in the prosecution of its rights based on evidence not available during the objection period. However, there remains the matter of whether Buckeye Farms has alleged facts which, if proven, constitute a meritorious position.

Buckeye Farms was correct in stating that the hearing on its *Motion to File Late Objections* was not a trial on the evidence. In other words, the purpose of the hearing was not try the matter of Aqua Life's alleged forfeiture or partial forfeiture of its claims to water rights. Rather, the hearing was to determine whether Buckeye Farms has shown good cause to have its *Motion* granted. The court is satisfied that Buckeye Farms has shown good cause.

Buckeye Farms alleged that Aqua Life used less than its licensed or claimed amounts of water during a five year period from 1992 until 1996.<sup>4</sup> That allegation, if proven, supports a finding of forfeiture:

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<sup>4</sup> Three of Aqua Life's claims are based on licenses. Claim 36-04011 is based on beneficial use.

All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated....

I.C. § 42-222, (2).

Unlike abandonment which requires intent, statutory forfeiture provides that all rights to water are lost where the appropriator fails to make beneficial use of the water for a continuous five year period regardless of intent. *McAtee v. Faulkner Land & Livestock, Inc.*, 113 Idaho 393, 744 P.2d 121 (App. 1987).

As the parties are aware, the Presiding Judge in the SRBA has held that there is no "partial" forfeiture in Idaho.<sup>5</sup> That ruling is now pending on appeal before the Idaho Supreme Court. That being the law of the case, Buckeye Farms' allegations of partial forfeiture cannot support its *Motion*. However, Buckeye Farms also alleged forfeiture without specifying which claims may be wholly forfeited.

Admittedly, Aqua Life presented testimony by Messrs Ellis and Eggleston to rebut Mr. Shaw's affidavit. Essentially, they said that there was no five year period when water was not used when water quality was good enough to raise fish. They both told of impaired water quantity and quality because of upstream junior appropriators. Their testimony aided the court in identifying the essential issues yet to be determined. However, the court withheld judgment on whether their testimony established defenses to the allegations of forfeiture. That will be determined at a trial on the merits, should the subcases proceed that far. Buckeye Farms will have to prove forfeiture at trial, but not to file objections to Aqua Life's claims.

THEREFORE, it is ordered that Buckeye Farms' *Motion to File Late Objections* in these four subcases is **granted**. Responses, if any, to Buckeye Farms' objections must be filed no later than April 18, 1997.

DATED March 24, 1997.

  
TERRENCE A. DOLAN  
Special Master, Reporting Area 3  
Snake River Basin Adjudication

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<sup>5</sup> See Memorandum Decision on Basin-Wide Issue 10, Partial Forfeiture, entered April 26, 1996.

## CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER GRANTING MOTION TO FILE LATE OBJECTIONS** was mailed on March 24, 1997, with sufficient first-class postage to the following:

Director of IDWR  
P. O. Box 83720  
Boise, ID 83720-0098

C. Thomas Arkoosh  
P O Box 32  
Gooding, Idaho 83330  
Rep: Aqua Life Inc.

John K. Simpson  
P O Box 2139  
Boise, Idaho 83701-2139  
Rep: Buckeye Farms, Inc.

  
Deputy Clerk

John K. Simpson  
Rosholt, Robertson & Tucker  
1221 W. Idaho Street, Suite 600  
P.O. Box 2139  
Boise, Idaho 83701-2139  
Telephone: (208) 336-0700  
Facsimile: (208) 344-6034

RECEIVED

FEB 05 1997

Department of Water Resources  
Adjudication Bureau

RECEIVED

FEB - 5 1997

OFFICE OF THE  
ATTORNEY GENERAL

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. 35976

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Subcase Nos.           36-02734  
                              36-04011  
                              36-02414  
                              36-02338

BUCKEYE FARMS' MOTION TO FILE  
LATE OBJECTIONS

DESCRIPTIVE SUMMARY

This document is a Motion to File Late Objection in claims nos. 36-02734, 36-04011, 36-02414 and 36-02338 on behalf of Buckeye Farms.

MOTION

Buckeye Farms (hereinafter referenced as "Movant"), hereby moves for leave to file a late objection to water right claims 36-02734, 36-04011, 36-02414 and 36-02338. This motion is supported by the argument below, the Affidavit of David Shaw, attached as Exhibit "A" and the proposed objections attached.

MAIL3722



## ARGUMENT

Aqua Life, Inc.'s predecessor filed two fish propagation claims for water out of Billingsley Creek. Claim no. 36-02734 is a licensed right for 100 cfs and was recommended as claimed by IDWR. Claim no. 36-04011 is a beneficial use claim for 50 cfs. IDWR recommended 12 cfs. Neither of these claims were objected to and therefore, no subcases exist. These claims are junior to the Movant's irrigation rights. However, in the non-irrigation season, the rights are senior to various non-irrigation rights held by the Movant. Aqua Life also filed claims for water from Tupper Springs and Big Springs or Fisher Springs, claim nos. 36-02338 for 54.6 cfs and 36-02414 for 4 cfs. The Aqua Life facility operates a number of raceways, with distinct and separate raceways served by the two sources, the springs and Billingsley Creek. Water is not co-mingled in the raceways and is only intermixed for purposes of discharge.

IDWR issued its recommendations for 36-02734, 36-02414, 36-04011 and 36-02338 in 1992 as a part of the Basin 36 Director's Report. At the close of the objection period no objections were made with respect to the recommendations. Therefore, these unobjected to recommendations are ready pursuant to Administrative Order 1 for partial decree. The partial decrees for each of these rights would have been based upon IDWR's investigation conducted during the period 1988 to 1990 or 1991. No partial decrees have been issued. Moreover, at least five years have passed since the rights were last analyzed. It is during this time period that actual use at the facility gives rise to forfeiture of certain rights or portions of rights.

Commercial fish propagation facilities that discharge water from their facilities to a public water source (waters of the United States) are normally required to obtain an NPDES discharge permit and submit monthly discharge monitoring reports (DMR's) as a condition of the permit. The DMR's are filed with EPA by the facility operator/permit holder and a copy is subsequently placed on file with the Division of Environmental Quality (DEQ) regional office in the vicinity of the facility. In this case the Twin Falls office of DEQ contains the pertinent files.

The Movant has reviewed the discharge amount portions of the DMR's for the Aqua Life facility. See *Affidavit of David Shaw*. For the period 1992-1996 the discharge figures indicate that only a small portion of the water claimed through the rights depicted above were being put to beneficial use. In fact for this period approximately 60 cfs of the total 170.6 cfs recommended was diverted and discharged according to Aqua Life records.

**I. Good Cause Exists to Grant the Movant's Leave to File Late Objections.**

The decision to set aside an entry of default or a default judgment, to allow a late notice of claim to be filed, and presumably, to allow a late objection to be filed, is within the sound discretion of the court. Clear Springs Trout Co. v. Anthony, 123 Idaho 141, 143 (1992). I.R.C.P. 60(b) provides that relief from a judgment may be granted on the grounds that ". . . (2) newly discovered evidence which by due diligence could not have been discovered in time for a new trial under Rule 59(b)" is discovered. This discovery standard also provides a basis for a new trial pursuant to I.R.C.P. 59(a). In addition to the discovery standard the court may also consider whether the failure to file an objection was wilful,

whether allowing a late objection would prejudice a party and whether a meritorious objection has been presented.

In the present case a judgment or partial decree has not been entered. Here, where no subcase has been established, the claims remain within the Court's jurisdiction, simply await a partial decree. Therefore, the discovery of new evidence which contradicts IDWR's recommendations, should be considered by the Court to ensure that the elements of any claim ultimately decreed are valid as of the date of the decree.

The Aqua Life discharge data obviously was not available during the original objection period in 1993. In fact the data was not available until after the close of the objection period. The newly discovered data impacts the validity of the Aqua Life claims as they are now recommended before the Court and awaiting the partial decree. The import of this motion is that if claims are decreed as recommended without consideration of this new evidence, the movant will lose the opportunity to rely upon this data. Arguably, the movant would not be able to go behind the decree to rely upon factual data prior to the date of the decree.

Moreover, at the time of the designated objection period, the Movant did have sufficient basis to file an objection. Only after the 1996 data period did the five year period provide the basis for filing this motion. Additionally, factual basis for this motion as enumerated in the affidavit of David Shaw, is premised upon information submitted to DEQ by the claimant. Again, this information gives rise to a forfeiture claim by the Movant.

The significance of this motion is further exemplified by the fact that by letter to the IDWR on April 9, 1996, Aqua Life made a call for delivery of the Billingsley Creek water

as against junior upstream users on Billingsley Creek and tributaries. Because the call was for non-irrigation season water, IDWR informed Aqua Life that the call would have to be renewed at the end of the irrigation season. In November, Aqua Life verbally renewed the call and submitted a written call in December, 1996 pursuant to an additional IDWR request.

Finally, the Movant recognizes that with Basin-wide #10 (Partial Forfeiture) on appeal the status of partial forfeiture is uncertain. Once the Supreme Court resolves this appeal then the facts of this case as supplemented by the affidavit contained herein, can be applied to the law. In the interim the Movant should be granted the opportunity to file its objections.

DATED this 4<sup>th</sup> day of February, 1997.

ROSHOLT, ROBERTSON & TUCKER



John K. Simpson  
Attorney for Buckeye Farms

## CERTIFICATE OF MAILING

I hereby certify that on the 4<sup>th</sup> day of February, 1997, I mailed the original and copies of this objection, including all attachments, to the following persons, by mailing the original and/or 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 at the following address:

Name: Aqua Life, Inc.  
Address: Route 5, Box 5053  
Buhl, Idaho 83316

3. Copies to:

IDWR Document Depository  
PO Box 83720  
Boise, ID 83720-0098

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

United States Department of Justice  
Environmental and Natural Resource Division  
550 West Fort Street, MSC 033  
Boise, Idaho 83724



\_\_\_\_\_  
John K. Simpson  
Attorney for Buckeye Farms

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**AFFIDAVIT OF DAVID B. SHAW DATED FEBRUARY 4, 1997**

DAVID B. SHAW, being first duly sworn deposes and states:

1. My name is David B. Shaw, and my work address is ERO Resources Corporation, 2309 N. Mountain View Drive, Suite 174, Boise, ID 83706-1065. My home address is 802 S. Plaza Road, Emmett, ID 83617.

2. My educational background includes bachelor's and master's degrees in Agricultural Engineering from the University of Idaho in 1966 and 1972, respectively. I am a registered professional engineer and land surveyor in the State of Idaho.

3. My work experience includes five years of teaching at the University of Idaho in the College of Engineering from 1968 to 1973. I was with the Idaho Department of Water Resources (department) and its predecessor agencies from November 1973 until July 1996. With the department, I served in a number of technical and administrative positions including Regional Supervisor for the department's western region from 1978 to 1985 and Adjudication Bureau Chief from 1985 to 1996. My experience with the department includes successfully managing a variety of water right, water supply and water delivery situations. Since July 1996 I have been employed by ERO Resources Corporation providing consulting services to clients in the areas of water rights, water right adjudication, and water distribution and management.

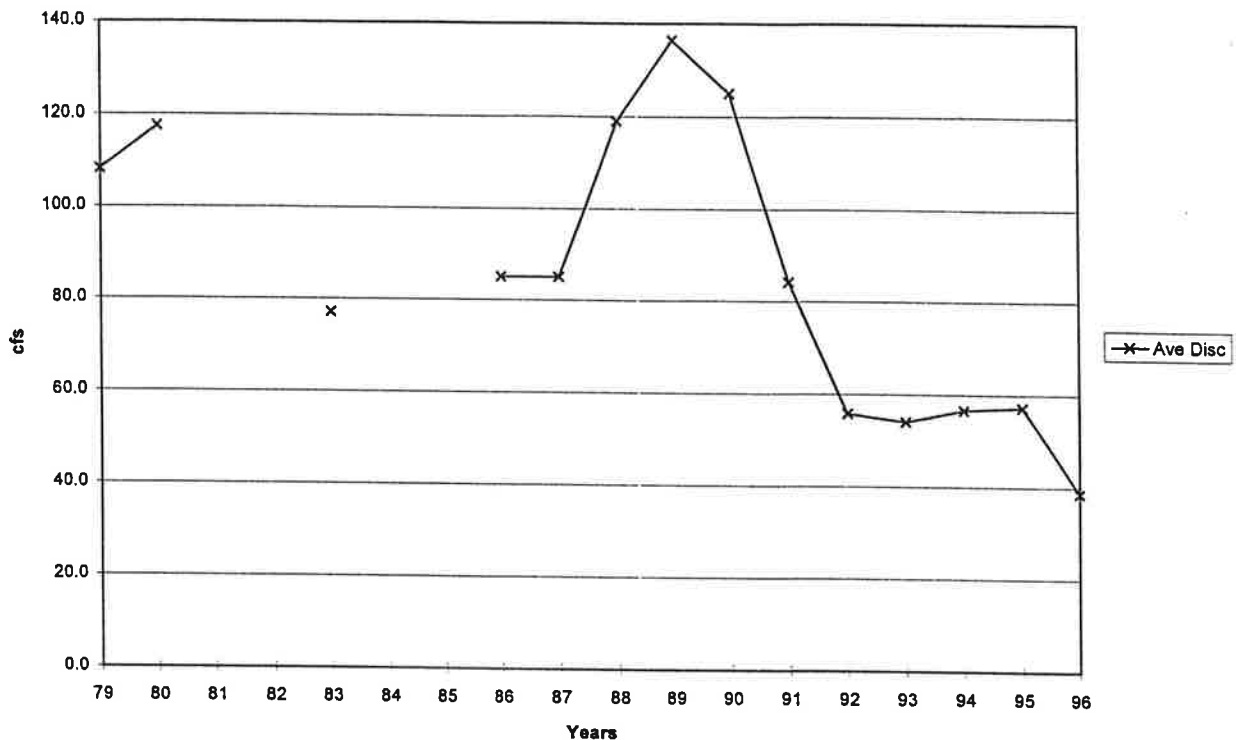
4. I have been engaged by Buckeye Ranch to examine the water rights of Aqua Life, Inc. (Aqua Life) for the facility once known as Idaho Springs Trout Farm and currently operated as Gold Springs, Inc. (Gold Springs), particularly with reference to Aqua Life's water rights from Billingsley Creek. The water rights for the Gold Springs are numbered 36-02338, 36-02414, 36-02734 and 36-04011 in the records of the Idaho Department of Water Resources (IDWR).

5. I have examined the public records of IDWR regarding these water rights including the SRBA claim files and the 1995 water diversion records. I also examined the public records of the Idaho Department of Health and Welfare, Division of Environmental Quality (DEQ) for Gold Springs numbered ID-000073-6 in DEQ's records, and observed the facility on October 8 and December 5, 1996.

6. DEQ's records include Discharge Monitoring Reports (DMR's) which are to be submitted on a monthly basis by the operator of a fish raising facility operating under the requirements of a National Pollutant Discharge Eliminating System (NPDES) permit. Among other information, the quantity of discharged water is supposed to be reported on the DMR's for Gold Springs. DEQ's records contain some DMR's for the period 1979 through 1996 for Gold Springs. Figure 1, below, shows the average annual discharge, in cubic feet per second (cfs), based upon the DMR's on file with DEQ for Gold Springs. This figure shows an annual average discharge for Gold Springs of less than 60 cfs for the five year period from 1992 through 1996.

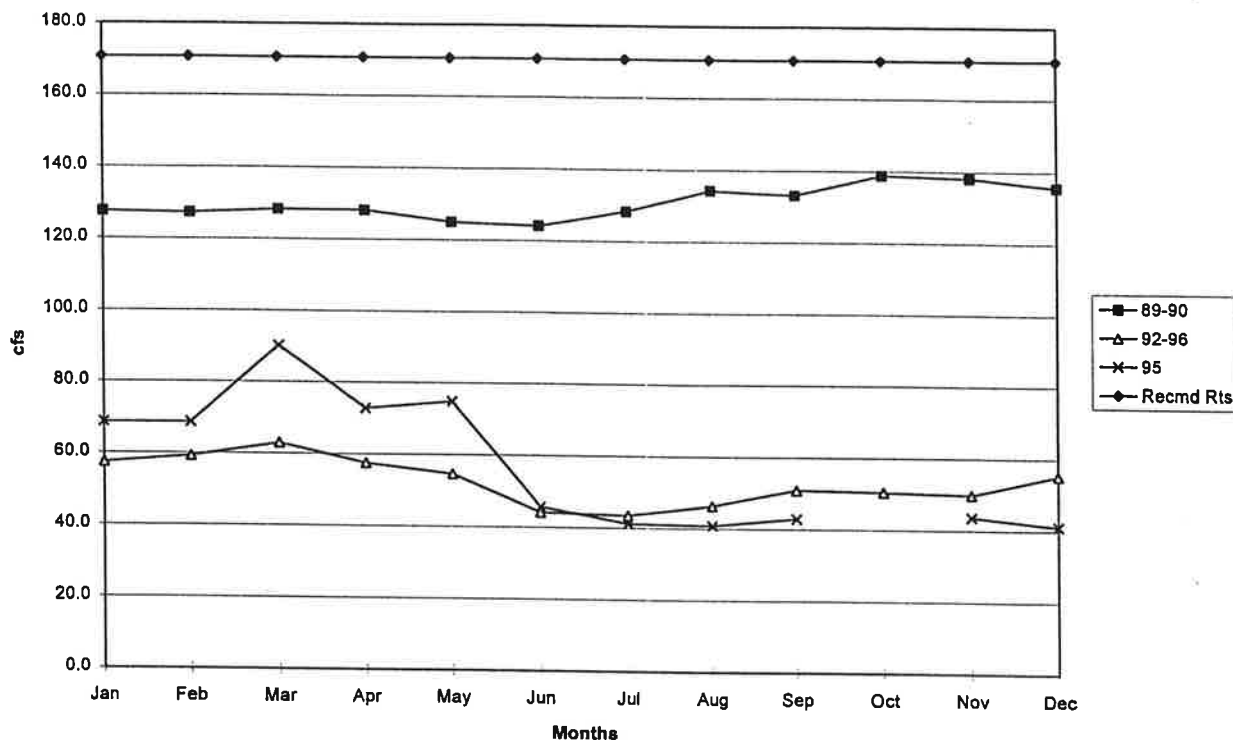
7. The quantity and source of the Aqua Life water rights for Gold Springs are 36-02338 for 54.6 cfs from Big Springs or Fisher Springs, 36-02414 for 4 cfs from Tupper Springs, and 36-02734 and 36-04011 for 100 cfs and 12 cfs, respectively, from Billingsley Creek.

Figure 1  
GOLD SPRINGS AVERAGE ANNUAL DISCHARGE



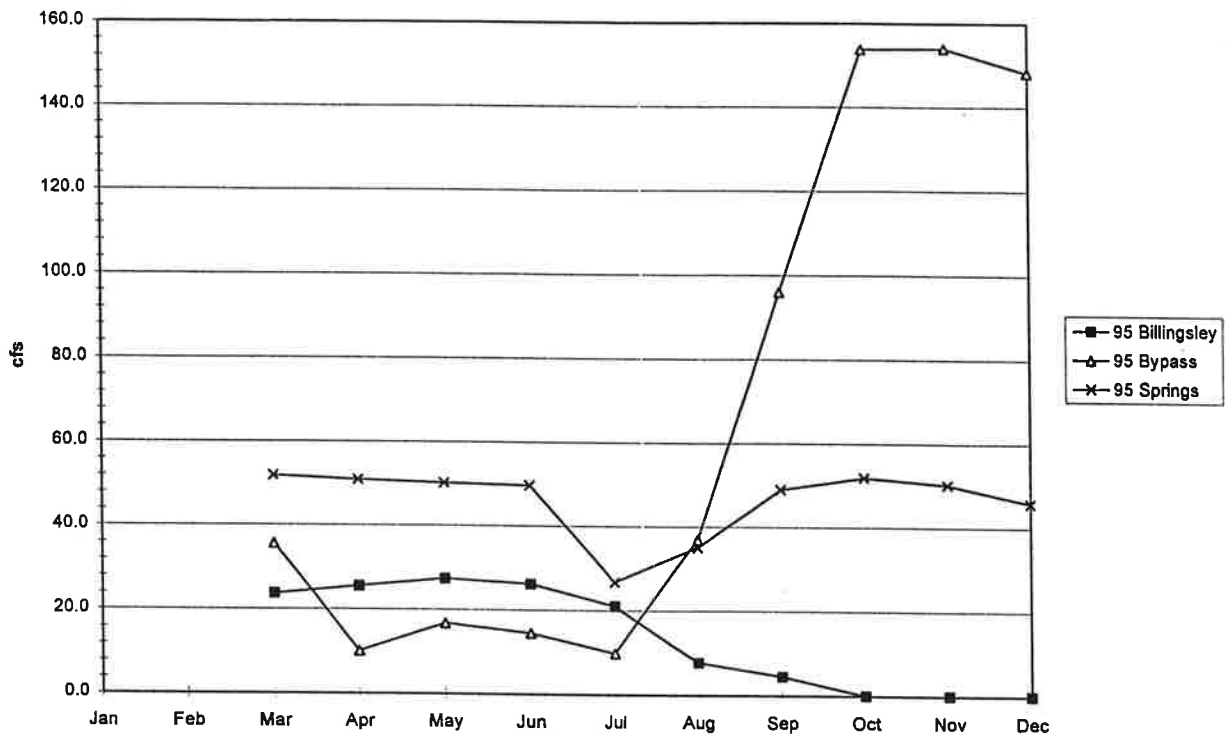
8. The monthly discharge amounts reported on the DMR's for the period 1992 through November 1996 are shown in Figure 2, below, compared to the monthly discharge amounts reported on the DMR's for the 1989 through 1990 period and the amount of the water rights recommended to the SRBA Court by IDWR. In addition, Figure 2 shows the monthly discharge amounts reported on the DMR's for 1995. The DMR's do not provide a readily identifiable means of correlating discharge amounts to the source from which the water is diverted.

Figure 2  
GOLD SPRINGS DISCHARGE



9. Figure 3, below, shows the diversion data for 1995 for these water rights as reported to IDWR. These curves show the diversion from Billingsley Creek separate from the diversion from the springs. The bypass amount shown in the figure is the amount of water reported to have bypassed the diversion for water rights 36-02734 and 36-04011 in Billingsley Creek. Figure 3 shows water being bypassed in Billingsley Creek during times when water was not being diverted from Billingsley Creek and also shows that when water was available to satisfy the 112 cfs water rights from Billingsley Creek it was not diverted. The figure also shows the diversion from Billingsley Creek was always less than the diversion from the springs. Diversion data was reported to IDWR for the first time in 1995.

Figure 3  
GOLD SPRINGS 1995 DIVERSIONS



10. Figure 2, above, shows that while these water rights have been more fully exercised in the past during the period 1992 through November 1996 the water rights from Billingsley Creek were not fully utilized.

11. I prepared the above figures from the sources of information noted. No water was being diverted from Billingsley Creek by Gold Springs either day that I observed the facility.

Dated this 4 day of February, 1997.

  
\_\_\_\_\_  
David B. Shaw

SUBSCRIBED and SWORN to before me this 4<sup>th</sup> day of February, 1997.

  
\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing at: Boise  
My Commission Expires: 9/26/2000

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. Case 39576

)  
) Subcase No. 36-02734  
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STANDARD FORM 1

OBJECTION

**INSTRUCTIONS**

This form must be used to file an objection to any water right recommended in the Director's Report. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR) or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even-number pages upside down.

The water right number you are objecting to must be indicated above in the blank space following "Subcase." To object to multiple water right recommendations, you must use a **separate form for each** objection and there must be **only one objector** for each 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.

This form has been adopted by the court in *SRBA Administrative Order 1, Rules of Procedure* (amended Sept. 30, 1996), Section 4, which may be consulted for further information.

Any party physically filing 25 or more objections must contact the Clerk of the SRBA Court no later than 14 days before the filing deadline and arrange an appointment to file multiple objections.

By filing an objection form, you are certifying that the objection is well-grounded in fact; that it 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 needlessly increase the cost of litigation.

## **I. GENERAL INFORMATION**

**Please fill in the following information:**

**1. *Party/Claimant objecting:***

**Name: Buckeye Farms, Inc.**

**Address: Buckeye Farms, Inc.  
18335 U.S. Highway 30  
Hagerman, ID 83332**

**Phone: Work: (208) 622-4100 Home: \_\_\_\_\_**

**Briefly describe your interest in this water right:**

**Buckeye Farms has water rights from the same source.**

**2. If this objection is filed by an attorney:**

**Attorney Name: John K. Simpson**

**Attorney Address: Rosholt, Robertson & Tucker  
1221 W. Idaho Street, Suite 1200  
P.O. Box 2139  
Boise, ID 83701-2139**

**Attorney Phone No. (208) 336-0700**

**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. ☐ **Point(s) 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. **Water Right Recommendation:** I object to:
  - ☒ a. this water right being recommended at all; or
  - ☐ b. this water right not being recommended.
12. ☐ **Description of Reservation:** I object to the legal description of the reservation.

13. ☐ Other: I object to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **REASONS SUPPORTING EACH BOX CHECKED**

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

**This water has not been beneficially used.**

## **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.

**This claim should be denied.**

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

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**Affidavit of David Shaw  
Motion To File Late Objection**

\_\_\_\_\_

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253 Third Avenue North  
P.O. Box 2707  
Twin Falls, Idaho 83303-2707

2. One copy to the owner of the water right at the following address:

Name: Aqua Life, Inc.  
Address: Route 5, Box 5053  
Buhl, Idaho 83316

3. Copies to:

IDWR Document Depository  
PO Box 83720  
Boise, ID 83720-0098

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

United States Department of Justice  
Environmental and Natural Resource Division  
550 West Fort Street, MSC 033  
Boise, Idaho 83724

  
\_\_\_\_\_  
Signature of party/claimant or attorney  
mailing on Objector's behalf

\\wpdata\bucketeye\objection

**VERIFICATION** (Must be Completed)

State of Idaho )  
                          ) .ss  
County of Ada )

John K. Simpson, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection, (as listed on Page 2, Section 1, "Party/Claimant objecting"), as defined by I.C. § 42-1401A(1) and (7), and that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

\_\_\_\_\_  
Signature of person filing objection

  
\_\_\_\_\_  
(Attorney signing in representative capacity)

Subscribed and sworn to before me on Feb. 4, 1997.

  
\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing at: Boise.  
My commission expires: 9/26/2000



## **I. GENERAL INFORMATION**

**Please fill in the following information:**

**1. *Party/Claimant objecting:***

**Name:** Buckeye Farms, Inc.

**Address:** Buckeye Farms, Inc.  
18335 U.S. Highway 30  
Hagerman, ID 83332

**Phone:** Work: (208) 622-4100 Home: \_\_\_\_\_

**Briefly describe your interest in this water right:**

**Buckeye Farms has water rights from the same source.**

**2. If this objection is filed by an attorney:**

**Attorney Name:** John K. Simpson

**Attorney Address:** Rosholt, Robertson & Tucker  
1221 W. Idaho Street, Suite 1200  
P.O. Box 2139  
Boise, ID 83701-2139

**Attorney Phone No.** (208) 336-0700

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

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4. ☐ **Priority Date:** I object to the priority date.
5. ☐ **Point(s) of Diversion:** I object to the legal description of the point(s) of diversion.
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**Affidavit of David Shaw  
Motion To File Late Objection**

\_\_\_\_\_

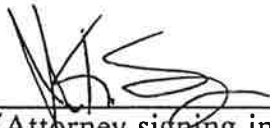
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                          ) ss  
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\_\_\_\_\_  
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NOTARY PUBLIC FOR IDAHO  
Residing at: Boise  
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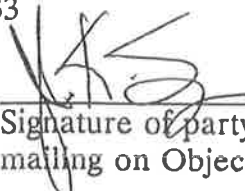
Name: Aqua Life, Inc.  
Address: Route 5, Box 5053  
Buhl, Idaho 83316

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Chief, Natural Resource Division  
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550 West Fort Street, MSC 033  
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\_\_\_\_\_  
Signature of party/claimant or attorney  
mailing on Objector's behalf

\\wpdata\buckeye\objectio

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. Case 39576

)  
) Subcase No. 36-02414  
)  
)  
)  
)  
)  
)

STANDARD FORM 1

OBJECTION

---

## INSTRUCTIONS

This form must be used to file an objection to any water right recommended in the Director's Report. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR) or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even-number pages upside down.

The water right number you are objecting to must be indicated above in the blank space following "Subcase." To object to multiple water right recommendations, you must use a **separate form for each objection** and there must be **only one objector** for each 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.

This form has been adopted by the court in *SRBA Administrative Order 1, Rules of Procedure* (amended Sept. 30, 1996), Section 4, which may be consulted for further information.

Any party physically filing 25 or more objections must contact the Clerk of the SRBA Court no later than 14 days before the filing deadline and arrange an appointment to file multiple objections.

By filing an objection form, you are certifying that the objection is well-grounded in fact; that it 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 needlessly increase the cost of litigation.

## I. GENERAL INFORMATION

Please fill in the following information:

1. *Party/Claimant objecting:*

Name: **Buckeye Farms, Inc.**

Address: **Buckeye Farms, Inc.  
18335 U.S. Highway 30  
Hagerman, ID 83332**

Phone: Work: **(208) 622-4100** Home: \_\_\_\_\_

Briefly describe your interest in this water right:

**Buckeye Farms has water rights from the same source.**

2. If this objection is filed by an attorney:

Attorney Name: **John K. Simpson**

Attorney Address: **Rosholt, Robertson & Tucker  
1221 W. Idaho Street, Suite 1200  
P.O. Box 2139  
Boise, ID 83701-2139**

Attorney Phone No. **(208) 336-0700**

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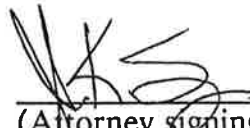
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(Attorney signing in representative capacity)

Subscribed and sworn to before me on Feb 4, 1997.

  
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NOTARY PUBLIC FOR IDAHO  
Residing at: Bolse  
My commission expires: 9/24/2000

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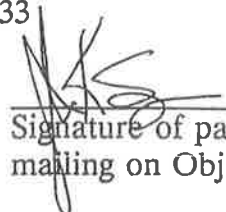
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\\wpdata\buckeye\objectio



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Motion To File Late Objection**

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\_\_\_\_\_  
Signature of party/claimant or attorney  
mailing on Objector's behalf

\\wpdata\bucketeye\objectio

C. TOM ARKOOSH  
116 4th Ave. W.  
P.O. Box 32  
Gooding, ID 83330  
Telephone: 208-934-8872

ATTORNEY FOR AQUA LIFE, INC.

RECEIVED

MAR 04 1997

Department of Water Resources  
Bureau of Reclamation

RECEIVED

MAR - 3 1997

OFFICE OF THE  
ATTORNEY GENERAL

MAR 07 1997

Department of Water Resources  
Southern Region

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

In RE SRBA

Case No. 39576

Subcase No. 36-02338

*already in data base,*  
NOTICE OF APPEARANCE *- 3-5-97*

PLEASE TAKE NOTICE that the party in the above entitled action, Aqua Life, Inc., hereby makes an appearance by and through its attorney, C. Tom Arkoosh, and hereby requests all further notices and pleadings in the above entitled action be sent to said attorney.

DATED this 28th day of February, 1997.

*Prepared by*  
C. TOM ARKOOSH

NOTICE OF APPEARANCE

-1-

MAIL4126



CERTIFICATE OF MAILING

I hereby certify that on the 28th day of February, 1997, I served a true and correct copy of the foregoing document upon the following person, by causing to be deposited a copy thereof in the United States Mail, first class postage prepaid and via facsimile transmission:

Clerk of the District Court  
Snake River Basic Adjudication  
253 Third Avenue N.  
P.O. Box 2707  
Twin Falls, ID 83303-2707

John K. Simpson  
ROSHOLT ROBERTSON & TUCKER  
1211 W. Idaho Street, Suite 600  
P.O. Box 2139  
Boise, Idaho 83701-2139

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

US Dept. of Justice  
Environment and Natural Resource Division  
550 W. Fort Street, Box 33  
Boise, ID 83724

  
C. TOM ARKOOSH

# INFORMATION REQUEST

NAME: JO Freeman DATE: 5/21/96  
 ADDRESS: \_\_\_\_\_  
 CITY/ZIP: BOISE, ID PHONE: \_\_\_\_\_  
 (please print)

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

| ADJUDICATION<br>CLAIM NUMBERS | ALLOCATION WATER<br>RIGHT NUMBERS | OTHER<br>DOCUMENTS |
|-------------------------------|-----------------------------------|--------------------|
| <u>36-02414</u>               | _____                             | _____              |
| <u>36-2734</u>                | _____                             | _____              |
| <u>36-04011</u>               | _____                             | _____              |
| <u>36-02338</u>               | _____                             | _____              |
| _____                         | _____                             | _____              |
| _____                         | _____                             | _____              |
| _____                         | _____                             | _____              |
| _____                         | _____                             | _____              |
| _____                         | _____                             | _____              |
| _____                         | _____                             | _____              |
| _____                         | _____                             | _____              |
| _____                         | _____                             | _____              |
| _____                         | _____                             | _____              |

RESEARCH SUBJECT: ~~Q~~ Aqua Life  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

COPIES MADE OF: \_\_\_\_\_  
 10 COPIES OR LESS: FREE

NUMBER OF COPIES MADE: 262  
 FEES DUE @ \$0.05 PER COPY: \$13.10  
 OTHER FEES: \_\_\_\_\_

Jennifer Vansant  
 (customer signature)

RECEIPT NUMBER: \_\_\_\_\_  
 ASSISTING AGENT: RL

**MICROFILMED**  
**DEC 04 1996**

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A36-02338

Date Received: 8/31/1988

Receipt No: C002408

Received By: Q/C HLB

COPY FOR  
YOUR FILES

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

COPY FOR  
YOUR FILES

1. Name: AQUA LIFE INC  
Address: ROUTE 5 BOX 5053  
BUHL ID

208-733-4250

83316

2. Date of Priority: AUG 5, 1954

3. Source: SPRINGS

Trib. to: BILLINGSLEY CREEK

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 | Lot | County  |
|----------|-------|---------|--------|--------|-----|-----|---------|
| 07S      | 14E   | 18      | SW     | SW     |     | 4   | GOODING |

5. Description of diverting works:

SPRING FLOWS INTO LAKE, DIVERTED BY CANAL TO FISH HATCHERY.

6. Water is used for the following purposes:

| Purpose          | From  | To    | C.F.S  | (or) | A.F.A. |
|------------------|-------|-------|--------|------|--------|
| FISH PROPAGATION | 01/01 | 12/31 | 54.680 |      |        |

7. Total Quantity Appropriated is:

54.680 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:

FISH, HATCHERY

10. Place of Use:

| Township | Range | Section | 1/4 of | 1/4 | Lot | Use  | Acres |
|----------|-------|---------|--------|-----|-----|------|-------|
| 07S      | 14E   | 18      | SW     | SW  | 4   | FISH |       |

11. Place of use in counties: GOODING

MICROFILMED

DEC 04 1996

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:  
NONE

14. Remarks:

WATER IS LEASED TO THE FISH HATCHERY.  
OWNERSHIP CHANGE MADE 11/30/95 BY TLB.

15. Basis of Claim: LICENSE

Water Right Number: 27082

Water Right Number - 36-02338

Prefix Translation: WATER RIGHT

Old (D) Number - 27082

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

\*\*\* C - CURRENT OWNER \*\*\*  
AQUA LIFE INC

1 - ROUTE 5 BOX 5053  
2 -  
3 -  
City- BUHL State- ID Zip- 83316  
Phone - 208-733-4250

\*\*\* D - DIR RPT OWNER \*\*\*  
FISHER

OPAL HOLMES

1 - 1605 PROMONTORY ROAD  
2 -  
3 -  
City- BOISE State- ID Zip- 83702  
Phone - 208-344-4517

\*\*\* O - ORIGINAL OWNER \*\*\*  
FISHER DEC

VARDIS

1 -  
2 -  
3 -  
City- HAGERMAN State- ID Zip- 83332  
Phone - 208-000-0000

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +  
08/05/1954 17 SOUTHERN L - LICENSE

+ - - - - Source - - - - - + + - - - - Tributary - - - - - +  
SPRINGS BILLINGSLEY CREEK

| + - - - - Point of Diversion - - - - - + |     |     |          |     |      |         |
|------------------------------------------|-----|-----|----------|-----|------|---------|
| Twn                                      | Rng | Sec | Tract    | Lot | RFlg | County  |
| 07S                                      | 14E | 18  | SE NW SW | 3   | (47) | GOODING |
|                                          |     |     | NE SW SW | 4   | (47) | GOODING |

| + - - - - Water Use - - - - - + |                  |             |           |                |                  |  |
|---------------------------------|------------------|-------------|-----------|----------------|------------------|--|
| Code                            | Description      | Period From | Period To | Diversion Rate | Diversion Volume |  |
| 19                              | FISH PROPAGATION | 01/01       | 12/31     | 54.680         | 39518.00         |  |

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +  
54.680 39518.00 0.0

| + - - - - Place of Use - - - - - + |     |     |       |     |       |      |                  |              |
|------------------------------------|-----|-----|-------|-----|-------|------|------------------|--------------|
| Twn                                | Rng | Sec | Tract | Lot | Acres | Code | Description      | County       |
| 07S                                | 14E | 18  | SW SW | 4   |       | 19   | FISH PROPAGATION | (47) GOODING |

Total Acres:

+ - - Diversion Means - SPRING FLOWS INTO LAKE, DIVERTED BY CANAL TO FISH HATCHERY.

+ - - Non-Irrigation Use - FISH, HATCHERY

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DEC 04 1996

Water right number - 36-02338

Prefix Translation: WATER RIGHT

+ - - Other Rights for Same Use - 36-02414

+ - - - - - Remarks - - - - - +  
FACILITY VOLUME 381,656 CUBIC FEET.  
USE OF THIS RIGHT WITH RIGHT NO. 36-02414 IS LIMITED TO A  
TOTAL COMBINED DIVERSION RATE OF 58.68 CFS AND TO A TOTAL  
FACILITY VOLUME OF 381,656 CUBIC FEET.

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

+ - - - - - Conditions of Approval - - - - - +  
C03 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION  
- PURSUANT TO IDAHO CODE 42-1416A.

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

+ - - - - - Comments - - - - - +  
Date: 08/27/1991 User Id: CHRISTEN Subject: COPIED FROM REMARKS  
THE WATER IS LEASED TO THE FISH HATCHERY.  
Date: 05/19/1992 User Id: THORNTON Subject: REVIEW OF OWNERSHIP  
THIS WATER USE WAS ALSO CLAIMED BY THE USER OF THE WATER AS 36-04014, WITH A PRIORITY OF 1951. ALTHOUGH THERE IS EVIDENCE  
TO SUPPORT THE USE OF THE WATER FROM THAT DATE, THE WATER RIGHT IS LEASED FROM OPAL FISHER BY THE FISH OPERATION, AS DOCUMENTED  
BY LEASED (IN FILE). THEREFORE, 36-04014 HAS BEEN DISALLOWED. THE OTHER WATER RIGHT USED AT THIS OPERATION (36-02414) IS  
CLAIMED AND HAS BEEN RECOMMENDED BY THE OPERATOR.  
Date: 11/30/1995 User Id: TBACKLUN Subject: NAME CHANGE  
OWNERSHIP CHANGE MADE FROM 42-1409(7). FISHER TO AQUA LIFE. SPECIAL ADMINISTRATOR'S DEED WAS SUBMITTED. SF3 WAS SENT TO  
NEW CLAIMANT.

+ - - Audit Fields - - +  
11/30/95 TBACKLUN

+ - - - - - Adjudication Rights Dates and Flags Area - - - - - +  
Court Report Filing - 11/02/1992      Field Inspection Made - 00/00/0000      Civil Case Number - 39576  
Objection Filed Date - 00/00/0000      Field Inspection Flag -      Old Case Number -  
Response Filed Date - 00/00/0000      Verified Date - 00/00/0000      Old Judicial District -  
Claim Received Date - 08/31/1988      Last Amended Date - 00/00/0000      Temporary Right - P  
Receipt Number - C002408      Water District -  
POU Ownership Flag - N      Federal/State Indicator - S  
Name Connector - OR      Presumption Flag - C  
Notice of Error Flag -

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DEC 04 1996



# NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

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

DATE OF CLOSING: 10-27-95

LEGAL DESCRIPTION OF PROPERTY: Township 7 South Range 14 East, B.M.  
Section 18, 1/4 of E 1/4 1/4 of SW 1/4 Govt. Lot 3 & 4, BM.  
Lot N/A, Block, N/A, Subdivision/Townsite N/A.  
If you have additional legal descriptions, please attach separate sheet.

- ☐ Served Only by a Public Service Water Supply (all water is received from a city or company who maintains water supply system, owns the water right, and bills the customer on a regular basis)
- ☒ Water Right Number(s)  
Assigned by IDWR: A36-02338 and A36-10842
- ☒ Name and Address of Former Owner/Claimant(s)(Seller): Opal Holmes Fisher By Grant R. Fisher, Special Administrator  
1605 Promontory Road  
Boise, Idaho 83702
- ☒ New Owner/Claimant (Purchaser): Aqua Life, Inc.
- ☒ New Mailing Address: Route 5, Box 5053  
Buhl, Idaho 83316
- ☒ New Telephone Number: (208) 733 - 4250 Office 208-543-4312 Home
- ☒ Does the change in ownership result in a splitting of the water right owned/claimed? yes X no  
If yes, then describe the portion of the water right that is now owned/claimed by the new owner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- ☒ Attach proof of ownership, describe proof attached: Copy of the recorded Special Administrator's Deed  
(proof of ownership must describe either the property conveyed or include the claim number. Proof of ownership is not required if this form is signed by the former owner/claimant.)

- ☒ Signature of New Owner/Claimant(s) Aqua Life Corp. Date 11/30/95  
by [Signature] Date \_\_\_\_\_
- ☐ Signature of Former Owner/Claimant(s): \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date \_\_\_\_\_

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

## FOR IDWR USE ONLY:

Initial Review and Data-Entry

Date: \_\_\_\_\_ By: \_\_\_\_\_

Further Action Needed:

Further Action Taken

Date: \_\_\_\_\_ By: \_\_\_\_\_

Final Review and Data-Entry

Date: 11/21/95 By: [Signature]

Claim Numbers of Split, if any:

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

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DEC 04 1996

**R PROOF**



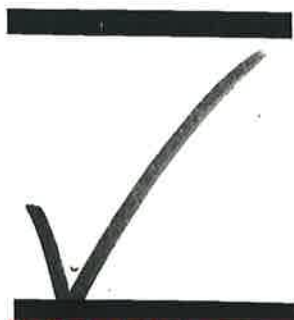
**CVR**



**MAPS**



**PHOTOS**



**MISC**

**MICROFILMED**

**JAN 27 1993**

## SPECIAL ADMINISTRATOR'S DEED

THIS DEED, made by Grant R. Fisher, as Special Administrator of the estate of Opal Laurel Holmes Fisher, deceased, Grantor, to Aqua Life, Inc., Grantee, whose current address is Route 5, Box 5053, Buhl, Idaho 83316.

WHEREAS, Grantor is the qualified Special Administrator of said estate, filed as Case No. 3P-16852, in Ada County, Idaho;

THEREFORE, for valuable consideration received, Grantor grants, transfers, and conveys to Grantee the real property in Gooding County, Idaho, described on Exhibit A hereto and by this reference made a part hereof, together with all appurtenant water rights, easements and other appurtenances.

EXECUTED this 24 day of October, 1995.



Special Administrator of the Estate of  
Opal Laurel Holmes Fisher, Deceased

STATE OF CALIFORNIA )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day October, 1995, before me, \_\_\_\_\_, the undersigned, a notary public in and for said state, personally appeared, Grant R. Fisher, known or identified to me to be the person whose name is subscribed to the within instrument, as Special Administrator of the Estate of Opal Laurel Holmes Fisher, deceased, and acknowledged to me that he executed the same as such Personal Representative.

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

See attached Acknowledgment

Notary Public for California

Residing at \_\_\_\_\_

My commission expires: \_\_\_\_\_

SPECIAL ADMINISTRATOR'S DEED - 1

MICROFILMED

DEC 04 1996

40

A PARCEL OF LAND LOCATED IN GOV'T LOTS 3 AND 4 AND A PORTION OF THE E1/2SW1/4 OF SECTION 18, TOWNSHIP 7 SOUTH, RANGE 14 EAST, BOISE MERIDIAN, GOODING COUNTY, IDAHO AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 18, THENCE N00°06'27"E ALONG THE WEST BOUNDARY OF GOV'T LOT 4 OF SECTION 18 FOR A DISTANCE OF 1316.78 FEET TO THE SOUTHWEST CORNER OF GOV'T LOT 3 AND BEING THE TRUE POINT OF BEGINNING:

THENCE CONTINUING N00°06'27"E ALONG THE WEST BOUNDARY OF GOV'T LOT 3 OF SECTION 18 FOR A DISTANCE OF 546.78 FEET TO A POINT THAT IS S00°06'27"W-770.00 FEET FROM THE NORTHWEST CORNER OF GOV'T LOT 3 OF SECTION 18;

THENCE N89°41'57"E PARALLEL WITH AND 770.0 FEET SOUTH OF THE NORTH BOUNDARY OF GOV'T LOT 3 OF SECTION 18 FOR A DISTANCE OF 1038.38 FEET TO A POINT ON THE EAST BOUNDARY OF GOV'T LOT 3 OF SECTION 18;

THENCE N00°44'00"W ALONG THE EAST BOUNDARY OF GOV'T LOT 3 OF SECTION 18 FOR A DISTANCE OF 85.66 FEET;

THENCE S15°25'38"E FOR A DISTANCE OF 299.56 FEET TO A FOUND STEEL PIN;

THENCE S34°34'01"E FOR A DISTANCE OF 449.40 FEET TO A FOUND STEEL PIN;

THENCE S23°08'01"E FOR A DISTANCE OF 251.77 FEET TO A FOUND STEEL PIN;

THENCE S31°09'01"E FOR A DISTANCE OF 307.86 FEET TO A FOUND STEEL PIN;

THENCE S69°03'42"W FOR A DISTANCE OF 860.54 FEET TO A FOUND STEEL PIN;

THENCE S86°54'11"W FOR A DISTANCE OF 150.07 FEET TO A SPECIAL ADMINISTRATOR'S DEED - 2

EXHIBIT "A"

MICROFILMED

DEC 04 1996

41  
FOUND STEEL PIN;

THENCE S11° 19' 47" E FOR A DISTANCE OF 49.68 FEET TO A  
FOUND STEEL PIN;

THENCE S80° 25' 28" W FOR A DISTANCE OF 20.78 FEET TO A  
FOUND STEEL PIN;

THENCE N38° 50' 32" W FOR A DISTANCE OF 189.28 FEET TO A  
FOUND STEEL PIN;

THENCE N66° 02' 51" E FOR A DISTANCE OF 32.74 FEET TO A  
FOUND STEEL PIN;

THENCE N59° 50' 18" W FOR A DISTANCE OF 50.00 FEET;

THENCE N23° 50' 18" W FOR A DISTANCE OF 125.00 FEET;

THENCE N15° 41' 18" W FOR A DISTANCE OF 220.00 FEET;

THENCE N25° 48' 18" W FOR A DISTANCE OF 45.00 FEET;

THENCE N67° 58' 18" W FOR A DISTANCE OF 190.00 FEET TO A  
POINT IN THE APPROXIMATE CENTER OF BILLINGSLEY CREEK;

THENCE N42° 58' 18" W ALONG THE APPROXIMATE CENTER OF  
BILLINGSLEY CREEK FOR A DISTANCE OF 130.00 FEET;

THENCE N14° 24' 32" W ACROSS A LAKE CREATED BY BILLINGSLEY  
CREEK FOR A DISTANCE OF 170.65 FEET TO A POINT ON THE NORTH  
BOUNDARY OF GOV'T LOT 4 OF SECTION 18;

THENCE S89° 45' 27" W ALONG THE NORTH BOUNDARY OF GOV'T LOT  
4 OF SECTION 18 FOR A DISTANCE OF 98.00 FEET TO THE TRUE  
POINT OF BEGINNING.

CONTAINING 34.34 ACRES, MORE OR LESS

STATE OF CALIFORNIA

County of Santa Clara }

ss.

On October 24, 1995, before me, Christine L. Freeman, Notary Public  
(Name of Notary/Title)personally appeared Grant R. Fisher, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person ~~(s)~~ whose name ~~(s)~~ is/are subscribed to the within instrument and acknowledged to me that ~~(he/she/they)~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~ and that by ~~his/her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

Christine Freeman

(Signature)



(Seal)

163166

STATE OF IDAHO COUNTY OF GOODING

Filed for record at the request of FIRST AMERICAN TITLE10 min. past 4 o'clock P.m. this 27th  
of October, 19 95 12:00By Penny Watson Deputy

Printed on Recycled Paper

030-04242 (REV. 3/94)

MICROFILMED

DEC 04 1996



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033  
Fax (208) 736-3037

PHILIP E. BATT  
Governor

KARL J. DREHER  
Director

NOVEMBER 30, 1995

AQUA LIFE, INC  
ROUTE 5 BOX 5053  
BUHL, ID 83316

RE: SRBA CLAIM 36-02338 & 36-10842  
FISHER

DEAR CLAIMANT(S):

PURSUANT TO THE NOTIFICATION WITH A 42-1409(7) THAT YOU HAVE PURCHASED PROPERTY WITH THE ABOVE-REFERENCED ADJUDICATION CLAIM(S). WE HAVE CHANGED THE DEPARTMENT'S RECORDS AS YOU HAVE REQUESTED. **THIS COPY IS FOR YOUR RECORDS.** PLEASE REVIEW FOR ACCURACY.

I AM ENCLOSING A STANDARD FORM THREE THAT IS TO BE FILLED OUT AND SENT TO SRBA COURT FOR THE RECORDS. IF YOU ALREADY HAVE THIS FORM, PLEASE DISREGARD IT. IF YOU HAVE ANY QUESTIONS, PLEASE FEEL FREE TO CONTACT ME AT THIS OFFICE.

SINCERELY,

TARA L BACKLUND  
SNAKE RIVER BASIN ADJUDICATION  
RECORDS CLERK

/TLB  
ENCLOSURES

MICROFILMED  
DEC 04 1996

C. TOM ARKOOSH  
116 4th Ave. W.  
P.O. Box 32  
Gooding, ID 83330  
Telephone: 208-934-8872

ATTORNEY FOR AQUA LIFE, INC.

RECEIVED

JAN 30 1996

Department of Water Resources  
Adjudication Bureau

RECEIVED

JAN 29 1996

OFFICE OF THE  
ATTORNEY GENERAL

A36 02338

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 APPEARANCE

PLEASE TAKE NOTICE that the party in the above entitled action, Aqua Life, Inc., hereby makes an appearance by and through its attorney, C. Tom Arkoosh, and hereby requests all further notices and pleadings in the above entitled action be sent to said attorney.

DATED this 26<sup>th</sup> day of January, 1996.

  
C. TOM ARKOOSH

NOTICE OF APPEARANCE

-1-

MICROFILMED  
COPY

CERTIFICATE OF MAILING

I hereby certify that on the 26<sup>th</sup> day of January, 1996,  
I served a true and correct copy of the foregoing document upon the  
following person, by causing to be deposited a copy thereof in the  
United States Mail, first class postage prepaid:

Clerk of the District Court  
Snake River Basic Adjudication  
253 Third Avenue N.  
P.O. Box 2707  
Twin Falls, ID 83303-2707

Scott Campbell  
Elam & Burke  
702 W. Idaho, P.O. Box 1539  
Boise, ID 83701

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

US Dept. of Justice  
Environment and Natural Resource Division  
550 W. Fort Street, Box 33  
Boise, ID 83724

  
\_\_\_\_\_  
C. TOM ARKOOSH

9/20/94

## COMMUNICATION DOCUMENTATION

File No. A36-02338

This form is to be used to document public record information requests regarding any SRBA claim or other water right. 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.

IDWR Employee/Agent Allen Merritt Date September 29, 1995

Contact person(s) Roger Crandlemeir (939-1400)

Nature of Contact On 9/28 Jeff Peppersack requested I contact Mr. Crandlemeir and respond to his question about transfer of the water right 36-02338. Apparently the lease may be purchased or the right purchased by Mr. Crandlemeir.

### Substance of Communication:

I phoned 9/28 but got an answering machine. This day I called and spoke with Mr. Crandlemeir. He proposes to purchase the right and then wishes to sell it a potable water. I told him that since the water right is non-consumptive in nature, any transfer to a consumptive use would not be readily approvable.

MICROFILMED  
DEC 04 1996

*none*  
**DIRECTOR'S REPORT CONVERSATION MEMO**

1. PERSON(S) MAKING THE ENQUIRY:

Include address and phone no.  
in case follow-up is needed.

Ken Ellis

phone no. 837-6686

2. SUBJECT OF INQUIRY: Wanted to know the status of A36-10842, A36-02338, A36-02414  
I told him with the Gag Order on - I could not tell him much.

3. RESPONSE TO INQUIRY: read to him the status of each file. Could not understand  
why A36-10842 had been disallowed. He said he would be in the office some time  
this week to talk to me about it. He will need to see KKC - the agent who  
reviewed this right.

4. IDWR STAFF AND DATE:

6/28/94 10:30 am

Print name and initial

Judy Givens

JG

WATER RIGHT CLAIM (Nos.):

A36-10842, A36-02338, A36-02414

**MICROFILMED**

**OCT 13 1994**

Water Right Number - R36-02338

Prefix Translation: RESEARCH

Old (D) Number - 27082

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

\*\*\* C - CURRENT OWNER \*\*\*  
FISHER

OPAL HOLMES

1 - 1605 PROMONTORY ROAD  
2 -  
3 -  
City- BOISE  
Phone - 208-344-4517

State- ID Zip- 83702

\*\*\* O - ORIGINAL OWNER \*\*\*  
FISHER DEC.

VARDIS

1 -  
2 -  
3 -  
City- HAGERMAN  
Phone - 208-000-0000

State- ID Zip- 83332

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +  
08/05/1954 17 SOUTHERN L - LICENSE+ - - - - Source - - - - - + + - - - - Tributary - - - - - +  
SPRINGS BILLINGSLEY CREEK+ - - - - Point of Diversion - - - - - +  
Twn Rng Sec Tract Lot RFlg County  
07S 14E 18 SE NW SW 3 (47) GOODING  
NE SW SW 4 (47) GOODING+ - - - - Water Use - - - - - +  
Code Description Period From Period To Diversion Rate Diversion Volume  
19 - FISH PROPAGATION 01/01 12/31 54.680 39518.00+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +  
54.680 39518.00 0.0+ - - - - Place of Use - - - - - +  
Twn Rng Sec Tract Lot Acres Code Description County  
07S 14E 18 SW SW 4 19 FISH PROPAGATION (47) GOODING

Total Acres:

+ - - Diversion Means - SPRING FLOWS INTO LAKE, DIVERTED BY CANAL TO FISH HATCHERY.

+ - - Non-Irrigation Use - FISH, HATCHERY

+ - - Other Rights for Same Use - 36-02414

+ - - - - Remarks - - - - - +  
FACILITY VOLUME 381,656 CUBIC FEET.  
USE OF THIS RIGHT WITH RIGHT NO. 36-02414 IS LIMITED TO A

VERIFIED ADM

MICROFILMED

JAN 27 1993

Water right number - R36-02338

Prefix Translation: RESEARCH

+ - - - - Remarks - - - - - +  
TOTAL COMBINED DIVERSION RATE OF 58.68 CFS AND TO A TOTAL  
FACILITY VOLUME OF 381,656 CUBIC FEET.

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

+ - - - - Conditions of Approval - - - - - +  
C03 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT  
- TO IDAHO CODE 42-1416A.

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

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

Date: 08/27/1991 User Id: CHRISTEN Subject: COPIED FROM REMARKS  
THE WATER IS LEASED TO THE FISH HATCHERY.

Date: 05/19/1992 User Id: THORNTON Subject: REVIEW OF OWNERSHIP  
THIS WATER USE WAS ALSO CLAIMED BY THE USER OF THE WATER AS  
TO SUPPORT THE USE OF THE WATER FROM THAT DATE, THE WATER RIGHT  
BY LEASED (IN FILE). THEREFORE, 36-04014 HAS BEEN DISALLOWED.  
CLAIMED AND HAS BEEN RECOMMENDED BY THE OPERATOR.

36-04014, WITH A PRIORITY OF 1951. ALTHOUGH THERE IS EVIDENCE  
IS LEASED FROM OPAL FISHER BY THE FISH OPERATION, AS DOCUMENTED  
THE OTHER WATER RIGHT USED AT THIS OPERATION (36-02414) IS

+ - - Audit Fields - - +  
05/22/92 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         | - 05/22/1992 | Old Judicial District   | -       |
| Claim Received Date  | - 08/31/1988 | Last Amended Date     | - 00/00/0000 | Temporary Right         | - P     |
|                      |              | Receipt Number        | - C002408    | Water District          | -       |
|                      |              | POU Ownership Flag    | - N          | Federal/State Indicator | - S     |
|                      |              | Name Connector        | - OR         | Presumption Flag        | - C     |
|                      |              |                       |              | Notice of Error Flag    | -       |

MICROFILMED

JAN 27 1993

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIM VERIFICATION REPORT

01:57:28  
06/30/90

PAGE: 12  
QUICKLOOK INFORMATION

CLAIM NUMBER: A36-02338

| WR ELEMENT                | FIELD EXAM<br>Y/N | CORRESPONDENCE<br>SENT/RECEIVED<br>BY WHOM/DATE | FIELD EXAM<br>BY WHOM/DATE | CHANGE<br>CLAIM<br>Y/N | VERIFIED BY<br>CODE | COMPLETED<br>REVIEW<br>WHOM/DATE | COMPLETED<br>DATA ENTRY<br>WHOM/DATE | VERIFIED<br>DATE<br>WHOM/DATE |
|---------------------------|-------------------|-------------------------------------------------|----------------------------|------------------------|---------------------|----------------------------------|--------------------------------------|-------------------------------|
| PRIORITY DATE             | N                 |                                                 |                            | N                      |                     | Re-review<br>HHT 5/18/92         | DB<br>HHT 5/19/92                    | KXC<br>5/27/91                |
| POINT OF DIV              | Y                 |                                                 | 7-27-90<br>SC/HHT          | Y                      | 1,5                 |                                  |                                      |                               |
| SOURCE                    | Y                 |                                                 |                            | N                      |                     |                                  |                                      |                               |
| PLACE OF USE              | Y                 |                                                 | 7-27-90<br>SC/HHT          | N                      |                     |                                  |                                      |                               |
| DIV. AMOUNT<br>CFS/VOLUME | N                 |                                                 |                            | N                      | div.<br>volume.     |                                  |                                      |                               |
| CONSUMPTIVE USE           |                   |                                                 |                            | NY                     |                     |                                  |                                      |                               |
| PURPOSES                  | N                 |                                                 |                            | N                      |                     |                                  |                                      |                               |
| PERIOD OF USE             | N                 |                                                 |                            | N                      |                     |                                  |                                      |                               |
| BASIS OF CLAIM            | N                 |                                                 |                            | N                      |                     |                                  |                                      |                               |
| REMARKS                   | Y                 |                                                 |                            | N                      |                     |                                  |                                      |                               |

"VERIFIED BY" CODES

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

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

Remark D-06 - 8.76 AF 381656 cubic ft.  
EOI - combined div. rate 58.68 cfs.

MICROFILMED  
JAN 27 1993  
HHT 5/19/92

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIM VERIFICATION REPORT

01:57:28  
06/30/90

PAGE: 1  
GENERAL INFORMATION

CLAIM NUMBER: A36-02338

LAST: FISHER DEC.  
ADDRESS:  
CITY: HAGERMAN  
PHONE NUMBER: 208-000-0000

FIRST: VARDIS  
STATE: ID ZIP: 83332

OWNER CODE: O

LAST: FISHER  
ADDRESS: 1605 PROMONTORY ROAD  
CITY: BOISE  
PHONE NUMBER: 208-344-4517

FIRST: OPAL HOLMES  
STATE: ID ZIP: 83702

OWNER CODE: C

FIELD EXAM REQUIRED?

DATABASE  
Y

FIELD  
EXAMINER

VERIFICATION REQUIRED DUE TO REMARKS?

CLAIM REMARKS: THE WATER IS LEASED TO THE FISH HATCHERY.

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JAN 27 1993

CONTACT PERSON: Mike Dodge (fish farm employee)

PHONE NUMBER: ( ) -

DATE OF FIELD EXAM: 7/27/90

APPOINTMENT MADE: Y( ) N( )

TIME: : A( ) P( )

ACCOMPANIED BY: \_\_\_\_\_

PHONE NUMBER: ( ) -

RELATIONSHIP TO CLAIMANT: \_\_\_\_\_

DIRECTIONS TO PROPERTY / REMARKS:

Possible change in ownership to Ken Ellis or lease? <sup>No - see below</sup>

MICROFILM

JAN 27 1991

There are 2 springs which feed the large lake. ~~The spring is the east spring which was used for the Fisher dam/irrig. originally.~~  
Some overflow of the Big Springs Water Users Diversion spills to the Lake.

A spring higher up <sup>from the EAST spring</sup> was the original source for Fisher dam/irrig which is dry. Locally known as the Dardis Fisher spring

5-18-92

Review by legal staff, IDWR. Determined water right owned by claimant (Fisher) and leased to fish propagation development currently owned by Ken Ellis (Aqualife) Hts

A. AJ CLAIM: # A36-02338 PRIORITY DATE: 08-05-1954 STAGE: L  
B. WR RECORD: # 36-02338 PRIORITY DATE: 08-05-1954 STAGE: L

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

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

REMARKS:

=====

RECOMMENDED PRIORITY DATE:  
08-05-1954

REVIEWED BY

DATE

5a 8-1-90

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JAN 27 1993

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

| RIGHT     | TWP. | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | CNTY    |
|-----------|------|------|------|-----|-----|-----|-----|---------|
| A36-02338 | 07S  | 14E  | 18   | Nw  | SW  | SW  | 4   | GOODING |

OTHER AJ CLAIMS WITH SAME AJ POD  
A PREFIX R PREFIX  
A36-10842 NONE

WR RECORDS IN SAME 40 ACRE TRACT  
36-02414

SOURCE: SPRINGS

TRIB: BILLINGSLEY CREEK

B. WR POINT OF DIVERSION AND SOURCE:

| RIGHT    | TWP. | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | CNTY    |
|----------|------|------|------|-----|-----|-----|-----|---------|
| 36-02338 | 07S  | 14E  | 18   |     | SW  | SW  | 4   | GOODING |

OTHER WR RECORDS WITH SAME WR POD

AJ CLAIMS IN SAME 40 ACRE TRACT  
A PREFIX R PREFIX  
A36-10842 NONE  
A36-02414

SOURCE: UNNAMED SPRINGS

TRIB: BILLINGSLEY CREEK

C. FIELD EXAM REQUIRED?

|  | DUE TO POD DISCREPANCY? (Y/N) | DUE TO SOURCE DISCREPANCY? (Y/N) | DATABASE | FIELD EXAMINER |
|--|-------------------------------|----------------------------------|----------|----------------|
|  |                               |                                  | Y        | YES            |

REMARKS:

10 Ac.

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JAN 27 1993

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

| TWP. | RGE. | SEC. | 1/4           | 1/4 | 1/4 | LOT | COUNTY |
|------|------|------|---------------|-----|-----|-----|--------|
| 7S.  | 14E  | 18   | <del>NE</del> | SW  | SW  | 4   | 47     |
|      |      |      | SE            | NW  | SW  | 3   |        |

SOURCE: SPRINGS

TRIB: BILLINGSLEY CREEK

REVIEWED BY: sc

DATE: 8-1-90

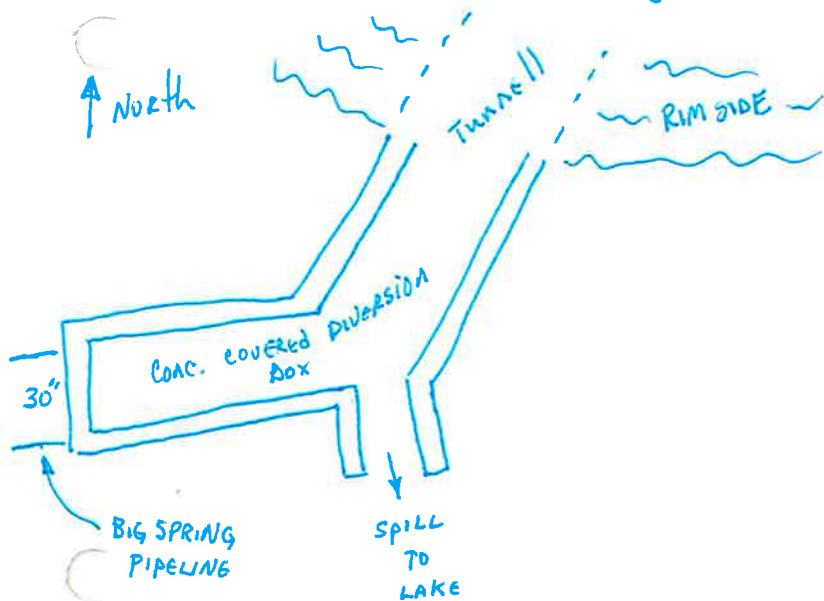
AP- sc

5/24/92

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JAN 27 1993

SOURCES to the LAKE ARE the East Spring (AKA Jedis Fisher Spr.)  
and the Big Spring; separate diversion gate is built into the DIVERSION.



A. ROOT WATER RIGHT NUMBERS: A36-02338

B. POU LISTING

| TWP         | RNG | SEC | 1/4 | 1/4 | LOT | NAME                    | AJ<br>#/ACRES    | WR<br>#/ACRES          | LANDSAT<br>DATA | FIELD<br>EXAM. | RECOMM.<br>ACRES |
|-------------|-----|-----|-----|-----|-----|-------------------------|------------------|------------------------|-----------------|----------------|------------------|
| 07S         | 14E | 18  | SW  | SW  | 4   | FISHER , OPAL HOLMES    | A36-02338 / -    | <del>A36-02338</del> / |                 |                |                  |
|             |     |     |     |     |     | FISHER , OPAL HOLMES    | A36-10842 / 20.0 | - /                    |                 |                |                  |
|             |     |     |     |     |     | CLEAR SPRINGS TROUT CO. | A36-04011 /      | 36-04011 /             |                 |                |                  |
|             |     |     |     |     |     | TUPPER , ROBERT E.      | A36-04073 / 4.0  | 36-04073 / 4.0         |                 |                |                  |
|             |     |     |     |     |     | AQUA LIFE CORP.         | A36-02414 /      | 36-02414 /             |                 |                |                  |
|             |     |     |     |     |     | CLEAR SPRINGS TROUT CO. | A36-02734 /      | 36-02734 /             |                 |                |                  |
|             |     |     |     |     |     | TUPPER , ROBERT E.      | A36-07841 /      | 36-07841 /             |                 |                |                  |
|             |     |     |     |     |     | CLEAR SPRINGS TROUT CO. | A36-04014 /      | 36-04014 /             |                 |                |                  |
|             |     |     |     |     |     | TUPPER , W. G.          |                  | 36-00115 /             |                 |                |                  |
| TOTAL ACRES |     |     |     |     |     | A36-02338               |                  |                        |                 |                |                  |

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

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE  
Y

FIELD  
EXAMINER  
N

PRESUMPTION FLAG:

REMARKS:

*License only listed POU as lot 4, no tract.*

RECOMMENDATIONS:

TOTAL ACRES: ~~0~~

REVIEWED BY: SC

DATE: 8-1-90

MICROFILMED  
JAN 27 1993

## A. AJ CLAIMED USES:

| PURPOSES                            | MONTH/DAY           | DIVERSION QUANTITY |
|-------------------------------------|---------------------|--------------------|
| A36-02338 FISH PROPAGATION          | FROM 01-01 TO 12-31 | 54.680 CFS         |
| TOTAL DIVERSION RATE/VOLUME CLAIMED |                     | 54.680 CFS         |

## B. WR RECORDED USES:

| PURPOSES                            | MONTH/DAY           | DIVERSION QUANTITY       |
|-------------------------------------|---------------------|--------------------------|
| 36-02338 FISH PROPAGATION           | FROM 01-01 TO 12-31 | 54.680 CFS 39518.00 AF/A |
| TOTAL DIVERSION RATE/VOLUME CLAIMED |                     | 54.680 CFS 39518.00 AF/A |

## 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) | N        | <u>N</u>       |

## D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y(~~X~~) N( )

RECOMMEND TO WR STANDARDS OR OTHER?

Y( ) N(~~X~~)

Explain in remarks, below.

REMARKS:

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JAN 27 1993

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

Y(☒) N(☐)

AJ TOTAL CLAIMED DIVERSION RATE: 54.680 CFS  
 WR ROOT RIGHT TOTAL DIVERSION RATE: 54.680 CFS

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

FLOW MEASUREMENT REQUIRED?

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

FIELD  
 DATABASE EXAMINER  
 N

B.

FLOW MEASUREMENT

MEASUREMENT METHOD                     , SEE ATTACHED CALCULATIONS.C. ARE OTHER WATER RIGHTS USED? Y(☐) N(☒) IF YES COMPLETE OVERLAP REVIEW.

OTHER RIGHTS LISTED IN CLAIM: NONE

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

| CLAIM     | SOURCE | NAME                 | DIV. RATE | DIV. RATE/ACRE | DIV. VOL. | DIV. VOL./ACRE |
|-----------|--------|----------------------|-----------|----------------|-----------|----------------|
| A36-10842 | SPRING | FISHER , OPAL HOLMES | 0.480     | 0.024          |           |                |

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

| CLAIM NO. | PURPOSES         | NAME                    | MONTH/DAY           | RATE        | VOLUME |
|-----------|------------------|-------------------------|---------------------|-------------|--------|
| A36-02338 | FISH PROPAGATION | FISHER , OPAL HOLMES    | FROM 01-01 TO 12-31 | 54.680 CFS  |        |
| A36-10842 | DOMESTIC         | FISHER , OPAL HOLMES    | FROM 01-01 TO 12-31 | .080 CFS    |        |
| A36-04011 | FISH PROPAGATION | CLEAR SPRINGS TROUT CO. | FROM 01-01 TO 12-31 | 50.000 CFS  |        |
| A36-02414 | FISH PROPAGATION | AQUA LIFE CORP.         | FROM 01-01 TO 12-31 | 4.000 CFS   |        |
| A36-02734 | FISH PROPAGATION | CLEAR SPRINGS TROUT CO. | FROM 01-01 TO 12-31 | 100.000 CFS |        |
| A36-07841 | FISH PROPAGATION | TUPPER , ROBERT E.      | FROM 01-01 TO 12-31 | 1.000 CFS   |        |
| A36-04014 | FISH PROPAGATION | CLEAR SPRINGS TROUT CO. | FROM 01-01 TO 12-31 | 65.000 CFS  |        |

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JAN 27 1993

D. RATE/VOLUME CALCULATIONS: (IRRIGATION)

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

1b. CALCULATIONS

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

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

2. IRRIGATION CONSUMPTIVE USE  
CLAIMED CONSUMPTIVE USE = \_\_\_\_\_ AF/A  
ACRES \_\_\_\_\_ x CONSUMPTIVE VOL. AF/A FOR AREA \_\_\_\_\_ =  
TOTAL CONSUMPTIVE USE \_\_\_\_\_ AF/A

3. IRRIGATION DIVERSION VOLUME  
CLAIMED DIVERSION VOLUME = \_\_\_\_\_ AF/A  
ACRES \_\_\_\_\_ x DIVERSION VOL. AF/A FOR AREA \_\_\_\_\_ =  
TOTAL DIVERSION VOLUME \_\_\_\_\_ AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:  
SEE ATTACHED SHEET? Y(\_\_\_\_) N(~~X~~)

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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JAN 27 1993

RECOMMENDATIONS:

| REC.<br>PURPOSES     | REC. PERIOD<br>FROM TO | REC. DIV<br>RATE CFS        | REC. DIV<br>VOL. AF/A      | REC. CONS.<br>USE        |
|----------------------|------------------------|-----------------------------|----------------------------|--------------------------|
| FISH PROPAGATION     | 01-01 12-31            | DATABASE 54.680<br>EXAMINER | DATABASE 39578<br>EXAMINER | DATABASE 0.0<br>EXAMINER |
| TOTAL FOR THIS RIGHT |                        | 54.680                      |                            | 0.0                      |

REVIEWED BY:

*See*

DATE:

*8-1-90*

*HTT 5/18/92 - licensed div. volume*

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JAN 27 1993

A. CHECK ONLY THE FOLLOWING THAT APPLY:

OWNERSHIP \_\_\_\_\_  
FORFEIT/ABANDON \_\_\_\_\_  
ADDITIONAL DIV. AMOUNT \_\_\_\_\_

|                        |                 |
|------------------------|-----------------|
| ACCEPTED<br>AS CLAIMED | NEEDS<br>REVIEW |
| ( )                    | (X)             |
| (X)                    | ( )             |
| (X)                    | ( )             |

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 36-02338

TOTAL DIVERSION RATE OF WR SPLITS

DATABASE  
54.680

EXAMINER

CFS

SPLITS:

| OLD RIGHT<br>NUMBERS | CURRENT<br>CLAIM NUMBERS | DIVERSION<br>RATE | CURRENT "R"<br>CLAIM NUM. | "R" DIV.<br>RATE | WR RIGHT<br>NUMBERS | DIVERSION<br>RATE |
|----------------------|--------------------------|-------------------|---------------------------|------------------|---------------------|-------------------|
| -                    | A36-02338                | 54.680            | -                         |                  | 36-02338            | 54.680            |
| TOTAL CFS            |                          | 54.680            |                           |                  |                     | 54.680            |

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

OK

REMARKS:

AUTHENTICATION:

SIGNATURE:

Steve Clelland

DATE:

8-1-90

NAME OF FIELD EXAMINER:

STEVE CLELLAND

TITLE:

WR Agent

John Stanley Thoms  
AP

5/18/92

5/22/92

C#3

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JAN 27 1993

5/7/92 -  
 Collected from  
 Stanis Lawelle,  
 DERTF

36-02734  
 04011

36-02414  
 -02338

Idaho Springs  
Aquaculture Industries

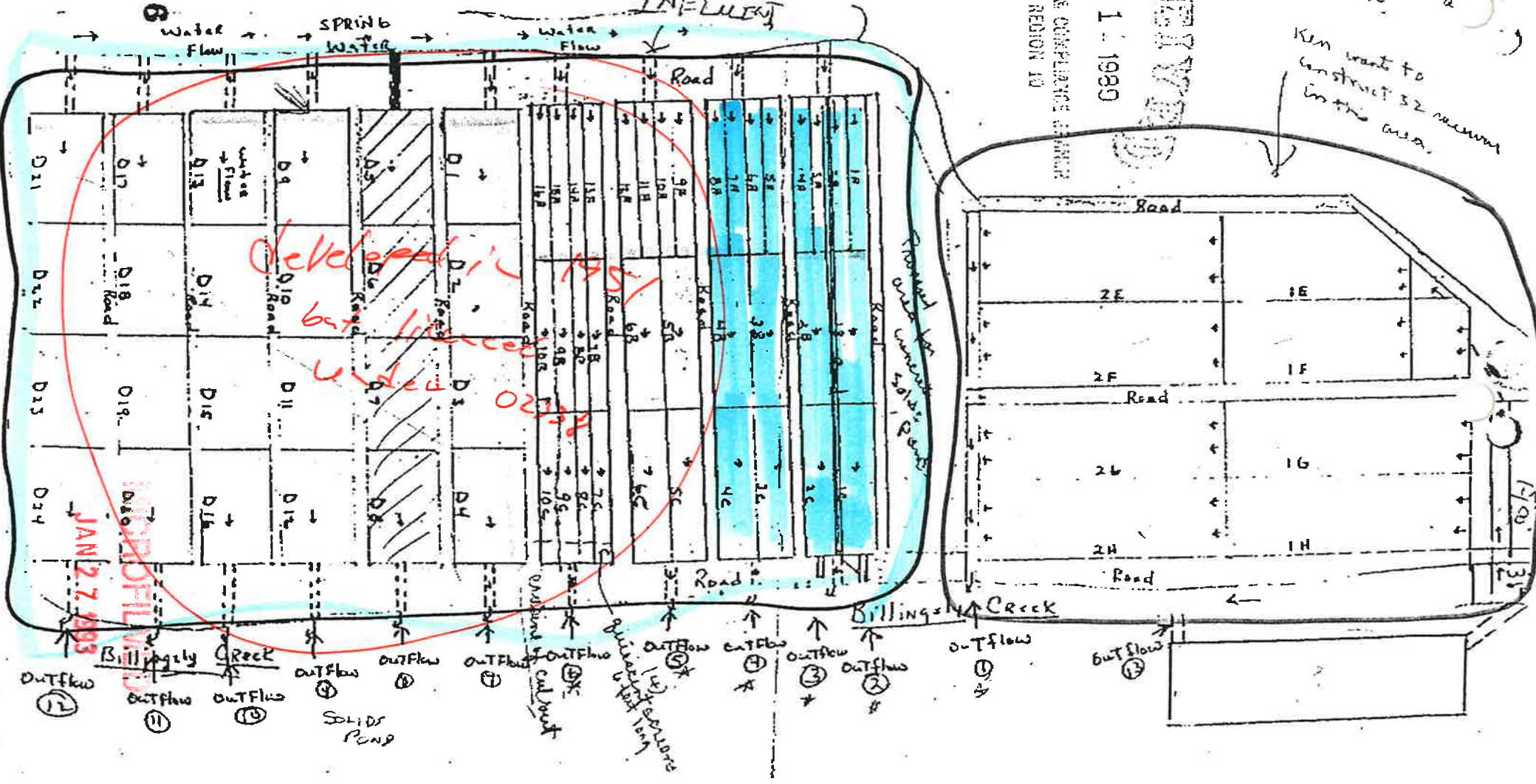
ID-000073-6

Patio  
 House

RECEIVED  
 MAY 11 1989  
 WATER PERMITS & COMPLIANCE DIVISION  
 EPA-REGION 10

Will incorporate  
 Sand traps &  
 outflow

Ken wants to  
 construct 32 meadow  
 in the area.



Received from  
Ken Ellis

8 2987331878 AQUACULTURE IND

05/14/92 09:14 P.02

# Pond Index

Total = 381,656.93  
43560 ft<sup>2</sup>/ac  
= 8.761 AF

| Pond No | Width | Length | Depth       |
|---------|-------|--------|-------------|
| 1A      | 9'    | x 100' | x 4' = 3600 |
| 2A      | 9'    | x 100' | x 4' = 3600 |
| 3A      | 9'    | x 110' | x 4' = 3960 |
| 4A      | 9'    | x 110' | x 4' = 3960 |
| 5A      | 9'    | x 120' | x 4' = 4320 |
| 6A      | 9'    | x 120' | x 4' = 4320 |
| 7A      | 9'    | x 120' | x 4' = 4320 |
| 8A      | 9'    | x 120' | x 4' = 4320 |
| 9A      | 9'    | x 90'  | x 4' = 3240 |
| 10A     | 9'    | x 90'  | x 4' = 3240 |
| 11A     | 9'    | x 90'  | x 4' = 3240 |
| 12A     | 9'    | x 90'  | x 4' = 3240 |
| 13A     | 9'    | x 100' | x 4' = 3600 |
| 14A     | 9'    | x 100' | x 4' = 3600 |
| 15A     | 9'    | x 100' | x 4' = 3600 |
| 16A     | 9'    | x 100' | x 4' = 3600 |
| 1B      | 18'   | x 96'  | x 4' = 6912 |
| 2B      | 18'   | x 96'  | x 4' = 6912 |
| 3B      | 18'   | x 96'  | x 4' = 6912 |
| 4B      | 18'   | x 96'  | x 4' = 6912 |
| 5B      | 18'   | x 100' | x 4' = 7200 |
| 6B      | 18'   | x 100' | x 4' = 7200 |
| 7B      | 9'    | x 100' | x 4' = 3600 |
| 8B      | 9'    | x 100' | x 4' = 3600 |
| 9B      | 9'    | x 100' | x 4' = 3600 |
| 10B     | 9'    | x 100' | x 4' = 3600 |
| 1C      | 18'   | x 96'  | x 4' = 6912 |
| 2C      | 18'   | x 96'  | x 4' = 6912 |
| 3C      | 18'   | x 96'  | x 4' = 6912 |
| 4C      | 18'   | x 96'  | x 4' = 6912 |

| Pond No | Width | Length | Depth        |
|---------|-------|--------|--------------|
| 5C      | 18'   | x 100' | x 4' = 7200  |
| 6C      | 18'   | x 100' | x 4' = 7200  |
| 7C      | 9'    | x 100' | x 4' = 3600  |
| 8C      | 9'    | x 100' | x 4' = 3600  |
| 9C      | 9'    | x 100' | x 4' = 3600  |
| 10C     | 9'    | x 100' | x 4' = 3600  |
| 1D      | 25'   | x 75'  | x 4' = 7500  |
| 2D      | 25'   | x 90'  | x 4' = 9000  |
| 3D      | 25'   | x 90'  | x 4' = 9000  |
| 4D      | 25'   | x 105' | x 4' = 10500 |
| 5D      | 25'   | x 75'  | x 4' = 7500  |
| 6D      | 25'   | x 90'  | x 4' = 9000  |
| 7D      | 25'   | x 90'  | x 4' = 9000  |
| 8D      | 25'   | x 95'  | x 4' = 9500  |
| 9D      | 25'   | x 75'  | x 4' = 7500  |
| 10D     | 25'   | x 90'  | x 4' = 9000  |
| 11D     | 25'   | x 90'  | x 4' = 9000  |
| 12D     | 25'   | x 90'  | x 4' = 9000  |
| 13D     | 25'   | x 75'  | x 4' = 7500  |
| 14D     | 25'   | x 90'  | x 4' = 9000  |
| 15D     | 25'   | x 90'  | x 4' = 9000  |
| 16D     | 25'   | x 90'  | x 4' = 9000  |
| 17D     | 25'   | x 75'  | x 4' = 7500  |
| 18D     | 25'   | x 90'  | x 4' = 9000  |
| 19D     | 25'   | x 90'  | x 4' = 9000  |
| 20D     | 25'   | x 90'  | x 4' = 9000  |
| 21D     | 25'   | x 75'  | x 4' = 7500  |
| 22D     | 25'   | x 90'  | x 4' = 9000  |
| 23D     | 25'   | x 90'  | x 4' = 9000  |
| 24D     | 25'   | x 90'  | x 4' = 9000  |

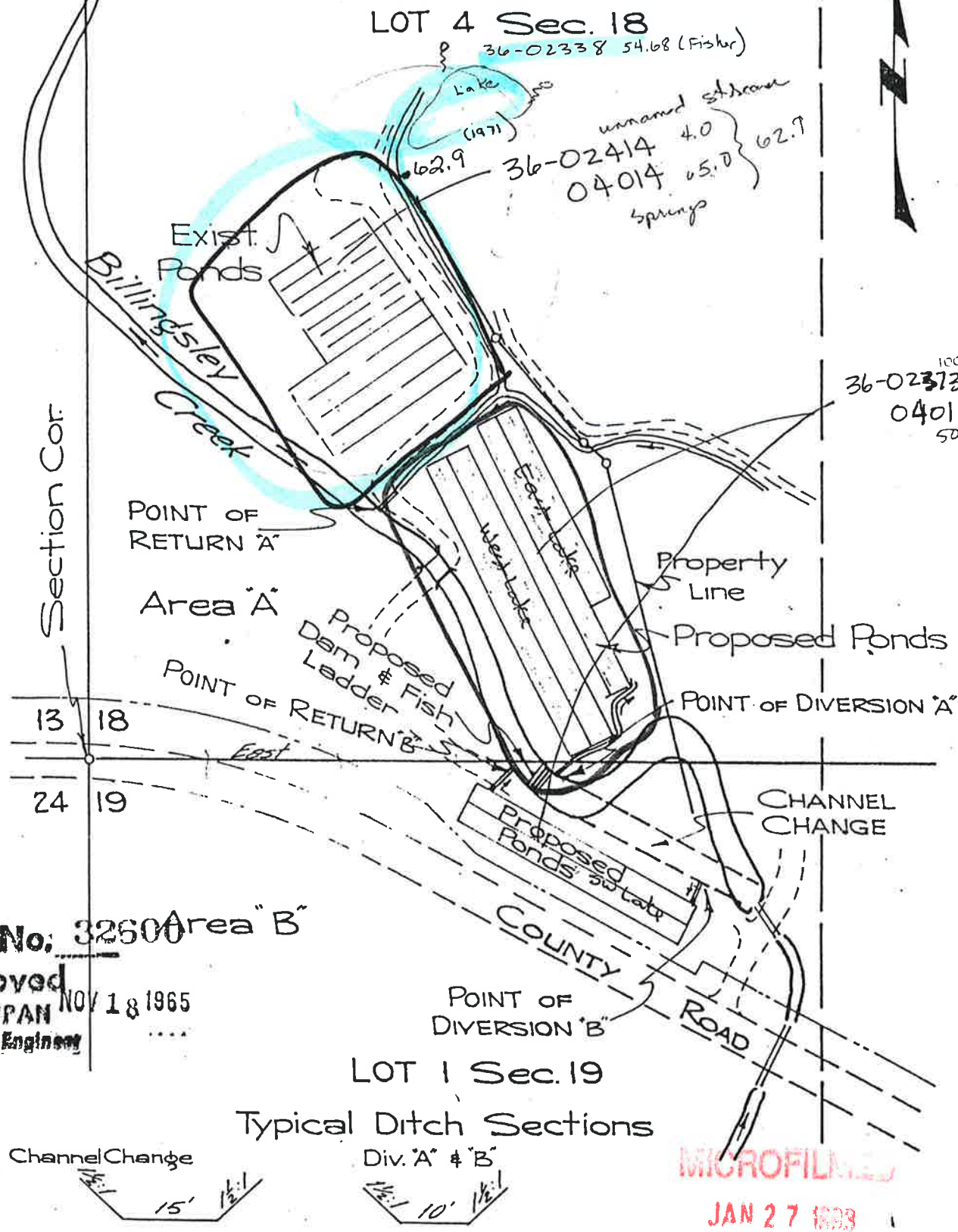
Vol 36-02338  
87,696 sq ft

MICROFILMED

Vol 2 X 153

26-02734

T. 7 S., R. 14 E., B. 1 N  
Gooding County, Idaho  
Scale: 1" = 200'

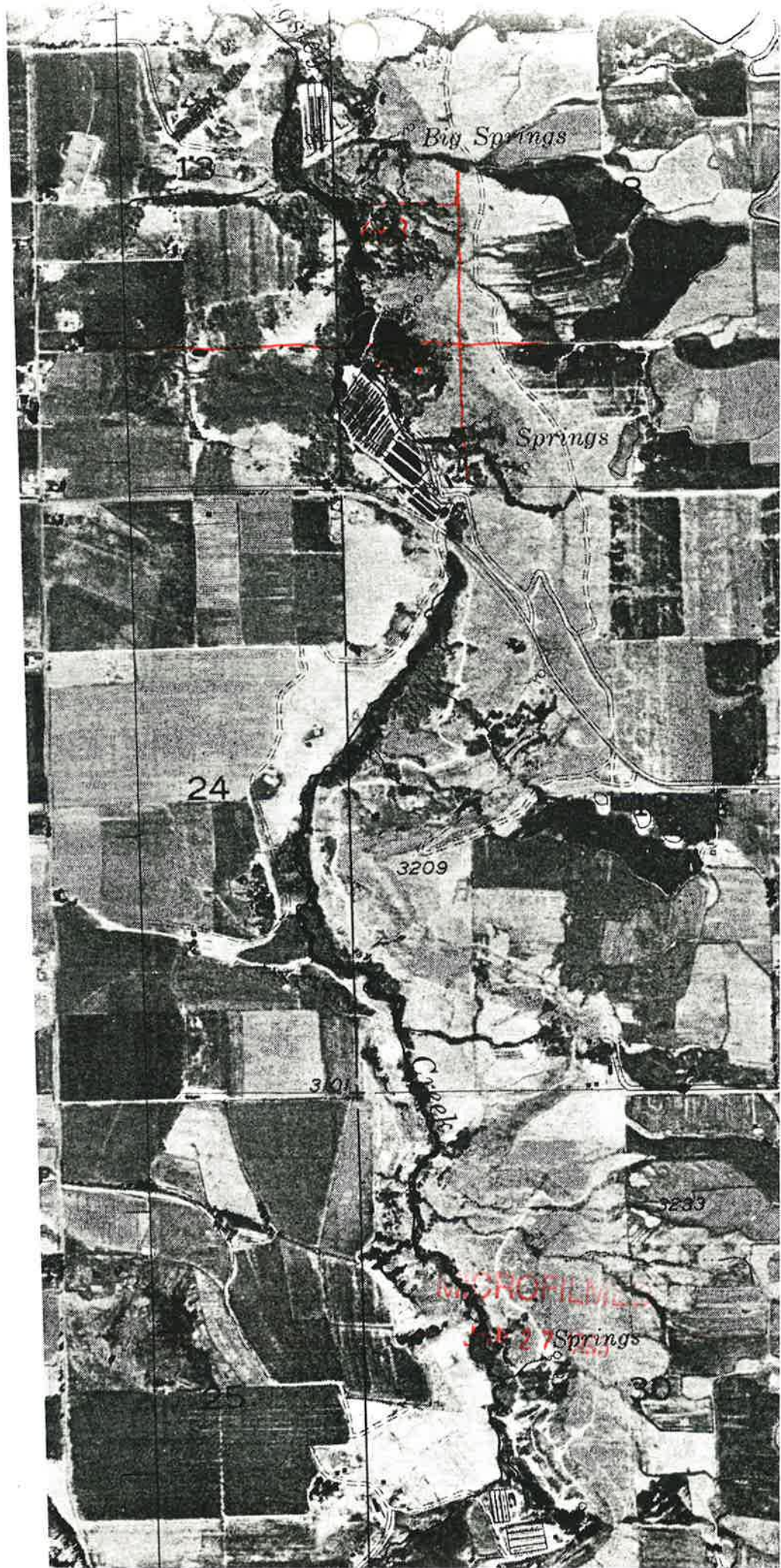


Permit Map No. 32500 Area 'B'

As Approved  
CARL E. TAPPAN  
State Reclamation Engineer  
NOV 18 1965

MICROFILMED  
JAN 27 1968

I, Charles W. Glasby, of Twin Falls, Idaho, an engineer licensed in the State of Idaho, do hereby certify this map was made from a plat of an actual survey which I reviewed at the site on September 1, 1965, and that it correctly represents







Total =  $\frac{381,656.93}{43560 \text{ sq ft/ac}}$   
= 8.761 AF

# Pond Ida Springs

# Pond Index

| No  | Width | Length | Depth       |
|-----|-------|--------|-------------|
| 1A  | 9'    | x 100' | x 4' = 3600 |
| 2A  | 9'    | x 100' | x 4' = 3600 |
| 3A  | 9'    | x 110' | x 4' = 3960 |
| 4A  | 9'    | x 110' | x 4' = 3960 |
| 5A  | 9'    | x 120' | x 4' = 4320 |
| 6A  | 9'    | x 120' | x 4' = 4320 |
| 7A  | 9'    | x 120' | x 4' = 4320 |
| 8A  | 9'    | x 120' | x 4' = 4320 |
| 9A  | 9'    | x 90'  | x 4' = 3240 |
| 10A | 9'    | x 90'  | x 4' = 3240 |
| 11A | 9'    | x 90'  | x 4' = 3240 |
| 12A | 9'    | x 90'  | x 4' = 3240 |
| 13A | 9'    | x 100' | x 4' = 3600 |
| 14A | 9'    | x 100' | x 4' = 3600 |
| 15A | 9'    | x 100' | x 4' = 3600 |
| 16A | 9'    | x 100' | x 4' = 3600 |
| 1B  | 18'   | x 96'  | x 4' = 6912 |
| 2B  | 18'   | x 96'  | x 4' = 6912 |
| 3B  | 18'   | x 96'  | x 4' = 6912 |
| 4B  | 18'   | x 96'  | x 4' = 6912 |
| 5B  | 18'   | x 100' | x 4' = 7200 |
| 6B  | 18'   | x 100' | x 4' = 7200 |
| 7B  | 9'    | x 100' | x 4' = 3600 |
| 8B  | 9'    | x 100' | x 4' = 3600 |
| 9B  | 9'    | x 100' | x 4' = 3600 |
| 10B | 9'    | x 100' | x 4' = 3600 |
| 1C  | 18'   | x 96'  | x 4' = 6912 |
| 2C  | 18'   | x 96'  | x 4' = 6912 |
| 3C  | 18'   | x 96'  | x 4' = 6912 |
| 4C  | 18'   | x 96'  | x 4' = 6912 |

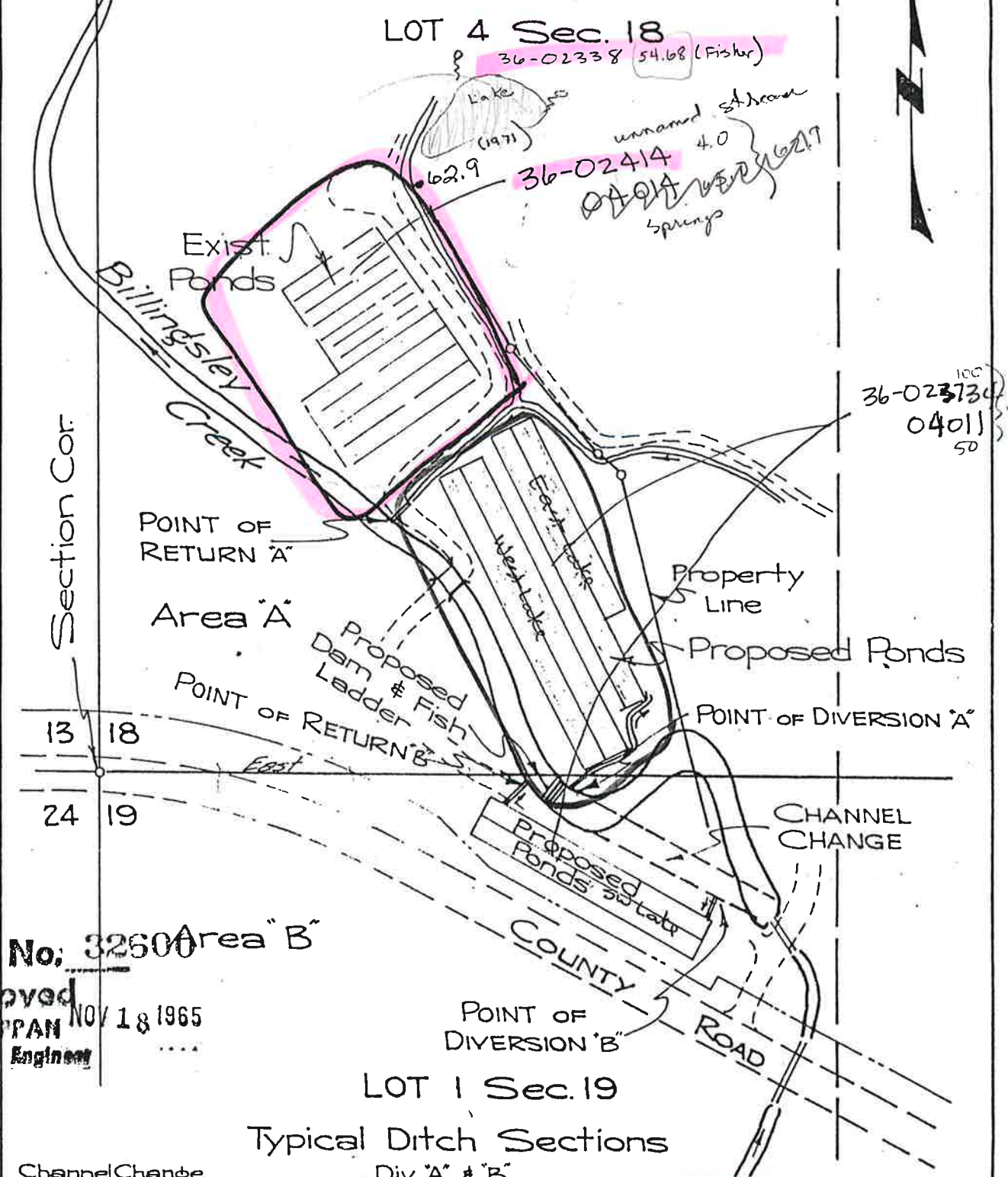
| No  | Width | Length | Depth        |
|-----|-------|--------|--------------|
| 5C  | 18'   | x 100' | x 4' = 7200  |
| 6C  | 18'   | x 100' | x 4' = 7200  |
| 7C  | 9'    | x 100' | x 4' = 3600  |
| 8C  | 9'    | x 100' | x 4' = 3600  |
| 9C  | 9'    | x 100' | x 4' = 3600  |
| 10C | 9'    | x 100' | x 4' = 3600  |
| 1D  | 25'   | x 75'  | x 4' = 7500  |
| 2D  | 25'   | x 90'  | x 4' = 9000  |
| 3D  | 25'   | x 90'  | x 4' = 9000  |
| 4D  | 25'   | x 105' | x 4' = 10500 |
| 5D  | 25'   | x 75'  | x 4' = 7500  |
| 6D  | 25'   | x 90'  | x 4' = 9000  |
| 7D  | 25'   | x 90'  | x 4' = 9000  |
| 8D  | 25'   | x 95'  | x 4' = 9500  |
| 9D  | 25'   | x 75'  | x 4' = 7500  |
| 10D | 25'   | x 90'  | x 4' = 9000  |
| 11D | 25'   | x 90'  | x 4' = 9000  |
| 12D | 25'   | x 90'  | x 4' = 9000  |
| 13D | 25'   | x 75'  | x 4' = 7500  |
| 14D | 25'   | x 90'  | x 4' = 9000  |
| 15D | 25'   | x 90'  | x 4' = 9000  |
| 16D | 25'   | x 90'  | x 4' = 9000  |
| 17D | 25'   | x 75'  | x 4' = 7500  |
| 18D | 25'   | x 90'  | x 4' = 9000  |
| 19D | 25'   | x 90'  | x 4' = 9000  |
| 20D | 25'   | x 90'  | x 4' = 9000  |
| 21D | 25'   | x 75'  | x 4' = 7500  |
| 22D | 25'   | x 90'  | x 4' = 9000  |
| 23D | 25'   | x 90'  | x 4' = 9000  |
| 24D | 25'   | x 90'  | x 4' = 9000  |

MICROFILMED  
JAN 27 1993

rem  
36-02734

from license # 36-02734

T. 7 S., R. 14 E., B. N  
Gooding County, Idaho  
Scale: 1" = 200'

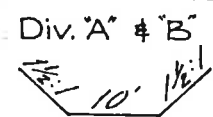


Permit Map No: 32500 Area "B"

As Approved  
CARL E. TAPPAN  
State Reclamation Engineer  
NOV 18 1965



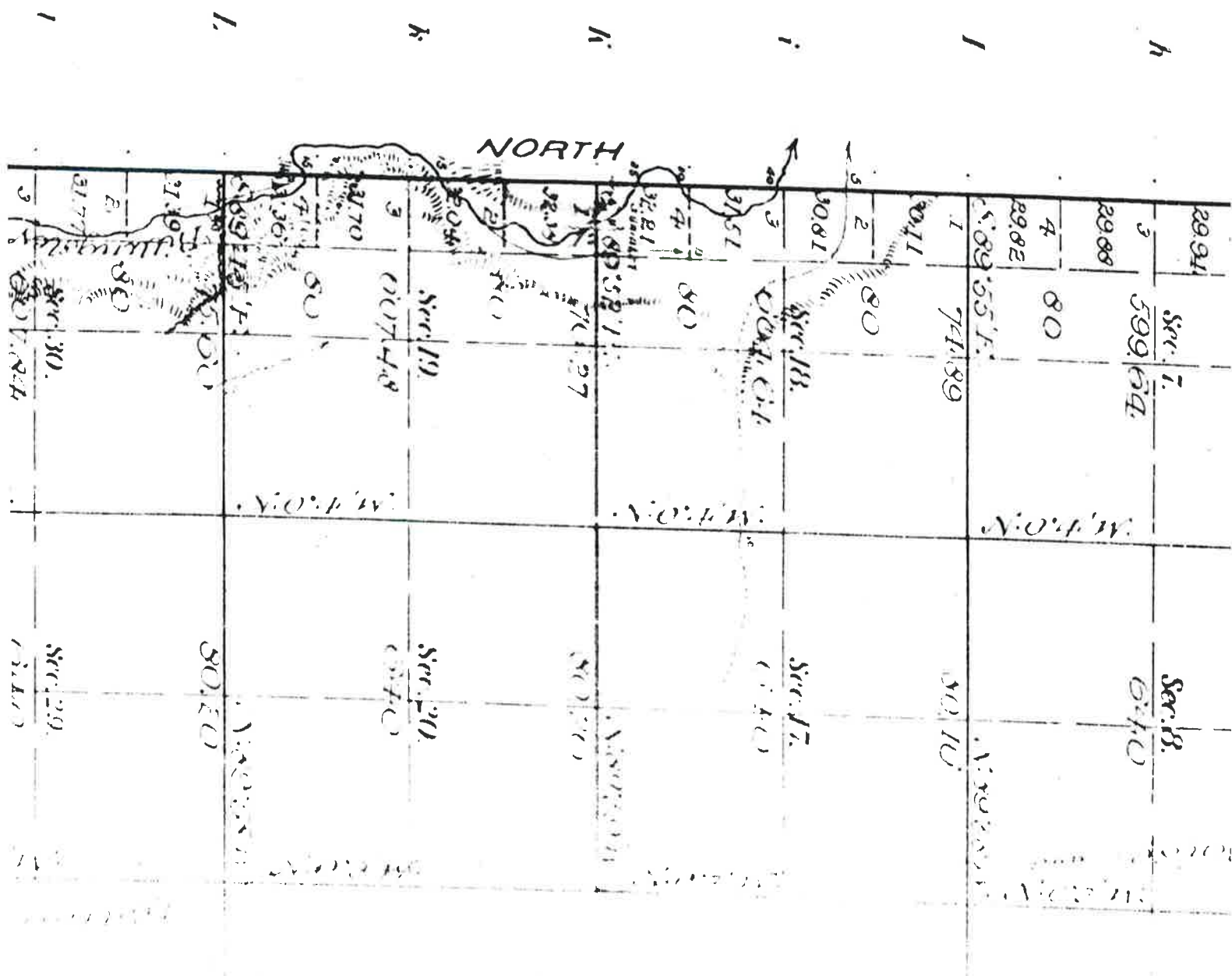
Typical Ditch Sections



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I, Charles W. Glasby, of Twin Falls, Idaho, an engineer licensed in the State of Idaho, do hereby certify this map was made from a plat of an actual survey which I reviewed at the site on September 1, 1965, and that it correctly represents



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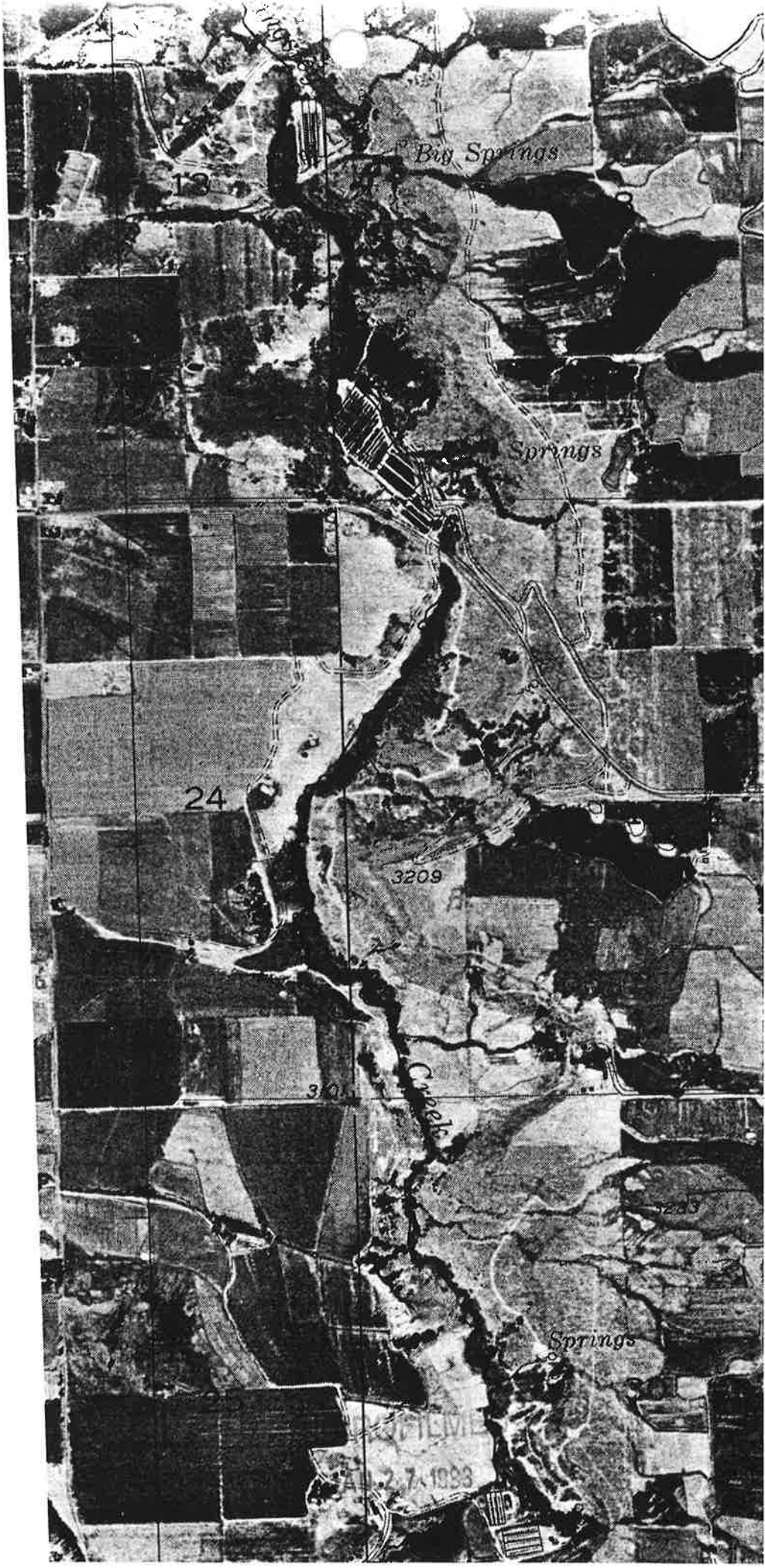


Plate 9

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JAN 27 1993

# IDAHO SPRINGS TROUT FARM

Thousand Springs Trout Farms, Inc.  
Route 4, Box 232  
Buhl, Idaho 83316

Map Location: F-5

Started in 1951

Water Source: Tupper Springs, Hewitt Springs, Billingsley Creek

Water Discharge: Billingsley Creek

Water Flow: 203 CFS (Max.)  
143 CFS (Min.)

Water Temp.: 58°F 15.6°C

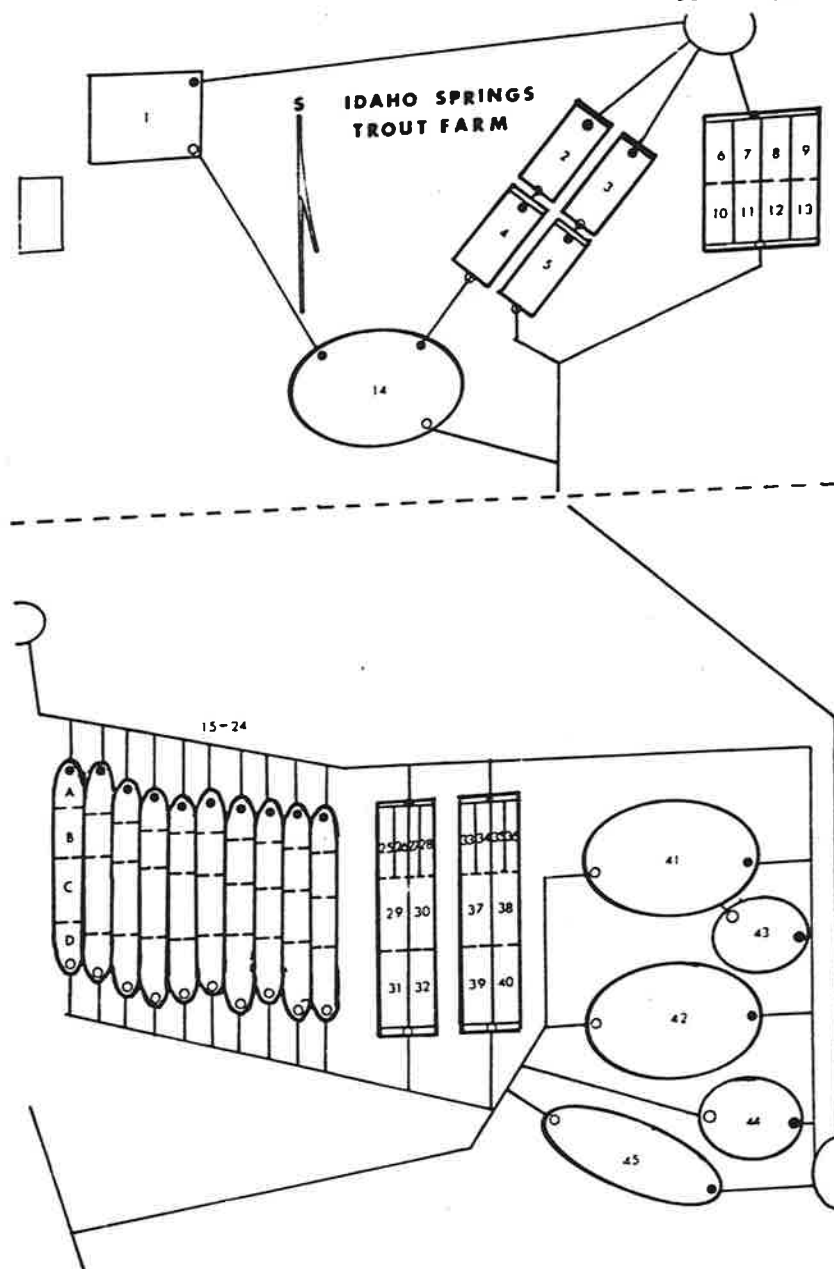
## Water Chemistry:

|                    |           |
|--------------------|-----------|
| Dissolved Oxygen   | 9.35 ppm  |
| Alkalinity         | 137 ppm   |
| pH                 | 8.05      |
| Conductivity       | 708 µmhos |
| Nitrate            | 0.90 ppm  |
| Phosphate          | 0.29 ppm  |
| Hardness (Calcium) | 68 ppm    |
| Hardness (Total)   | 171 ppm   |
| Calcium            | 14.33 ppm |
| Sodium             | 26 ppm    |
| Potassium          | 5.19 ppm  |
| Magnesium          | 22.16 ppm |

Fish Rearing Space: 404,600 cubic feet in 69 ponds

Water Replacement Time: 33.2-47.0 minutes

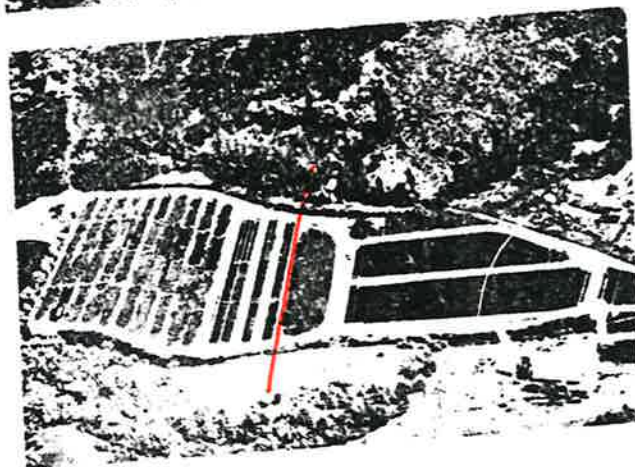
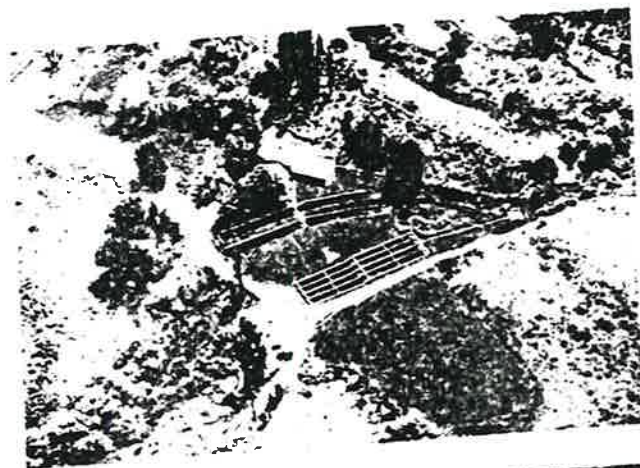
Flow Diagram 11



JAN 27 1983

Plate 9

(Max.)  
(Min.)  
15.6°C



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JAN 27 1983

EXHIBIT A.

A G R E E M E N T

THIS AGREEMENT, Made and entered into this 7<sup>th</sup> day of July, 1954, by and between VARDIS FISHER and OPAL FISHER, husband and wife, of Hagerman, Gooding County, Idaho, parties of the first part, and JAMES N. ELLIS and MARY LOU ELLIS, husband and wife, of Hagerman, Gooding County, Idaho, parties of the second part, WITNESSETH:

WHEREAS, The parties of the first part are the owners of certain water rights more particularly described hereafter and are desirous of leasing the same to the parties of the second part for the sole purpose and use in a fish hatchery.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF the sum of ONE and NO/100 DOLLARS (\$1.00) paid to the parties of the first part by the parties of the second part, the receipt whereof is hereby acknowledged, the parties of the first part do hereby lease and let unto the parties of the second part all and singular the water, water rights, ditch rights and spillway rights which belong or in any way appertain to that certain lake and spring waters supplying the same situated upon the homeplace of the parties of the first part and located upon the northeasterly portion of Lot Four (4) Section Eighteen (18), Township Seven (7) South, Range Fourteen (14) East of the Boise Meridian, Gooding County, Idaho, for a term of Ninety-nine (99) years from the 1st day of July, 1954, at an annual rental of TWO THOUSAND and NO/100 DOLLARS (\$2,000.00) per year, the first installment being due on or before the first day of July, 1955, and like installment being due on or before the first day of each July thereafter, upon the following terms and conditions, to-wit:

36 ~~441~~ 4014

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JAN 27 1954

1. The parties of the first part do hereby retain for their personal use and benefit one second foot of water from the waters hereby leased, and the right to use said lake for their reasonable personal pleasure and that of their friends, including boating and fishing, subject to the provisions in paragraphs 4 and 5 following.

2. The parties of the second part do hereby agree that the waters being leased under this agreement will be used only for purposes usual in the operation of a fish hatchery and processing plant.

3. This agreement together with the water, water rights, ditch and ditch rights hereby leased may be assigned or sublet by the parties of the second part to that certain partnership now existing under the firm name and style of Thousand Springs Trout Company or any successor corporation organized by the partners in said Thousand Springs Trout Company or the said parties of the second part may assign this agreement together with the water, water rights, ditch and ditch rights hereby leased to such other persons, firms or corporations who may hereafter purchase or lease the property in the business known as and being operated by that certain partnership known as Thousand Springs Trout Company; provided that if the existing partnership operating under the firm name and style of Thousand Springs Trout Company is organized in a corporation by the existing partners and the parties of the second part herein do not in that event control the corporation, or if this agreement together with the water, water rights, ditch and ditch rights hereby leased is sold or leased to other persons, firms or corporations, then in that event this agreement may not be assigned except upon a written approval of the parties of the first part in regard to the responsibility of such assignee so as to protect the parties of the first part against any development or management of the fishery

that would detract from the value of the homelace of the parties of the first part and in the event the parties of the first part do not approve of such assignment the parties of the second part may require said matter to be arbitrated, each of the parties hereto to choose one arbitrator and such two arbitrators to choose a third arbitrator and the judgment of said three arbitrators shall be final.

4. Parties of the first part do hereby agree that they will not during the term of this lease or any extension thereof permit said water supply or lake or waters leading therefrom to be used for any commercial purpose other than for fish hatchery purposes to be carried on by the parties of the second part or their successors and assigns.

5. The parties of the first part hereby agree to do all that is reasonably within their power to maintain said waters in the condition of purity as of the date of this agreement, and not to permit, within their reasonable power, the introduction into the water or subsoil that might be detrimental or injurious to fish; provided that it is expressly understood and agreed that as of the date of this agreement the household sewage from parties of the first part is discharged into said waters, with the approval of parties of the second part; and provided further that parties of the second part may elect at their expense and at any time to convey sewage so that it will not be discharged into said waters.

It is expressly agreed and understood that neither the parties of the first part nor their heirs or assigns, during the term of this lease, have the right to stock the waters under this lease with fish which are not approved by parties of the second part.

6. The parties of the second part agree that the Thousand Springs Trout Company shall be operated in such a manner as to avoid any unnecessary bad odors, and that there shall be no

if by reason of acts of God, war or insurrection, or for any other reason beyond the control of parties of the second part, it becomes impossible to operate said fish hatchery, then this agreement shall be immediately terminated, without prejudice to either party.

15. Parties of the first part hereby agree that in the event the waters under this lease are offered for sale, the first option to purchase said waters is hereby granted to the parties of the second part, their heirs or assigns. Parties of the first part further agree that in the event their said home place, described herein on Page 1 of this Agreement, is offered for sale at any time after the death of Opal Fisher, the first option to purchase said home place is hereby granted to the parties of the second part, their heirs or assigns.

16. This agreement shall be binding upon the heirs, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year in this agreement first above written.

(SIGNED) VARDIS FISHER

(SIGNED) OPAL HOLMES FISHER  
Parties of the First Part

(SIGNED) JAMES N. ELLIS

(SIGNED) MARY LOU ELLIS  
Parties of the Second Part

STATE OF IDAHO }  
COUNTY OF GOODING } ss.

On this 21 day of July, 1954, before me, the undersigned, a Notary Public in and for said State, personally appeared VARIOUS FISHER and ORAL FISHER, husband and wife, and JAMES N. ELLIS and MARY LOU ELLIS, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

(SEAL)

(SIGNED) EMERSON PUGHIRE  
Notary Public for the State of Idaho,  
Residing at Hagerman, Idaho.

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JAN 27 1993