

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: **A36-04011**
Date Received: 9/ 1/1988
Receipt No: S002014
Received By: *ownership change*

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

1. Name: AQUA LIFE INC
Address: RT 5 BOX 5053
BUHL ID 83316
208-543-4312

2. Date of Priority: DEC 1, 1965

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
07S	14E	19	NE	NW	NW	1	GOODING

5. Description of diverting works:
CHECK DAM & DITCH TO RACEWAYS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
FISH PROPAGATION	01/01	12/31	50.000		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
FISH, TROUT PRODUCTION

10. Place of Use:

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

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:

A3602414, A36-02734, A36-04014

14. Remarks:

2 P/D IN NWNW, S19, T7S, R14E, LOT 1.

SEE CLAIM A36-2734 FOR ADDITIONAL DATA.

15. Basis of Claim: STATUTORY CLAIM

16. Signature(s)

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

Number of attachments: _____

For Individuals:

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

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

State of Idaho)
County of _____) SS.

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

Notary Public

Seal

Residing at _____

My Commission Expires _____

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FEB 04 1993

DEED

THIS DEED made this 13th day of April, 1989,
between CLEAR SPRINGS TROUT COMPANY, an Idaho corporation,
whose current address is P. O. Box 712, Buhl, Idaho, 83316, the
"Grantor," and AQUALIFE, INC., an Idaho corporation, whose
current address is Route 5, Box 5053, Buhl, Idaho, 83316, the
"Grantee."

W I T N E S S E T H

In consideration of the sum of TEN AND NO/100 DOLLARS
(\$10.00) lawful money of the United States of America, and
other valuable considerations to the Grantor paid by the
Grantee, the receipt whereof is hereby acknowledged, the
Grantor does hereby grant, convey and quitclaim to the Grantee
all of Grantor's right, title, and interest in and to the
following described real property situated in the County of
Gooding, State of Idaho, commonly known as Idaho Springs, to
wit:

TRACT ONE:

TOWNSHIP 7 SOUTH, RANGE 14 EAST OF THE
BOISE MERIDIAN, GOODING COUNTY, IDAHO

Section 18: That part of Lot 4, described
as follows:

Beginning at the Southwest corner of said
Lot 4;

Thence Easterly along the South boundary of
said Lot, 798.5 feet;

Thence North 14°3' West, 452 feet;

Thence South 80°47' West, 23 feet;

Thence North 38°56' West, 191.4 feet;

Thence North 67°19' East, 34 feet, more or

less, to the Southwest corner of the
Vardis Fisher property;

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1 Thence along said Vardis Fisher property West
2 line North 60°11' West, 50 feet;
3 Thence North 24°11' West, 125 feet;
4 Thence North 16°02' West, 220 feet;
5 Thence North 26°09' West, 45 feet;
6 Thence North 68°19' West, 190 feet;
7 Thence North 43°19' West, 130 feet;
8 Thence North 32°55' West approximately 200
feet to the North boundary of said Lot
4;
9 Thence Westerly along the North boundary of
said Lot to the Northwest corner
thereof;
10 Thence Southerly along the West boundary of
said Lot 4 approximately 1320 feet to
11 THE POINT OF BEGINNING.

12 Section 19: That part of Lot 1, described
as follows:

13 Beginning at a point on the North boundary
of and 227.2 feet Easterly from the
Northwest corner of said Lot 1;
14 Thence South 57°38' East, 541 feet;
15 Thence North 77°52' East, 180.8 feet;
16 Thence North 14°03' West approximately 258.3
feet to the North boundary of said Lot
1;
17 Thence Westerly along said North boundary,
571.3 feet, more or less, to THE POINT
OF BEGINNING.

18 EXCEPT tract for public highway as conveyed
in Deed to the Hagerman Highway District,
dated December 24, 1937, recorded September
1, 1938, in Book 26 Deed Page 495,
described as follows:

19 Beginning at a point 1043 feet East of
Northeast corner of the NE1/4 NE1/4,
Section 24, Township 7 South, Range
20 13, East Boise Meridian;
21 Thence South 80 feet;
22 Thence East 100 feet;
Thence North 80 feet;
Thence West 100 feet to THE POINT OF BEGINNING.

23 AND ALSO EXCEPTING strips of land for
highway as set forth in the following Right
of Way Deeds to the Hagerman Highway
District No. 3:



- 1 a. Dated March 4, 1961, recorded November
2 29, 1961, as microfilmed instrument
3 No. 2856, across land in NE1/4 NW1/4
4 and SE1/4 NW1/4, Section 19.
5
6 b. Dated March 4, 1961, recorded November
7 29, 1961, as microfilmed instrument
8 No. 2859, across land in Lot 4,
9 Section 18 and Lot 1, Section 19,
10 records of Gooding County, Idaho.

11 TRACT 2:

12 TOWNSHIP 7 SOUTH, RANGE 14, EAST OF THE
13 BOISE MERIDIAN, GOODING COUNTY, IDAHO.

14 Section 19: That part of Lot 1, described
15 as follows:

16 Beginning at Section corner which is the
17 Northwest corner of said Section 19;
18 Thence Easterly along Section line common
19 to Sections 18 and 19, a distance of
20 approximately 798.5 feet to a point
21 which intersects the easterly
22 boundary of the Idaho Springs Trout
23 Farm;
Thence South 14°03' East, a distance of
78.7 feet to THE TRUE POINT OF
BEGINNING;
Thence South 45°24' East along wooden fence
for 22.6 feet;
Thence South 81°08' East along said fence,
49.5 feet;
Thence North 77°27' East along fence for
100.3 feet;
Thence South 18°07' West for 88.4 feet;
Thence South 46°06' West, 127.6 feet to a
point which is the Southeast corner of
the Idaho Springs Trout Farm;
Thence North 14°03' West along Easterly
boundary of said property for 179.6
feet to THE POINT OF BEGINNING.

GRANTOR RESERVES AN OPTION TO PURCHASE THE
ABOVE DESCRIBED REAL PROPERTY PURSUANT TO
THE LETTER AGREEMENT DATED MARCH 27, 1986,
EXECUTED BY STANFORD B. OWEN OF FABIAN &
CLEDENIN, ATTORNEY FOR THE GRANTEE, AND
DANIEL L. BERMAN OF BERMAN & O'RORKE,
ATTORNEY FOR CLEAR SPRINGS TROUT COMPANY, A

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1 COPY OF THE RELEVANT PORTIONS OF SAID
2 AGREEMENT MAY BE OBTAINED FROM CLEAR
3 SPRINGS TROUT COMPANY, P. O. BOX 712, BUHL,
4 IDAHO, 83316.

5 Grantor makes no warranties to the Grantee, and its
6 successors in title, except that Grantor has not created or
7 permitted to be created any lien, charge or encumbrance against
8 said real estate which is not shown herein.

9 DATED this 13th day of April, 1989.

10 CLEAR SPRINGS TROUT COMPANY

11 By Larry W. Cope
12 Larry W. Cope, President

13 "GRANTOR"

14 STATE OF IDAHO)
15) ss.
16 County of Twin Falls)

17 On this 13th day of April, 1989, before me, the
18 undersigned, a Notary Public in and for said County and State,
19 personally appeared LARRY W. COPE, who being by me duly sworn
20 did say, for himself, that he, the said Larry W. Cope is the
21 President of Clear Springs Trout Company by authority of a
22 resolution of its board of directors and said Larry W. Cope
23 duly acknowledged to me that said corporation executed the same
and that the seal affixed is the seal of said corporation.

24 J. O. Hepworth
25 NOTARY PUBLIC FOR IDAHO
26 Residing at: Twin Falls, Idaho
27 Commission Expires: 12-11-92



DEED 1.405)

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DEED - 4 -



Hepworth,
Nungester,
& Lezamiz



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

22-Oct-1992

AQUA LIFE INC
RT 5 BOX 5053
BUHL ID 83316

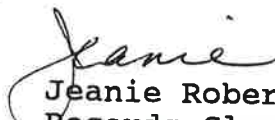
Re: Ownership Change for Adjudication Claim #A36-04011, A36-04014,
A36-02734 - CLEAR SPRINGS/AQUA LIFE

Dear Claimant(s):

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

Please review the record and if you have any corrections or questions, feel free to call this office.

Sincerely,


Jeanie Robertson
Records Clerk

/jr
Enclosures:

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EW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

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

DATE OF CLOSING: _____

LEGAL DESCRIPTION OF PROPERTY: Township _____ Range _____
Section _____, 1/4 of _____ 1/4 of _____ 1/4, Govt. Lot _____, BM.
Lot _____, Block _____, Subdivision/Townsite _____
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: 436-04011, 04014, 02734

☒ Name and Address of Former Owner/Claimant(s)(Seller): Clear Springs Trout Co.

☒ New Owner/Claimant (Purchaser): P.O. Box 712
Buhl, ID 83316

☒ New Mailing Address: Aqua Life, Inc.
P.O. Box 5053
Buhl, ID 83316

☒ New Telephone Number: (208) 543-4312

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

☐ Attach proof of ownership, describe proof attached: _____

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

☒ Signature of New Owner/Claimant(s): Aqua Life, Inc. Date _____
Obey, Kenneth E. & Susan Date 10-22-92

☐ 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: 10/22/92 By: [Signature]

Further Action Needed:

Further Action Taken

Date: _____ By: _____

Final Review and Data-Entry

Date: _____ By: _____

Claim Numbers of Split, if any:

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

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: A36-04011
Date Received: 8/26/1988
Receipt No: _____
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CLEAR SPRINGS TROUT CO. 208-543-4316
Address: P.O. BOX 712
BUHL, ID 83316

2. Date of Priority: DEC 01, 1965

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
07S	14E	19	NE	NW	NW	1	GOODING

5. Description of diverting works:
CHECK DAM & DITCH TO RACEWAYS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
FISH PROPAGATION	01/01	12/31	50.000		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
COMMERCIAL TROUT PRODUCTION

10. Place of Use:

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

11. Place of use in counties: GOODING

A36-04011

Page 1

Date: 08/26/88

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

13. Other Water Rights Used:

LIC. 36-2414 & 36-2734 & CLAIM 36-4014.

14. Remarks:

2 P/D IN NWNW, S19, T7S, R14E, LOT 1.

SEE CLAIM A36-2734 FOR ADDITIONAL DATA.

15. Basis of Claim: STATUTORY CLAIM

16. Signature(s)

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

Number of attachments: 1

For Organizations:

I do solemnly swear or affirm that I am President of
Clear Springs Trout Company Organization, that I have signed the foregoing
Organization

document in the space below as President of
Title

Clear Springs Trout Company Organization and that the statements contained in the
foregoing document are true and correct.

Signature of Authorized Agent

President Clear Springs Trout Company
Title and Organization

8/30/88

Date

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 30th day
of August 19 88

Kent M. Quigley
Notary Public

Seal

Residing at Beall ID

My Commission Expires 11-17-92

MEMORANDUM

RECEIVED

To: Judy Givens

FEB 25 1992

From: Helen Harrington-Thornton ^{HHT}
Marci Sterling *ms*

Department of Water Resources
Southern Region Office

Date: February 21, 1992

Subject: Incorrect Entry of Attorney/Notice of Appearance

=====

We are currently in active review of the following SRBA claims filed by Clear Springs Trout Co. These claims identify William Ringert as the attorney acting for the claimant. Upon contacting Mr. Ringert, we discovered that he is not, nor has he ever been, the attorney for Clear Springs Trout Co. We have not been able to locate any reason for Mr. Ringert to have been entered as attorney. We have spoken with Anna Baumhoff, and Jeannie Robertson has checked the original claim files and no documentation has been uncovered. Please, therefore, remove Mr. Ringert from the following claims and attach a copy of this memo to each file for explanation if future questions arise.

A36-02048	A36-02703	A36-02708	A36-02734
A36-04011	A36-04013A	A36-04013B	A36-04013C
A36-04014	A36-07040	A36-07083	A36-07148
A36-07151	A36-07201	A36-07218	A36-07568

The only suspected reason for Mr. Ringert on these claims is due to his acting as attorney for Clear Lakes Trout Co. and that he was erroneously entered on Clear Springs claims.

The claims listed above are those being acted on in the Boise office. You may wish to check other claims/files in order to determine if Mr. Ringert is identified on other claims in error.

cc: Anna Baumhoff

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Water Right Number - A36-04011

Prefix Translation:

ADJUDICATION CLAIM

Old (D) Number -

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

+ - First Name - - +

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

*** C - CURRENT OWNER ***
CLEAR SPRINGS TROUT CO.

1 - P.O. BOX 712

2 -

3 -

City- BUHL

Phone - 208-543-4316

State- ID Zip- 83316

+ - - Priority Date - - +
12/01/1965+ - - Region - - - +
17 SOUTHERN+ - - Stage - - - +
S - STATUTORY CLAIM

+ - - Status - - - +

+ - - Source - - - - +
BILLINGSLEY CREEK+ - - Tributary - - - - +
SNAKE RIVER

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

Twn Rng Sec Tract Lot RFlg County

07S 14E 19 NE NW NW 1 (47) GOODING

+ - - - - Water Use - - - - - +

Code Description Period From Period To Diversion Rate Diversion Volume

19 - FISH PROPAGATION 01/01 12/31 50.000

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
50.000 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
07S	14E	19	NW NW	1		19	FISH PROPAGATION	(47) GOODING

Total Acres:

+ - - Diversion Means - CHECK DAM & DITCH TO RACEWAYS

+ - - Non-Irrigation Use - FISH, TROUT PRODUCTION

+ - - Other Rights for Same Use - A3602414, A36-02734, A36-04014

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

2 P/D IN NWNW, S19, T7S, R14E, LOT 1.
SEE CLAIM A36-2734 FOR ADDITIONAL DATA.

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

No Old Water Right Numbers Found

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Water right number - A36-04011

Prefix Translation: ADJUDICATION CLAIM

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

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

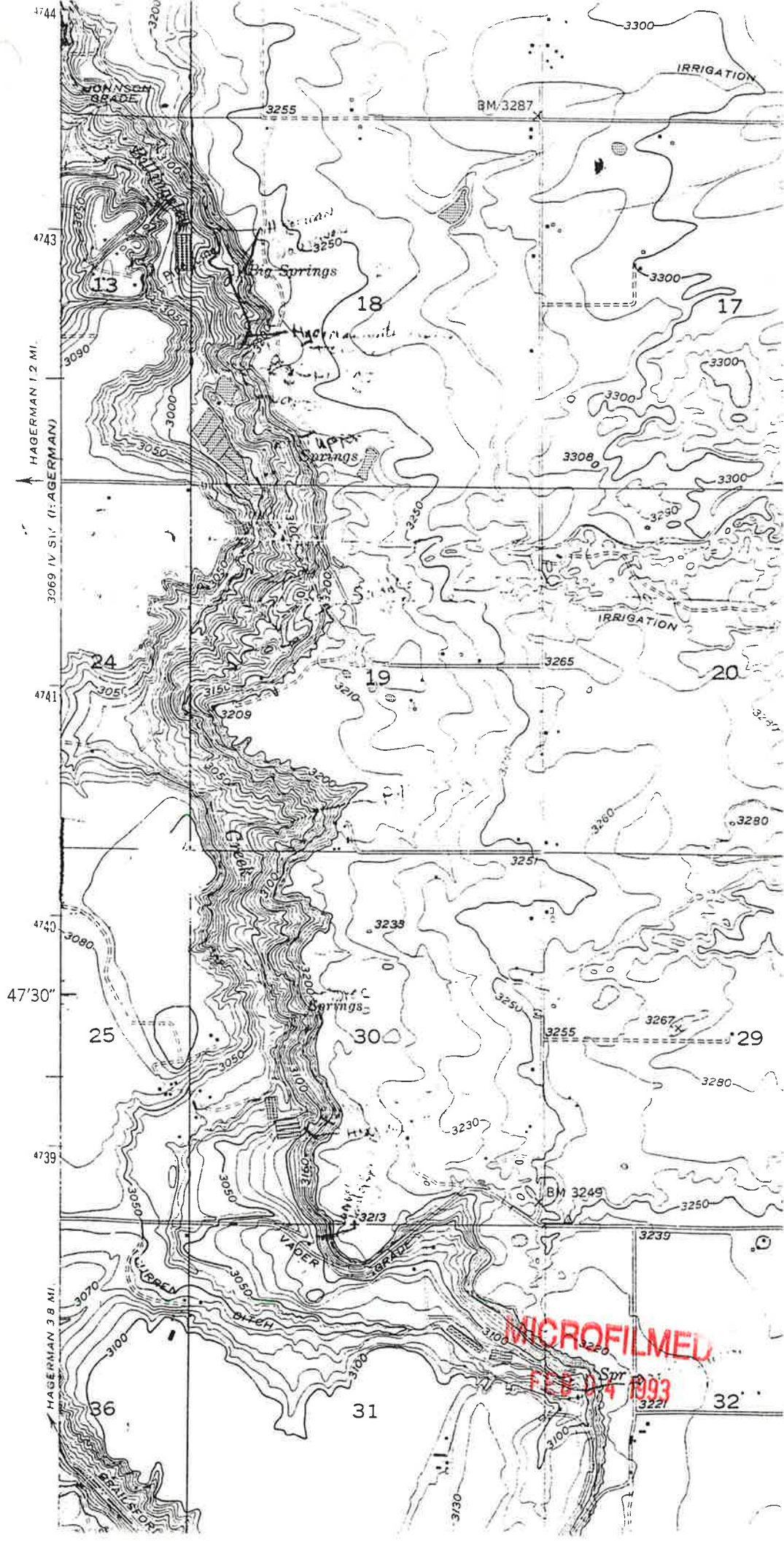
+ - - - - Comments - - - - - +
No Comments Found

+ - - Audit Fields - - +
02/26/92 GIVENS

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

Court Report Filing	- 00/00/0000	Field Inspection Made	- 00/00/0000	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 00/00/0000	Old Judicial District	-
Claim Received Date	- 09/01/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S002014	Water District	-
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	-	Presumption Flag	-
				Notice of Error Flag	-

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State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 3, 1990

A36-04011
CLEAR SPRINGS TROUT CO.
P.O. BOX 712

not sent

BUHL

ID 88816

Dear Claimant(s):

In the past you submitted the claim(s) identified with the number(s) shown above your name and address at the top of this letter. You indicated on the claim(s) that the basis for establishing the water right(s) was Beneficial Use, meaning the water right was not previously confirmed by a decree, water right license or permit before you filed the claim(s).

The purpose of this letter is to request evidence supporting the priority date(s) you have claimed. The enclosed pamphlet describes what this means. While I encourage you to read all of the pamphlet, I direct your attention to the right-hand half of the pamphlet after you open it. There you will find two sections: What Kind of Evidence is Required, and Some Examples of Documents which May Be Evidence of the Priority Date. These sections tell you what must be submitted. The other sections tell you why the evidence is necessary and what the consequences of not submitting the evidence could be.

Please submit the requested evidence by November 1, 1990. When returning to the Department please reference all documents with the claim(s) identification number(s) listed above.

If you have questions not addressed by the pamphlet or need other technical assistance, please feel free to contact this office. For advice on your water right(s), please contact your attorney.

Sincerely,

Allen Merritt, P.E.
Water Rights Supervisor

Enclosure

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FEB 04 1993

36-4011

AFFIDAVIT

STATE OF IDAHO)
COUNTY OF Twin Falls) SS

J. David Erickson, being first duly sworn on his oath, deposes and says:

I am a professional fishery biologist residing at the Snake River Trout Farm in Gooding County, Idaho. I am employed as hatchery biologist by Thousand Springs Trout Farms, Inc. I have worked for this company or its predecessor since 1961.

I have visited and worked at the Idaho Springs Trout Farm on numerous occasions since December 1965. Diversion of Billingsley Creek waters into the trout ponds on this property began on December 1, 1965 and diversions have been made continuously since that time.

I have prepared the following description of the Billingsley Creek diversion that describes the ponds, water requirements and trout production. I have also prepared the accompanying map of Billingsley Creek diversion.

J. David Erickson
J. David Erickson

Subscribed and sworn to before me this 3th day of March, 1971.

Notary Public

Residing in Butte, Idaho

My Commission Expires: 1-1-73

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FEB 04 1993

36-4011

BILLINGSLEY CREEK DIVERSION

POND DESCRIPTION

The first diversion of water from Billingsley Creek by Idaho Springs Trout Farm took place on December 1, 1965. The diversion has been made continuously since this time. The water is used as follows:

1. Southwest Lake.

This unit is 300 feet by 50 feet and averages three feet in depth providing 45,000 cubic feet of volume. The pond has been operated successfully by utilizing 15 to 20 cubic feet per second and 1.3 to 1.6 water exchanges per hour. It holds a maximum of 50,000 pounds of fish.

2. West Lake.

This unit is 330 feet by 140 feet and averages three feet in depth providing 138,600 cubic feet of volume. The pond has been operated using 20 to 55 cubic feet per second depending on the time of year and fish density. Water exchange rate varies from less than 1 to 1.4 per hour. The unit has held a maximum of 120,000 pounds of trout.

3. East Lake.

This unit is 300 feet by 140 feet and averages three feet in depth providing 126,000 cubic feet in volume. The pond has been operated with 15 to 45 cubic feet per second depending on varying factors. Water exchange rate varies from less than 1 to 1.3 per hour. This unit holds a maximum of 110,000 pounds of fish.

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FEB 04 1993

36-4011

WATER REQUIREMENTS AND TROUT PRODUCTION

The three units described utilize 50 to 120 cubic feet per second of Billingsley Creek water. Water requirements vary widely in these units due to fluctuating water temperatures and varying water quality (turbidity from upstream activity). Since water temperatures may approach 70° F., adequate oxygen content must be maintained by providing a relatively high volume of flow. Water chemistry has been periodically sampled to ensure adequate conditions for trout rearing. Production of trout has averaged 350,000 pounds per year since 1966.

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FEB 04 1993

36-4011

AFFIDAVIT

STATE OF IDAHO)
) SS
COUNTY OF ADA)

JACK E. KELLY being first duly sworn on his oath, deposes and says:

I am a registered professional engineer residing in Boise, Idaho. I am a partner in the consulting engineering firm of Anderson & Kelly which specializes in water resource work.

I have personally visited the Idaho Springs Trout Farm adjacent to Billingsley Creek located in Sec. 19, T.7S., R.14E. B.M. in Blaine County, Idaho. I have personally observed the diversion of a portion of Billingsley Creek into the Idaho Springs Trout Farm facilities on several occasions in 1969 and 1970. The water being used was in constructed channels that the Owner refers to as Southwest Lake, West Lake and East Lake. I observed the use of the diverted water for fish propagation during my visits to the property.

On December 16, 1970 I measured the diversion into Southwest Lake with a current meter at 10.7 cubic feet per second (cfs). On December 10, 1970 I measured the diversion into West Lake and East Lake by the submerged weir method at 112 cfs. On January 6, 1971 I measured the diversion into West Lake and East Lake together with Mr. Keith E. Anderson, a registered professional engineer, and my partner. We measured the discharge with a current meter and obtained a measurement of 111.3 cfs. The combined diversion on December 16, 1970 was 122.7 cfs.

I have analyzed spring flow records for other streams in the vicinity and have observed a seasonal fluctuation as evidenced by these records. It is my opinion that Billingsley Creek, which is derived from spring flow, will have a higher flow in August or September and that diversions into the Idaho Springs Trout Farm may be higher during these months.

Jack E. Kelly
JACK E. KELLY

Subscribed and sworn to before me this
1971.

NOTARY PUBLIC

Residing in

My Commission Expires:

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FEB 04 1993

POOR ORIGS.
CCS 06-02-97

MICROFILMED
FEB 04 1993

NOW, THEREFORE, FOR AID 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 homelace of the parties of the first part and located upon the northeasterly portion of Lot Four (4) Section Eighteen (18), Township Seven (7) North, 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 (\$2,000.00) per year, the first installment being due on the first day of July, 1955, and thereafter on the 1st day of July, 1956, and each year thereafter, until the expiration of the term of years hereinbefore expressed, and the parties of the first part do hereby agree to lease and conditions, to-wit:

36-4011

that would detract from the value of the homoplace 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 lending 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 reason to know, the introduction into the water of any substance which is or may be injurious to fish; provided that as to any substance which is or may be injurious to fish which is or may be introduced into said waters from parties of the first part is discharged said substance, 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 acknowledged that the parties of the first part nor their heirs or assigns, nor the parties of the second part, have the right to use said waters for any purpose other than for fish hatchery purposes, and that the parties of the first part shall not use said waters for any purpose other than for fish hatchery purposes, and that the parties of the second part shall not use said waters for any purpose other than for fish hatchery purposes.

6. The parties of the second part shall not use said waters for any purpose other than for fish hatchery purposes, and shall not use said waters for any purpose other than for fish hatchery purposes, and shall not use said waters for any purpose other than for fish hatchery purposes.

MICROFILMED

FEB 04 1993

36-4011

17. 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.

18. 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.

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

20. The parties of the first part hereby agree that their heirs, successors and assigns shall not be bound by this agreement.

(SIGNED) _____

(SIGNED) OPAL FISHER FISHER

(SIGNED) JAMES T. HILLIS

(SIGNED) MARY LOU HILLIS

MICROFILMED
FEB 04 1993

36-4011

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 VANCE ELLIS and ORAL ELLIS, husband and wife, and JAMES E. ELLIS and LOUIE 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 PERMIRE
Notary Public for the State of Idaho,
Residing at Hailey, Idaho.

MICROFILMED

FEB 04 1955

36-4011

EXHIBIT B.

CONSENT TO ASSIGNMENT & ASSUMPTION OF ASSIGNMENT

This agreement made and entered into this 28th day of November, 1958 by and between Vardis Fisher and Opal Fisher, husband and wife, Hagerman, Idaho, first parties and James N. Ellis and Mary Lou Ellis, husband and wife, Hagerman, Idaho, second parties and Robert A. Erkins and Bernardino M. Erkins, husband and wife, Buhl, Idaho, third parties.

Whereas, first parties and second parties entered into a written agreement and lease on the 1st day of July, 1954 wherein and whereby, among other things, first parties leased to second parties certain water rights, ditch rights and spillway rights for the operation of a fishery and which said water and water rights are located generally in Lot 4, Section 18, Twp. 7 S R. 14 E.B.M. Gooding County, Idaho and

Whereas, second parties are now desirous of assigning said lease and agreement to third parties.

Now, therefore, it is mutually covenanted and agreed as follows:

(1) First parties do hereby consent to the assignment of said lease and agreement by second parties to third parties, provided, however, that the consent to assignment of lease herein granted to second parties shall in no manner be deemed or construed as obviating the consent of first parties to subsequent assignments or subleases by third parties or their heirs or successors.

(2) Second parties and/or third parties covenant and agree to cease and desist using the road owned by first parties and which said road has been permissively used by second parties as ingress and egress to the fishery operated by second parties. Second parties and/or third parties covenant and agree to construct a road into said fishery on or before July 1, 1959.

(3) Second parties and/or third parties covenant and agree to so manage the fishery that the same shall not yield offensive and disagreeable odors and further that the same shall not produce unnecessary and unreasonable noises.

MICROFILMED

FEB 04 1959

(4) By way of clarification, it is mutually understood and agreed that the maximum water level on the pond and conveying canal to said fishery and at the spillway is the exact south top of the center pier of said spillway.

(5) Third parties covenant to perform all the other terms, covenants, and conditions of the said lease and agreement first herein mentioned.

First Parties.

First Parties.

Anna V. Ellis
Mary Lou Ellis

Second Parties.

Robert A. Ekins
Barbara M. Ekins

Third Parties.

On this 12 day of Nov, 1956, before the undersigned a notary public in and for said State of Texas personally appeared Vardis Fisher and Opal Fisher, husband and wife, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my seal the day and year in this certificate first above written.

36-4011

STATE OF IDAHO)
) ss.
County of Gooding)

On this 19 day of December, 1958, before the undersigned
a notary public in and for said county, personally appeared James N.
Ellis and Mary Lou Ellis, known to me to be the persons whose names are
subscribed to the foregoing instrument, and acknowledged to me that they
executed the same.

In witness whereof I have hereunto set my hand and affixed my
seal the day and year in this certificate first above written.

Harry L. Lyle
Notary Public for the State
of Idaho.

SEAL)

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 17 day of December, 1958, before the undersigned
a notary public in and for said county, personally appeared Robert A.
Erkins and Bernardine M. Erkins, known to me to be the persons whose
names are subscribed to the foregoing instrument, and acknowledged to
me that they executed the same.

Harry L. Lyle
Notary Public for the State
of Idaho

SEAL)

2001 NOV 13 PM 1:25

FILED
TWIN FALLS, IDAHO

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

In Re SRBA

Case No. 39576

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

NOTICE OF COMPLETED
ADMINISTRATIVE
PROCEEDING

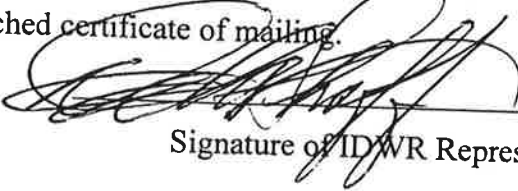
IDWR has completed the following administrative proceeding:

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

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

11/08/2001

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

NOV 13 PM 1:25

RIGHT NUMBER: 36-4011

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

REGISTERED - SRBA
TWIN FALLS CO., IDAHO
FILED

SOURCE: BILLINGSLEY CREEK

TRIBUTARY: SNAKE RIVER

QUANTITY: 12.000 CFS

PRIORITY DATE: 12/01/1965

POINT OF
DIVERSION:

T07S R14E S19 NENWNW Lot 1 Within GOODING County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

FISH PROPAGATION

1/01 12/31

12.000 CFS

PLACE OF USE: FISH PROPAGATION Within GOODING County

T07S R14E S18 Lot 4 SWSW

T07S R14E S19 Lot 1 NWNW

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use
FACILITY VOLUME 301,000 CUBIC FEET.

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.

Water Right No(s).	Adjudication Claim No(s).	Split	Water RightNo(s).	Adjudication Claim No(s).	Split
✓ 36-4011					
✓ 36-2734					
✓ 36-15476					
✓ 36-2414					
✓ 36-2338					

RECEIVED
 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
- New Mailing Address P.O. Box 2802
- City, State and ZIP Code Boise, Idaho 83701
- New Telephone Number (208) 345-6057
5. Date you acquired the property September 28, 2001

OK to Change *Shiff* 10/6/01
 records changed 11-7-01. m
 NCAP 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 (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 (cubic feet per second or acre-feet annum)	Description (acres, number and type of stock, homes, etc.)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other	_____	_____
Total	_____	_____

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (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 (cubic feet per second or acre-feet annum)	Description (acres, number and type of stock, homes, etc.)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other	_____	_____
Total	_____	_____

7. Signature of New Owner(s) or Claimant(s) Snake River Building Authority
(include title of applicable) Joe Meuleman, 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	<u>J. Meuleman</u>	Date	<u>10-29-01</u>
Received by	<u>J. Meuleman</u>	Date	<u>10-29-01</u>
Processed by	_____	Date	_____
		Fee	_____
		Receipt No.	<u>2057428</u>
		WR	_____
		Date	_____

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



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

ALAN G. LANCE

RECEIVED

OCT 29 2001

Department of Water Resources

October 26, 2001

Vicki Kelly
Department of Water Resources
STATEHOUSE MAIL

Re: Billingsley Creek - Notices of Change of Water Right Ownership

Dear Vicki:

Enclosed are two Notices of Change in Water Right Ownership, one for the AquaLife property and one for the McFadden property. Also enclosed is a check from Meuleman & Miller in the amount of \$125.00 for the filing fee required on the AquaLife property.

Sincerely,

Julie K. Weaver
Deputy Attorney General
Contracts & Administrative Law Division

JKW/js
Enclosures

36-2338
✓ - 2414
✓ - 4011
✓ - 2734
late c/m #36-15476

AquaLife

36-48A
✓ - 49
✓ - 2169
✓ - 15532
✓ - 15533
✓ - 15538

McFadden

Instrument # 1. 263

GOODING, GOODING, IDAHO

2001-09-28

04:20:14 No. of Pages: 17

Recorded for : GOODING TITLE

HELEN EDWARDS

Ex-Officio Recorder Deputy

Index to: DEED, WARRANTY

Fee: 51.00

G010184

WARRANTY DEED

THIS INDENTURE made by and between AQUA LIFE, INC., an Idaho corporation whose address is 1128 E. 4150 N., Buhl, Idaho 83316, hereinafter referred to as "Grantor," and the IDAHO STATE BUILDING AUTHORITY, P.O. Box 2802, Boise, Idaho 83701, hereinafter referred to as "Grantee";

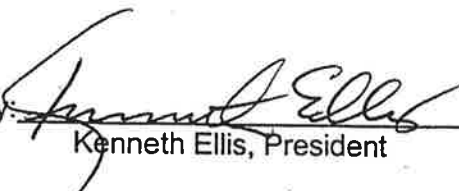
WITNESSETH, that the Grantor does hereby convey and confirm in fee unto the said Grantee and its successors and assigns forever the premises situated in Gooding County, Idaho and more particularly described on Exhibit "A" annexed hereto and by this reference incorporated herein, excepting therefrom the premises situated in Gooding County, Idaho and more particularly described on Exhibit "B" annexed hereto and by this reference incorporated herein, together with all water rights, ditch rights, rights of way, improvements, fixtures, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining thereto, including but not limited to, the water rights identified on Exhibit "C" annexed hereto and by this reference incorporated herein.

TO HAVE AND TO HOLD the above-described premises and parcel of land and granted real property unto Grantor and its successors and assigns forever, subject only to the exceptions set forth on Exhibit "D" annexed hereto and by this reference incorporated herein, and that Grantor shall warrant and defend the premises from all other lawful claims whatsoever.

The Grantor further warrants to the Grantee that he is lawfully seized of the above described real property in fee simple, that the same is free and clear of any and all encumbrances of every kind and description, except as herein specified, and that the Grantor has lawful right to convey the said real property.

DATED This 28th day of September, 2001.

AQUA LIFE, INC.

By: 

Kenneth Ellis, President

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

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this date before me, the undersigned notary public for such state, personally appeared **KENNETH ELLIS**, known or identified to me to be the person whose name is subscribed to the within instrument, and did acknowledged to me that he is the President of AquaLife, Inc., an Idaho corporation, and that the document was signed by him on behalf of said corporation and that the said corporation executed the same.

WITNESS my hand and seal on Sept. 28th, 2001.



Residing at: Twin Falls
Commission expires: 7-25-2002

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

EXHIBIT A

Legal Description

Parcel 1

A parcel of land located in the Northeast Quarter of Section 13, Township 7 South, Range 13 East, Boise Meridian, Gooding County, Idaho.

Commencing at the Northeast corner of said Section 13; Thence South 00°06'27" West, 1316.78 feet;

Thence North 89°56'58" West, 135.57 feet;

Thence South 10°29'56" East, 229.69 feet;

Thence South 09°26'13" East, 128.98 feet,

Thence South 02°44'59" East, 30.00 feet,

Thence North 74°35'21" West, 38.56 feet,

Thence North 25°48'31" West, 129.65 feet to the REAL POINT OF BEGINNING.

Thence South 74°07'40" West, 205.27 feet;

Thence South 02°19'11" West, 205.82 feet,

Thence South 25°14'04" West, 219.50 feet,

Thence South 04°50'15" West, 401.85 feet,

Thence North 75°44'14" West, 146.64 feet,

Thence North 75°22'14" West, 164.67 feet,

Thence North 78°19'14" West, 233.70 feet,

Thence North 03°36'14" West, 170.90 feet,

Thence North 22°30'46" East, 223.17 feet,

Thence North 46°51'37" East, 234.23 feet,

Thence North 27°10'44" East, 224.74 feet,

Thence North 49°40'41" East, 302.91 feet,

Thence North 79°08'34" East, 176.13 feet,

Thence South 25°48'31" East, 255.77 feet to the REAL POINT OF BEGINNING.

Said parcel contains approximately 10.72 acres.

Parcel 2

A Parcel of Land located in the Northeast Quarter of Section 13, Township 7 South, Range 13 East, Boise Meridian, Gooding County Idaho described as follows:

Commencing at the Southeast corner of said Section 13; Thence North 00°06'27" East, 2633.56 feet along the East boundary of Section 13; thence North 89°57'12" West, 81.37 feet to the REAL POINT OF BEGINNING.

Thence North 89°57'12" West, 418.62 feet,

Thence North 10°28'05" West, 55.44 feet,

Thence South 32°55'58" East, 23.90 feet,

Thence North 87°09'18" East, 60.18 feet,

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

Thence North 57°54'32" East, 38.56 feet,
Thence South 83°49'58" East, 143.82 feet,
Thence South 66°33'03" East, 107.44 feet to the REAL POINT OF BEGINNING.
Said parcel contains approximately 0.31 acres.

Parcel 3

A parcel of land located in the NE ¼, Section 13, Township 7 South, Range 13 East, Boise Meridian & Government Lots 2, 3 and 4 and the SW ¼, Section 18, Township 7 South, Range 14 East of the Boise Meridian, Gooding County, Idaho and Government Lot 1, Section 19, Township 7 South, Range 14 East, Boise Meridian, Gooding County, Idaho, more particularly described as follows:

Commencing at the Southwest corner of said Section 18;
Thence North 00°06'27" East along the West boundary of Section 18 for a distance of 78.66 feet being the REAL POINT OF BEGINNING;

Thence continuing North 00°06'27" East along the West boundary of Government Lot 3 of Section 18 for a distance of 1784.90 feet to a point that is South 00°06'27" West 770.00 feet from the Northwest corner of Government Lot 3;

Thence North 00°06'27" East, 734.81 feet
Thence South 66°33'10" East, 85.93 feet
Thence South 19°26'13" East, 429.65 feet
Thence South 33°50'46" West, 174.97 feet
Thence South 11°16'42" East, 21.35 feet
Thence South 83°46'40" East, 360.89 feet
Thence North 04°39'15" West, 164.46 feet
Thence North 53°55'35" West, 145.97 feet
Thence North 34°55'15" East, 98.38 feet
Thence North 34°38'20" West, 117.70 feet
Thence North 06°35'41" East, 140.20 feet
Thence North 17°01'30" West, 92.53 feet
Thence North 66°10'48" West, 110.60 feet
Thence North 07°49'08" East, 58.06 feet
Thence North 33°16'05" East, 432.67 feet
Thence North 23°29'35" West, 7.56 feet
Thence North 86°36'46" West, 234.78 feet
Thence South 64°12'56" West, 200.94 feet
Thence South 64°27'51" West, 65.87 feet to a point on the West boundary line of Section 18
Thence South 64°27'51" West, 44.39 feet
Thence North 02°44'59" West, 639.54 feet
Thence North 09°26'13" West, 128.98 feet
Thence North 10°29'56" West, 229.69 feet
Thence North 89°56'58" West, 367.20 feet
Thence South 44°00'16" West, 310.04 feet
Thence South 31°52'32" West, 199.44 feet
Thence South 40°51'56" West, 230.96 feet
Thence South 69°42'25" West, 117.61 feet
Thence South 50°24'25" West, 322.28 feet
Thence North 39°24'35" West, 105.75 feet

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

Thence North 50°24'25" East, 130.00 feet
Thence North 00°07'35" West, 30.00 feet
Thence North 48°06'25" East, 559.40 feet
Thence North 56°51'25" East, 477.46 feet
Thence North 83°51'27" East, 11.94 feet
Thence North 89°51'16" East, 135.49 feet
Thence North 72°36'15", East, 92.17 feet
Thence South 80°50'22" East, 142.52 feet
Thence South 89°01'22" East, 108.12 feet
Thence South 00°06'27" West, 21.00 feet
Thence North 89°39'48" East, 1007.76 feet
Thence South 00°44'00" East, 2001.76 feet
Thence South 15°25'38" East, 299.56 feet;
Thence South 34°34'01" East, 449.40 feet;
Thence South 23°08'01" East, 251.77 feet;
Thence South 31°09'01" East, 307.73 feet;
Thence South 69°03'42" West, 860.62 feet;
Thence South 86°54'03" West, 150.09 feet;
Thence South 11°20'56" East, 49.63 feet;
Thence South 14°00'14" East, 447.35 feet to a point on the South boundary
of Section 18;
Thence South 14°00'14" East, 5.02 feet,
Thence South 13°43'07" East, 78.77 feet;
Thence South 45°19'32" East, 22.57 feet;
Thence South 81°07'26" East, 49.41 feet;
Thence North 77°25'05" East, 100.11 feet;
Thence South 72°04'24" East, 20.37 feet;
Thence South 22°14'32" West, 92.90 feet;
Thence South 43°24'58" West, 170.79 feet;
Thence South 30°42'47" West, 20.00 feet to a point on the North Right of Way Line of State
Highway 30;
Thence North 59°17'47" West, 312.83 feet to Highway Right of Way Marker Sta 32+00;
Thence North 45°38'51" West along the North Right of Way for State Highway 30, 127.44 feet;

Thence Northwest along Curve 3 on the North Right of Way of State Highway 30;
Δ 27°50'29"

LCB North 73° 12'28" West

Radius 1034.93 feet

Length 502.90 feet

Tangent 256.62 feet; to the REAL POINT OF BEGINNING.

Except a Parcel of Land described as follows:

Commencing at the Northwest corner of Section 18, Township 7 South, Range 14 East, Boise
Meridian, Gooding County, Idaho. Thence South 00°06'27" West, 1747.65 feet, to the REAL
POINT OF BEGINNING.

Thence North 89°14'58" East, 307.07 feet,
Thence South 25°12'11" East, 272.96 feet,
Thence South 86°47'58" West, 374.00 feet,

WARRANTY DEED

Page 3 of 4

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

Thence North 14°52'02" West, 272.70 feet,
Thence North 89°14'58" East, 20.11 feet to the REAL POINT OF BEGINNING.
Said parcel, less the excepted parcel, contains approximately 95.88 acres.

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

EXHIBIT B

Excepted Property

A&G, L.L.C. Parcels

Parcel No. 5:

Lot 13 of NORWOOD SUBDIVISION, Gooding County, Idaho, as the same is platted in the official plat thereof, now of record in the office of the County Recorder of said County.

Parcel No. 6:

Township 7 South, Range 13 East of the Boise Meridian, Gooding County, Idaho

Section 13: A tract of land in the South one-half of the Northeast Quarter, described as follows:

COMMENCING at the Northwest corner of said South one-half of the Northeast Quarter;
Thence North 89°23' East, 955.00 feet;
Thence South 2°10' East, 1350.48 feet;
Thence East, 1014.23 feet;
Thence North 50.20 feet;
Thence North 10°11' West, 200.00 feet to the TRUE POINT OF BEGINNING;
Thence North 75°41' West, 164.67 feet;
Thence North 78°38' West, 233.70 feet;
Thence North 3°55' West, 170.90 feet;
Thence North 22°12' East, 223.17 feet;
Thence South 60°42' East, 294.00 feet;
Thence South 10°33' East, 325.53 feet to the TRUE POINT OF BEGINNING.

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

Parcel No. 7:

Township 7 South, Range 13 East of the Boise Meridian, Gooding County, Idaho

Section 13: That part of the Southeast Quarter of the Northeast Quarter,
described as follows:

COMMENCING at the Northeast corner of said Section 13;

Thence South $0^{\circ}06'27''$ West along the East boundary of Section 13 for a distance of 2633.56 feet to the East quarter corner of said Section 13;

Thence North $89^{\circ}57'12''$ West along the South boundary of the Northeast quarter of Section 13 for a distance of 81.37 feet to the center of Billingsley Creek and being the TRUE

POINT OF BEGINNING;

Thence North $89^{\circ}57'12''$ West along the South boundary of the Northeast quarter of Section 13 for a distance of 337.25 feet, more or less, to a point that lies South $89^{\circ}57'12''$ East, 183.61 feet from the Southeast corner of Lot 15 Norwood Subdivision;

Thence North $10^{\circ}28'05''$ West for a distance of 55.44 feet to the center of Billingsley Creek;
Thence along the center of Billingsley Creek on the following courses and distances:

South $32^{\circ}55'58''$ East 23.90 feet;

North $87^{\circ}09'18''$ East 60.18 feet;

North $57^{\circ}54'32''$ East 38.56 feet;

South $83^{\circ}49'58''$ East 143.82 feet;

Thence South $66^{\circ}33'10''$ East 107.44 feet to the TRUE POINT OF BEGINNING.

AND

Township 7 South, Range 13 East of the Boise Meridian, Gooding County, Idaho

Section 13: That part of the South one-half of the Northeast Quarter, described as follows:

COMMENCING at the Northeast corner of said Section 13;

Thence South $0^{\circ}06'27''$ West along the East boundary of said Section 13 for a distance of 1316.78 feet to the Southeast corner of the Northeast Quarter of the Northeast Quarter of said Section 13 and being the TRUE POINT OF BEGINNING;

Thence South $0^{\circ}06'27''$ West along the East boundary of Section 13 for a distance of 430.87 feet to a point on the Northerly boundary of that certain piece of property deeded to Elwood D. Grimes and Mary A. Grimes, by Warranty Deed dated November 4, 1971, recorded

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October 10, 1972 as Instrument No. 42280, and later recorded by correction Warranty Deed dated October 8, 1975, recorded November 17, 1976 as Instrument No. 62005, Gooding County records;

Thence South $89^{\circ}14'58''$ West, measured (South $89^{\circ}13'$ West recorded), along the Northerly boundary of the Grimes property for a distance of 20.11 feet to the Northwest corner of the Grimes property;

Thence South $14^{\circ}52'02''$ East, measured (South $14^{\circ}54'$ East, recorded), along the Westerly boundary of the Grimes property for a distance of 77.80 feet to a point on the East boundary of Section 13;

Thence South $0^{\circ}06'27''$ West along the East boundary of Section 13 for a distance of 466.27 feet;

Thence South $64^{\circ}28'42''$ West 44.49 feet;

Thence North $2^{\circ}44'59''$ West 639.54 feet;

Thence North $9^{\circ}26'13''$ West 128.98 feet;

Thence North $10^{\circ}29'56''$ West, 229.69 feet to a point on the North boundary of the Southeast Quarter of the Northeast Quarter of said Section 13, said point lies North $89^{\circ}56'58''$ West, 135.57 feet from the Northeast corner of the Southeast Quarter of the Northeast Quarter;

Thence North $89^{\circ}56'58''$ West along the North boundary of the Southeast Quarter of the Northeast Quarter of Section 13 for a distance of 367.20 feet;

Thence South $44^{\circ}00'16''$ West for a distance of 310.04 feet;

Thence South $31^{\circ}52'32''$ West for a distance of 199.44 feet to the Northeast corner of Norwood Drive of Norwood Subdivision;

Thence along the Northerly boundary of Norwood Drive of Norwood Subdivision the following courses and distances:

South $40^{\circ}51'56''$ West 230.96 feet;

South $69^{\circ}42'25''$ West 117.61 feet;

South $50^{\circ}24'25''$ West 322.28 feet to the Northwest corner of Norwood Drive;

Thence North $39^{\circ}24'35''$ West along the Easterly boundary of Norwood Road of Norwood Subdivision for a distance of 105.75 feet;

Thence North $50^{\circ}24'25''$ East along the Southerly boundary of an access road of Norwood Subdivision for a distance of 130.0 feet;

Thence North $0^{\circ}07'35''$ West along the Easterly boundary of an access road of Norwood Subdivision for a distance of 30.0 feet to the Southwest corner of Lot 1 of Norwood Subdivision;

Thence North 48°06'25" East along the Southerly boundary of Lot 1 of Norwood Subdivision for a distance of 559.4 feet to the Northeast corner of Lot 1 of Norwood Subdivision, said point also being the Southeast corner of that certain piece of property deeded to A. Arthur Allen, Jr. and June Audrey Allen by Warranty Deed dated October 9, 1973, recorded December 21, 1978, as Instrument No. 73847, Gooding County records;

Thence North 56°51'25" East along the Southerly boundary of the Arthur Allen property for a distance of 448.38 feet to a point of the North boundary of the Southeast Quarter of the Northeast Quarter;

Thence South 89°56'58" East along the North boundary of the Southeast Quarter of the Northeast Quarter 508.31 feet to the TRUE POINT OF BEGINNING.

AND

Section 13: That part of the South one-half of the Northeast Quarter, described as follows:

COMMENCING at the Northeast corner of said Section 13;

Thence South 0°06'27" West along the East boundary of Section 13 for a distance of 2633.56 feet to the East quarter corner of Section 13;

Thence North 89°57'12" West along the South boundary of the Northeast Quarter of Section 13 for a distance of 418.62 feet, more or less, to a point that lies South 89°57'12" East, 183.61 feet from the Southeast corner of Lot 15 of Norwood Subdivision;

Thence North 10°28'05" West for distance of 55.44 feet to the center of Billingsley Creek;

Thence North 6°51'19" West along the center of Billingsley Creek for a distance of 95.08 feet;

Thence North 56°59'00" West along the center of Billingsley Creek for a distance of 42.61 feet;

Thence North 44°33'07" West along the center of Billingsley Creek for a distance of 28.98 feet;

Thence North 4°50'16" East along the center of Billingsley Creek for a distance of 6.89 feet to the Northeast corner of that certain piece of property deeded to Marvin L. Foss and Martha L. Foss, husband and wife, dated November __, 1997, recorded December 12, 1977 as Instrument No. 67719, records of Gooding County, Idaho, the TRUE POINT OF BEGINNING;

Thence North 75°44'14" West, measured (North 75°41' West, recorded), for a distance of 146.64 feet measured (182.59 feet recorded), to the Northeast corner of lot 14 of Norwood Subdivision;

Thence North 10°14'14" West along the Easterly boundary of Norwood Subdivision for distance of 534.30 feet;

Thence North 25°27'41" West along the Easterly boundary of Norwood Subdivision for a distance of 110.75 feet to the Northeast corner of Lot 13 of Norwood Subdivision;
Thence North 27°10'44" East, 224.74 feet;
Thence North 49°40'41" East, 302.91 feet;
Thence North 79°08'34" East, 176.13 feet;
Thence South 25°48'31" East, 255.77 feet;
Thence South 74°07'40" West 205.27 feet to the center of Billingsley Creek;
Thence along the center of Billingsley Creek on the following courses and distances:
 South 2°19'11" West 205.82 feet;
 South 25°14'04" West, 219.50 feet;
Thence South 4°50'16" West, 401.86 feet to the TRUE POINT OF BEGINNING.

Parcel No. 8:

Township 7 South, Range 14 East of the Boise Meridian, Gooding County, Idaho

Section 18: That part of Government Lots 2 and 3 described as follows:

COMMENCING at the Northwest corner of said Section 18;
Thence South 0°06'27" West along the West boundary of Section 18 for a distance of 1316.78 feet to the Northwest corner of Government Lot 2 and being the TRUE POINT OF BEGINNING;
Thence North 89°39'48" East along the North boundary of Government Lot 2 for distance of 1007.76 feet to the Northeast corner of Government Lot 2;
Thence South 0°44'00" East along the Easterly boundary of Government Lots 2 and 3 for distance of 2087.41 feet to a point located South 0°44'00" East, 770.00 feet from the Northeast corner of Government Lot 3;
Thence South 89°41'57" West parallel with the North boundary of Government Lot 3 for a distance of 1038.38 feet to a point on the West boundary of Section 18;
Thence North 0°06'27" East along the West boundary of Section 18 for a distance of 734.81 feet to the center of Billingsley Creek, said point lies South 0°06'27" West, 35.20 feet from the West quarter corner of said Section 18;
Thence along the center of Billingsley Creek the following courses and distances:
 South 66°33'10" East, 86.03 feet;
 South 19°26'13" East, 429.65 feet;
 South 33°50'46" West, 174.97 feet;
 South 11°16'42" East, 21.35 feet;
Thence leaving the centerline of Billingsley Creek South 83°46'40" East 360.89 feet;
Thence North 4°39'15" West, 164.46 feet;

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Thence North 53°55'35" West, 145.97 feet;
Thence North 34°55'15" East, 98.38 feet;
Thence North 34°38'20" West, 117.70 feet;
Thence North 6°35'41" East, 140.20 feet;
Thence North 17°01'30" West, 92.53 feet;
Thence North 66°10'48" West, 110.60 feet;
Thence North 7°49'08" East, 58.06 feet;
Thence North 33°16'05" East, 432.67 feet;
Thence North 23°29'35" West, 7.56 feet;
Thence North 86°36'46" West 234.78 feet;
Thence South 64°12'56" West, 200.94 feet;
Thence South 64°28'42" West, 65.86 feet to a point on the West boundary of Government Lot 2;

Thence North 0°06'27" East along the West boundary of Government Lot 2 for a distance of 466.27 feet to a point on the West boundary of that certain piece of property deeded to Elwood D. Grimes and Mary A. Grimes by Warranty Deed dated November 4, 1971, recorded October 10, 1972, as Instrument No. 42280, and later corrected by Correction Warranty Deed dated October 8, 1975, recorded November 17, 1976 as Instrument No. 62005, Gooding County records;

Thence South 14°52'02" East, measured (South 14°54' East recorded), along the West boundary of Grimes property for a distance of 194.90 feet to the Southwest corner of the Grimes property;

Thence North 86°47'58" East, measured (North 86°46' East recorded) along the South boundary of the Grimes property for a distance of 374.00 feet the Southeast corner of the Grimes property;

Thence North 25°12'11" West, measured (North 25°14' West recorded) along the East boundary of Grimes property for a distance of 272.96 feet, measured (273.00 feet recorded) to the Northeast corner of the Grimes property;

Thence South 89°14'58" West, measured (South 89°13' West recorded), along the North boundary of Grimes property for a distance of 307.07 feet to a point on the West boundary of Government Lot 2;

Thence North 0°06'27" East along the West boundary of Government Lot 2 for a distance of 430.87 feet to the TRUE POINT OF BEGINNING.

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Parcel No. 9:

Township 7 South, Range 13 East of the Boise Meridian, Gooding County, Idaho

Section 13: All that part of the Northeast Quarter of the Northeast Quarter,
described as follows:

COMMENCING at the Southeast corner of the Northeast Quarter of the Northeast Quarter of said Section 13 and being the TRUE POINT OF BEGINNING;
Thence North 89°56'58" West along the South Boundary of the Northeast Quarter of the Northeast Quarter of said Section 13 for distance of 508.31 feet;
Thence North 56°51'25" East for a distance of 29.06 feet to a point on the existing fence line;
Thence along the existing fence line on the following courses:
North 83°51'27" East, 12.05 feet;
North 89°51'16" East, 135.49 feet;
North 72°36'15" East, 92.17 feet;
South 80°50'22" East, 142.52 feet;
South 89°01'22" East, 108.12 feet to a point on the East boundary of the Northeast Quarter of the Northeast Quarter of said Section 13;
Thence South 0°06'27" West along the East boundary of the Northeast Quarter of the Northeast Quarter of said Section 13 for a distance of 21.0 feet to the Southeast corner of the Northeast Quarter of the Northeast Quarter of said Section 13, and being THE TRUE POINT OF BEGINNING.

TOGETHER WITH a perpetual nonexclusive easement and right-of-way for ingress and egress over a portion of the Southeast Quarter of the Northeast Quarter, described as follows:

Beginning at the Northeast corner of Section 13;
Thence South 0°06'27" West, 1316.78 feet to the Northeast corner of the Southeast Quarter of the Northeast Quarter;
Thence North 89°56'58" West, 135.57 feet along the Northerly boundary of the Southeast Quarter of the Northeast Quarter to the TRUE POINT OF BEGINNING;
Thence North 89°56'58" West, 367.20 feet along said Northerly boundary;
Thence South 44°00'16" West, 310.04 feet;
Thence South 31°52'32" West, 199.44 feet;
Thence South 32°58'54" East, 74.96 feet to the Northeast corner of Lot 13 of the "Norwood Subdivision";
Thence North 27°10'44" East, 224.74 feet along the Southerly boundary of said Access Easement;

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Thence North 49°40'41" East, 302.91 feet;
Thence North 79°08'34" East, 176.13 feet;
Thence South 25°48'31" East, 385.42 feet;
Thence South 74°35'21" East, 38.56 feet;
Thence North 2°44'59" West, 30.00 feet;
Thence North 9°26'13" West, 128.98 feet;
Thence North 10°29'56" West, 229.69 feet to the TRUE POINT OF BEGINNING.

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EXHIBIT C

Aqua Life Water Rights as per IDWR records

Record No.	Source	Priority Date	Basis	Use
36-4011	Billingsley Creek	12/01/1965	Statutory Claim	Fish Propagation
36-273	Billingsley Creek	10/05/1965	License	Fish Propagation
36-15476	Billingsley Creek	06/01/1954	Beneficial Use	Aesthetic, Recreation, Wildlife
36-2414	Tupper Springs	12/21/1959	License	Fish Propagation
36-2338	Big Springs	08/05/1954	License	Fish Propagation

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EXHIBIT D

Exceptions

1. Power Line Easement, and the Terms and Conditions thereof in favor of Idaho Power Company, a corporation recorded November 22, 1930 as Instrument No. 51352 in Book 3 of Miscellaneous at Page 359.
2. Power line easement granted to Idaho Power Company, a corporation recorded November 12, 1941 in Book 4 of Miscellaneous, Page 630 as Instrument No. 81948, records of Gooding County, Idaho.
3. Right-of-way granted to Mountain States Telephone and Telegraph Company recorded February 9, 1953 in Book 7 of Miscellaneous, Page 188, as Instrument No. 120394, records of Gooding County, Idaho.
4. Right-of-way granted to Mountain States Telephone and Telegraph Company recorded February 9, 1953 in Book 7 of Miscellaneous, Page 193, as Instrument No. 120407, records of Gooding County, Idaho.
5. Power line easement granted to Idaho Power Company, a corporation recorded May 29, 1953 in Book 7 of Miscellaneous, Page 247 as Instrument No. 121492, records of Gooding County, Idaho.
6. Agreement and the terms, conditions and provisions contained therein, between Vardis Fisher and Opal Fisher, Husband and Wife and the City of Hagerman for the purpose of receiving and using water from certain springs dated September 12, 1957, recorded October 1, 1957, as Instrument No. 133305 in Book 6 of Miscellaneous at Page 289, records of Gooding County, Idaho.
7. Easements and restrictions contained in Warranty Deed given by Virgil U. Norwood and Ardith Norwood, husband and wife, to Herbert L. Maske, dated August 9, 1960, recorded October 25, 1960 in Book 48 Page 451 as Instrument No. 141996, records of Gooding County, Idaho.
8. Covenants, conditions, restrictions and easements contained in deed to the State of Idaho, recorded November 29, 1961 as Instrument No. 2859, records of Gooding County, Idaho.
9. Covenants, conditions, restrictions and easements contained in deed to the State of Idaho, recorded December 12, as Instrument No. 6401, records of Gooding County, Idaho.
10. Power line easement granted to Idaho Power Company, a corporation recorded March 19, 1963 as Instrument No. 7519.
11. Power line easement granted to Idaho Power Company recorded June 10, 1963 as Instrument No. 8247.
12. Terms and conditions of an Agreement by and between Virgil U. Norwood and Ardith Norwood, Husband and Wife, first party, and Herbert L. Maske and Thelma W. Maske, Husband and Wife, second party, dated July 23, 1964, recorded October 7, 1964 as Instrument No. 12578, records of Gooding County, Idaho, pertaining to the rights and use of appropriate waters of a spring.
13. Power line easement granted to Idaho Power Company, a corporation recorded March 1, 1966 as Instrument No. 17499.

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14. Easement for roadway easement and right of way for ingress and egress granted to Vardis Fisher and Opal Fisher, Husband and Wife recorded March 7, 1968 as Instrument No. 24549, records of Gooding County, Idaho.
15. Easement for roadway easement and right of way for ingress and egress granted to Vardis Fisher and Opal Fisher, Husband and Wife recorded March 7, 1968 as Instrument No. 24550, records of Gooding County, Idaho.
16. Easement for roadway easement and right of way for ingress and egress granted to Vardis Fisher and Opal Fisher, Husband and Wife recorded March 7, 1968 as Instrument No. 24551, records of Gooding County, Idaho.
17. Power line easement granted to Idaho Power Company, a corporation recorded January 17, 1972 as Instrument No. 38669.
18. Covenants, Conditions and Restrictions recorded June 15, 1972, as Instrument No. 40847, records of Gooding County, Idaho.
19. Easement for road right of way set forth in Warranty Deed given by Virgil U. Norwood and Ardith M. Norwood to Elwood D. Grimes and Mary A. Grimes, recorded October 10, 1972 as Instrument No. 42280
20. Subject to an easement for ingress and egress as set forth in Decree Determining Surviving Spouse as sole Beneficiary, in favor of Elwood D. Grimes, recorded June 24, 1976 as Instrument No. 60138.
21. Easement contained in Warranty Deed given by Virgil U. Norwood and Ardith M. Norwood, husband and wife, to Elwood D. Grimes, a widower, dated October 8, 1975, recorded November 17, 1976 as Instrument No. 62005, records of Gooding County, Idaho.
22. Sewer Line Easement for installing, constructing and maintaining a septic tank granted to Arthur Allen and June Allen, husband and wife recorded November 10, 1977 as Instrument No. 67317, records of Gooding County, Idaho.
23. Power line easement granted to Idaho Power Company, a corporation recorded February 13, 1980 as Instrument No. 81419.
24. Power line easement granted to Idaho Power Company, a corporation recorded February 13, 1980 as Instrument No. 81420.
25. Easement for easement and right of way for a public road granted to County of Gooding, State of Idaho recorded August 7, 1989 as Instrument No. 137524, records of Gooding County, Idaho.

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Instrument # 2264

GOODING, GOODING, IDAHO

2001-09-28

04:20:35 No. of Pages: 13

Recorded for : GOODING TITLE

HELEN EDWARDS

Fee: 39.00

Ex-Officio Recorder Deputy

Index to: DEED, WARRANTY

G010186

WARRANTY DEED

THIS INDENTURE made by and between A & G, L.L.C., an Idaho limited liability company whose address is Post Office Box 1867, Twin Falls, Idaho 83301, hereinafter referred to as "Grantor," and the IDAHO STATE BUILDING AUTHORITY, P.O. Box 2802, Boise, Idaho 83701, hereinafter referred to as "Grantee";

WITNESSETH, that the Grantor does hereby convey and confirm in fee unto the said Grantee and its successors and assigns forever the premises situated in Gooding County, Idaho and more particularly described on Exhibit "A" annexed hereto and by this reference incorporated herein, excepting therefrom the premises situated in Gooding County, Idaho and more particularly described on Exhibit "B" annexed hereto and by this reference incorporated herein, together with all water rights, ditch rights, rights of way, improvements, fixtures, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining thereto, including but not limited to, the water rights identified on Exhibit "C" annexed hereto and by this reference incorporated herein.

TO HAVE AND TO HOLD the above-described premises and parcel of land and granted real property unto Grantor and its successors and assigns forever, subject only to the exceptions set forth on Exhibit "D" annexed hereto and by this reference incorporated herein, and that Grantor shall warrant and defend the premises from all other lawful claims whatsoever.

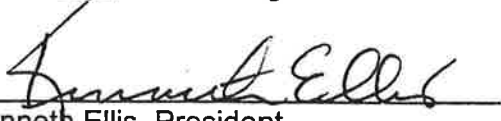
The Grantor further warrants to the Grantee that he is lawfully seized of the above described real property in fee simple, that the same is free and clear of any and all encumbrances of every kind and description, except as herein specified, and that the Grantor has lawful right to convey the said real property.

DATED This 28th day of September, 2001.

A & G, L.L.C.

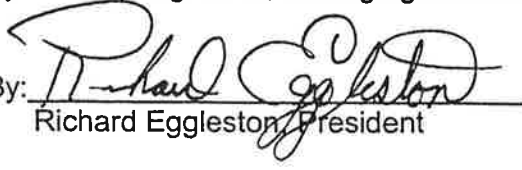
By Aqua Life, Inc., Manager

By:


Kenneth Ellis, President

By Gold Springs, Inc., Managing Member

By:


Richard Eggleston, President

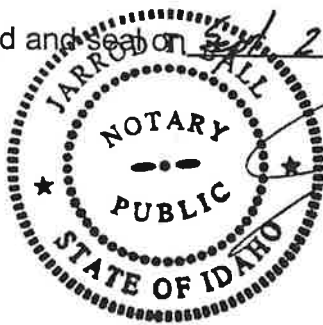
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STATE OF IDAHO)

) ss.
County of Twin Falls)

On this date before me, the undersigned notary public for such state, personally appeared **RICHARD EGGLESTON**, known to me to be the person whose name is subscribed to the within instrument, and did acknowledged to me that he is the President of Gold Springs, Inc., an Idaho corporation, that Gold Springs, Inc. is the Managing Member of A&G, LLC. and that the document was signed by him on behalf of Gold Springs, Inc. as the Managing Member of A&G, LLC and that the said company executed the same.

WITNESS my hand and seal on Sept. 28th, 2001.



[Signature]
NOTARY PUBLIC

Residing at: Twin Falls

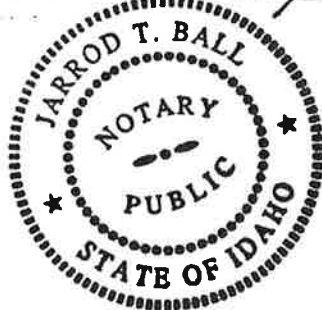
Commission expires: 7-25-2002

STATE OF IDAHO)

) ss.
County of Twin Falls)

On this date before me, the undersigned notary public for such state, personally appeared **KENNETH ELLIS**, known to me to be the person whose name is subscribed to the within instrument, and did acknowledged to me that he is the President of AquaLife, Inc., an Idaho corporation, that AquaLife, Inc. is the Manager of A&G, LLC. and that the document was signed by him on behalf of AquaLife, Inc. as the Manager of A&G, LLC and that the said company executed the same.

WITNESS my hand and seal on Sept. 28th, 2001.



[Signature]
NOTARY PUBLIC

Residing at: Twin Falls

Commission expires: 7-25-2002

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EXHIBIT A

Legal Description

Parcel 1

A parcel of land located in the Northeast Quarter of Section 13, Township 7 South, Range 13 East, Boise Meridian, Gooding County, Idaho.

Commencing at the Northeast corner of said Section 13; Thence South 00°06'27" West, 1316.78 feet;

Thence North 89°56'58" West, 135.57 feet;

Thence South 10°29'56" East, 229.69 feet;

Thence South 09°26'13" East, 128.98 feet,

Thence South 02°44'59" East, 30.00 feet,

Thence North 74°35'21" West, 38.56 feet,

Thence North 25°48'31" West, 129.65 feet to the REAL POINT OF BEGINNING.

Thence South 74°07'40" West, 205.27 feet,

Thence South 02°19'11" West, 205.82 feet,

Thence South 25°14'04" West, 219.50 feet,

Thence South 04°50'15" West, 401.85 feet,

Thence North 75°44'14" West, 146.64 feet,

Thence North 75°22'14" West, 164.67 feet,

Thence North 78°19'14" West, 233.70 feet,

Thence North 03°36'14" West, 170.90 feet,

Thence North 22°30'46" East, 223.17 feet,

Thence North 46°51'37" East, 234.23 feet,

Thence North 27°10'44" East, 224.74 feet,

Thence North 49°40'41" East, 302.91 feet,

Thence North 79°08'34" East, 176.13 feet,

Thence South 25°48'31" East, 255.77 feet to the REAL POINT OF BEGINNING.

Said parcel contains approximately 10.72 acres.

Parcel 2

A Parcel of Land located in the Northeast Quarter of Section 13, Township 7 South, Range 13 East, Boise Meridian, Gooding County Idaho described as follows:

Commencing at the Southeast corner of said Section 13; Thence North 00°06'27" East, 2633.56 feet along the East boundary of Section 13; thence North 89°57'12" West, 81.37 feet to the REAL POINT OF BEGINNING.

Thence North 89°57'12" West, 418.62 feet,

Thence North 10°28'05" West, 55.44 feet,

Thence South 32°55'58" East, 23.90 feet,

Thence North 87°09'18" East, 60.18 feet,

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Thence North 57°54'32" East, 38.56 feet,
Thence South 83°49'58" East, 143.82 feet,
Thence South 66°33'03" East, 107.44 feet to the REAL POINT OF BEGINNING.
Said parcel contains approximately 0.31 acres.

Parcel 3

A parcel of land located in the NE ¼, Section 13, Township 7 South, Range 13 East, Boise Meridian & Government Lots 2, 3 and 4 and the SW ¼, Section 18, Township 7 South, Range 14 East of the Boise Meridian, Gooding County, Idaho and Government Lot 1, Section 19, Township 7 South, Range 14 East, Boise Meridian, Gooding County, Idaho, more particularly described as follows:

Commencing at the Southwest corner of said Section 18;
Thence North 00°06'27" East along the West boundary of Section 18 for a distance of 78.66 feet being the REAL POINT OF BEGINNING;

Thence continuing North 00°06'27" East along the West boundary of Government Lot 3 of Section 18 for a distance of 1784.90 feet to a point that is South 00°06'27" West 770.00 feet from the Northwest corner of Government Lot 3;

Thence North 00°06'27" East, 734.81 feet
Thence South 66°33'10" East, 85.93 feet
Thence South 19°26'13" East, 429.65 feet
Thence South 33°50'46" West, 174.97 feet
Thence South 11°16'42" East, 21.35 feet
Thence South 83°46'40" East, 360.89 feet
Thence North 04°39'15" West, 164.46 feet
Thence North 53°55'35" West, 145.97 feet
Thence North 34°55'15" East, 98.38 feet
Thence North 34°38'20" West, 117.70 feet
Thence North 06°35'41" East, 140.20 feet
Thence North 17°01'30" West, 92.53 feet
Thence North 66°10'48" West, 110.60 feet
Thence North 07°49'08" East, 58.06 feet
Thence North 33°16'05" East, 432.67 feet
Thence North 23°29'35" West, 7.56 feet
Thence North 86°36'46" West, 234.78 feet
Thence South 64°12'56" West, 200.94 feet
Thence South 64°27'51" West, 65.87 feet to a point on the West boundary line of Section 18
Thence South 64°27'51" West, 44.39 feet
Thence North 02°44'59" West, 639.54 feet
Thence North 09°26'13" West, 128.98 feet
Thence North 10°29'56" West, 229.69 feet
Thence North 89°56'58" West, 367.20 feet
Thence South 44°00'16" West, 310.04 feet
Thence South 31°52'32" West, 199.44 feet
Thence South 40°51'56" West, 230.96 feet
Thence South 69°42'25" West, 117.61 feet
Thence South 50°24'25" West, 322.28 feet
Thence North 39°24'35" West, 105.75 feet

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Thence North 50°24'25" East, 130.00 feet
Thence North 00°07'35" West, 30.00 feet
Thence North 48°06'25" East, 559.40 feet
Thence North 56°51'25" East, 477.46 feet
Thence North 83°51'27" East, 11.94 feet
Thence North 89°51'16" East, 135.49 feet
Thence North 72°36'15", East, 92.17 feet
Thence South 80°50'22" East, 142.52 feet
Thence South 89°01'22" East, 108.12 feet
Thence South 00°06'27" West, 21.00 feet
Thence North 89°39'48" East, 1007.76 feet
Thence South 00°44'00" East, 2001.76 feet
Thence South 15°25'38" East, 299.56 feet;
Thence South 34°34'01" East, 449.40 feet;
Thence South 23°08'01" East, 251.77 feet;
Thence South 31°09'01" East, 307.73 feet;
Thence South 69°03'42" West, 860.62 feet;
Thence South 86°54'03" West, 150.09 feet;
Thence South 11°20'56" East, 49.63 feet;
Thence South 14°00'14" East, 447.35 feet to a point on the South boundary
of Section 18;
Thence South 14°00'14" East, 5.02 feet,
Thence South 13°43'07" East, 78.77 feet;
Thence South 45°19'32" East, 22.57 feet;
Thence South 81°07'26" East, 49.41 feet;
Thence North 77°25'05" East, 100.11 feet;
Thence South 72°04'24" East, 20.37 feet;
Thence South 22°14'32" West, 92.90 feet;
Thence South 43°24'58" West, 170.79 feet;
Thence South 30°42'47" West, 20.00 feet to a point on the North Right of Way Line of State
Highway 30;
Thence North 59°17'47" West, 312.83 feet to Highway Right of Way Marker Sta 32+00;
Thence North 45°38'51" West along the North Right of Way for State Highway 30, 127.44 feet;

Thence Northwest along Curve 3 on the North Right of Way of State Highway 30;
Δ 27°50'29"

LCB North 73° 12'28" West

Radius 1034.93 feet

Length 502.90 feet

Tangent 256.62 feet; to the REAL POINT OF BEGINNING.

Except a Parcel of Land described as follows:

Commencing at the Northwest corner of Section 18, Township 7 South, Range 14 East, Boise
Meridian, Gooding County, Idaho. Thence South 00°06'27" West, 1747.65 feet, to the REAL POINT
OF BEGINNING.

Thence North 89°14'58" East, 307.07 feet,

Thence South 25°12'11" East, 272.96 feet,

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Thence South 86°47'58" West, 374.00 feet,
Thence North 14°52'02" West, 272.70 feet,
Thence North 89°14'58" East, 20.11 feet to the REAL POINT OF BEGINNING.
Said parcel, less the excepted parcel, contains approximately 95.88 acres.

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EXHIBIT B

Excepted Property

Parcel No. 1:

Township 7 South, Range 14 East of the Boise Meridian, Gooding County, Idaho

Section 18: A parcel of land located in Government Lots 3 and 4 and a portion of the East one-half of the Southwest Quarter, more particularly described as follows:

COMMENCING at the Southwest corner of said Section 18;
Thence North 00°06'27" East along the West boundary of Government Lot 4 of Section 18 for a distance of 1,316.78 feet to the Southwest corner of Government Lot 3 and being the TRUE POINT OF BEGINNING;
Thence continuing North 00°06'27" East along the West boundary of Government Lot 3 of Section 18 for a distance of 546.78 feet to a point that is South 00°06'27" West 770.00 feet from the Northwest corner of Government Lot 3 of Section 18;
Thence North 89°41'57" East parallel with and 770.00 feet South of the North boundary of Government Lot 3 of Section 18 for a distance of 1,038.38 feet to a point on the East boundary of Government Lot 3 of Section 18;
Thence North 00°44'00" West along the East boundary of Government Lot 3 of Section 18 for a distance of 85.66 feet;
Thence South 15°25'38" East for a distance of 299.56 feet to a found steel pin;
Thence South 34°34'01" East for a distance of 449.40 feet to a found steel pin;
Thence South 23°08'01" East for a distance of 251.77 feet to a found steel pin;
Thence South 31°09'01" East for a distance of 307.86 feet to a found steel pin;
Thence South 69°03'42" West for a distance of 860.54 feet to a found steel pin;
Thence South 86°54'11" West for a distance of 150.07 feet to a found steel pin;
Thence South 11°19'47" East for distance of 49.68 feet to a found steel pin;
Thence South 80°25'28" West for a distance of 20.78 feet to a found steel pin;
Thence North 38°50'32" West for a distance of 189.28 feet to a found steel pin;
Thence North 66°02'51" East for a distance of 32.74 feet to a found steel pin;
Thence North 59°50'18" West for a distance of 50.00 feet;
Thence North 23°50'18" West for a distance of 125.00 feet;
Thence North 15°41'18" West for a distance of 220.00 feet;
Thence North 25°48'18" West for a distance of 45.00 feet;
Thence North 67°58'18" West for a distance of 190.00 feet to a point in the approximate center of Billingsley Creek;

Thence North 42°58'18" West along the approximate center of Billingsley Creek for a distance of 130.00 feet;
Thence North 14°24'32" West across a lake created by Billingsley Creek for a distance of 170.65 feet to a point on the North boundary of Government Lot 4 of Section 18;
Thence South 89°45'27" West along the North boundary of Government Lot 4 of Section 18 for a distance of 98.00 feet to the TRUE POINT OF BEGINNING.

Parcel No. 2:

Township 7 South, Range 14 East of the Boise Meridian, Gooding County, Idaho

Section 18: That part of Government Lot 4, described as follows:

Beginning at the Southwest corner of said Government Lot 4;
Thence Easterly along the South boundary of said Government Lot, 798.50 feet;
Thence North 14°3' West, 452.00 feet;
Thence South 80°47' West, 23.00 feet;
Thence North 38°56' West, 191.40 feet;
Thence North 67°19' East, 34.00 feet more or less, to the Southwest corner of the Vardis Fisher property;
Thence along said Vardis Fisher property West line North 60°11' West, 50.00 feet;
Thence North 24°11' West, 125.00 feet;
Thence North 16°2' West, 220.00 feet;
Thence North 26°09' West, 45.00 feet;
Thence North 68°19' West 190.00 feet;
Thence North 43°19' West, 130.00 feet;
Thence North 32°55' West approximately 200.00 feet to the North boundary of said Government Lot 4;
Thence Westerly along the North boundary of said Government Lot 4 to the Northwest corner thereof;
Thence Southerly along the West boundary of said Government Lot 4 approximately 1,320.00 feet to the TRUE POINT OF BEGINNING.

Parcel No. 3:

Township 7 South, Range 14 East of the Boise Meridian, Gooding County, Idaho

Section 19: That part of Government Lot 1 described as follows:

Beginning at a point on the North boundary of and 227.20 feet Easterly from the Northwest corner of said Government Lot 1;
Thence South 57°38' East, 541.00 feet;
Thence North 77°52' East, 180.80 feet;
Thence North 14°3' West, approximately 258.30 feet to the North boundary of said Government Lot 1;
Thence Westerly along said North boundary 571.30 feet, more or less to the TRUE POINT OF BEGINNING.

EXCEPT tract for public highway as conveyed in Deed to the Hagerman Highway District dated December 24, 1937, recorded September 1, 1938 in Book 26 of Deeds, Page 495, described as follows:

BEGINNING at a point 1,043 feet East of the Northeast corner of Northeast Quarter of the Northeast Quarter Section 24, Township 7 South, Range 13, East of the Boise Meridian;
Thence South 80.00 feet;
Thence East 100.00 feet;
Thence North 80.00 feet;
Thence West 100.00 feet to the TRUE POINT OF BEGINNING.

AND ALSO EXCEPTING strips of land for highway as set forth in the following Right-of-Way Deeds to the Hagerman Highway District No. 3:

a. Dated March 4, 1961, recorded November 29, 1961 as microfilmed instrument No. 2856, across the land in Northeast Quarter of the Northwest Quarter and Southeast Quarter of the Northwest Quarter Section 19.

b. Dated March 4, 1961, recorded November 29, 1961 as microfilmed instrument No. 2859, across land in Government Lot 4 Section 18 and Government Lot 1 Section 19, records of Gooding County, Idaho.

Parcel No. 4:

Township 7 South, Range 14 East of the Boise Meridian, Gooding County, Idaho

Section 19: That part of Government Lot 1, described as follows:

BEGINNING at the Section corner which is the Northwest corner of said Section 19;
Thence Easterly along Section line common to Section 18 and 19, a distance

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of approximately 798.50 feet to a point which intersects the Easterly boundary of the Idaho Springs Trout Farm;

Thence South $14^{\circ}03'$ East a distance of 78.70 feet to the TRUE POINT OF BEGINNING;

Thence South $45^{\circ}24'$ East along wooden fence 22.60 feet;

Thence South $81^{\circ}08'$ East along said fence 49.50 feet;

Thence North $77^{\circ}27'$ East along fence for 100.30 feet;

Thence South $18^{\circ}07'$ West for 88.40 feet;

Thence South $46^{\circ}06'$ West, 127.60 feet a point which is the Southeast corner of the Idaho Springs Trout Farm;

Thence North $14^{\circ}03'$ West along Easterly boundary of said property for 179.60 feet to the TRUE POINT OF BEGINNING.

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EXHIBIT C

A&G Water Rights

- a. 23 shares of Hagerman Water Users Association
- b. 2 shares of Ruby Springs Water

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EXHIBIT D

Exceptions

1. Any assessments levied by a local irrigation district, including but not limited to assessments for delivery of water which was adjudicated by Decree in the District Court of the United States for the District of Idaho Southern Division, dated March 22, 1932, recorded April 19, 1932 in Book 6 of Judgments at Page 31, records of Gooding County, Idaho.
2. Power Line Easement, and the Terms and Conditions thereof in favor of Idaho Power Company, a corporation recorded November 22, 1930 as Instrument No. 51352 in Book 3 of Miscellaneous at Page 359.
3. Power line easement granted to Idaho Power Company, a corporation recorded November 12, 1941 in Book 4 of Miscellaneous, Page 630 as Instrument No. 81948, records of Gooding County, Idaho.
4. Right-of-way granted to Mountain States Telephone and Telegraph Company recorded February 9, 1953 in Book 7 of Miscellaneous, Page 188, as Instrument No. 120394, records of Gooding County, Idaho.
5. Right-of-way granted to Mountain States Telephone and Telegraph Company recorded February 9, 1953 in Book 7 of Miscellaneous, Page 193, as Instrument No. 120407, records of Gooding County, Idaho.
6. Power-line easement granted to Idaho Power Company, a corporation recorded May 29, 1953 in Book 7 of Miscellaneous, Page 247 as Instrument No. 121492, records of Gooding County, Idaho.
7. Agreement and the terms, conditions and provisions contained therein, between Vardis Fisher and Opal Fisher, Husband and Wife and the City of Hagerman for the purpose of receiving and using water from certain springs dated September 12, 1957, recorded October 1, 1957, as Instrument No. 133305 in Book 6 of Miscellaneous at Page 289, records of Gooding County, Idaho.
8. Easements and restrictions contained in Warranty Deed given by Virgil U. Norwood and Ardith Norwood, husband and wife, to Herbert L. Maske, dated August 9, 1960, recorded October 25, 1960 in Book 48 Page 451 as Instrument No. 141996, records of Gooding County, Idaho.
9. Covenants, conditions, restrictions and easements contained in deed to the State of Idaho, recorded November 29, 1961 as Instrument No. 2859, records of Gooding County, Idaho.
10. Covenants, conditions, restrictions and easements contained in deed to the State of Idaho, recorded December 12, as Instrument No. 6401, records of Gooding County, Idaho.
11. Power line easement granted to Idaho Power Company, a corporation recorded March 19, 1963 as Instrument No. 7519.
12. Power line easement granted to Idaho Power Company recorded June 10, 1963 as Instrument No. 8247.
13. Terms and conditions of an Agreement by and between Virgil U. Norwood and Ardith Norwood, Husband and Wife, first party, and Herbert L. Maske and Thelma W. Maske, Husband and Wife, second party, dated July 23, 1964, recorded October 7, 1964 as Instrument No. 12578, records of Gooding County, Idaho, pertaining to the rights and use of appropriate waters of a spring.

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14. Power line easement granted to Idaho Power Company, a corporation recorded March 1, 1966 as Instrument No. 17499.
15. Easement for roadway easement and right of way for ingress and egress granted to Vardis Fisher and Opal Fisher, Husband and Wife recorded March 7, 1968 as Instrument No. 24549, records of Gooding County, Idaho.
16. Easement for roadway easement and right of way for ingress and egress granted to Vardis Fisher and Opal Fisher, Husband and Wife recorded March 7, 1968 as Instrument No. 24550, records of Gooding County, Idaho.
17. Easement for roadway easement and right of way for ingress and egress granted to Vardis Fisher and Opal Fisher, Husband and Wife recorded March 7, 1968 as Instrument No. 24551, records of Gooding County, Idaho.
18. Power line easement granted to Idaho Power Company, a corporation recorded January 17, 1972 as Instrument No. 38669.
19. Covenants, Conditions and Restrictions recorded June 15, 1972, as Instrument No. 40847, records of Gooding County, Idaho.
20. Easement for road right of way set forth in Warranty Deed given by Virgil U. Norwood and Ardith M. Norwood to Elwood D. Grimes and Mary A. Grimes, recorded October 10, 1972 as Instrument No. 42280
21. Subject to an easement for ingress and egress as set forth in Decree Determining Surviving Spouse as sole Beneficiary, in favor of Elwood D. Grimes, recorded June 24, 1976 as Instrument No. 60138.
22. Easement contained in Warranty Deed given by Virgil U. Norwood and Ardith M. Norwood, husband and wife, to Elwood D. Grimes, a widower, dated October 8, 1975, recorded November 17, 1976 as Instrument No. 62005, records of Gooding County, Idaho.
23. Sewer Line Easement for installing, constructing and maintaining a septic tank granted to Arthur Allen and June Allen, husband and wife recorded November 10, 1977 as Instrument No. 67317, records of Gooding County, Idaho.
24. Power line easement granted to Idaho Power Company, a corporation recorded February 13, 1980 as Instrument No. 81419.
25. Power line easement granted to Idaho Power Company, a corporation recorded February 13, 1980 as Instrument No. 81420.
26. Easement for easement and right of way for a public road granted to County of Gooding, State of Idaho recorded August 7, 1989 as Instrument No. 137524, records of Gooding County, Idaho.

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1" = 200'

Located In
NE4, Section 13,
T. 7 S., R. 13 E., B.M.

&
Gov't. Lots 2, 3, & 4 & SW4, Section 18,
&
Gov't. Lot 1, Section 19
T. 7 S., R. 14 E., B.M.
Gooding County, Idaho
2001

Legend:

ADJUSTED SECONDARY LINE
1ST LINE/ PARCEL LINE TO BE ABANDONED
CENTERLINE OF EXISTING FENCELINE
CENTERLINE OF EXISTING ACCESS ROAD
ROAD 1/2" WIDE & CAP

Parcel 1
16.71 Acres

Parcel 2
10.33 Acres

Parcel 3
15.33 Acres

1" = 200'

Located In
NE4, Section 13,
T. 7 S., R. 13 E., B.M.

&
Gov't. Lots 2, 3, & 4 & SW4, Section 18,
&
Gov't. Lot 1, Section 19
T. 7 S., R. 14 E., B.M.
Gooding County, Idaho
2001

I, Gary R. Burkett, do hereby certify that this
plot is a true and accurate map of the land
surveyed under my supervision and direction.

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

The Idaho State Building Authority

ALAN G. LANCE
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Idaho State Bar No. 3471

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

In Re: SRBA
Case No. 39576

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

)
)
) NOTICE OF APPEARANCE
)
)
)

Notice is hereby given, in the above-captioned subcases, that the following counsel will
appear for Applicant, the Idaho State Building Authority:

ALAN G. LANCE
Attorney General, State of Idaho

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

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DATED this 19th day of October 2001.

ALAN G. LANCE
Attorney General, State of Idaho

By: CJ. Krema
C. NICHOLAS KREMA
Deputy Attorney General

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

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October I caused to be served copies of the foregoing **NOTICE OF APPEARANCE** by the method indicated bellow to the following:

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Nick Spencer
IDWR

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C. NICHOLAS KREMA

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RECEIVED

OCT 22 1999

Department of Water Resources

COPY

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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 20th 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.*

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:

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


JASON R. MICIAK

AJ0743NP
(OD-124)

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

05/10/99 10:17:02
Page 1

Water Right Number - 36-04011

Prefix Translation: WATER RIGHT

Old (D) Number -

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

+ - First Name - - +

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

*** A - ATTORNEY ***
MICIAC

JASON R

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2 - PO BOX 2749
3 -

City- TWIN FALLS
Phone - 208-733-5500

State- ID Zip- 833032749

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

1 - RT 5 BOX 5053

2 -

3 -

City- BUHL
Phone - 208-543-4312

State- ID Zip- 83316

*** O - ORIGINAL OWNER ***
CLEAR SPRINGS TROUT CO

1 - PO BOX 712

2 -

3 -

City- BUHL
Phone - 208-543-4316

State- ID Zip- 83316

+ - - Priority Date - - +
12/01/1965

+ - - - Region - - - +
17 SOUTHERN

+ - - - Stage - - - +
J - BENEFICIAL USE

+ - - - Status - - - +

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

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

Tw	Rng	Sec	Tract	Lot	RFlg	Point of Diversion	County
07S	14E	19	NE NW NW	1	(47)	GOODING	

Code	Description	Period From	Period To	Water Use	Diversion Rate	Diversion Volume
19 - FISH PROPAGATION		01/01	12/31		12.000	

+ - Total Div. Rate - + 12.000

+ - Total Div. Volume - +

+ - Total Consumptive Use - + 0.0

+ - KW Usage - +

Tw	Rng	Sec	Tract	Lot	Place of Use	Description	County
					Acres	Code	
07S	14E	18	SW SW	4		19 FISH PROPAGATION	(47) GOODING
07S	14E	19	NW NW	1		19 FISH PROPAGATION	(47) GOODING

Total Acres:

+ - - Diversion Means - CHECK DAM & DITCH TO RACEWAYS

+ - - Non-Irrigation Use - FISH PROPAGATION/ TROUT FISH PONDS

36-04011

Prefix Translation: WATER RIGHT

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

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

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

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

Date: 05/19/1992 User Id: THORNTON Subject: POSSIBLE CHANGE IN OWNERSHIP

Date: 06/12/1992 User Id: MERRITT Subject: THE WEST POND IS NOT BEING RECOMMENDED
THIS SPRING THE SITE WAS VISITED AND IT WAS OBSERVED THAT THE POND ON THE WEST SIDE OF THE CREEK IS NOT BEING USED. THIS
CONFIRMS WHY THE POND WAS NOT INCLUDED IN THE VOLUME CALCULATION FROM THE EPA AND ALSO CONFIRMS WHAT IS SEEN ON THE NAPP PHOTO
DATED IN 1988. SINCE THIS POND IS NOT USED THE DISCHARGE OF 10.7 CFS IS NOT INCLUDED IN THE TOTAL RECOMMENDED AMOUNT.
Date: 09/24/1992 User Id: MERRITT Subject: NOTICE OF ERROR RECEIVED

Date: 09/24/1992 User Id: MERRITT Subject: NOTICE OF ERROR RECEIVED OF 10.7 CFS IS NOT INCLUDED IN THE TOTAL RECOMMENDED AMOUNT.
MR. ELLIS WAS CONTACTED BY PHONE (9/30/92). NO CHANGE IN THE CLAIM AS RECOMMENDED.
Date: 10/22/1992 User Id: ROBERTSO Subject: OWNERSHIP CHANGE
Change of ownership form received 10/22/92, original owners Clear Springs Trout Co-new owners Aqua Life Inc. Copy of deed submitted with form. A36-04011 also changed on this date.
Date: 05/18/1993 User Id: ROBERTSO Subject: OWNERSHIP CHANGE

Date: 05/10/1999 User Id: SSHERMAN Subject: ATTORNEY CHANGE
MICIAC REPLACED ARKOOSH FOR AQUA LIFE.

+ - - Audit Fields - - +
05/10/99 SSHERMAN

+ - - - - - 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	- 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	- 09/01/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S002014	Water District	- 36A
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	-	Presumption Flag	-
				Notice of Error Flag	- B

RECEIVED

MAY - 7 1999

Department of Water Resources

COPY

Aqua Life Corp.

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

RECEIVED

SEP 09 1998

Department of Water Resources
Southern Region

RECEIVED

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

DISTRICT COURT-SRBA
TWIN FALLS, IDAHO
FILED

In Re SRBA

Case No. 39576

AquaLife
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
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
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 Copies	Materials	Cost
537	@.05	\$ 26.85
	FILES # 36-02338	
	36-02414	
	36-02734	
	36-04011	
TOTAL		\$ 26.85

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

ADDRESS:

Beeman & Haystack

DATE:

5-13-98

CITY/ZIP:

Boise
(please print)

PHONE:

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
DOCUMENTSA36-04011A36-02734A36-2414A-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: _____

ASSISTING AGENT: DAH

Phone in to Vicki Kelley
(customer signature)

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APR 15 1998

Department of Water Resource
Southern Region

RECEIVED

APR 10 1998

Department of Water Resources
Adjudication Bureau

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
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.

Find these

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.

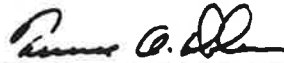
Proceedings

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 36-04011

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: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 12.00 CFS

PRIORITY DATE: 12/01/1965

POINT OF DIVERSION: T07S R14E S19 LOT 1 (NENWNW) Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	FISH PROPAGATION	01-01 12-31	12.00 CFS

PLACE OF USE: FISH PROPAGATION Within GOODING County
T07S R14E S18 Lot 4 (SWSW)
S19 Lot 1 (NWNW)

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

Daniel C. Hurlbutt, Jr.

SPECIAL MASTER

RECEIVED

MAR 06 1998

Department of Water Resources
Southern Region

RECEIVED
MAR 03 1998
Department of Water Resources

1998 FEB 26 PM 2:00

SOUTHERN 9-30

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	)	
	)	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*.

After the *Motion* and *Stipulation* were filed, counsel for IDWR called the Court and the parties' counsel to state that IDWR concurs in the final resolution. The claims will be decreed as recommended by the Director and the rotation agreement will not change the elements of each water right nor hinder the Director's administration of the water rights.

THEREFORE, IT IS ORDERED:

1. That the *Motion to Dismiss* is **granted**. Objections filed by claimant Aqua Life, Inc., and by Buckeye Farms are dismissed. Each party shall bear their own costs and attorney fees; and

2. That the trial is **vacated**.

DATED February 26, 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 DISMISS and ORDER VACATING TRIAL was mailed on February 26, 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

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

C. Thomas Arkoosh
Box 32
Gooding, Idaho 83330


Deputy Clerk

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

2-25
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FEB 27 1998

OFFICE OF THE
ATTORNEY GENERAL

RECEIVED

MAR 06 1998

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) Subcases 36-02338, 36-02734
Case No. 39576) 36-02414, 36-04011

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)
CASE NO. 39576)
RECEIVED)

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

STIPULATION

RECEIVED
FEB 26 1998

MAR 02 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

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

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 17th day of February 1998.

For: AquaLife


By: Ken Ellis

STATE OF IDAHO)
County of Gooding) ss.

On the 17th 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. Butler
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 21st 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.

Herbert 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.023

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

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

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**

RECEIVED

JUL 10 1997

Department of Water Resources

RECEIVED

JUL 17 1997

Department of Water Resources

1997 JUL -3 AM 8:35

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED [Signature]

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 36-04011

ORDER GRANTING AQUA LIFE
CORPORATION'S MOTION TO FILE
LATE OBJECTION

Aqua Life's Motion

Aqua Life Corporation filed a *Motion to File Late Objection* on March 10, 1997. In its *Motion*, Aqua Life sought to file late objections to the quantity element in seven claims to water rights.¹ Only one of those rights (36-04011) was claimed by Aqua Life. Four of the other six rights did not appear in the *Director's Report* and two (36-00015 and 36-00018) were already decreed to Buckeye Farms, Inc. On March 10, 1997, the Presiding Judge denied Aqua Life's *Motion* in all but 36-04011 which he referred to the Special Master.

A hearing on Aqua Life's *Motion* in 36-04011 was held before the Special Master on May 23, 1997. C. Thomas Arkoosh appeared for Aqua Life and John K. Simpson appeared for Buckeye Farms, a late objector. J. Andrew Helmlinger appeared by telephone for IDWR. After the hearing, the record was left open for two weeks to give Aqua Life time to submit additional information from IDWR's records.

On June 3, 1997, Aqua Life filed an *Affidavit of Ken Ellis in Support of Motion to File Late Objections*. Buckeye Farms then filed a *Response* followed by Aqua Life's *Reply*. With those pleadings, the *Motion* was taken under advisement.

Buckeye Farms' Late Objections

To understand Aqua Life's *Motion to File Late Objection* in 36-04011, it is helpful to recall earlier proceedings involving Buckeye Farms. Aqua Life Corporation or Aqua Life, Inc., claimed

¹ 36-00015, 36-00018, 36-04011, 36-07740, 36-07742, 36-08728 and 36-08730.

seven water rights in the SRBA,² including 36-04011. Four of those claims were unobjected-to until Buckeye Farms filed its *Motion to File Late Objections* in 36-02338, 36-02414, 36-02734 and 36-04011.

Buckeye Farms sought to file late objections to the recommended quantities because of Aqua Life's alleged forfeiture or partial forfeiture of water rights during the five-year period (1992-1996) after the *Director's Report* was filed. Buckeye Farms was granted leave to file late objections on March 24, 1997. However, trial scheduling in the four subcases was stayed pending the Idaho Supreme Court's determination of *Basin-Wide Issue 10, Partial Forfeiture*.

Aqua Life's Claim in 36-04011

On September 1, 1988, Aqua Life filed its claim in 36-04011 to 50 cfs from Billingsley Creek for fish propagation based on beneficial use. The Director recommended 12 cfs and Aqua Life did not file a timely objection. Aqua Life only asked to file a late objection to its own claim after Buckeye Farms filed its motion to file late objections to four of Aqua Life's claims, including 36-04011. Aqua Life's proposed late objection in 36-04011 concerned quantity. It asked that the quantity be 50 cfs as claimed instead of the 12 cfs recommended by the Director.

Discussion

Meritorious Position

The two questions before the court are whether Aqua Life has 1) shown *good cause* to file a late objection and 2) stated a *meritorious position*. The court is satisfied that Aqua Life has stated a meritorious position. It claimed 50 cfs under 36-04011 and 100 cfs under 36-02734 for a combined total quantity of 150 cfs. IDWR recommended 12 cfs for 36-04011 and 100 cfs for 36-02734 for a combined total quantity of 112 cfs. Ken Ellis, primary shareholder of Aqua Life, said that Aqua Life consistently used "at least 129 cfs or 17 more cfs than was actually recommended by the IDWR." He also stated that Aqua Life used less than that amount since the 1980's only because of "upstream interference from upstream Junior users and/or reduced water flows."

Of course, there remain the issues of forfeiture and partial forfeiture raised by Buckeye Farms, but it is clear that Aqua Life has stated facts which, if proven, constitute a meritorious position. Its position is that Aqua Life is entitled to more water under 36-04011 than recommended by the Director.

Good Cause

The more difficult question is whether Aqua Life has shown good cause to file a late objection. Aqua Life argued that the addition of an adverse party and late objections were good cause warranting Aqua Life's late objection:

² 36-02414, 36-02338, 36-02734, 36-04011, 36-04014, 36-10842 and 36-15476.

Aqua Life's position is that since the Special Master permitted Subcase No. 36-04011 to be reopened and Buckeye to assert its claims [objections], Aqua Life should be permitted to raise its claims arising out of the same transaction in the same subcase.

Aqua Life's argument has some merit. The initial "pleading" in this subcase was the *Notice of Claim* filed in 1988. The next "pleading" was the *Director's Report* filed in 1992. Aqua Life did not object to the Director's recommendation of less water than claimed. However, one can guess why Aqua Life may have chosen *not* to object to the Director's recommendation of 12 cfs for 36-04011. For instance, Aqua Life may have thought the combined total of 36-02734 and 36-04011 (112 cfs) was close enough to its historical use of "at least 129 cfs"; it would be too expensive to argue over the difference; and the claimed total of 150 cfs is not available anyway.

Whatever reasons Aqua Life may have had for not objecting, its decision relied upon the Director's recommendations for 36-02734 and 36-04011 being decreed as recommended. When Buckeye Farms filed its objections, that premise disappeared. Faced with allegations of forfeiture and partial forfeiture, Aqua Life had no choice but to argue that it is entitled to its original claim of 50 cfs under 36-04011.

In the unique circumstances of this subcase, the court agrees that Aqua Life has shown good cause to file a late objection in 36-04011. Mr. Ellis said that during the error correction process, he filled out and mailed to IDWR "certain forms for filing an objection." He said he was following IDWR instructions and did not know that objections were filed with the SRBA Court. However, Steve Clelland, an employee with IDWR's southern office in Twin Falls, partially disputed that. Mr. Clelland said he found no evidence in the adjudication file that Aqua Life mailed an objection to IDWR.

Mr. Ellis' affidavit left unanswered whether he mailed a *Standard Form 1, Objection* or some other forms. It was also unclear to which IDWR office he mailed the forms. Mr. McClelland's affidavit left open the question of whether he searched records outside of the adjudication file or IDWR's Twin Falls office.

Under these circumstances, it seems fair that the claimant be accorded the benefit of doubt in favor of a full hearing on all issues. Besides, the impact of allowing Aqua Life to file a late objection seems minimal. As Buckeye Farms has pointed out, Aqua Life intermixes its use of water under multiple rights for fish propagation. It would not be possible to change one water right without affecting the other rights. Aqua Life is already a party to the subcase as the claimant. Regardless of whether it filed its own objection, Aqua Life will participate in all future proceedings as a necessary party. Aqua Life has not sought to amend its claim, but instead claims the original amount. Hence, the parties and IDWR will require minimal investigation to prepare for trial.

Allowing Aqua Life's late objection will not delay the proceedings.

THEREFORE, it is ordered that Aqua Life Corporation's *Motion to File a Late Objection* in 36-04011 is **granted**. Its *Objection* lodged with the SRBA Court on March 10, 1997, is deemed filed the date of this **Order**. The only other party to the subcase, objector Buckeye Farms, Inc., shall not be required to respond to Aqua Life's *Objection*.

DATED July 8, 1997.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

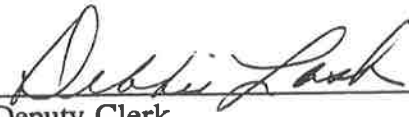
I certify that a true and correct copy of the ORDER GRANTING AQUA LIFE CORPORATION'S MOTION TO FILE LATE OBJECTION was mailed on July 8, 1997, with sufficient first-class postage to the following:

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

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

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


Deputy Clerk

ATTORNEY FOR AQUA LIFE, INC.

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

In RE SRBA	)	Subcase Nos. 36-00018
	)	36-07742
	)	36-08730
	)	36-00015
Case No. 39576	)	36-07740
	)	36-08728
	)	36-04011
	)	
	)	MOTION TO FILE LATE OBJECTION

COMES NOW, AquaLife Corporation [hereinafter AquaLife], by and through its attorney, C. Tom Arkoosh, of Post Office Box 32, 116 Fourth Avenue West, Gooding, Idaho, and respectfully moves this Court for its order allowing late objection to the recommendation of the Director of the Idaho Department of Water Resources [hereinafter respectively Director and Department] and for further consideration of the water rights as named in the style of this pleading, all as set forth hereto:

MOTION TO FILE LATE OBJECTION -1-

I. RIGHTS AT ISSUE

1. 36-00018: This right belongs to Buckeye Farms, believed to be Buckeye Farms, Inc., [hereinafter Buckeye] and is for 20 cfs of irrigation water at places of use owned and not owned by Buckeye of a priority date of September 10, 1884 and season of use of March 15 to November 15 annually. This right is delivered from Billingsley Creek, Gooding County, through the Curran ditch, to what AquaLife believes Buckeye refers to as its Bar - S Lands.

2. 36-00742: This right belongs to Buckeye, and is a nonconsumptive fish propagation right for 10 cfs from February 1 to May 15 annually, and no more than 20 cfs through the remainder of the year, is comprised of the same water as 36-00018 during the irrigation season, and is of a priority date of August 1, 1977. As with the identical water of 36-00018, this right is delivered from Billingsley Creek through the Curran ditch, but is not consumptive.

3. 36-08730: This right belongs to Buckeye, and is an expansion of the use of 36-0018 waters of 20 cfs for a nonconsumptive wildlife, esthetic and recreational use with a priority date of September 24, 1987 for use from January 1 to December 31 annually.

4. 36-00015: This right belongs to Buckeye, and is for 6.5 cfs of irrigation water at places of use owned and not owned by Buckeye of a priority date of March 8, 1902 and a season of use of March 15 to November 15 annually. This right is delivered

from Weatherby Springs, a tributary to Billingsley Creek, through the Bar - S Ditch, then Billingsley Creek, then the Curran ditch, to what AquaLife believes Buckeye refers to as its Bar - S Lands.

5. 36-7740: This right belongs to Buckeye and is a nonconsumptive fish propagation right for 6.5 cfs annually, is comprised of the same water as 36-00015 during the irrigation season, and is of a priority date of August 1, 1977. As with the identical water of 36-00015, this right is delivered from Weatherby Springs, through the Bar - S ditch and intermingled with Billingsley Creek, and then through the Curran ditch, but is nonconsumptive.

6. 36-08728: This right belongs to Buckeye, and is an expansion of the use of 36-00015 waters of 6.5 cfs for a nonconsumptive wildlife, esthetic and recreational use with a priority date of September 24, 1987 for use from January 1 to December 31 annually.

7. 36-04011: This right belongs to AquaLife and is for 50 cfs of fish propagation water at a place of use owned by AquaLife with a priority date of December 1, 1965, and an annual season of use. This right is delivered from Billingsley Creek to AquaLife's fish facilities downstream from the diversion of the Curran ditch. The claim for this right recites 50 cfs; the Director's recommendation for this right is 12 cfs.

II. MOTION

8. That on or about the 4th day of February, 1997, Buckeye filed a motion to object to the Director's recommendation regarding 36-04011, one of AquaLife's fish propagation water rights from Billingsley Creek, and several other fish propagation water rights of AquaLife in Billingsley Creek, reciting, *intra alia*, in summary, that AquaLife is not beneficially using its right which is senior to the nonirrigation rights of Buckeye, and that AquaLife has made a call for its water against junior upstream users on Billingsley Creek and its tributaries. Buckeye's motion above recited seeks to put at issue the nonirrigation rights of Billingsley Creek and its tributaries, which will include an adjudication of AquaLife's 36-04011.

9. That on or about the 25th of January, 1994, Buckeye applied for transfer of the place of use of its 36-00018 and 36-00015 irrigation rights from certain of its Bar - S lands to other of its Bar - S lands, having sold a substantial portion of the previous place of use to an entity named Spring Valley Ranches, Inc., a Utah corporation, on or about February 7, 1989, while ostensibly retaining certain water rights therefrom. The Department did not commence advertisement of this application for transfer until on or about October 23, 1996, and subsequently, having evidently held the same in abeyance during the negotiations between the transferror, Buckeye, and perhaps others, to reach a stipulated water right that may or may not have been memorialized on a Form 5, made recommendations on or about April 26, 1996, for 36-00018 and on May 6, 1996, for

36-00015. By agreement dated on or about August 18, 1988, incorporated herein, and adopted by the license concerning 36-00742, Buckeye agreed to, and the Department relegated Buckeye to, the conjunctive administration of all its water rights diverted from Billingsley Creek into the Curran ditch. Said agreement is attached hereto as Exhibit B and incorporated herein as though the same were set forth in full. Therefore, all the Buckeye rights named in the style of this pleading are to be conjunctively managed pursuant to said agreement such that the same do not interfere with senior rights.

10. Insofar as Buckeye seeks late review of the Director's recommendation concerning the Billingsley Creek nonconsumptive fish propagation rights as between Buckeye and AquaLife; and insofar as Buckeye seeks, at this late date, a transfer of the place of use of the irrigation portion of those conjunctively managed rights; and, insofar as the Billingsley Creek waters are a finite resource, and the demand against those waters must take that issue into account concerning all water rights and whether or not the same are consumptive, AquaLife herein respectively submits that the Department cannot make its determination of, and administer, the various water rights of the parties without reasonable investigation of them all. Therefore, if the Department is to make a determination regarding Buckeye's request for transfer of the place of use of irrigation rights 36-00015 and 36-00018, which are conjunctively managed with the remaining Buckeye water rights named in the style of this pleading; and, if the Department is to give consideration to the request for late filing of objections of AquaLife's

nonconsumptive rights as requested by Buckeye, the Department must create subcases for all the pertinent and affected water rights.

WHEREFORE, AquaLife requests the Department as follows:

1. For creation of subcases for all Buckeye's rights as set forth in the style of this pleading;
2. For an order allowing the filing of the objections appended hereto, which are incorporated herein by this reference as though the same were set forth in full.

DATED this 7th day of March, 1997.



C. TOM ARKOOSH

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of March, 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:

IDWR Document Depository
Post Office Box 83720
Boise, Idaho 83720-0098

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 West Fort Street, MSC 033
Boise, ID 83724



C. TOM ARKOOSH

AGREEMENT

The undersigned agree to the withdrawal of their protests to Application No. 36-7742 if said permit is conditioned as follows:

I. It is understood that Buckeye Farms, Inc. (hereinafter "Buckeye") shall not at any time divert more than a total of 20 cfs from Billingsley Creek into the Curran Ditch pursuant to the hereinafter described rights. However, Buckeye shall be entitled to divert from Billingsley Creek from its existing diversion below Rangen's Hatchery into Curran Ditch all of its 20 cfs of water for irrigation and stock water purposes with a priority date of April 1, 1917; and under Permit No. 36-7742 for fish propagation purposes with a priority date of August 1, 1977, and for recreation, aesthetics, fish propagation, and fish and wildlife habitat purposes with a priority date of September 24, 1987 (hereinafter "water rights"); except as follows:

A. Buckeye agrees to divert only 10 cfs of its water rights between February 1 and May 15 of each year so that the remainder of its water rights will be left in Billingsley Creek as a bypass flow for instream flow purposes or for diversion to nonconsumptive uses by others so long as the water is returned to Billingsley Creek immediately below the place of use.

1. In the event that there would be less than 20 cfs available at the existing diversion below Rangen's Hatchery into Curran Ditch for diversion under Buckeye's water rights as above described in Paragraph No. I between February 1 and May 15 of any year, the reduction will be shared equally. e.g. If only 18 cfs were available, 9 would be left in Billingsley Creek and 9 would be diverted by Buckeye.

2. In the further event that future upstream junior diversions would be made from Billingsley Creek above the diversion of Buckeye as said diversion is described in Paragraph No. I above, resulting in less than 20 cfs being available for diversion and bypass as provided in this Agreement, the undersigned hereto shall be responsible for the protection of their own entitlement under this Agreement. e.g. If 20 cfs were otherwise available for diversion at Buckeye Farms, the undersigned shall be responsible for Curran

SEP 27 1988

Ditch at anytime between February 1 and May 15 except for an upstream diversion pursuant to a junior priority right, Buckeye shall be responsible for protection of its right to divert 10 cfs and the undersigned (except Buckeye) hereto shall be responsible for protecting the 10 cfs bypass.

B. Buckeye and the undersigned shall comply with the requirements of the Idaho Department of Water Resources so as to legally validate said bypass between February 1 and May 15 of each year, including but not limited to the following alternatives:

1. An amendment of Application No. 36-7742 to reflect the bypass right therein, together with an assignment of the appropriate portion of 36-7742 to the Idaho Water Resource Board for bypass flows between February 1 and May 15 as a public trustee; and/or

2. A change in nature of use and place of use to protect the priority date and use of said water right for bypass purposes under 36-7742; and/or

3. An assignment of the 10 cfs bypass right for the period of February 1 through May 15 annually as required by this Agreement, to the land immediately above the mouth of Billingsley Creek for aesthetic or other nonconsumptive beneficial purposes, so as to assure the bypass flow will remain in the drainage.

II. It is understood that Application 36-7742 shall be issued pursuant to the conditions of this Agreement and subject to all prior water rights. Nothing herein shall be deemed a waiver by another water right holder who is a party hereto to contest the diversions of Buckeye pursuant to the rights set out in Paragraph I above in an appropriate forum in the future and no party hereto shall be precluded from challenging the validity or any element of any water right perfected under Permit No. 36-7742.

III. Buckeye agrees that existing fish propagation facilities shall not be used to establish beneficial use under Permit No. 36-7742, and that the uses under Permit No. 36-7742 are non-consumptive uses for purposes of Fisheries Development Co.'s Permit No. 36-8089.

IV. The parties agree that this Agreement may be executed in counterparts and will be effective as though and had executed the same document.

SEP 27 1988

V. The undersigned hereby bind themselves, their heirs, personal representatives, successors and assigns.

BUCKEYE FARMS, INC.

Dated: 7/18/88

EDWARD D. SHOKAL

Dated: _____

RUTH C. SHOKAL

Dated: _____

MARNE MERCER, PRESIDENT
HAGERMAN VALLEY CITIZENS ALERT

Dated: 7-18-88

PAUL E. WATKINS

Dated: _____

INEZ S. WATKINS

Dated: _____

CLEAR LAKES TROUT &
FISHERIES DEVELOPMENT CO.

Dated: 7-15-88

W.A. SANDY, PRESIDENT
TROUTCO

Dated: _____

THE

SEP 27 1968

IV. The parties agree that this Agreement may be executed in counterparts and will be effective as though all had executed the same document.

V. The undersigned hereby bind themselves, their heirs, personal representatives, successors and assigns.

BUCKEYE FARMS, INC.

Dated: _____

EDWARD D. SHOKAL

Dated: _____

RUTH C. SHOKAL

Dated: _____

MARNE MERCER, PRESIDENT
HAGERMAN VALLEY CITIZENS ALERT

Dated: _____

Paul E. Watkins

PAUL E. WATKINS

Dated: 7-18-88

Inez S. Watkins

INEZ S. WATKINS

Dated: 7-18-88

CLEAR LAKES TROUT &
FISHERIES DEVELOPMENT CO.

Dated: _____

W.A. SANDY, PRESIDENT
TROUTCO

Dated: _____

9335m

RECEIVED

SEP 27 1988

IV. The parties agree that this Agreement may be executed in counterparts and will be effective as though all had executed the same document.

V. The undersigned hereby bind themselves, their heirs, personal representatives, successors and assigns.

BUCKEYE FARMS, INC.

Dated: _____

EDWARD D. SHOKAL

Dated: _____

RUTH C. SHOKAL

Dated: _____

MARNE MERCER, PRESIDENT
HAGERMAN VALLEY CITIZENS ALERT

Dated: _____

PAUL E. WATKINS

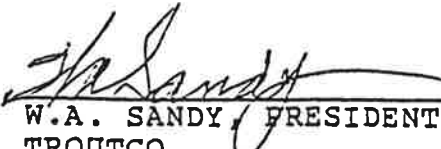
Dated: _____

INEZ S. WATKINS

Dated: _____

CLEAR LAKES TROUT &
FISHERIES DEVELOPMENT CO.

Dated: _____



W.A. SANDY, PRESIDENT
TROUTCO

Dated: 7/21/88

9335m

SEP 23 1988

IV. The parties agree that this Agreement may be executed in counterparts and will be effective as though all had executed the same document.

V. The undersigned hereby bind themselves, their heirs, personal representatives, successors and assigns.

BUCKEYE FARMS, INC.

Dated: _____ ✓

Edward C. Shokal
EDWARD D. SHOKAL

Dated: July 16 1988

Ruth C. Shokal
RUTH C. SHOKAL

Dated: July 16, 1988

MARNE MERCER, PRESIDENT
HAGERMAN VALLEY CITIZENS ALERT

Dated: _____ ✓

PAUL E. WATKINS

Dated: _____ ✓

INEZ S. WATKINS

Dated: _____ ✓

CLEAR LAKES TROUT &
FISHERIES DEVELOPMENT CO.

Dated: _____ ✓

W.A. SANDY, PRESIDENT
TROUTCO

Dated: _____ ✓

9335m

RECEIVED

SEP 28 1988

WR5809NP
No. 36-07742

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT

DATE: 03/27/96
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	BUCKEYE FARMS INC 18335 US HWY 30 HAGERMAN ID 83332 (208) 837-6595	08/01/1977	FISH PROPAGATION	01/01 12/31	20.000 CFS	
TOTAL DIVERSION:					20.000 CFS	

Water Source: BILLINGSLEY CREEK

Tributary to: SNAKE RIVER

Stage: PERMIT

Point(s) of Diversion: T07S R14E S31 SWNE GOODING County

Place of use Legal Description for: FISH PROPAGATION

				NE				NW				SW				SE			
T	R	S		NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
				Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac
07S	13E	33	:				F												
07S	13E	34	:							F									

Pou County: GOODING

Other Rights: 36-7739.

Conditions of Approval:

- 026 - Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.
- 004 - The issuance of this right does not grant any right-of-way or easement across the land of another.
- 027 - Use of water under this right shall be non-consumptive.
- 044 - Use of water under this right is subject to policies set forth in the State of Idaho Water Plan, including Policy No. 5G.
- 042 - The right holder shall be required to provide the Department, upon request, information showing volume changes per hour necessary to maintain an adequate environment for the fish propagation facility. Volume changes per hour shall be based upon actual fish production.
- 01J - A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works prior to diversion of water under this right.
- 07A - Assignment or sale of this right is subject to a determination by the Department that the right holder has proceeded to develop the right with due diligence and without speculation.
- 09D - Water used under this right if discharged into a natural channel shall meet Idaho Water Quality Standards.
- 005 - Use of water under this right is subject to control by the watermaster of State Water District No. 36A.
- 016 - See remarks for additional conditions of approval.

Remarks: This permit is subject to the agreement dated 7/18/88 between ~

WR5809NP
No. 36-07742

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT

DATE: 03/27/96
PAGE: 2

Remarks: right holder & protestant(s) to the extent such agreement covers matters within the jurisdiction of IDWR.

Dates: App. Received: 08/01/1977 Priority Date: 08/01/1977
Proof Due Date: 07/01/1993 Proof Made Date: 06/29/1993
Exam Made Date: Exam Sent to S.O.:
Licensed Date:

Misc: Water District Number: 36A Field Exam Fee: R (Received)

Comments: Date: 06/15/1994 User-ID: CZIMMERM Subject: PERMIT BIFURCATED
This permit has been bifurcated to reflect the original application. For amended uses see 36-08730.

Audit: 02/04/88 05/28/88 CONVERT 06/21/88 BALDWIN 08/05/88 CURTIS
09/01/88 CURTIS 07/01/93 GUSTAFSO 07/02/93 GUSTAFSO 06/15/94 CZIMMERM

WR5809NP
No. 36-08730

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT

DATE: 03/27/96
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	BUCKEYE FARMS INC 18335 US HWY 30 HAGERMAN ID 83332 (208) 837-6595	09/24/1987	WILDLIFE RECREATION AESTHETIC	01/01 12/31 01/01 12/31 01/01 12/31	20.000 CFS 20.000 CFS 20.000 CFS	
TOTAL DIVERSION:					20.000 CFS	

Water Source: BILLINGSLEY CREEK

Tributary to: SNAKE RIVER

Stage: PERMIT

Point(s) of Diversion: T07S R14E S31

SWNE

GOODING County

Place of use Legal Description for: WILDLIFE

				NE				NW				SW				SE									
T	R	S	:	NENE	NWNE	SWNE	SENE	:	NENW	NWNW	SWNW	SENW	:	NESW	NWSW	SWSW	SESW	:	NESE	NWSE	SWSE	SESE	:		
				Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	:
07S	13E	26	:					:						:	W		W	W	:					:	
07S	13E	27	:					:						:			W	W	:			W	W	:	
07S	13E	33	:				W	:						:					:	W	W		W	:	
07S	13E	34	:		W	W	W	:			W	W	:		W	W			:					:	
07S	13E	35	:		W	W	W	:		W	W	W	:						:					:	

Place of use location for RECREATION is the same location as described for: WILDLIFE

Place of use location for AESTHETIC is the same location as described for: WILDLIFE

Pou County: GOODING

Other Rights: 36-7739.

Conditions of Approval:

- 026 - Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.
- 004 - The issuance of this right does not grant any right-of-way or easement across the land of another.
- 027 - Use of water under this right shall be non-consumptive.
- 01J - A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works prior to diversion of water under this right.
- 005 - Use of water under this right is subject to control by the watermaster of State Water District No. 36A.

Remarks: The total combined rate of diversion under this right and Right 36-07742 shall not exceed 20.0 cfs.
This right is subject to the agreement dated 7/18/88 between

WR5809NP
No. 36-08730

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT

DATE: 03/27/96
PAGE: 2

Remarks: right holder & protestant(s) to the extent such agreement covers matters within the jurisdiction of IDWR.

Dates: App. Received: 09/24/1987 Priority Date: 09/24/1987
Proof Due Date: 01/01/1995 Proof Made Date: 12/12/1994
Exam Made Date: Exam Sent to S.O.:
Licensed Date:

Misc: Water District Number: 36A Field Exam Fee: R (Received)

Comments: Date: 06/15/1994 User-ID: CZIMMERM Subject: ADDITIONAL INFORMATION
This permit was created to reflect the request for the additional amended uses as identified in permit no. 36-07742. Since adding the new uses would have required advancement of the priority date of permit no. 36-07742, a new application filing is needed for the additional uses. The priority date of this right is set at the date the amendment to permit no. 36-07742 was received.

Date: 12/13/1994 User-ID: VAULT Subject: Proof of Beneficial Use Rcvd
Proof of Beneficial Use Rcvd

Audit: 06/15/94 CZIMMERM 06/15/94 CZIMMERM 06/17/94 CZIMMERM 07/14/94 CZIMMERM
12/13/94 COMMENTS 12/20/94 JYARBROU

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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

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.¹ 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

¹ 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.²

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."³ 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.*

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

³ 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

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).

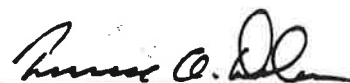
Unlike abandonment which requires intent, statutory forfeiture provides that all rights to water are lost where the appropriator fails to make beneficial use of the water for a continuous five year period regardless of intent. *McAtee v. Faulkner Land & Livestock, Inc.*, 113 Idaho 393, 744 P.2d 121 (App.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

As the parties are aware, the Presiding Judge in the SRBA has held that there is no "partial" forfeiture in Idaho.⁵ 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

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

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 1996.⁴ That allegation, if proven, supports a finding of forfeiture:

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

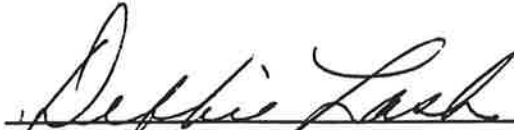
CERTIFICATE OF MAILING

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

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Department of Water Resources
Adjudication Bureau

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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

)
) 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 4th day of February, 1997.

ROSHOLT, ROBERTSON & TUCKER



John K. Simpson
Attorney for Buckeye Farms

CERTIFICATE OF MAILING

I hereby certify that on the 4th 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:

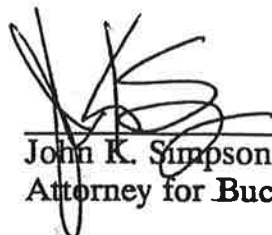
Name: Aqua Life, Inc.
Address: Route 5, Box 5053
Buhl, Idaho 83316

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.

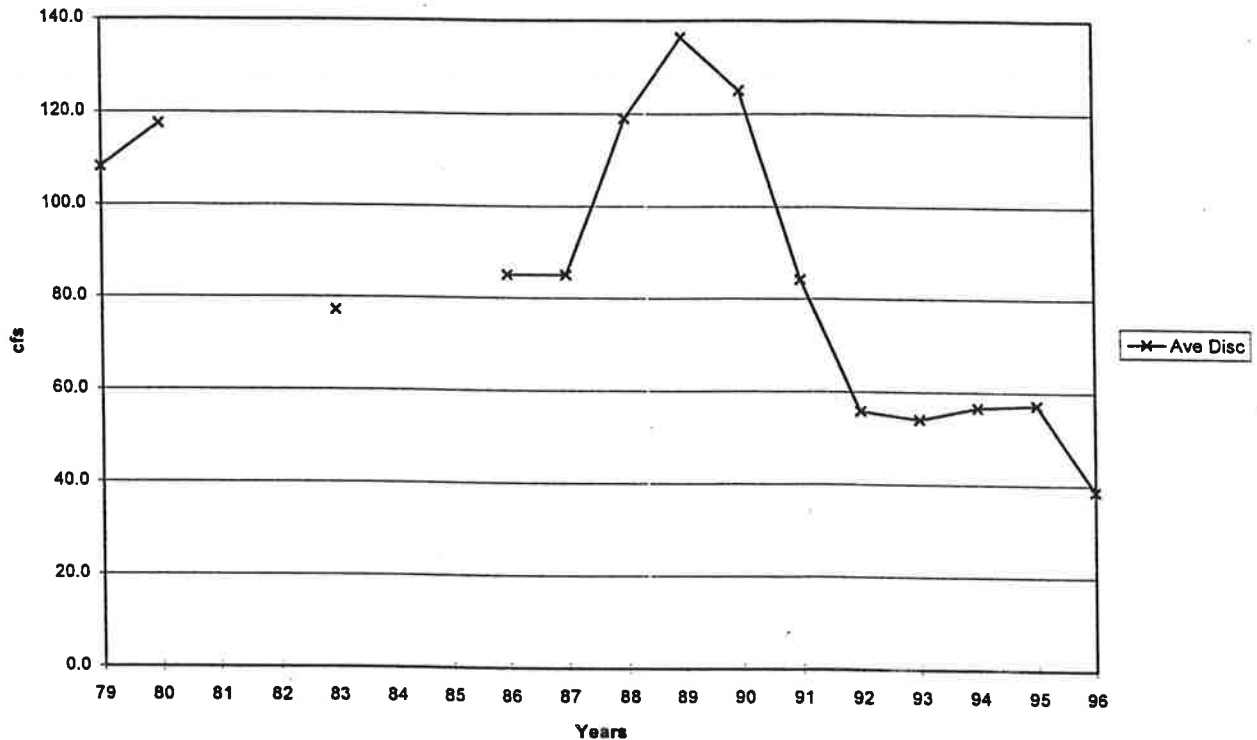
4. I have been engaged by Buckeye Ranch to examine the water rights of Aqua Life, Inc. (Aqua Life) for the facility once known as Idaho Springs Trout Farm and currently operated as Gold Springs, Inc. (Gold Springs), particularly with reference to Aqua Life's water rights from Billingsley Creek. The water 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.

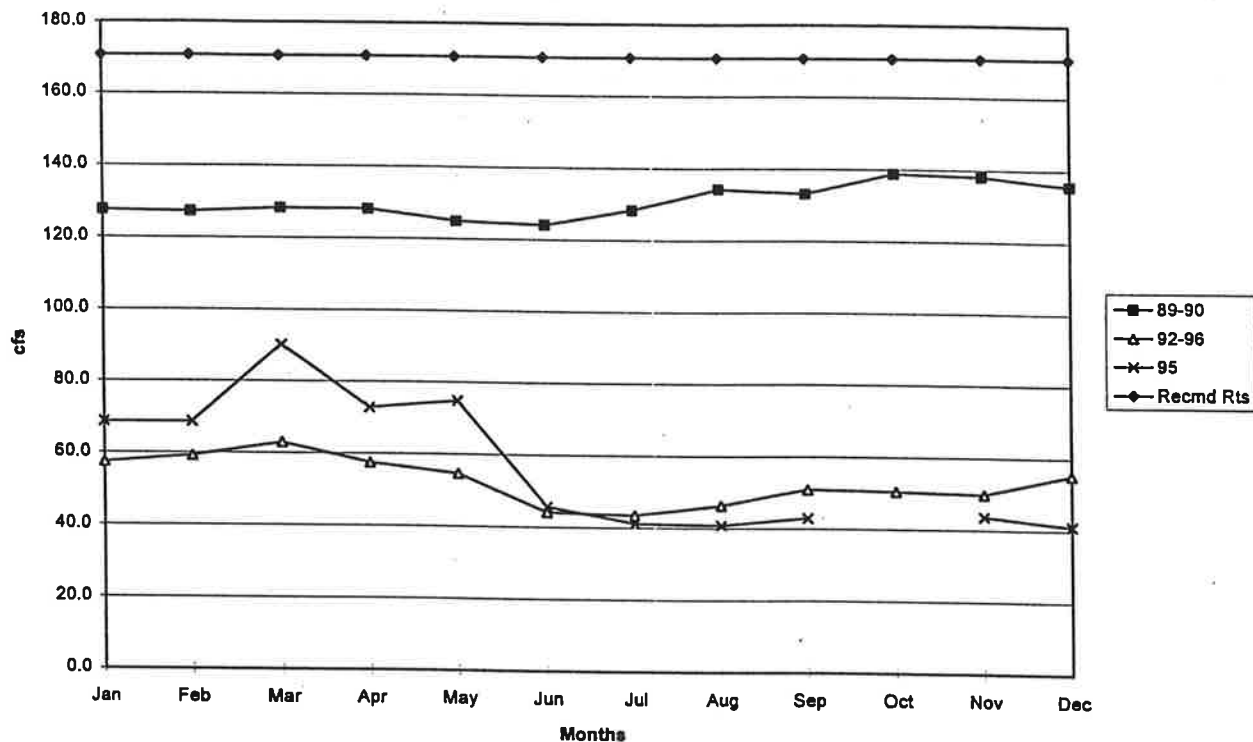
7. The quantity and source of the Aqua Life water rights for Gold Springs are 36-02338 for 54.6 cfs from Big Springs or Fisher Springs, 36-02414 for 4 cfs from Tupper Springs, and 36-02734 and 36-04011 for 100 cfs and 12 cfs, respectively, from Billingsley Creek.

Figure 1
GOLD SPRINGS AVERAGE ANNUAL DISCHARGE



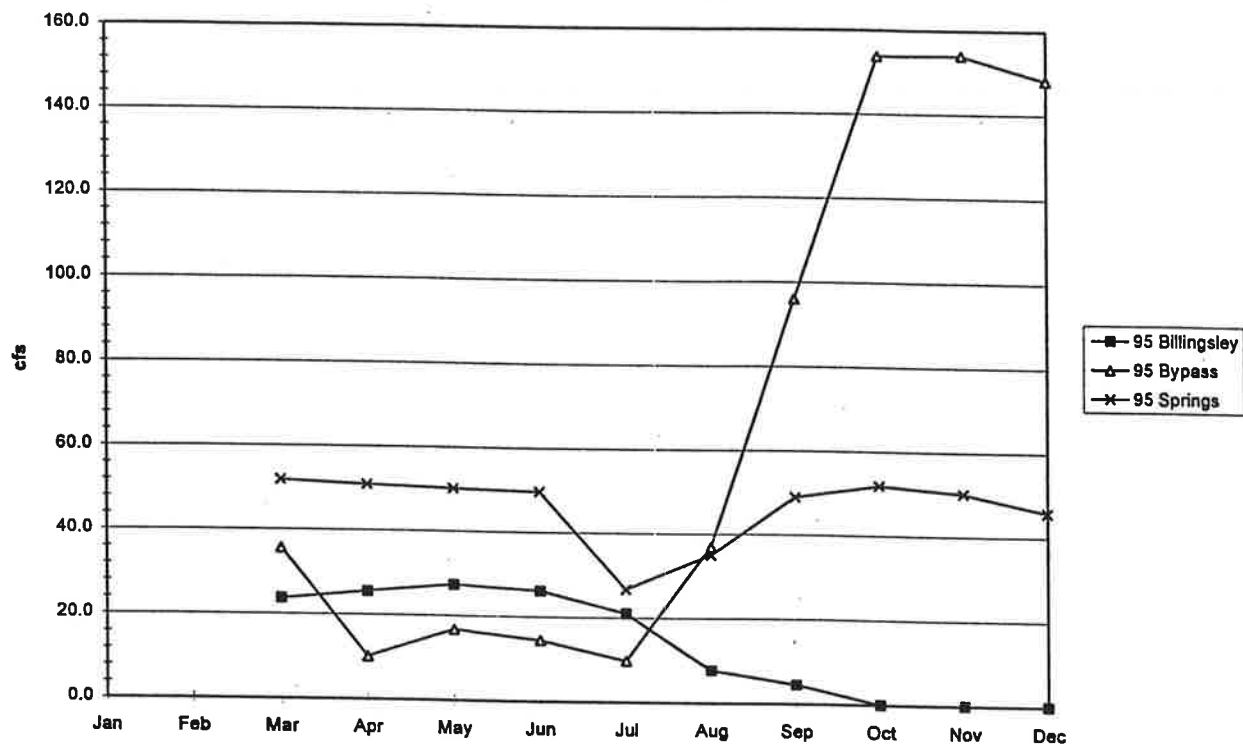
8. The monthly discharge amounts reported on the DMR's for the period 1992 through November 1996 are shown in Figure 2, below, compared to the monthly discharge amounts reported on the DMR's for the 1989 through 1990 period and the amount of the water rights recommended to the SRBA Court by IDWR. In 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 4th day of February, 1997.



NOTARY PUBLIC FOR IDAHO

Residing at: Boise

My Commission Expires: 9/30/2000

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.

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.

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

Affidavit of David Shaw
Motion To File Late 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.

Gena Cameron
NOTARY PUBLIC FOR IDAHO
Residing at: Boise
My commission expires: 9/26/2000

INSTRUCTIONS FOR MAILING

You must mail the objection, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all of the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I hereby certify that on February 4, 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:

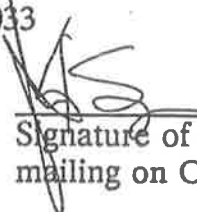
Name: Aqua Life, Inc.
Address: Route 5, Box 5053
Buhl, Idaho 83316

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



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

\\wpdata\bucket\objection

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. 36-04011
)
)
)
)
)

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.

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

**Affidavit of David Shaw
Motion To File Late 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

INSTRUCTIONS FOR MAILING

You must mail the objection, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all of the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I hereby certify that on February 4, 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:

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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:

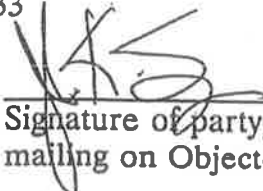
Name: Aqua Life, Inc.
Address: Route 5, Box 5053
Buhl, Idaho 83316

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



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

\\wpdata\bucket\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

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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.

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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.**

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Phone: Work: (208) 622-4100 Home: _____

Briefly describe your interest in this water right:

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Attorney Name: **John K. Simpson**

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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.

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Motion To File Late Objection**

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Signature of person filing objection



(Attorney signing in representative capacity)

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

Gena Cameron

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

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Address: Route 5, Box 5053
Buhl, Idaho 83316

3. Copies to:

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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

13. ☐ Other: I object to: _____

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

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Affidavit of David Shaw
Motion To File Late Objection

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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: Bose
My commission expires: 9/26/2000

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P.O. Box 2707
Twin Falls, Idaho 83303-2707

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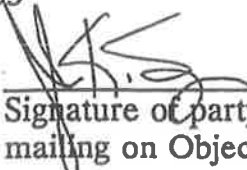
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Address: Route 5, Box 5053
Buhl, Idaho 83316

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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\bucket\objection

JUN 10 1997

Case No. 39576

)
)
)
)
)
)
)

COPY

36-04011

SUBSCRIBED AND SWORN TO before me this 11th day of June, 1997.

Janie Robertson
Notary Public for Idaho
Residing at: Twin Falls, Id.
My Commission expires: 9-23-2000

\\wpdata\\buckeye\\affclell

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. A36-04011

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

IDWR Employee/Agent Steve Clelland

June 6, 1997 11:00am

NAME:
JOHN SIMPSON CALLIN

RE:
AQUALIFE QUESTIONS

HE WANTED TO KNOW IF I COULD REVIEW THE AQUALIFE FILE AND DETERMINE IF THE RIGHT HAD BEEN OBJECTED TO IN A TIMELY MANNER. I AGREED TO REVIEW THE FILE. I TOLD HIM I HAD NOT READ THE AFFIDAVIT FILED BY KEN ELLIS AS WAS DISCUSSED IN THE COURTROOM ON JUNE 4TH AT THE 1:30 HEARING.

AFTER REVIEW OF THE FILE I CALLED CHARLIE HONSINGER TO TELL HIM I HAD FOUND NOTHING TO INDICATE THE STAFF HERE PARTICIPATING IN THE FILING OF THE OBJECTION FORM... HE SUGGESTED I CALL JOHN SIMPSON AND INFORM HIM OF THE FINDINGS I HAD MADE. THERE WAS NO RECORD OF THE OBJECTION FORM OR ANY REQUEST TO RECEIVE FORMS BY MR. ELLIS OR ANYONE ELSE ASSOCIATED WITH THIS RIGHT... IT IS STANDARD PROCEDURE TO DOCUMENT SUCH CONTACTS IN OUR FILES; ESPECIALLY AFTER THE DIRECTOR'S REPORT HAS BEEN FILED WITH THE COURT.

COMMUNICATION DOCUMENTATION

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

June 3, 1997 10:59am

RE:
36-04011

CUSTOMER LEFT AND RETURNED AT 10:45. REVIEWED THE COPIES AND TOOK HIS CHECK. RECEIPT PROGRAM WOULDN'T PRINT. TRIED AGAIN BY TRISH AND PRINTED RECEIPT. MAILED HIS RECIEPT COPIES TO HIM.



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

Date 06-03-97
Name AQUA LIFE
Address RT 5 BOX 5053 BNHL, ID 83314

No. of Copies	Materials	Cost
BZ	36-04011 (entire claim file)	\$ 4.10
	<u>PAID</u> 06-03-97	
	<u>CHK # 2040</u>	
TOTAL		\$ 4.10

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~~ me.

Sincerely,

Frank Hitchcock

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
 Adjudication Bureau

RECEIVED

MAR 07 1997

Department of Water Resources
 Southern Region

RECEIVED

MAR - 3 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. 39576)

Subcase No. 36-04011

already in data base.

NOTICE OF APPEARANCE

03-5-97

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.

Philip A. Brown for C. Tom Arkoosh
 C. TOM ARKOOSH

NOTICE OF APPEARANCE

-1-

MAIL4124



CERTIFICATE OF MAILING

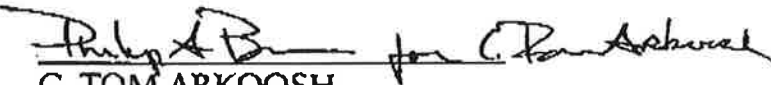
I hereby certify that on the 28th day of February, 1997, I served a true and correct copy of the foregoing document upon the following person, by causing to be deposited a copy thereof in the United States Mail, first class postage prepaid and via facsimile transmission:

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: AQUA LIFEDATE: 06-03-97

ADDRESS: _____

CITY/ZIP: _____

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
DOCUMENTS36-04011

CC: ALL
RT: 58
LFT: 34
92

RESEARCH SUBJECT: copy of entire file contentsCOPIES MADE OF: 92 total - 1st 10 free = 8210 COPIES OR LESS: FREE

Please remit to:

IDAHO WATER RESOURCES
1341 FILLMORE-SUITE 200
TWIN FALLS ID 83301-3380

NUMBER OF COPIES MADE: 82FEES DUE @ \$0.05 PER COPY: 4.10

OTHER FEES: _____

RECEIPT NUMBER: _____

ASSISTING AGENT: 77

(customer signature)

NOTICE OF ERROR

RESPONSE

CORRECTED R PROOF



MICROFILMED
FEB 04 1993

From: DWR06::"Shawdb@ac...com" 3-SEP-1996 09:01:44.2
To: djones@idwr.state.id.us
CC:
Subj: Copies

Doug,

Thank you for the copy of file 36-02734 in the name of Aqua Life, Inc. It appears

I will also need a copy of 36-04011, also in the name of Aqua Life, Inc.

Please
forward a copy with the bill for your expenses to:

David Shaw
ERO Resources Corp
2309 N Mountain View, Suite 174
Boise, ID 83706-1065

Thanks again, hope you had an opportunity to enjoy the long weekend.

Dave

Copies sent 9-3-96 . DM

MICROFILMED
DEC 04 1996

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. A36-02734

A36-04011

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

IDWR Employee/Agent Steve Clelland

May 2, 1996 11:36am

NAME:
JOHN SIMPSON @ROSHOLT'S

RE:
CALLED FOR APPT ON AQUALIFE

CAME IN AND WE REVIEWED THE FILES A36-02734 & A36-04011. DISCUSSED WHY THE 100 CFS WAS ALLOWED VS. FORFEIT AND IF THERE HAD BEEN NON-USE OF THE FACILITIES OR WATER. INDICATIONS ARE IN THE FILE THIS IS THE CASE. UNCLEAR WHY MORE EVIDENCE TO SHOW THE OWNERSHIP PROBLEMS IS NOT IN THE FILE AS OFFERED BY K. ELLIS. PLAN TO DO ADDITIONAL REVIEW TOMORROW AND COPY FILES FOR JOHN S.

MICROFILMED
DEC 04 1996

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
CLAIM NUMBERS

ALLOCATION WATER
RIGHT NUMBERS

OTHER
DOCUMENTS

36-02414

36-2734

36-04011

36-02338

RESEARCH SUBJECT:

~~Life~~ 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:

RECEIPT NUMBER:

ASSISTING AGENT:

Jennifer Vansant
(customer signature)

RLB

MICROFILMED

DEC 04 1996



DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION
222 SHOSHONE ST. EAST
TWIN FALLS, ID 83301-6105

Date *5/2/96*
Name *Rasholt, Robertson, & Tucker*
Address *Twin Falls*

No. of Copies	Material	Cost
<i>178</i>	<i>Copies of 36-02734 & 36-04011</i>	<i>\$ 8.90</i>
TOTAL		<i>\$ 8.90</i>

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, *Lisa L Backlund*

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

A36-04011

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 26th day of January, 1996.

C. TOM ARKOOSH

NOTICE OF APPEARANCE

-1-

COPY
MICROFILMED
DEC 8 1996

CERTIFICATE OF MAILING

I hereby certify that on the 26th 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

AUG-24-1992

NOTICE OF ERROR FOR

RECEIVED

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

Idaho Department of Water Resources

Statehouse Mail

Boise, Idaho 83720-9000

SEP 24 1992

Department of Water Resources
Southern Region Office

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

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

1. Water right number: **36-04011**

2. Name: **Agua Life Corp**

Address: **Rt 5 Box 5053**

Buhl, Id 83316

Weekday Telephone Number: **543-4312**

(This was
Sent To wrong
Co + address)

MICROFILMED

TEAR AT PERFORATIONS AND COMPLETE FORM ON OTHER SIDE

SEP 24 1992

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

3. Describe the portion of proposed recommendation with which you disagree:
*I do NOT agree with the Amount of C.F.S.
Proposed by water Resources.*
4. Describe the changes you wish to have made in the proposed recommendation:
*This claim should be approved for the total
Claim - 50 CFS.*
5. Describe why you disagree with the proposed recommendation:
The facility is NOT Limited to 112 CFS Flow.
6. Date: *9-23-92*

SIGNATURE *AquaLife Corp by Ken Ellis*



**CLEAR
SPRINGS
FOODS™**

CLEAR SPRINGS FOODS, INC.
Corporate Office P.O. Box 712, Buhl, Idaho 83316

RECEIVED

Phone 208 543-4316
Sales 800 635-8211
Fax 208 543-5608

SEP 24 1992

Department of Water Resources
Southern Region Office

September 22, 1992

Mr. Kenneth Ellis
1128 East 4150 North
Buhl, Idaho 83316

Re: **NOTICE OF ERROR FORMS**

Dear Mr. Ellis:

The enclosed forms, referenced above, were recently delivered to Clear Springs Foods in error.

It is my understanding that these **NOTICE OF ERROR FORMS** correspond to water right permits, under your control, at the Idaho Springs Farm.

Sincerely,

CLEAR SPRINGS FOODS, INC.

Tim Hanifen
Vice President, Operations

TJH/th

MICROFILMED
FEB 04 1993

IN THE MATTER OF)
NOTICE OF CLAIM TO)
A WATER RIGHT NO.(S))
_____)
_____)
_____)
State of Idaho)
County of _____)

AFFIDAVIT

_____ being first duly sworn,
deposes and says: I operated a trout facility on the
"Idaho Springs" facility from 1980 thru 1992. During
the years 1980 thru 1985 the single pond (The south-
west Lake was used). After 1985 there was not enough water
to run this lake in Billingsly creek & run the other lakes
under this claim.

[Signature]
(Signature)

Subscribed and sworn to before me this
day 22nd of October, 1992.

SEAL

[Signature]
(Notary Public)

Residing at Boise, Idaho

My Commission Expires 12-1-1994

MICROFILMED

FEB 04 1993

MEMO TO FILE

FROM: HELEN HARRINGTON-THORNTON

DATE: 10-22-92

RE: AFFIDAVIT FROM KEN ELLIS

The attached affidavit was submitted by Ken Ellis of Aqualife Inc., to support the non-use of the "southwest pond". His contention is that the pond has not been used due to low water and if the water had been available, the pond would have been used.

He was in the office and is aware that no changes will be made to the recommendation at this time.

MICROFILMED
FEB 04 1993

RESPONSE TO NOTICE OF ERROR
IN THE SNAKE RIVER BASIN ADJUDICATION

Water Right No: 36-02734 & 36-04011 Contact Date: 9/30/92

IDWR Contact Person: (print and Initial) ROBERT WORSTELL

Claimant Contact Person Ken Ellis

Others Present —

Contact By (give date) 10/21/92

Meeting (location): —

Phone Call (no.) 543-4312 ✓

Letter (attach letter): —

IDWR USE ONLY

Date Initials

Date Entered 9/30/92 R.V.W.

Verified 9/30/92 R.V.W.

I. Issues identified by claimant: He disagrees with the remarks limiting the flow to 112 cfs. Should be at least 150 cfs. He also said the notice of error was mailed to the wrong address which delayed his receiving it until 9/23/92.

II. Reasons provided claimant for original recommendation: This claim is recommended for 100 cfs and claim 36-04011 is recommended for 12 cfs. It was claimed at 50 cfs, reduced to 22.7 cfs (the measured flow from the spring) and further reduced to 12.0 cfs because one of the ponds (the SW Lake) was not being used since 1987.

III. Additional information provided by claimant: He said the south west lake could not be used because the flow of the springs has dropped and his system is such that if he operated this pond it would decrease the flow into his main ponds & raceways. He also said he has submitted change of ownership forms for his claims. He will resume use of the south west Lake when spring flow increases.

IV. Changes to be made in final recommendation (if any): none.
If evidence is provided to show that the South West Lake has been used for fish propagation between 1987 and 1992 the diversion rate for 36-04011 may be restored to 22.7 cfs.

V. Action taken (date): Sent change of ownership form.
Reset Notice of Error Flag and re-verify the R record
He expects to file notice of Objection with the court

MICROFILMED
9/30/92
FEB 04 1993

Water Right Number - R36-04011

Prefix Translation: RESEARCH

Old (D) Number -

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

*** C - CURRENT OWNER ***
CLEAR SPRINGS TROUT CO1 - PO BOX 712
2 -
3 -
City- BUHL
Phone - 208-543-4316

State- ID Zip- 83316

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - - +
12/01/1965 17 SOUTHERN BENEFICIAL USE+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
BILLINGSLEY CREEK SNAKE RIVER+ - - - - Point of Diversion - - - - - +
TwN Rng Sec Tract Lot RFlg County
07S 14E 19 NE NW NW 1 (47) GOODING+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
19 - FISH PROPAGATION 01/01 12/31 12.000+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
12.000 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
07S 14E 19 NW NW 1 19 FISH PROPAGATION (47) GOODING

Total Acres:

+ - - Diversion Means - CHECK DAM & DITCH TO RACEWAYS

+ - - Non-Irrigation Use - FISH PROPAGATION/ TROUT FISH PONDS

+ - - Other Rights for Same Use - 36-02734

+ - - - - Remarks - - - - - +
FACILITY VOLUME 301,000 CUBIC FEET.
USE OF THIS RIGHT WITH RIGHT NO. 36-02734 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 112.0 CFS AND A TOTAL FACILITY
VOLUME OF 301,000 CUBIC FEET.+ - - - - Old Water Right Numbers - - - - - +
No Old Water Right Numbers FoundMICROFILMED
FEB 04 1993

Prefix Translation: RESEARCH

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	- 10/02/1992	Old Judicial District	-
Claim Received Date	- 09/01/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S002014	Water District	- 36A
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	-	Presumption Flag	-
				Notice of Error Flag	- B

MICROFILMED
M FEB 04 1993

Water Right Number - R36-04011

Prefix Translation: RESEARCH

Old (D) Number -

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

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

1 - RT 5 BOX 5053

2 -

3 -

City- BUHL

Phone - 208-543-4312

State- ID Zip- 83316

*** O - ORIGINAL OWNER ***
CLEAR SPRINGS TROUT CO

1 - PO BOX 712

2 -

3 -

City- BUHL

Phone - 208-543-4316

State- ID Zip- 83316

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +
12/01/1965 17 SOUTHERN J - BENEFICIAL USE+ - - - - Source - - - - - + + - - - - - Tributary - - - - - +
BILLINGSLEY CREEK SNAKE RIVER+ - - - - Point of Diversion - - - - - +
TwN Rng Sec Tract Lot RFlg County
07S 14E 19 NE NW NW 1 (47) GOODING+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
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Total Acres:

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+ - - Non-Irrigation Use - FISH PROPAGATION/ TROUT FISH PONDS

+ - - Other Rights for Same Use - 36-02734

+ - - - - Remarks - - - - - +
FACILITY VOLUME 301,000 CUBIC FEET.
USE OF THIS RIGHT WITH RIGHT NO. 36-02734 IS LIMITED TO AMICROFILMED
FEB 04 1993
4 1993

Water right number - R36-04011

Prefix Translation: RESEARCH

+ - - - - - Remarks - - - - - +
TOTAL COMBINED DIVERSION RATE OF 112.0 CFS AND A TOTAL FACILITY
VOLUME OF 301,000 CUBIC FEET.

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

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

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

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

Date: 05/19/1992 User Id: THORNTON Subject: POSSIBLE CHANGE IN OWNERSHIP
THIS WATER RIGHT MAY BE OWNED BY KEN ELLIS/AQUALIFE. HOWEVER, AFTER BOTH WRITTEN AND VERBAL CONTACT WITH HIM, I HAVE NOT BEEN
ABLE TO OBTAIN ANY DOCUMENTATION TO THAT EFFECT.

Date: 06/12/1992 User Id: MERRITT Subject: THE WEST POND IS NOT BEING RECOMMENDED
THIS SPRING THE SITE WAS VISITED AND IT WAS OBSERVED THAT THE POND ON THE WEST SIDE OF THE CREEK IS NOT BEING USED. THIS
CONFIRMS WHY THE POND WAS NOT INCLUDED IN THE VOLUME CALCULATION FROM THE EPA AND ALSO CONFIRMS WHAT IS SEEN ON THE NAPP PHOTO
DATED IN 1988. SINCE THIS POND IS NOT USED THE DISCHARGE OF 10.7 CFS IS NOT INCLUDED IN THE TOTAL RECOMMENDED AMOUNT.

Date: 09/24/1992 User Id: MERRITT Subject: NOTICE OF ERROR RECEIVED
MR. ELLIS WAS CONTACTED BY PHONE (9/30/92). NO CHANGE IN THE CLAIM AS RECOMMENDED.

Date: 10/22/1992 User Id: ROBERTSO Subject: OWNERSHIP CHANGE
Change of ownership form received 10/22/92, original owners Clear Springs Trout Co-new owners Aqua Life Inc. Copy of deed submitted
with form. A36-04011 also changed on this date.

+ - - Audit Fields - - +
10/22/92 ROBERTSO

+ - - - - - 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	- 10/22/1992	Old Judicial District	-
Claim Received Date	- 09/01/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S002014	Water District	- 36A
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	-	Presumption Flag	-
				Notice of Error Flag	- B

MICROFILMED
FEB 04 1993

Water Right Number - R36-04011

Prefix Translation: RESEARCH

Old (D) Number -

VERIFIED ADM

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

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1 - P.O. BOX 712

2 -

3 -

City- BUHL

State- ID Zip- 83316

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No Old Water Right Numbers FoundMICROFILMED
FEB 04 1993

Water right number - R36-04011

Prefix Translation: RESEARCH

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

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

+ - - - - Comments - - - - -

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THIS SPRING THE SITE WAS VISITED AND IT WAS OBSERVED THAT THE POND ON THE WEST SIDE OF THE CREEK IS NOT BEING USED. THIS
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+ - - Audit Fields - - +
06/12/92 MERRITT

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

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Claim Received Date	- 09/01/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S002014	Water District	-
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	-	Presumption Flag	-
				Notice of Error Flag	-



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

March 24, 1992

R. KEITH HIGGINSON
DIRECTOR

Ken Ellis
AquaLife, Inc.
Rt. 5, Box 5053
Buhl, ID 83316

RE: Snake River Basin Adjudication (SRBA)
Gooding County - A36-04014

Dear Mr. Ellis:

I have yet to receive any additional information from you regarding the review of SRBA Claim A36-04014 which we discussed on the phone several weeks ago.

As you may recall, I told you that I have a copy of a lease dated 1954 describing the leasing of a water right for fish propagation. I sent you a copy of that lease on February 28; if you did not receive it, please let me know. You mentioned that there was a new lease that clarified any question of ownership of the water right.

If you have a new lease, or any other information pertinent to my review of the water rights from the springs above the Fisher property, please forward the documents to me to allow completion of my review. Please submit the information by April 3, 1992. If you have any questions or would like to discuss this subject further, please do not hesitate to contact me at 327-7935.

Additionally, I am still awaiting receipt of change of ownership forms for SRBA claims A36-02734 and A36-04011 as well as the claim mentioned above.

If I do not receive any additional information, I will complete my review with the information I have available.

Sincerely,

Helen Harrington Thornton

Helen Harrington Thornton
Sr. Water Resource Agent
Adjudication Bureau

HT:sf:ht:state:tf

4/3/92 - Mr. Ellis called on 4/3 to discuss these issues. He has obtained copies of assignments, but agrees that the lease does lease the water right. He will be giving me the paperwork (I think). He has all the assignments which show his ownership of all the fish development from Clear Springs and will also get it to me.

He was in court w/ Endmont/Thousand Springs and won the case - all ownership documentation should be in order.

He believes there may be changes in the ponds and is concerned about whether new rights have been developed. He has a map that accurately shows all ponds & dimensions - will give me.

MICROFILMED
FEB 04 1993

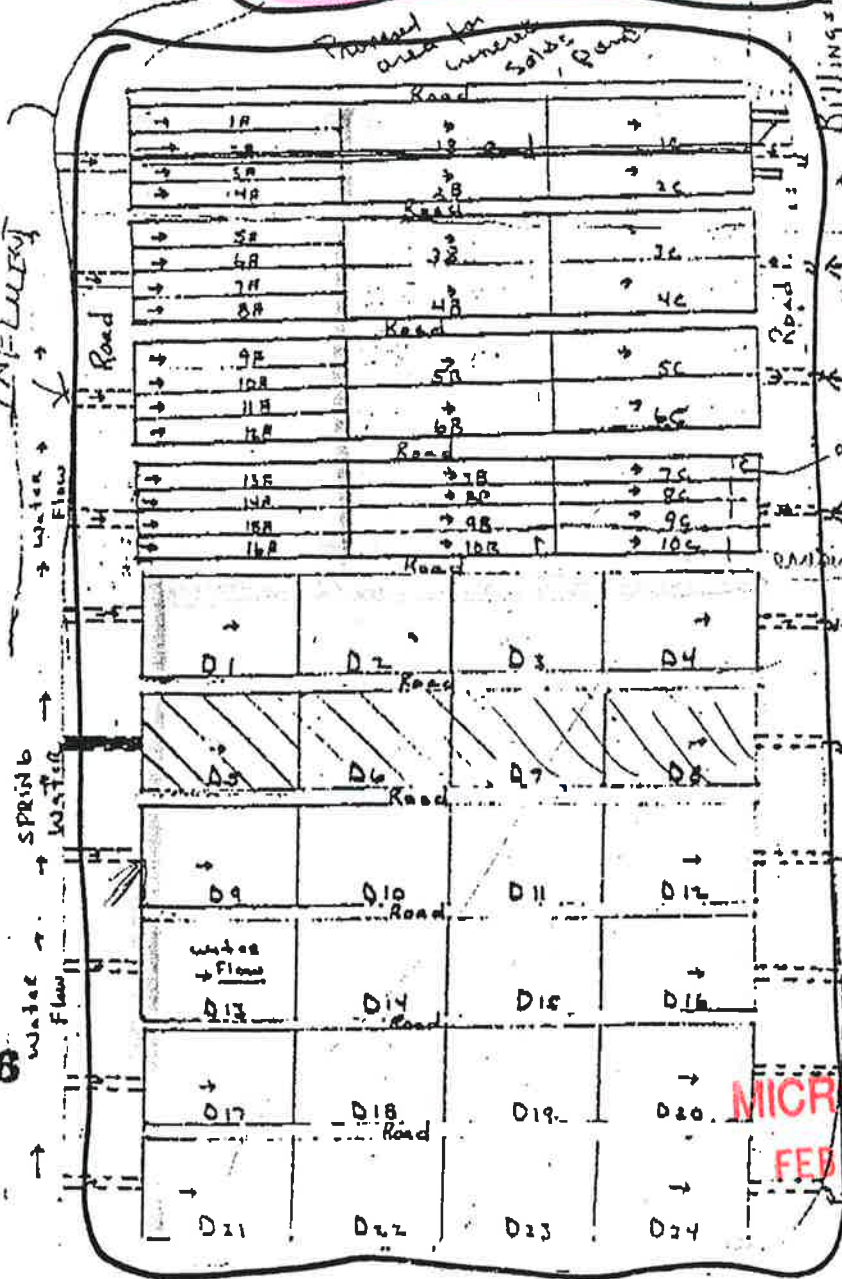
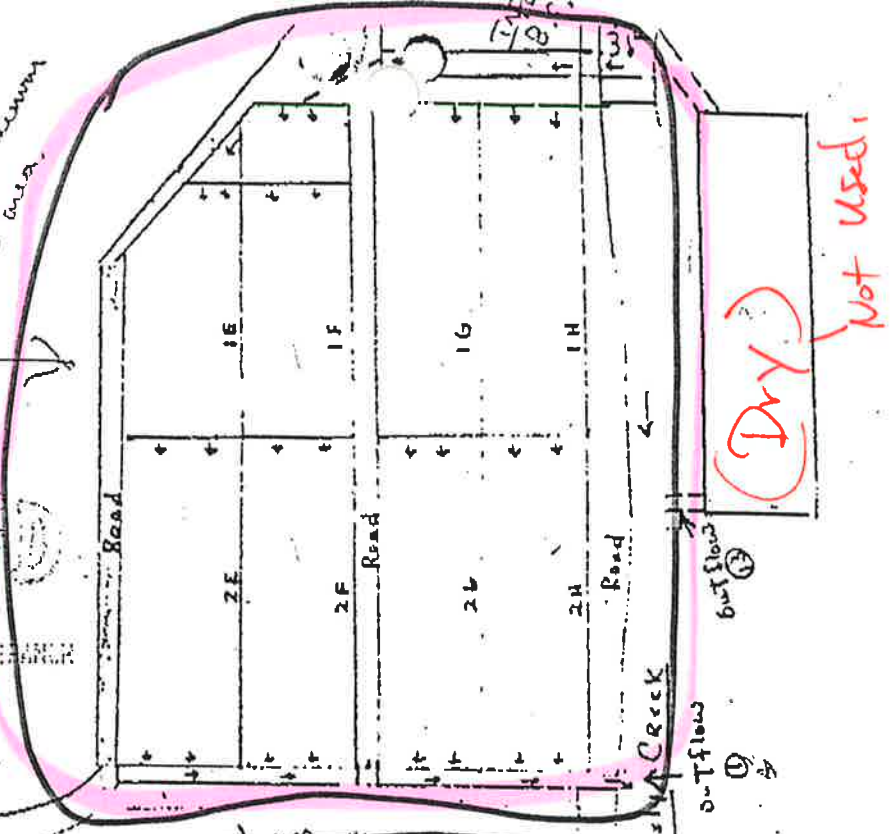
5/7/92 -
Received from
Skins Lavelle,
DEQ,TF

36-02734
-04011

Will incorporate
Sand traps at
in-flow
Ken want to
construct 32 manure
in the area

RECEIVED
MAY 1 1989

WATER PERMITS & COMPLIANCE DIVISION
EPA-REGION 10



Idaho Springs
Agriculture Industries

ID SPRINGS
IN-FLUX

36-02414
-02338

ID-000073-6

MICROFILMED
FEB 04 1993

Peto
House

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

LOT 4 Sec. 18

36-02338 54.68 (Fisher)

Lake

(1971)

unnamed stream
4.0
62.9
04014 05.0
springs

Exist. Ponds

Billingsley Creek

POINT OF RETURN 'A'

Area 'A'

Proposed Dam & Fish Ladder

POINT OF RETURN 'B'

East take
West take

Property Line

Proposed Ponds

POINT OF DIVERSION 'A'

CHANNEL CHANGE

Proposed Ponds

COUNTY ROAD

POINT OF DIVERSION 'B'

LOT 1 Sec. 19

Typical Ditch Sections

Div. 'A' & 'B'

Channel Change

15' 1 1/2:1

10' 1 1/2:1

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

MICROFILMED

FEB 04 1965

Permit Map No. 32600

As Approved

CARL E. TAPPAN

NOV 18 1965

State Reclamation Engineer

Idaho SPRINGS

Pond Index

Pond
NO

Width

Length

Depth

1E

45'

x

140'

x

5'

= 31500 ft³

2E

45'

x

140'

x

5'

= 31500 ft³

1F

45'

x

140'

x

5'

= 31500 ft³

2F

45'

x

140'

x

5'

= 31500 ft³

1G

50'

x

160'

x

5'

= 40000 ft³

2G

50'

x

160'

x

5'

= 40000 ft³

1H

50'

x

190'

x

5'

= 47500 ft³

2H

50'

x

190'

x

5'

= 47500 ft³301,000 ft³ = 6.9 IAF43500 ft³/a =

MICROFILMED

FEB 04 1993

07S14E

08 LT04	08 LT03	08 LT02	08 LT01	05 LT04	05 LT03	05 LT02	05 LT01	04 LT04	04 LT03	04 LT02	04 LT01	03 LT04	03 LT03	03 LT02	03 LT01	02 LT04	02 LT03	02 LT02	02 LT01	01 LT04	01 LT03	01 LT02	01 LT01
08 LT05	08 NE3W	08 NW0E	08 NE3E	05 NW3W	05 NE3W	05 NW0E	05 NE3E	04 NW3W	04 NE3W	04 NW0E	04 NE3E	03 NW3W	03 NE3W	03 NW0E	03 NE3E	02 NW3W	02 NE3W	02 NW0E	02 NE3E	01 NW3W	01 NE3W	01 NW0E	01 NE3E
08 LT06	08 SE3W	08 SW3E	08 SE3E	05 SW3W	05 SE3W	05 SW0E	05 SE3E	04 SW3W	04 SE3W	04 SW0E	04 SE3E	03 SW3W	03 SE3W	03 SW0E	03 SE3E	02 SW3W	02 SE3W	02 SW0E	02 SE3E	01 SW3W	01 SE3W	01 SW0E	01 SE3E
07 LT01	07 NE1W	07 NW1E	07 NE1E	08 NW1W	08 NE1W	08 NW1E	08 NE1E	08 NW1W	08 NE1W	08 NW1E	08 NE1E	10 NW1W	10 NE1W	10 NW1E	10 NE1E	11 NW1W	11 NE1W	11 NW1E	11 NE1E	12 NW1W	12 NE1W	12 NW1E	12 NE1E
07 LT02	07 SE1W	07 SW1E	07 SE1E	08 SW1W	08 SE1W	08 SW1E	08 SE1E	08 SW1W	08 SE1W	08 SW1E	08 SE1E	10 SW1W	10 SE1W	10 SW1E	10 SE1E	11 SW1W	11 SE1W	11 SW1E	11 SE1E	12 SW1W	12 SE1W	12 SW1E	12 SE1E
07 LT03	07 NE3W	07 NW3E	07 NE3E	08 NW3W	08 NE3W	08 NW0E	08 NE3E	08 NW3W	08 NE3W	08 NW0E	08 NE3E	10 NW3W	10 NE3W	10 NW0E	10 NE3E	11 NW3W	11 NE3W	11 NW0E	11 NE3E	12 NW3W	12 NE3W	12 NW0E	12 NE3E
07 LT04	07 SE3W	07 SW3E	07 SE3E	08 SW3W	08 SE3W	08 SW0E	08 SE3E	08 SW3W	08 SE3W	08 SW0E	08 SE3E	10 SW3W	10 SE3W	10 SW0E	10 SE3E	11 SW3W	11 SE3W	11 SW0E	11 SE3E	12 SW3W	12 SE3W	12 SW0E	12 SE3E
18 LT01	18 NE1W	18 NW1E	18 NE1E	17 NW1W	17 NE1W	17 NW1E	17 NE1E	18 NW1W	18 NE1W	18 NW1E	18 NE1E	15 NW1W	15 NE1W	15 NW1E	15 NE1E	14 NW1W	14 NE1W	14 NW1E	14 NE1E	13 NW1W	13 NE1W	13 NW1E	13 NE1E
18 LT02	18 SE1W	18 SW1E	18 SE1E	17 SW1W	17 SE1W	17 SW1E	17 SE1E	18 SW1W	18 SE1W	18 SW1E	18 SE1E	15 SW1W	15 SE1W	15 SW1E	15 SE1E	14 SW1W	14 SE1W	14 SW1E	14 SE1E	13 SW1W	13 SE1W	13 SW1E	13 SE1E
18 LT03	18 NE3W	18 NW3E	18 NE3E	17 NW3W	17 NE3W	17 NW0E	17 NE3E	18 NW3W	18 NE3W	18 NW0E	18 NE3E	15 NW3W	15 NE3W	15 NW0E	15 NE3E	14 NW3W	14 NE3W	14 NW0E	14 NE3E	13 NW3W	13 NE3W	13 NW0E	13 NE3E
18 LT04	18 SE3W	18 SW3E	18 SE3E	17 SW3W	17 SE3W	17 SW0E	17 SE3E	18 SW3W	18 SE3W	18 SW0E	18 SE3E	15 SW3W	15 SE3W	15 SW0E	15 SE3E	14 SW3W	14 SE3W	14 SW0E	14 SE3E	13 SW3W	13 SE3W	13 SW0E	13 SE3E
19 LT01	19 NE1W	19 NW1E	19 NE1E	20 NW1W	20 NE1W	20 NW1E	20 NE1E	21 NW1W	21 NE1W	21 NW1E	21 NE1E	22 NW1W	22 NE1W	22 NW1E	22 NE1E	23 NW1W	23 NE1W	23 NW1E	23 NE1E	24 NW1W	24 NE1W	24 NW1E	24 NE1E
19 LT02	19 SE1W	19 SW1E	19 SE1E	20 SW1W	20 SE1W	20 SW1E	20 SE1E	21 SW1W	21 SE1W	21 SW1E	21 SE1E	22 SW1W	22 SE1W	22 SW1E	22 SE1E	23 SW1W	23 SE1W	23 SW1E	23 SE1E	24 SW1W	24 SE1W	24 SW1E	24 SE1E
19 LT03	19 NE3W	19 NW3E	19 NE3E	20 NW3W	20 NE3W	20 NW0E	20 NE3E	21 NW3W	21 NE3W	21 NW0E	21 NE3E	22 NW3W	22 NE3W	22 NW0E	22 NE3E	23 NW3W	23 NE3W	23 NW0E	23 NE3E	24 NW3W	24 NE3W	24 NW0E	24 NE3E
19 LT04	19 SE3W	19 SW3E	19 SE3E	20 SW3W	20 SE3W	20 SW0E	20 SE3E	21 SW3W	21 SE3W	21 SW0E	21 SE3E	22 SW3W	22 SE3W	22 SW0E	22 SE3E	23 SW3W	23 SE3W	23 SW0E	23 SE3E	24 SW3W	24 SE3W	24 SW0E	24 SE3E
20 LT01	20 NE1W	20 NW1E	20 NE1E	20 NW1W	20 NE1W	20 NW1E	20 NE1E	20 NW1W	20 NE1W	20 NW1E	20 NE1E	27 NW1W	27 NE1W	27 NW1E	27 NE1E	28 NW1W	28 NE1W	28 NW1E	28 NE1E	25 NW1W	25 NE1W	25 NW1E	25 NE1E
20 LT02	20 SE1W	20 SW1E	20 SE1E	20 SW1W	20 SE1W	20 SW1E	20 SE1E	20 SW1W	20 SE1W	20 SW1E	20 SE1E	27 SW1W	27 SE1W	27 SW1E	27 SE1E	28 SW1W	28 SE1W	28 SW1E	28 SE1E	25 SW1W	25 SE1W	25 SW1E	25 SE1E
20 LT03	20 NE3W	20 NW3E	20 NE3E	20 NW3W	20 NE3W	20 NW0E	20 NE3E	20 NW3W	20 NE3W	20 NW0E	20 NE3E	27 NW3W	27 NE3W	27 NW0E	27 NE3E	28 NW3W	28 NE3W	28 NW0E	28 NE3E	25 NW3W	25 NE3W	25 NW0E	25 NE3E
20 LT04	20 SE3W	20 SW3E	20 SE3E	20 SW3W	20 SE3W	20 SW0E	20 SE3E	20 SW3W	20 SE3W	20 SW0E	20 SE3E	27 SW3W	27 SE3W	27 SW0E	27 SE3E	28 SW3W	28 SE3W	28 SW0E	28 SE3E	25 SW3W	25 SE3W	25 SW0E	25 SE3E
21 LT01	21 NE1W	21 NW1E	21 NE1E	22 NW1W	22 NE1W	22 NW1E	22 NE1E	22 NW1W	22 NE1W	22 NW1E	22 NE1E	24 NW1W	24 NE1W	24 NW1E	24 NE1E	25 NW1W	25 NE1W	25 NW1E	25 NE1E	26 NW1W	26 NE1W	26 NW1E	26 NE1E
21 LT02	21 SE1W	21 SW1E	21 SE1E	22 SW1W	22 SE1W	22 SW1E	22 SE1E	22 SW1W	22 SE1W	22 SW1E	22 SE1E	24 SW1W	24 SE1W	24 SW1E	24 SE1E	25 SW1W	25 SE1W	25 SW1E	25 SE1E	26 SW1W	26 SE1W	26 SW1E	26 SE1E
21 LT03	21 NE3W	21 NW3E	21 NE3E	22 NW3W	22 NE3W	22 NW0E	22 NE3E	22 NW3W	22 NE3W	22 NW0E	22 NE3E	24 NW3W	24 NE3W	24 NW0E	24 NE3E	25 NW3W	25 NE3W	25 NW0E	25 NE3E	26 NW3W	26 NE3W	26 NW0E	26 NE3E
21 LT04	21 SE3W	21 SW3E	21 SE3E	22 SW3W	22 SE3W	22 SW0E	22 SE3E	22 SW3W	22 SE3W	22 SW0E	22 SE3E	24 SW3W	24 SE3W	24 SW0E	24 SE3E	25 SW3W	25 SE3W	25 SW0E	25 SE3E	26 SW3W	26 SE3W	26 SW0E	26 SE3E

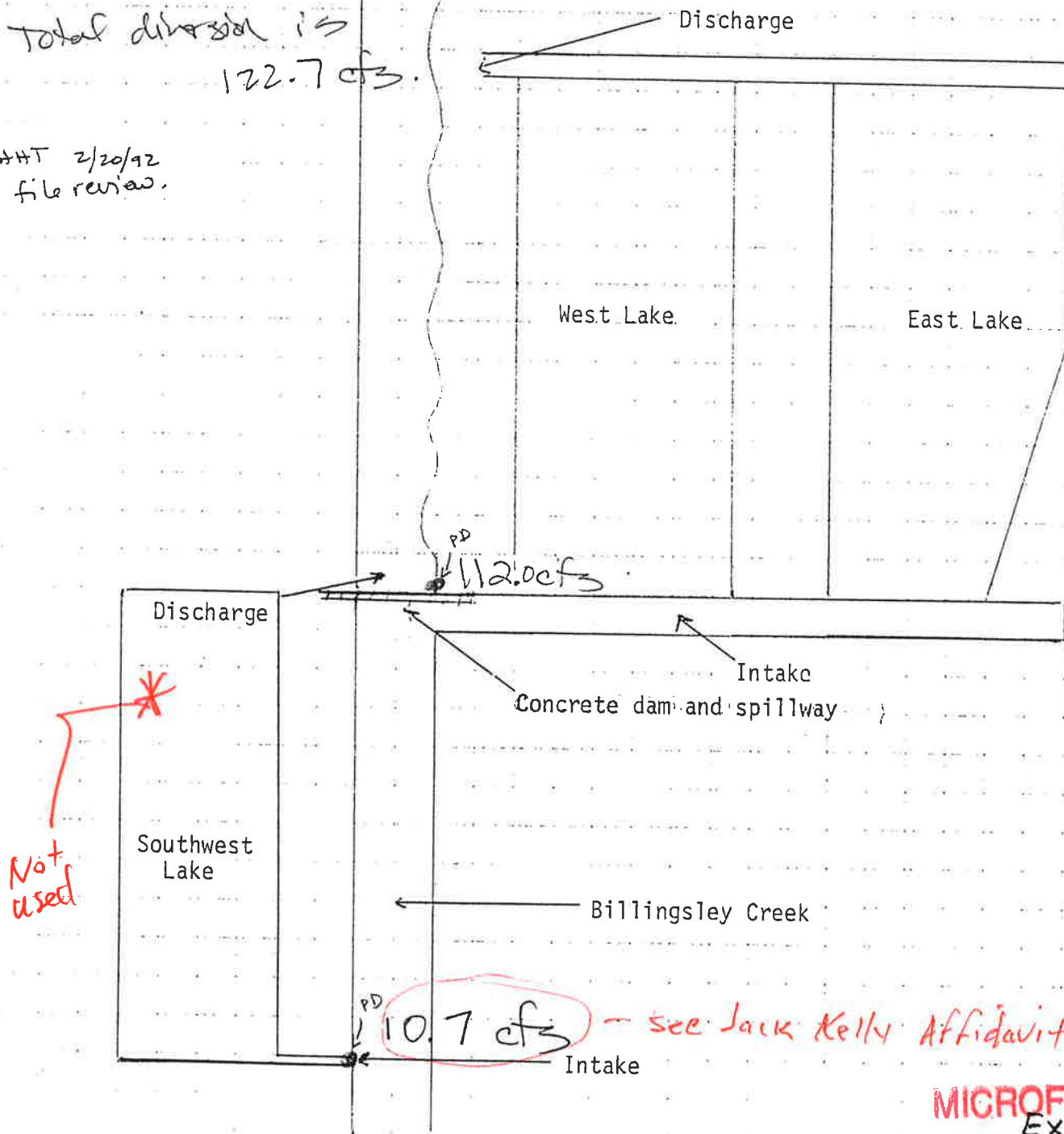
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FEB 04 1993

BILLINGSLEY CREEK DIVERSION

According to Jack Kelly, P.E. (1971)
measured diversion was as shown below:
Total diversion is
122.7 cfs.

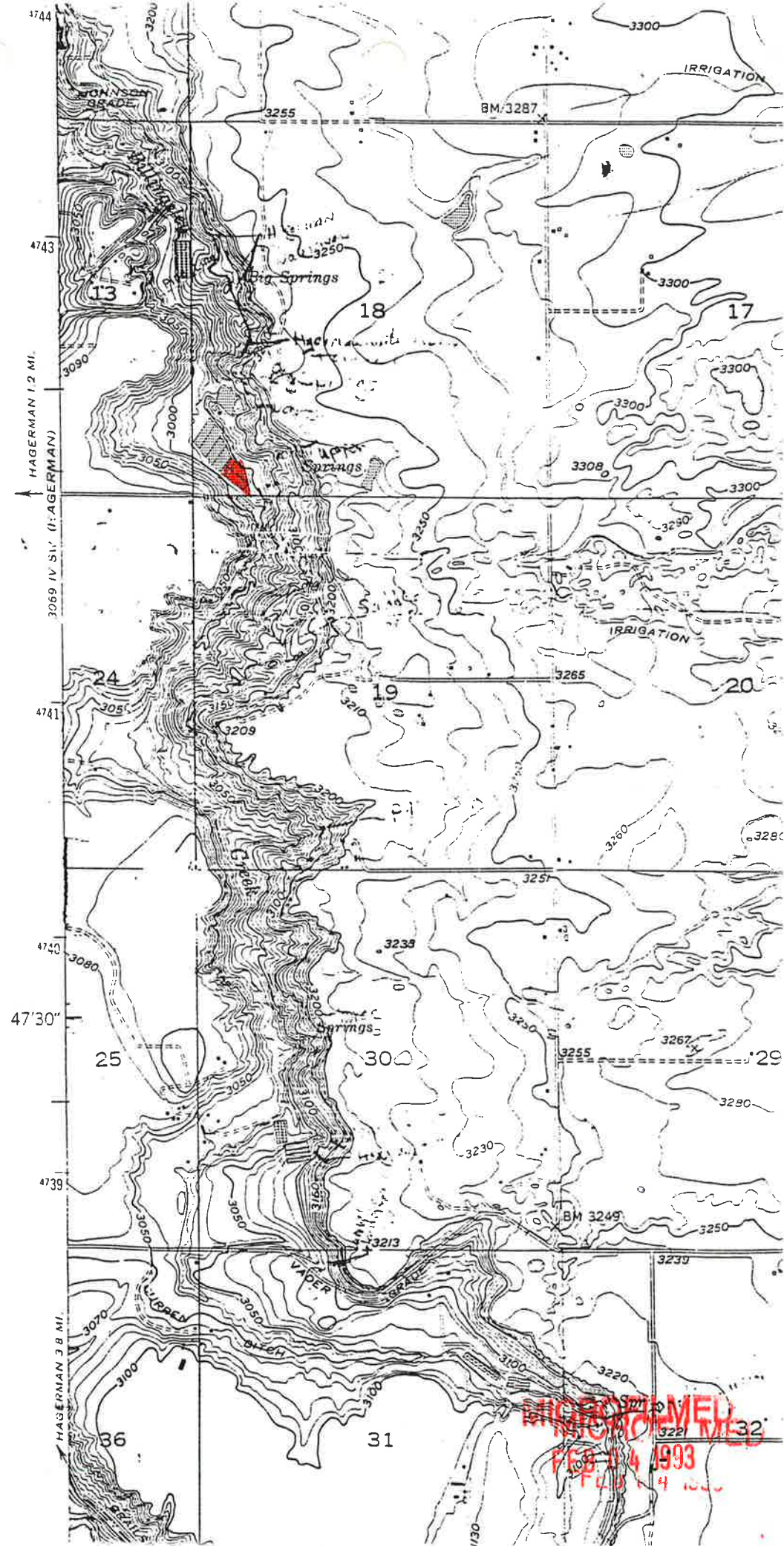
HHT 2/20/92
file review.



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Exhibit B
FEB 04 1993

36 4011

Scale: 1 inch = 100 feet



36-4011

BILLINGSLEY CREEK DIVERSION

POND DESCRIPTION

The first diversion of water from Billingsley Creek by Idaho Springs Trout Farm took place on December 1, 1965. The diversion has been made continuously since this time. The water is used as follows:

1. Southwest Lake.

This unit is 300 feet by 50 feet and averages three feet in depth providing 45,000 cubic feet of volume. The pond has been operated successfully by utilizing 15 to 20 cubic feet per second and 1.3 to 1.6 water exchanges per hour. It holds a maximum of 50,000 pounds of fish.

2. West Lake.

This unit is 330 feet by 140 feet and averages three feet in depth providing 138,600 cubic feet of volume. The pond has been operated using 20 to 55 cubic feet per second depending on the time of year and fish density. Water exchange rate varies from less than 1 to 1.4 per hour. The unit has held a maximum of 120,000 pounds of trout.

3. East Lake.

This unit is 300 feet by 140 feet and averages three feet in depth providing 126,000 cubic feet in volume. The pond has been operated with 15 to 45 cubic feet per second depending on varying factors. Water exchange rate varies from less than 1 to 1.3 per hour. This unit holds a maximum of 110,000 pounds of fish.

36 4011

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FEB 24 1983
Exhibit B

WATER REQUIREMENTS AND TROUT PRODUCTION

The three units described utilize 50 to 120 cubic feet per second of Billingsley Creek water. Water requirements vary widely in these units due to fluctuating water temperatures and varying water quality (turbidity from upstream activity). Since water temperatures may approach 70° F., adequate oxygen content must be maintained by providing a relatively high volume of flow. Water chemistry has been periodically sampled to ensure adequate conditions for trout rearing. Production of trout has averaged 350,000 pounds per year since 1966.

36 4011

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FEB 04 1993
Exhibit B

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

15:25:49
05/10/91

PAGE: 12
QUICKLOOK INFORMATION

CLAIM NUMBER: A36-04011

WR ELEMENT	FIELD EXAM Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	VERIFIED BY CODE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE		N/A		N	6	HAT 5/19/92	HAT 5/19/92	HAT 5/19/92
POINT OF DIV	Y			N	4,5	↓	↓	↓
SOURCE				N				
PLACE OF USE	Y			N				
DIV. AMOUNT CFS/VOLUME				Y	6			
CONSUMPTIVE USE	-			N				
PURPOSES				N				
PERIOD OF USE				N				
BASIS OF CLAIM				N				
REMARKS	Y			XX	see below			

"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.

Remarks

E07 36-02734 122.7 combined rate

DOG ~~30,600 AF~~ 6.9 AF

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FEB 04 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

15:25:49
05/10/91

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A36-04011

LAST: CLEAR SPRINGS TROUT CO.
ADDRESS: P.O. BOX 712
CITY: BUHL
PHONE NUMBER: 208-543-4316

FIRST:
STATE: ID ZIP: 83316

OWNER CODE: C

FIELD EXAM REQUIRED?

DATABASE
Y

FIELD
EXAMINER

VERIFICATION REQUIRED DUE TO REMARKS?

CLAIM REMARKS: 2 P/D IN NWNW, S19, T7S, R14E, LOT 1.
SEE CLAIM A36-2734 FOR ADDITIONAL DATA.

FIELD EXAMINATION INFORMATION

CONTACT PERSON: _____

PHONE NUMBER: (____) ____-____

DATE OF FIELD EXAM: ____/____/____

APPOINTMENT MADE: Y(____) N(____)

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

ACCOMPANIED BY: _____

PHONE NUMBER: (____) ____-____

RELATIONSHIP TO CLAIMANT: _____

DIRECTIONS TO PROPERTY / REMARKS:

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FEB 04 1993

A. AJ CLAIM: # A36-04011 PRIORITY DATE: 12-01-1965 STAGE: S
B. WR RECORD: # 36-04011 PRIORITY DATE: 12-01-1965 STAGE: S

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

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

REMARKS: See Affidavit in file from Dave Erickson, 3/5/71, stating that the
1st diversion of water for this right was 12/1/65. Recommend that date.

RECOMMENDED PRIORITY DATE:
12-01-1965

REVIEWED BY ms DATE 5/28/91

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FEB 04 1993

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A36-04011	07S	14E	19	NE	NW	NW	1	GOODING

OTHER AJ CLAIMS WITH SAME AJ POD
A PREFIX R PREFIX
A36-02734 NONE

WR RECORDS IN SAME 40 ACRE TRACT
36-02734

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
36-04011	07S	14E	19		NW	NW	1	GOODING

OTHER WR RECORDS WITH SAME WR POD

AJ CLAIMS IN SAME 40 ACRE TRACT
A PREFIX R PREFIX

36-02734

A36-02734 NONE

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

C. FIELD EXAM REQUIRED?

DUE TO POD DISCREPANCY? (Y/N)
DUE TO SOURCE DISCREPANCY? (Y/N)

DATABASE
Y
N

FIELD
EXAMINER
N
N

REMARKS:

Based on knowledge of area and previous field work, P/D is correct

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RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	COUNTY
<u>7S</u>	<u>14E</u>	<u>19</u>	<u>NE</u>	<u>NW</u>	<u>NW</u>	<u>1</u>	<u>Gooding</u>

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

REVIEWED BY: Helen Thayer

DATE: 2/20/72

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FEB 04 1993

A. ROOT WATER RIGHT NUMBERS: A36-04011

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
07S	14E	18	SW	SW	4	CLEAR SPRINGS TROUT CO.	A36-04011 /	36-04011 /	10.0		
			SW	SW	4	FISHER , OPAL HOLMES	A36-10842 /20.0	- /			
			SW	SW	4	TUPPER , ROBERT E.	A36-04073 / 4.0	36-04073 / 4.0			
			SW	SW	4	FISHER , OPAL HOLMES	A36-02338 /	- /			
			SW	SW	4	AQUA LIFE CORP.	A36-02414 /	36-02414 /			
			SW	SW	4	AQUA LIFE CORP.	R36-02414 /	- /			
			SW	SW	4	CLEAR SPRINGS TROUT CO.	A36-02734 /	36-02734 /			
			SW	SW	4	TUPPER , ROBERT E.	A36-07841 /	36-07841 /			
			SW	SW	4	CLEAR SPRINGS TROUT CO.	A36-04014 /	36-04014 /			
			SW	SW	4	FISHER , OPAL HOLMES	R36-02338 /	- /			
			SW	SW	4	TUPPER , ROBERT E.	R36-07841 /	- /			
			SW	SW	4	TUPPER , W. G.		36-00115 /			
07S	14E	19	NW	NW	1	CLEAR SPRINGS TROUT CO.	A36-04011 /	36-04011 /	29.0		
			NW	NW		BUCKEYE LAND CO.	A36-00046 /20.0	- /			
			NW	NW	1	CLEAR SPRINGS TROUT CO.	A36-02734 /	36-02734 /			
			NW	NW	1	BUCKEYE LAND COMPANY	R36-00046 /15.0	- /			
			NW	NW	1	TUPPER , W. G.		36-00114 /			
			NW	NW		TUPPER , W. G.		36-02042 / 5.0			
TOTAL ACRES							A36-04011		39.00		

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

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE
Y

FIELD
EXAMINER
N

No irrigation

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FEB 04 1993

PRESUMPTION FLAG:

REMARKS:

RECOMMENDATIONS:

TOTAL ACRES: 0

REVIEWED BY: Walter Thornton

DATE: 2/20/92

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FEB 04 1993

A. AJ CLAIMED USES:

PURPOSES MONTH/DAY
A36-04011 FISH PROPAGATION FROM 01-01 TO 12-31
TOTAL DIVERSION RATE/VOLUME CLAIMED

DIVERSION QUANTITY
~~50.000~~ CFS 22.7
50.000 CFS 22.7

B. WR RECORDED USES:

PURPOSES MONTH/DAY
36-04011 FISH PROPAGATION FROM 01-01 TO 12-31
TOTAL DIVERSION RATE/VOLUME CLAIMED

DIVERSION QUANTITY
50.000 CFS
50.000 CFS

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

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

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y(☒) N(☐)

RECOMMEND TO WR STANDARDS OR OTHER?

Y(☐) N(☐) Explain in remarks, below.

REMARKS:

According to P.E. affidavit from Jack Kelly, capacity of system is 122.7 from both P/P. 100 cfs is covered under 36-02734, therefore only 22.7 cfs are available.

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A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

Y() N()

AJ TOTAL CLAIMED DIVERSION RATE: 50.000 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 50.000 CFS

See Remarks

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

FLOW MEASUREMENT REQUIRED?

FIELD
DATABASE EXAMINER

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

Y

B.

FLOW MEASUREMENT

MEASUREMENT METHOD

SEE ATTACHED CALCULATIONS.

*Measurements made by Jack Kelly, P.E.
in 1970. See attached affidavit.*

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

OTHER RIGHTS LISTED IN CLAIM: A3602414, A36-02734, A36-04014

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	0.430	0.024		
A36-00046	THREE SPRINGS	BUCKEYE LAND CO.	5.700	0.016	2907.00	8.35
R36-00046	THREE SPRINGS	BUCKEYE LAND COMPANY	5.700	0.018	1212.00	3.97

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

CLAIM NO.	PURPOSES	NAME	MONTH/DAY	RATE	VOLUME
A36-04011	FISH PROPAGATION	CLEAR SPRINGS TROUT CO.	FROM 01-01 TO 12-31	50.000 CFS	
A36-10842	DOMESTIC	FISHER , OPAL HOLMES	FROM 01-01 TO 12-31	.080 CFS	
A36-02338	FISH PROPAGATION	FISHER , OPAL HOLMES	FROM 01-01 TO 12-31	54.680 CFS	
A36-02414	FISH PROPAGATION	AQUA LIFE CORP.	FROM 01-01 TO 12-31	4.000 CFS	
R36-02414	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	
R36-02338	FISH PROPAGATION	FISHER , OPAL HOLMES	FROM 01-01 TO 12-31	54.680 CFS	
R36-07841	FISH PROPAGATION	TUPPER , ROBERT E.	FROM 01-01 TO 12-31	1.000 CFS	

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D. RATE/VOLUME CALCULATIONS: (IRRIGATION)

1b. CALCULATIONS

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

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

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

N/A

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()

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

If consumptive use, surface area of ponds is:

Facility volume:

SW pond 45,000
W pond 138,600
E pond 126,000

Total 309,600 ~~cu ft~~ cu ft.

Surface area: SW pond
W pond
E pond

15,000 sq ft
46,200 sq ft.
42,000 sq ft.

Total

103,200 sq ft.

5-19-92

See attached DEQ documents; current facility volume = 301,000 ~~cu ft~~ cu ft
= 6.9 AF

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FEB 04 1992

RECOMMENDATIONS:

REC. PURPOSES	REC. PERIOD FROM TO	REC. DIV RATE CFS	REC. DIV VOL. AF/A	REC. CONS. USE
FISH PROPAGATION	01-01 12-31	DATABASE EXAMINER 50.000 22.7	DATABASE EXAMINER _____	DATABASE EXAMINER 0.0 _____
TOTAL FOR THIS RIGHT		50.000 22.7		0.0

REVIEWED BY:

Helen Thornton

DATE:

2/20/92

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FEB 04 1993

A. CHECK ONLY THE FOLLOWING THAT APPLY:

OWNERSHIP _____
FORFEIT/ABANDON _____
ADDITIONAL DIV. AMOUNT _____

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

unable to obtain documentation

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 36-04011

TOTAL DIVERSION RATE OF WR SPLITS

DATABASE
50.000

EXAMINER

CFS

SPLITS:

OLD RIGHT
NUMBERS

CURRENT
CLAIM NUMBERS

DIVERSION
RATE

CURRENT "R"
CLAIM NUM.

"R" DIV.
RATE

WR RIGHT
NUMBERS

DIVERSION
RATE

-

A36-04011

50.000

-

36-04011

50.000

TOTAL CFS

50.000

50.000

DIVERSION RATE REVIEW

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

DATABASE
Y

FIELD
EXAMINER

REMARKS:

AUTHENTICATION:

SIGNATURE:

Deter Harrington Thoms

DATE:

5/19/92

NAME OF FIELD EXAMINER:

Deter Harrington Thoms

TITLE:

SWR Res Mgt

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FEB 04 1993

From
Ker Ellis

Total = 381,656 ft³
43560 ft²/ac
= 8.761 ac

Pond Ida Springs Pond Index

No	width	Length	Depth	Pond No	width	Length	Depth
1A	9'	x 100'	x 4' = 3600	5C	18'	x 100'	x 4' = 7200
2A	9'	x 100'	x 4' = 3600	6C	18'	x 100'	x 4' = 7200
3A	9'	x 110'	x 4' = 3960	7C	9'	x 100'	x 4' = 3600
4A	9'	x 110'	x 4' = 3960	8C	9'	x 100'	x 4' = 3600
5A	9'	x 120'	x 4' = 4320	9C	9'	x 100'	x 4' = 3600
6A	9'	x 120'	x 4' = 4320	10C	9'	x 100'	x 4' = 3600
7A	9'	x 120'	x 4' = 4320	1D	25'	x 75'	x 4' = 7500
8A	9'	x 120'	x 4' = 4320	2D	25'	x 90'	x 4' = 9000
9A	9'	x 90'	x 4' = 3240	3D	25'	x 90'	x 4' = 9000
10A	9'	x 90'	x 4' = 3240	4D	25'	x 105'	x 4' = 10500
11A	9'	x 90'	x 4' = 3240	5D	25'	x 75'	x 4' = 7500
12A	9'	x 90'	x 4' = 3240	6D	25'	x 90'	x 4' = 9000
13A	9'	x 100'	x 4' = 3600	7D	25'	x 90'	x 4' = 9000
14A	9'	x 100'	x 4' = 3600	8D	25'	x 95'	x 4' = 9500
15A	9'	x 100'	x 4' = 3600	9D	25'	x 75'	x 4' = 7500
16A	9'	x 100'	x 4' = 3600	10D	25'	x 90'	x 4' = 9000
1B	18'	x 96'	x 4' = 6912	11D	25'	x 90'	x 4' = 9000
2B	18'	x 96'	x 4' = 6912	12D	25'	x 90'	x 4' = 9000
3B	18'	x 96'	x 4' = 6912	13D	25'	x 75'	x 4' = 7500
4B	18'	x 96'	x 4' = 6912	14D	25'	x 90'	x 4' = 9000
5B	18'	x 100'	x 4' = 7200	15A	25'	x 90'	x 4' = 9000
6B	18'	x 100'	x 4' = 7200	16D	25'	x 90'	x 4' = 9000
7B	9'	x 100'	x 4' = 3600	17D	25'	x 75'	x 4' = 7500
8B	9'	x 100'	x 4' = 3600	18D	25'	x 90'	x 4' = 9000
9B	9'	x 100'	x 4' = 3600	19D	25'	x 90'	x 4' = 9000
10B	9'	x 100'	x 4' = 3600	20D	25'	x 90'	x 4' = 9000
1C	18'	x 96'	x 4' = 6912	21D	25'	x 75'	x 4' = 7500
2C	18'	x 96'	x 4' = 6912	22D	25'	x 90'	x 4' = 9000
3C	18'	x 96'	x 4' = 6912	23D	25'	x 90'	x 4' = 9000
4C	18'	x 96'	x 4' = 6912	24D	25'	x 90'	x 4' = 9000

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Local 100' from
 Gen E 115

$$\text{Total} = \frac{381,656 \text{ ft}^3}{43,560 \text{ ft}^2/\text{ac}}$$

$$= 8.76 \text{ ac}$$

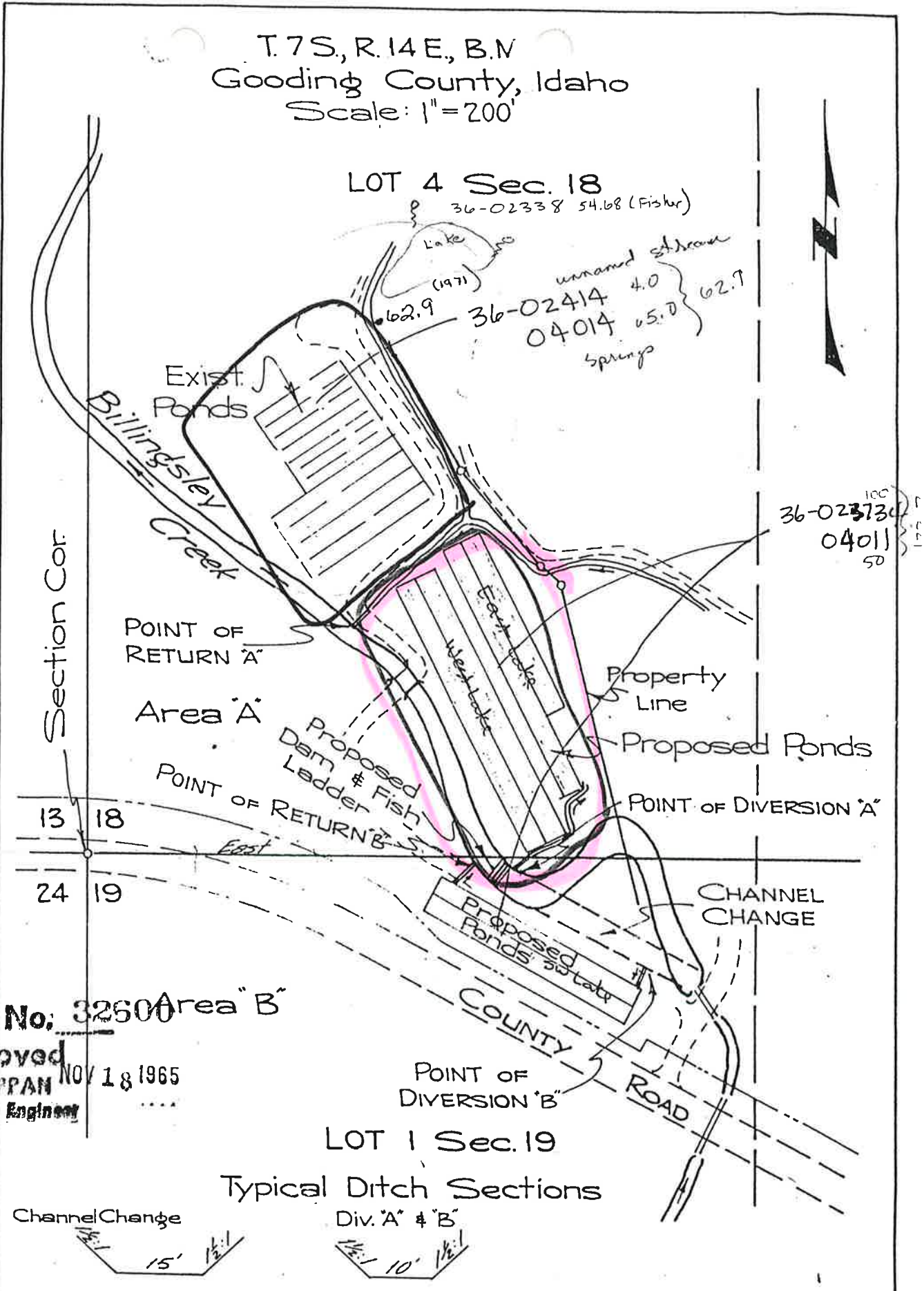
Pond Index

Pond No	width	Length	Depth	Pond No	width	Length	Depth
1A	9'	x 100'	x 4' = 3600	5C	18'	x 100'	x 4' = 7200
2A	9'	x 100'	x 4' = 3600	6C	18'	x 100'	x 4' = 7200
3A	9'	x 110'	x 4' = 3960	7C	9'	x 100'	x 4' = 3600
4A	9'	x 110'	x 4' = 3960	8C	9'	x 100'	x 4' = 3600
5A	9'	x 120'	x 4' = 4320	9C	9'	x 100'	x 4' = 3600
6A	9'	x 120'	x 4' = 4320	10C	9'	x 100'	x 4' = 3600
7A	9'	x 120'	x 4' = 4320	1D	25'	x 75'	x 4' = 7500
8A	9'	x 120'	x 4' = 4320	2D	25'	x 90'	x 4' = 9000
9A	9'	x 90'	x 4' = 3240	3D	25'	x 90'	x 4' = 9000
10A	9'	x 90'	x 4' = 3240	4D	25'	x 105'	x 4' = 10500
11A	9'	x 90'	x 4' = 3240	5D	25'	x 75'	x 4' = 7500
12A	9'	x 90'	x 4' = 3240	6D	25'	x 90'	x 4' = 9000
13A	9'	x 100'	x 4' = 3600	7D	25'	x 90'	x 4' = 9000
14A	9'	x 100'	x 4' = 3600	8D	25'	x 95'	x 4' = 9500
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2B	18'	x 96'	x 4' = 6912	12D	25'	x 90'	x 4' = 9000
3B	18'	x 96'	x 4' = 6912	13D	25'	x 75'	x 4' = 7500
4B	18'	x 96'	x 4' = 6912	14D	25'	x 90'	x 4' = 9000
5B	18'	x 100'	x 4' = 7200	15D	25'	x 90'	x 4' = 9000
6B	18'	x 100'	x 4' = 7200	16D	25'	x 90'	x 4' = 9000
7B	9'	x 100'	x 4' = 3600	17D	25'	x 75'	x 4' = 7500
8B	9'	x 100'	x 4' = 3600	18D	25'	x 90'	x 4' = 9000
9B	9'	x 100'	x 4' = 3600	19D	25'	x 90'	x 4' = 9000
10B	9'	x 100'	x 4' = 3600	20D	25'	x 90'	x 4' = 9000
1C	18'	x 96'	x 4' = 6912	21D	25'	x 75'	x 4' = 7500
2C	18'	x 96'	x 4' = 6912	22D	25'	x 90'	x 4' = 9000
3C	18'	x 96'	x 4' = 6912	23D	25'	x 90'	x 4' = 9000
4C	18'	x 96'	x 4' = 6912	24D	25'	x 90'	x 4' = 9000

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 FEB 6 4 1993

FROM
36-02734

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



Permit Map No. 32600 Area "B"

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

LOT 1 Sec. 19

Typical Ditch Sections

Channel Change

Div. A & B

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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FEB 4 1993

Idaho SPRINGS

Pond Index

Pond
NO

Width

Length

Depth

1E

45'

x

140'

x

5'

= 31500 ft³

2E

45'

x

140'

x

5'

= 31500 ft³

1F

45'

x

140'

x

5'

= 31500 ft³

2F

45'

x

140'

x

5'

= 31500 ft³

1G

50'

x

160'

x

5'

= 40000 ft³

2G

50'

x

160'

x

5'

= 40000 ft³

1H

50'

x

190'

x

5'

= 47500 ft³

2H

50'

x

190'

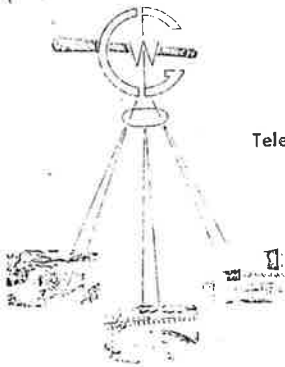
x

5'

= 47500 ft³301,000 ft³ = 6.9 IAF43500 ft²/a =

MICROFILMED

FEB 04 1993



Charles W. Glasby and Associates
CONSULTING ENGINEERS

Telephone 678-9650

BURLEY, IDAHO 83318

Overland Shopping Center

July 20, 1966

Harry Povey, Attorney
115 Second Street West
Twin Falls, Idaho

Dear Mr. Povey:

The water being diverted by the Idaho Springs Trout Farm from Billingsly Creek at Hagerman, Idaho was measured on July 12, 1966.

The volume of water was computed as follows:
North Pond - 106 c.f.s. measured by
current meter and cross-section method
South Pond - 14 c.f.s. measured by sub-
merged weir method

The total water being diverted is 120 c.f.s.

If you should need a signature or statement on any documents, please contact this office.

We thank you for the opportunity to be of service.

Sincerely,

Raymond J. Brossart
Raymond J. Brossart P.E.

CC Mr. Robert Erkins

RJB/jf

36 4011

MICROFILMED
FEB 04 1993

Exhibit A

BILLINGSLEY CREEK DIVERSION

POND DESCRIPTION

The first diversion of water from Billingsley Creek by Idaho Springs Trout Farm took place on December 1, 1965. The diversion has been made continuously since this time. The water is used as follows:

1. Southwest Lake.

This unit is 300 feet by 50 feet and averages three feet in depth providing 45,000 cubic feet of volume. The pond has been operated successfully by utilizing 15 to 20 cubic feet per second and 1.3 to 1.6 water exchanges per hour. It holds a maximum of 50,000 pounds of fish.

2. West Lake.

This unit is 330 feet by 140 feet and averages three feet in depth providing 138,600 cubic feet of volume. The pond has been operated using 20 to 55 cubic feet per second depending on the time of year and fish density. Water exchange rate varies from less than 1 to 1.4 per hour. The unit has held a maximum of 120,000 pounds of trout.

3. East Lake.

This unit is 300 feet by 140 feet and averages three feet in depth providing 126,000 cubic feet in volume. The pond has been operated with 15 to 45 cubic feet per second depending on varying factors. Water exchange rate varies from less than 1 to 1.3 per hour. This unit holds a maximum of 110,000 pounds of fish.

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FEB 04 1985

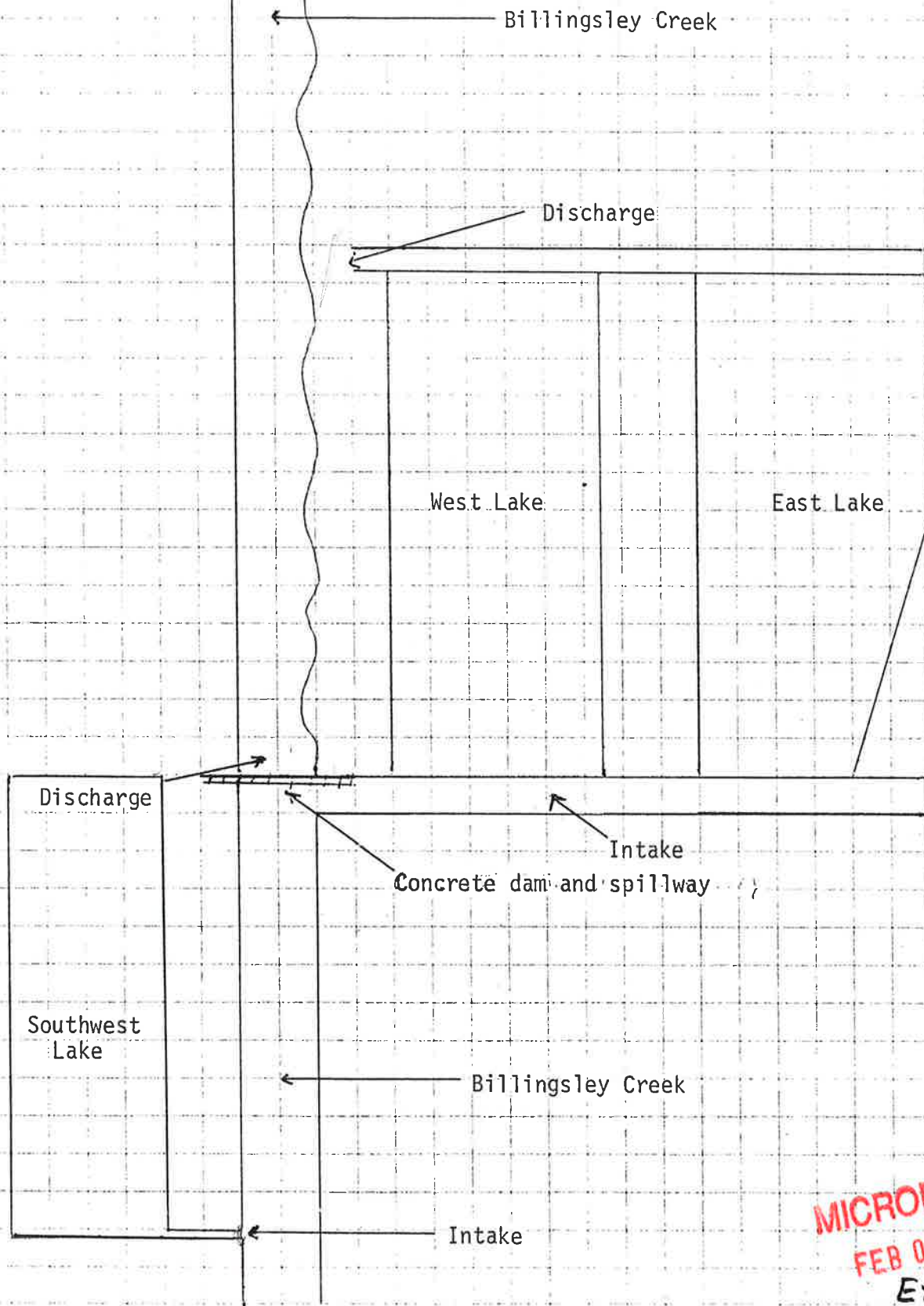
WATER REQUIREMENTS AND TROUT PRODUCTION

The three units described utilize 50 to 120 cubic feet per second of Billingsley Creek water. Water requirements vary widely in these units due to fluctuating water temperatures and varying water quality (turbidity from upstream activity). Since water temperatures may approach 70° F., adequate oxygen content must be maintained by providing a relatively high volume of flow. Water chemistry has been periodically sampled to ensure adequate conditions for trout rearing. Production of trout has averaged 350,000 pounds per year since 1966.

36 4011

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FEB 04 1993
Exhibit B

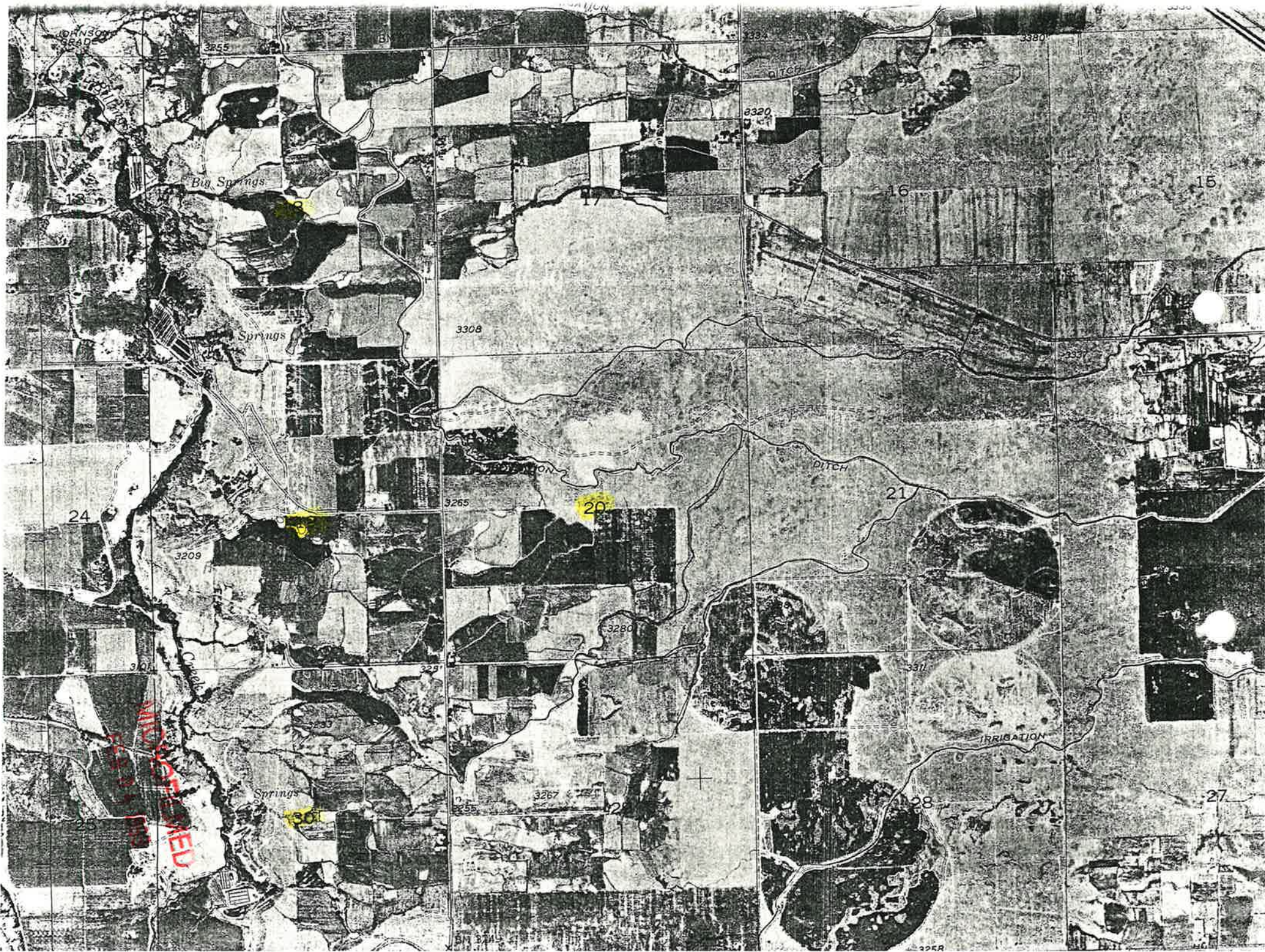
BILLINGSLEY CREEK DIVERSION



MICROFILMED
FEB 04 1993
Exhibit B

36 4011

Scale: 1 inch = 100 feet



R PROOF

CVR

MAPS

PHOTOS

MISC

MICROFILMED

FEB 04 1983

AFFIDAVIT

STATE OF IDAHO)
) SS
COUNTY OF Twin Falls)

J. David Erickson, being first duly sworn on his oath, deposes and says:

I am a professional fishery biologist residing at the Snake River Trout Farm in Gooding County, Idaho. I am employed as hatchery biologist by Thousand Springs Trout Farms, Inc. I have worked for this company or its predecessor since 1961.

I have visited and worked at the Idaho Springs Trout Farm on numerous occasions since December 1965. Diversion of Billingsley Creek waters into the trout ponds on this property began on December 1, 1965 and diversions have been made continuously since that time.

I have prepared the following description of the Billingsley Creek diversion that describes the ponds, water requirements and trout production. I have also prepared the accompanying map of Billingsley Creek diversion.

J. David Erickson
J. David Erickson

Subscribed and sworn to before me this 5th day of
March, 1971.

AFFIDAVIT

STATE OF IDAHO)
) SS
COUNTY OF ADA)

JACK E. KELLY being first duly sworn on his oath, deposes and says:

I am a registered professional engineer residing in Boise, Idaho. I am a partner in the consulting engineering firm of Anderson & Kelly which specializes in water resource work.

I have personally visited the Idaho Springs Trout Farm adjacent to Billingsley Creek located in Sec. 19, T.7S., R.14E. B.M. in Gooding County, Idaho. I have personally observed the diversion of a portion of Billingsley Creek into the Idaho Springs Trout Farm facilities on several occasions in 1969 and 1970. The water being used was in constructed channels that the Owner refers to as Southwest Lake, West Lake and East Lake. I observed the use of the diverted water for fish propagation during my visits to the property.

On December 10, 1970 I measured the diversion into Southwest Lake with a current meter at 10.7 cubic feet per second (cfs). On December 10, 1970 I measured the diversion into West Lake and East Lake by the submerged weir method at 112 cfs. On January 6, 1971 I measured the diversion into West Lake and East Lake together with Mr. Keith E. Anderson, a registered professional engineer, and my partner. We measured the discharge with a current meter and obtained a measurement of 111.3 cfs. The combined diversion on December 10, 1970 was 122.7 cfs.

Remarks - Con't

difficult to acquire an accurate diversion measurement.

However, a measurement was made on July 12, 1966, by Raymond J. Brossart, a professional engineer working for Charles W. Gladsby & Associates. Mr. Brossart measured 14 second feet on that day from the first point of diversion and 106 second feet from the second point of diversion. Therefore, on July 12, 1966, there was diverted 20 second feet more than could be covered by License #32600.

The flow of the springs is believed to vary from season to season and from year to year. . It is estimated by the applicant that as much as 150 second feet totally have been diverted. Mr. Bossart's letter has been marked as Exhibit A of this claim.

Dave Erickson has worked on the property for some period of time and is presently employed as hatchery manager. His personal knowledge as to the size and extent of the ponds and the production from the ponds has been set forth in an exhibit in an affidavit which has been marked as Exhibit B and included in this claim.

It is the claimant's intent to supply additional affidavits and additional data as they become available, including statements concerning the first use of water on the property from Billingsley Creek, the additional flow measurements, and aerial photographs of property.

MICROFILMED
FEB 04 1993

36 4911

Remarks - Con't

In addition to these claimed water rights and the water right under License #32600, waters are also diverted from springs and used in the same facilities and these supplemental rights are evidenced by License #28339 and water right claim # _____. (to be filed in Feb^{March}, 1971)

b. Do you get water through a ditch owned by several users? No If yes, give the name of the ditch
_____. The other users and their respective
interests in the ditch are (if known) _____

6. Where water is used for stock watering, give number of each kind of stock watered N. A.

7. Where water is used for domestic or municipal purposes give number of families served N. A.
name of town supplied _____

8. Where water is used for other purposes not above enumerated, give the nature of use, the extent of use,
and any details regarding the initiation of the right or subsequent later expansion. Be as specific as possible,
giving dates and quantities Fish Propagation -- See Remarks

9. Remarks: please explain any details of your claim which you feel need clarification or additional explanation
There are two points of diversion out of Billingsley Creek, both located in
Lot 1 of Sec. 19, T 7S, R 14E. The first diversion occurs on the south side
of the stream and diverts water for ponds on that side of the stream. The
water from these ponds is then returned to Billingsley Creek at a point in Lot 1
just below the second point of diversion.

The second point of diversion diverts water on the north side of Billingsley
Creek in Lot 1 and conveys it into Lot 4 of Sec. 18, T 7S, R 14E. The second
diversion is the larger diversion and is used in a series of ponds and raceways
that are located in Lot 4. These diversions and this water right occur in
connection with the diversion and the water right that is evidenced by License
#32600 in the name of Idaho Springs Trout Company, a subsidiary company of the

AFFIDAVIT

STATE OF IDAHO)
) SS
COUNTY OF Twin Falls)

J. David Erickson, being first duly sworn on his oath, deposes and says:

I am a professional fishery biologist residing at the Snake River Trout Farm in Gooding County, Idaho. I am employed as hatchery biologist by Thousand Springs Trout Farms, Inc. I have worked for this company or its predecessor since 1961.

I have visited and worked at the Idaho Springs Trout Farm on numerous occasions since December 1965. Diversion of Billingsley Creek waters into the trout ponds on this property began on December 1, 1965 and diversions have been made continuously since that time.

I have prepared the following description of the Billingsley Creek diversion that describes the ponds, water requirements and trout production. I have also prepared the accompanying map of Billingsley Creek diversion.

J. David Erickson
J. David Erickson

Subscribed and sworn to before me this 5th day of
March, 1971.

George W. Matthews
Notary Public
Residing in Buhl, Idaho

My Commission Expires: 1-1-73

MICROFILMED
FEB 04 1993

AFFIDAVIT

STATE OF IDAHO)
) SS
COUNTY OF ADA)

JACK E. KELLY being first duly sworn on his oath, deposes and says:

I am a registered professional engineer residing in Boise, Idaho. I am a partner in the consulting engineering firm of Anderson & Kelly which specializes in water resource work.

I have personally visited the Idaho Springs Trout Farm adjacent to Billingsley Creek located in Sec. 19, T.7S., R.14E. B.M. in Gooding County, Idaho. I have personally observed the diversion of a portion of Billingsley Creek into the Idaho Springs Trout Farm facilities on several occasions in 1969 and 1970. The water being used was in constructed channels that the Owner refers to as Southwest Lake, West Lake and East Lake. I observed the use of the diverted water for fish propagation during my visits to the property.

On December 10, 1970 I measured the diversion into Southwest Lake with a current meter at 10.7 cubic feet per second (cfs). On December 10, 1970 I measured the diversion into West Lake and East Lake by the submerged weir method at 112 cfs. On January 6, 1971 I measured the diversion into West Lake and East Lake together with Mr. Keith E. Anderson, a registered professional engineer, and my partner. We measured the discharge with a current meter and obtained a measurement of 111.3 cfs. The combined diversion on December 10, 1970 was 122.7 cfs.

I have analyzed spring flow records for other springs in the vicinity and have observed a seasonal fluctuation as evidenced by these records. It is my opinion that Billingsley Creek, which is derived from spring flow, will have a higher flow in August or September and that diversions into the Idaho Springs Trout Farm may be higher during these months.

Jack E. Kelly
JACK E. KELLY

MICROFILMED
FEB 04 1993

Subscribed and sworn to before me this 12th day of February, 1971.

Corinne B. Redmond
NOTARY PUBLIC

Residing in Boise, Idaho

My Commission Expires: Feb. 1, 1975

36 4911

Exhibit C

36-04011
Lic. File

b. Do you get water through a ditch owned by several users? No If yes, give the name of the ditch
_____. The other users and their respective
interests in the ditch are (if known) _____

6. Where water is used for stock watering, give number of each kind of stock watered N. A.

7. Where water is used for domestic or municipal purposes give number of families served N. A.
name of town supplied _____

8. Where water is used for other purposes not above enumerated, give the nature of use, the extent of use,
and any details regarding the initiation of the right or subsequent later expansion. Be as specific as possible,
giving dates and quantities Fish Propagation -- See Remarks

9. Remarks: please explain any details of your claim which you feel need clarification or additional explanation
There are two points of diversion out of Billingsley Creek, both located in
Lot 1 of Sec. 19, T 7S, R 14E. The first diversion occurs on the south side
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water from these ponds is then returned to Billingsley Creek at a point in Lot 1
just below the second point of diversion.

The second point of diversion diverts water on the north side of Billingsley
Creek in Lot 1 and conveys it into Lot 4 of Sec. 18, T 7S, R 14E. The second
diversion is the larger diversion and is used in a series of ponds and raceways
that are located in Lot 4. These diversions and this water right occur in
connection with the diversion and the water right that is evidenced by License
#32600 in the name of Idaho Springs Trout Company, a subsidiary company of the
applicant. The licensed right is for only 100 second feet of flow. There is
more water utilized for fish propagation than is allowed by this license.
Because of the diverting works, their arrangement and the volume of water it is

State of Idaho

County of Twin Falls

} ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the
foregoing claim to a water right, together with all attached information, and that the matters and facts therein are
true to the best of the affiants knowledge.

Thousand Springs Trout Company
Robert E. Ehlert, President
Claimant

Sworn to before me this 5th day of March, 1971.

Loeyn D. Matthews
Notary Public
Residing at Buhl, Idaho

My commission expires January 1, 1973

For Department Use Only

Received by _____	Date <u>3-15-71</u>	Exception filed by: _____	Forwarded to claimant by: _____	Date _____
Prelim. check by <u>OK</u>	Date <u>3-15-71</u>	_____	_____	_____
Fee received by <u>OK</u>	Date <u>3-15-71</u>	Fee \$ <u>10⁰⁰</u>	_____	_____
Approved for publication by _____	_____	_____	_____	_____
Published in <u>Gooding County</u>	Dates <u>4-1 & 4-8, 1971</u>	_____	_____	_____
<u>Leader at Gooding, Idaho</u>				

36 4011