

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: A36-07071
Date Received: 8/19/1988
Receipt No: S001554
Received By: W

COPY

FOR YOUR FILES
DO NOT RETURN

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: JOHN W. JONES JR. 208-837-4580
Address: BOX 265 83332
HAGERMAN, ID
AND/OR
Name: DELORIS D. JONES JR. 208-837-4580
Address: BOX 265 83332
HAGERMAN, ID
2. Date of Priority: JUL 08, 1969
3. Source: WEATHERBY SPRINGS Trib. to: BILLINGSLEY CREEK
THREE SPRINGS BILLINGSLEY CREEK
HOAGLAND TUNNEL BILLINGSLEY CREEK
4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
07S	14E	30	SE	NW			GOODING
			NE	SW			GOODING
5. Description of diverting works:
HEAD BOX, TWO 10" PIPES, ONE 24" PIPE & ONE 36" PIPE.
6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
FISH PROPAGATION	01/01	12/31	73.050		52794.00
7. Total Quantity Appropriated is:
73.050 C.F.S. (and/or) 52794.00 A.F.A.
8. Total consumptive use is Acre Feet Per Annum.
9. Non-irrigation uses:
FISH PROP/ 90 RACEWAYS-LRG & SMALL

A36-07071

Page

1

Date: 08/19/88

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OCT 19 1994
FEB 11 1988

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
07S	14E	30	NE SW		FISH	

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: LICENSE

16. Signature(s)

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

Number of attachments: 1

For Individuals:

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

Signature of Claimant(s): John W Jones Jr Date: Aug 19 1988
Date:

State of Idaho)
County of Twin Falls) SS.

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

Seal

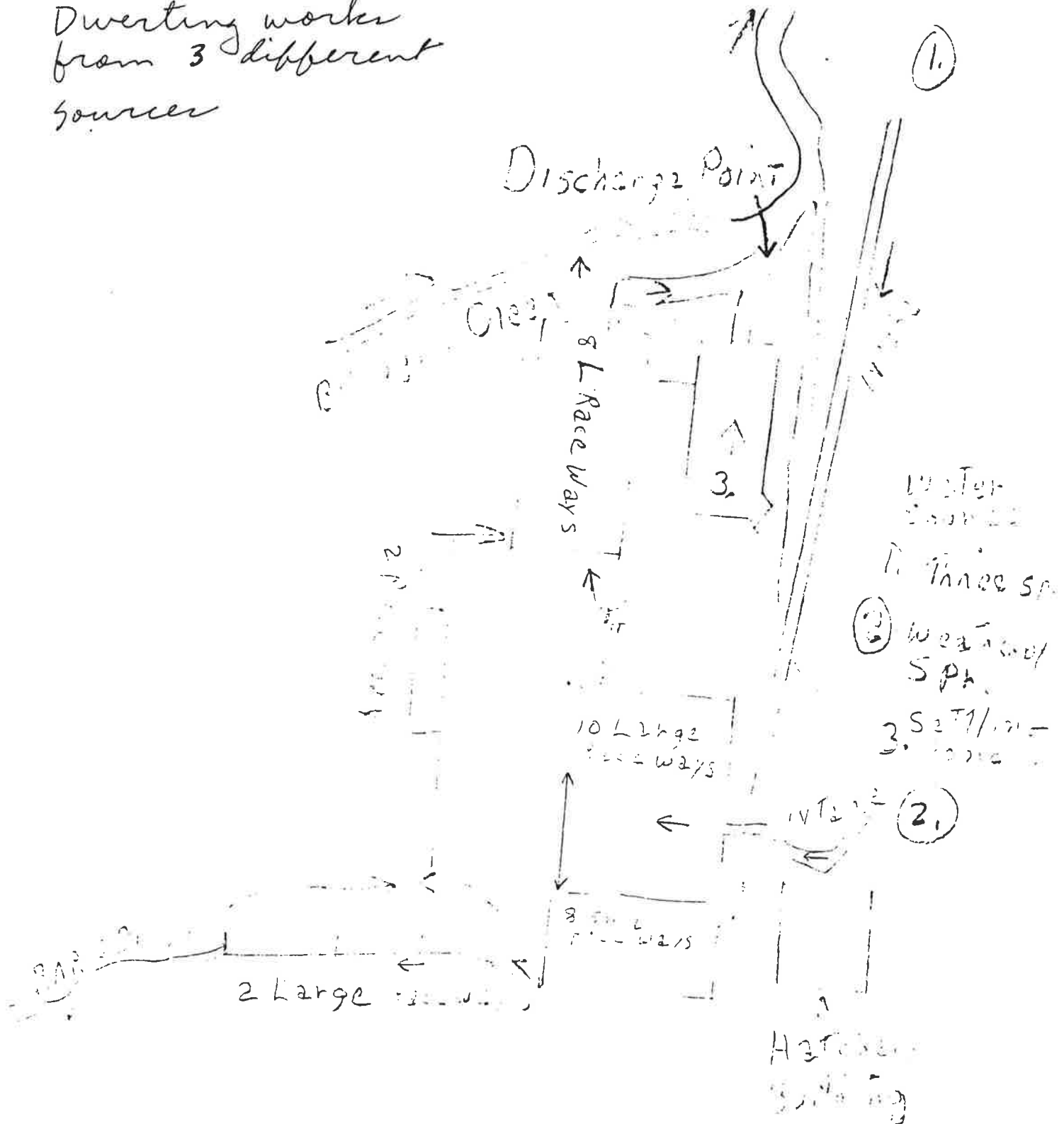
Roxanne Storey
Notary Public

Residing at Buhl, ID

My Commission Expires 6-30-94

POOR ORIGINAL

Diverting works
from 3 different
sources



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

TOTAL RECORDS IN SELECTION FILE: 116

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OCT 19 1994

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

Water right number - R36-07071

Adj. flag translation: RESEARCH

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

D06 *F06*

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

+ - - - - Conditions of Approval - - - - -
el *R01* - A measuring device of a type approved by this Department shall be
maintained as a part of the diverting works. *del*

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

+ - - - - Comments - - - - -
Date: 02/26/1991 User Id: BEDKE Subject: SCC-STAFF REVIEW

pond's sizes

+ - - Audit Fields - - +
BEDKE

+ - - - - Water Rights Dates and Flags Area - - - - -
Temporary Right ~P Receipt Number - S001554 Water District - 36A

pass flag

10-8-91
su

11-7-91
su

RECEIVED
FEB 10 1993
Department of Water Resources

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

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

* * * * *

10 In Re the General Adjudication)
11 of Rights to the Use of Water)
12 from the Snake River Basin)
13 Water System)

Case No. 39576

14 The State of Idaho, ex rel.
15 R. Keith Higginson in his
16 official capacity as director
17 of the Idaho Department of
18 Water Resources,

NOTICE OF APPEARANCE

Petitioner,

vs.

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

Respondents.

* * * * *

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



Hepworth,
Nungester,
& Lezamiz

NOTICE OF APPEARANCE - 1

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OCT 19 1994

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



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OC 1 19 1994

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



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NOTICE OF APPEARANCE - 3

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OCT 19 1984

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

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

12 DATED This 9 day of February, 1993.

13 HEPWORTH, NUNGESTER & LEZAMIZ

14
15 By 
16 PATRICK D. BROWN
Attorneys for Respondents

17
18 CERTIFICATE OF MAILING

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



Hepworth,
Nungester,
& Lezamiz

MICROFILMED
OCT 19 1994

1 February, 1993, to:

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

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

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

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

12
13 
14 Patrick D. Brown



Hepworth,
Nungester,
& Lezamiz



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 1, 1993

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

Re: Notice of Appearance

Dear Mr. Brown:

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

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

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

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OCT 19 1994

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

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

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

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OCT 19 1994

Mr. Patrick D. Brown
 March 1, 1993
 Page 3

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

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

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

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OCT 19 1994

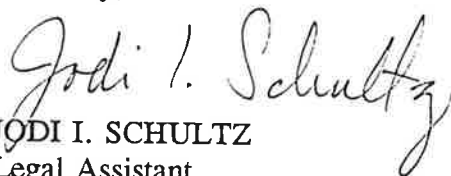
Mr. Patrick D. Brown
March 1, 1993
Page 4

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

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

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

Sincerely,



JODI I. SCHULTZ

Legal Assistant

Idaho Department of Water Resources

cc: IDWR Southern Region

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OCT 19 1994

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Department of Water Resources

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

In Re SRBA
Case No. 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-07071

200 APR 10 AM 10:19

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS: DELORIS D JONES
JOHN W JONES JR
PO BOX 265
HAGERMAN ID 83332

SOURCE: WEATHERBY SPRINGS
THREE SPRINGS
HOAGLAND TUNNEL

TRIBUTARY: BILLINGSLEY CREEK
BILLINGSLEY CREEK
BILLINGSLEY CREEK

QUANTITY: 73.05 CFS

THE APPROPRIATOR SHALL CONTINUOUSLY ALLOW 6.50 CFS FROM
WEATHERBY SPRINGS TO BE DELIVERED INTO BAR S DITCH FROM THE
OUTLET OF FISH OPERATION DESCRIBED ABOVE FROM MARCH 1 UNTIL
NOVEMBER 1 OF EACH YEAR, AND SHALL CONTINUOUSLY ALLOW 4.00 CFS
FROM WEATHERBY SPRINGS TO BE DELIVERED INTO THE BAR S DITCH FROM
THE OUTLET OF FISH OPERATION DESCRIBED ABOVE FROM NOVEMBER 1
UNTIL MARCH 1 OF EACH YEAR.

PRIORITY DATE: 07/08/1969

POINT OF DIVERSION: T07S R14E S30 SESENW Within GOODING County
SENESW

PURPOSE AND PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
FISH PROPAGATION 01-01 12-31 73.05 CFS
90 RACEWAYS

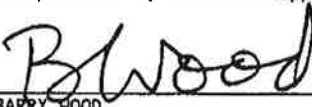
PLACE OF USE: FISH PROPAGATION Within GOODING County
T07S R14E S30 NESW

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

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

RULE 54(b) CERTIFICATE

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


BARRY WOOD
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

SRBA PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 36-07071

PAGE 1
MAR-13-2000

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APR 11 2000

Department of Water Resources

2000 APR 10 AM 10:18

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

)

ORDER OF PARTIAL DECREE

)

Case No. 39576

)

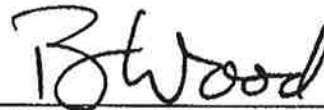
For Water Right 36-07071

)

The Notice of Challenge filed in the above subcase having been heard and ruled upon, IT IS
THEREFORE ORDERED that water right 36-07071 is hereby **decreed** as set forth in the attached
Partial Decree Pursuant to I.R.C.P. 54(b).

IT IS SO ORDERED.

DATED APR 10 2000



BARRY WOOD
Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication

Adjudication Recommendation Report 36-7071 V2

WATER RIGHT NUMBER: 36-7071 V2

Priority Date: 07/08/1969 ✓
Basis: License
Status: Active

0683-6422
ORIS D JONES
BOX 265
GERMAN, ID 83332
)837-4580
IN W JONES JR
BOX 265
GERMAN, ID 83332
)837-4580

source diff - pd has 3 like v1

Tributary

Tributary

BILLINGSLEY CREEK

Annual Volume

Total Diversion: 73.050 CFS ✓

Sec. 20, Twp 04N, Rge 03E, B.M.

ADA County

FISH PROPAGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	
07S	14E	30									X								

wrong
PD
use
VI
PD

Conditions of Approval:

Corrected per V. Kelly
DPL
3-26-02

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 36-7071 V2

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

Remarks:

1. Quantity THE APPROPRIATOR SHALL CONTINUOUSLY ALLOW 6.50 CFS FROM WEATHERBY SPRINGS TO BE DELIVERED INTO BAR S DITCH FROM THE OUTLET OF FISH OPERATION DESCRIBED ABOVE FROM MARCH 1 UNTIL NOVEMBER 1 OF EACH YEAR, AND SHALL CONTINUOUSLY ALLOW 4.00 CFS FROM WEATHERBY SPRINGS TO BE DELIVERED INTO THE BAR S DITCH FROM THE OUTLET OF FISH OPERATION DESCRIBED ABOVE FROM NOVEMBER 1 UNTIL MARCH 1 OF EACH YEAR. ✓
2. Purpose of Use 90 RACEWAYS ✓
3. Explanatory THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 36-00011A, 36-00011B, 36-00029A, 36-00029B, 36-00033B, 36-00033C, 36-00033D, 36-00033E, 36-00033F, 36-00033G, 36-00041A, 36-00041B, 36-00041C, 36-00041D, 36-00042A, 36-00044, 36-00046, 36-00060, 36-00061, 36-00062, 36-00068, 36-00070, 36-00086C, 36-00086D, 36-00086E, 36-00086F, 36-00086G, 36-00086H, 36-000105, 36-00116, 36-00119, 36-00120, 36-15157 AND 36-11142. FACILITY VOLUME 173,240 CU. FT.

Comments:

1. BEDKE 2/26/1991 SCC-STAFF REVIEW
Comment:
2. CLELLAND 11/7/1991 FACILITY VOLUME
Comment: PER CONVERSATION WITH BILL JONES ON 10-24-91. LARGE PONDS ABOVE - 30 X 2580 CU. FT. = 77,400 CU. FT. LARGE PONDS WEST - 6 X 2580 CU. FT. = 15,480 CU. FT. LARGE PONDS BELOW - 30 X 2220 CU. FT. = 66,600 CU. FT. SMALL PONDS - 16 X 860 CU. FT. = 13,760 CU. FT. TOTAL FACILITY VOLUME = 173,240 CU. FT. (8 SEED PONDS NOT USED)
3. THORNTON 8/11/1992 TYPO CORRECTION
Comment:
4. SCHULTZ 9/24/1992 NOTICE OF ERROR (NOE)
Comment: NOE RECEIVED 9/23/92. CHANGED NOE FLAG FROM BLANK TO A. CLAIM VERIFIED 8/18/92. DID NOT REVERIFY ANY PART OF CLAIM.
5. CHRISTEN 10/14/1992 RESPONSE TO NOE
Comment: INFORMED CLAIMANT THAT THE RECOMMENDATION OF 82 RACEWAYS WAS BASED UPON A FIELD EXAM AND THAT THE ADDITIONAL 8 RACEWAYS CLAIMED WOULD REQUIRE A PERMIT IF DEVELOPED. I ALSO EXPANDED UPON THE INFORMATION IN REMARKS TO CLARIFY HIS QUESTIONS. NO CHANGES WERE MADE TO THIS CLAIM AT THIS TIME. KKC 10-14-92.
6. SCHULTZ 2/19/1993 ADDED NEW ATTORNEY
Comment: RECEIVED NOTICE OF APPEARANCE FROM HEPWORTH NUNGESTER LEZAMIZ 2/10/93. CLAIM VERIFIED 10/14/92--DID NOT REVERIFY CLAIM.
7. CFRITSCH 5/20/1998 REFORMATTED/REVISED RECORD
Comment: THIS RECORD WAS REFORMATTED AND REVISED TO MATCH THE S.M. REPORT AND RECOMMENDATION SIGNED 05/19/98.
8. SSHERMAN 11/5/1999 NOTICE OF APPEARANCE
Comment: NOA AS CO-COUNSEL (CONSOLIDATED ISSUES) REC'D FROM D CRAIG LEWIS 11/3/99.
9. AJU10-DS 3/10/2000 AJU10 CONDITION UPDATE
Comment: CONDITION CODE(S) C18 ADDED IF NOT ALREADY PART OF RECORD THRU AJU10.

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommendation Report 36-7071 V2

Dates and Other Information:

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

SubCase:

SubCase Number: 36-7071
Class: 1
SF5 Filed Date:
Special Master Recom Signed Date: 5/19/1998
Attorney Assigned: NICHOLAS B SPENCER
Adjudication Agent:
Basis of Claim:
Date Filed: 11/19/1998 Objection Status: Active
Date Filed: 4/29/1993 Objection Status: Active

RECEIVED

NOV 3 - 1999

Department of Water Resources

RECEIVED

NOV 08 1999

Department of Water Resources
Southern Region

1999 NOV -1 AM 10:14

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

North Snake Ground Water District

D. Craig Lewis
University of Idaho
College of Law
6th & Rayburn Street
Moscow, ID 83843
(208) 885-6422
ISB No. 2063

R' records modified 11-5-99.

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. 36-07071, 36-02356,
36-07210, 36-07427, 36-07720, 36-02659,
36-07004, 36-07080, and 36-07731

Notice of Appearance as Co-Counsel
(Consolidated Issues)

PLEASE TAKE NOTICE that D. Craig Lewis hereby enters his appearance as co-counsel
to represent the North Snake Ground Water District in the above-mentioned subcases.

DATED this 1st day of November, 1999.


D. Craig Lewis

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of November, 1999, I caused to be served copies of the foregoing **Notice of Appearance as Co-Counsel (Consolidated Issues)** by the method indicated:

Patrick D. Brown
109 S. Adams Street
Jerome, ID 83338
* U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Dan Steenson
Ringert Clark
P. O. Box 2773
Boise, ID 83701-2773
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax

Norman Semanko
John E. Robertson
Rosholt, Robertson & Tucker
P. O. Box 1906
Twin Falls, ID 83303
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax

Idaho Department of Water Resources
Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098
* U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Chief, Natural Resources Division
Office of the Attorney General
P. O. Box 44449
Boise, Idaho 83711-4449
* U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

D:\1780\2\ac\CSF3640


Dana L. Hofstetter

MAY 23 1956

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

三

(Insert water right number)

STANDARD FORM 1 OBJECTION

B. NAME AND ADDRESS OF PERSON OBJECTING

MAIL



**Josephine P. Beeman
Dana L. Hofstetter
Beeman & Hofstetter, P.C.
608 West Franklin Street
P. O. Box 1427
Boise, Idaho 83701-1427
(208) 388-8900**

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

SF.1 - Objection
Amended 10/16/97

Page !

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: less than 73.05 cfs and should include a diverted volume quantity
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
11. **I object because:**
 - ☐ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): The quantity element does not adequately take into consideration actual beneficial use, including issues of partial forfeiture, adverse possession, estoppel, other legal principles, and seasonal water supply or use fluctuations.

F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

Dana L. Hofstetter, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6) or 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)

Dana Hofstetter

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: November 18, 1998



Joy C. Angell

Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: 07-24-2002

INSTRUCTIONS FOR MAILING

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

G.

CERTIFICATE OF MAILING

I certify that on November 18, 1998, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

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

Name: Deloris D. Jones
John W. Jones, Jr.
Address: P. O. Box 265
Hagerman, ID 83332

Patrick D. Brown
Parker, Warr & Brown
812 Shoshone Street East
Twin Falls, ID 83301

3. Copies to:

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

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

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

Gary D. Slette
Rosholt, Robertson & Tucker
P. O. Box 1906
Twin Falls, ID 83303



Signature of Objector or attorney
mailing on Objector's behalf

SOUTHERN
FILE 5-1a

MAY 20 1998

Department of Water Resources
Adjudication Bureau

1993 MAY 19 PM 4: 13

FILED _____ CO., IDAHO

In Re SRBA)
)
Case No. 39576)
)
)

Water Right(s): 36-07071


TERI HRANAC
Deputy Clerk

1998 MAY 19 PM 4:13
DISTRICT COURT - SP3A
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	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION
Case No. 39576	)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHT 36-07071

I. PROCEDURAL BACKGROUND

A notice of claim was filed for this water right pursuant to I.C. § 42-1409 (1996). The Director of the State of Idaho Department of Water Resources (IDWR) examined the water system and investigated and abstracted the notices of claim for this reporting area. The *Director's Report for Reporting Area 3 (Director's Report)* contained a recommendation for the elements of this water right.

Claimant John W. Jones, Jr., uses this water right for fish propagation by running water through "raceways" at a fish hatchery. The *Director's Report* for this water right includes a limitation on the facility volume used at the fish hatchery. Jones objected to the inclusion of the limitation.¹

No summary judgment motion was filed in this subcase. A trial was held September 10, 1997. The court called the Idaho Department of Water Resources as a witness pursuant to

¹ Billingsley Creek Ranch and Donnie McFadden filed a *Motion for Late Objection* (Jan. 5, 1996), seeking to assert objections to quantity. Billingsley Creek Ranch and McFadden then filed a *Notice of Contingent Withdrawal of Motion to File Late Objection*. The *Motion for Late Objection* was not pursued. Billingsley Creek Ranch and McFadden received all notices of trial scheduling, but did not appear at trial.

I.R.E. 614. IDWR was not permitted to participate as a party, and did not make objections or give closing argument.

The trial focused on whether the facility volume limitation recommendation by IDWR should be included for this right. IDWR gave five reasons for including volume. These reasons were to define quantity, nature or purpose of use, place of use, to administer the right in order to protect water quality, or to administer the right in case of a transfer. Jones asserted that IDWR could not justify including facility volume based on any of those reasons.

II. STANDARD OF REVIEW

A. STATUTORY CONSTRUCTION

IDWR included a facility volume limitation on this right to define elements of the right or as necessary to define or administer pursuant to I.C. § 42-1411(2) (Supp. 1997). The interpretation of I.C. § 42-1411 is a question of law. Statutory interpretation begins with the words of the statute, giving the language its plain, obvious, and rational meaning. If statutory language is clear and unambiguous, a court applies the statute without engaging in any statutory construction. *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 727, 732, 947 P.2d 400, 405 (1997). Further, I.C. § 73-113 provides that "[w]ords and phrases are construed according to the context and the approved usage of the language." If it is necessary for the court to construe a statute, it will then try to ascertain legislative intent. 947 P.2d at 406. "In construing a statute, the court may examine the language used, the reasonableness of the proposed interpretations, and the policy behind the statute" *Id.*

Application of a statute is an aid to construction, especially where the public relies on that application over a long period of time. *Id.* at 406. Where contemporaneous and practical interpretation has stood unchallenged for a considerable length of time, it will be regarded as important in arriving at the proper construction of a statute. *Id.* at 407.

The Idaho Supreme Court has recently emphasized that it will accord deference to agency construction of a statute when certain conditions are met. An agency's construction of a statute will be given great weight if:

- 1) the agency has been entrusted with the responsibility to administer the statute at issue;
- 2) the agency's construction of the statute is reasonable;

- 3) the statutory language at issue does not expressly treat the precise question at issue; and
- 4) any of the rationales underlying the rule of deference are present.

Id. at 407.

B. ELEMENTS OF A WATER RIGHT

IDWR concluded that a facility volume limitation was necessary for this right to define one or more of the elements -- quantity, nature or purpose of use, or place of use. In the alternative, IDWR included facility volume as necessary to further define or administer this right. The elements of a water right in Idaho are enumerated in I.C. § 42-1411(2) (Supp. 1997). The enumerated elements of a water right include: claimant, source, quantity, priority, point of diversion, purpose of use, period of use, place of use, conditions included in prior decrees or licenses, and other matters necessary to define or administer the right. Facility volume is not an enumerated element.

III. FINDINGS OF FACT

Water right 36-07071 was licensed in 1974. The license does not include a limitation on facility volume. (Exhibits 2 and 3; Testimony of David Tuthill; Testimony of Mark Daily.) The *Director's Report for Reporting Area 3* (Basin 36) recommended this right with a facility volume limitation of 173,240 cubic feet. IDWR and Jones stipulate that if facility volume is properly included in this water right, the volume is 289,345.525 cubic feet, of which 236,959.6 cubic feet is fish raceways and 52,385.925 cubic feet is head and tail raceways.

David Tuthill is the chief of the adjudication bureau of the Idaho Department of Water Resources. He has a bachelor's degree in agricultural engineering and a master's degree in civil and environmental engineering. IDWR included a facility volume limitation for this right to define the elements of quantity, nature or purpose of use, place of use, and to address unique attributes of fish propagation rights. (Testimony of David Tuthill.) The unique attributes of fish propagation rights considered by IDWR are: they require higher water quality, have a history of being bought and sold for speculation, involve local public interest concerns, and require a different measure of beneficial use. (Testimony of David Tuthill.)

IDWR has no knowledge of the water quality for this right, and has no expertise on water quality generally. However, IDWR concludes it was necessary to include facility volume for this

right for administrative purposes. (Testimony of David Tuthill.) Although IDWR has no current administrative concerns with this right, it is worried that future changes in facility volume might raise administrative issues. IDWR desires to keep records of facility volume in case a future change in facility volume requires administrative action. (Testimony of David Tuthill.)

If a fish hatchery increases its facility volume and later makes a call on junior or downstream users, those juniors could seek mitigation. If mitigation were appropriate, IDWR believes the measure of mitigation should be based on the original facility volume, not an expanded facility volume. (Testimony of David Tuthill.)²

Another reason IDWR proposes for including facility volume is that it may be necessary for administration where IDWR is required to look at the local public interest in case of a transfer. IDWR would need to know the extent of current use of water to determine impacts on water quality, the local environment, and other water users. (Testimony of David Tuthill.)

IDWR concludes that facility volume is the best measure of beneficial use. IDWR has determined that the extent of beneficial use of fish propagation rights is best defined by rate of flow, volume diverted, and facility volume. (Testimony of David Tuthill.)

Claimant's expert Mark Daily coordinates research and development at the fish hatchery. Daily has bachelor's and master's degrees in physics. Daily is responsible for compliance with the State of Idaho Department of Health and Welfare Division of Environmental Quality regulations which pertain to discharge of effluents from the fish hatchery. (Testimony of Mark Daily.)

It is Daily's opinion that facility volume parameters do not directly correlate with water quality or consumptive use. Fish hatcheries require flexibility in facility volume to improve water quality and living conditions for fish. For example, increasing facility volume by deepening a

² At trial, Jones objected to questions eliciting IDWR's interpretation of the law. This Special Master sustained those objections as impermissibly invading the province of the judge, and as improperly allowing a nonparty to give legal argument. The court has reconsidered in light of recent Supreme Court decisions which hold that the court may give deference to agency interpretation of the law. *State v. Hagerman Water Right Owners*, 130 Idaho 727, 947 P.2d 400 (1997). Thus, it appears that IDWR's interpretation of the law here is both relevant and admissible. At trial, IDWR made an offer of proof as to its view of the law on several points. The court having reconsidered its ruling at trial, now reverses and has considered all offers of proof made by IDWR as to its interpretation of law.

facility could take stress off fish and allow for change in methods of feeding and oxygen intake. Such increased facility volume would improve water quality. (Testimony of Mark Daily.)

IV. CONCLUSIONS OF LAW

A. QUANTITY

IDWR included a facility volume limit to further define the quantity element. I.C. § 42-1411(2)(c) (Supp. 1997). I.C. § 42-1411(2)(c) defines the manner in which quantity shall be described as:

[T]he quantity of water used describing the rate of water diversion or, in the case of an instream flow right, the rate of water flow in cubic feet per second or annual volume of diversion of water for use or storage in acre-feet per year as necessary for the proper administration of the water right.

I.C. § 42-1411(2)(c) (Supp. 1997). Where statutory language is clear and unambiguous, the court applies the statute without engaging in statutory construction, giving the language its plain, obvious and rational meaning. The statute requires quantity to be measured by rate of diversion or flow in cfs or AFY. I.C. § 42-1411(2)(c) does not include facility volume as a prescribed method of measuring quantity. The court holds that the plain meaning of the statute does not provide for describing or limiting quantity by facility volume.

B. NATURE OR PURPOSE OF USE

IDWR included a facility volume limit to further define purpose of use pursuant to I.C. § 42-1411(2)(f) (Supp. 1997). I.C. § 42-1411(2)(f) sets forth this element as: (f) purpose of use. IDWR concluded that any change in facility volume would be a change in nature or purpose of use requiring a transfer pursuant to I.C. § 42-222 (Supp. 1997). IDWR therefore concluded it needed a facility volume limitation to administer such changes.

The word "purpose" is a noun meaning "an end or aim to be kept in view." WEBSTER'S THIRD INTERNATIONAL DICTIONARY (1986). The court holds that the plain meaning of "purpose of use" in I.C. § 42-1411(2)(f) requires water rights be described by broad category of use such as mining, domestic, or irrigation, and does not require minute details of operation such as number of ditches, sprinklers, or facility volume limitations.

I.C. § 42-222 uses a slightly different phrase, "nature of use," in describing those changes requiring a transfer.

Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or **nature of use** of all or part of the water, under the right shall first make application to the department of water resources for approval of such change.

I.C. § 42-222(1) (Supp. 1997)(emphasis added). The word "nature" is a noun meaning "the essential character or constitution of something" or "the essence or ultimate form of something." WEBSTER'S THIRD INTERNATIONAL DICTIONARY (1986). The court holds that the plain meaning of "nature of use" in I.C. § 42-222 requires an application to transfer only if there is a proposed change in the essential character or essence of the water right. A change from fish propagation to mining, or a change from fish propagation to irrigation would be a change in the essential character or essence of this water right. A mere change in facility volume while maintaining this right for the purpose of fish propagation does not change the essential "nature of use" for this right.

The court holds that the plain meaning of "purpose of use" in I.C. § 42-1411(2)(f) and the plain meaning of "nature of use" in I.C. § 42-222 describe the essential character of broad categories of water use. Changes in minute details of operation within the broad categories do not trigger a transfer proceeding. The court declines to require details of operation to be included in the definition of nature or purpose of use for a water right.

In case of a transfer, IDWR is charged with examining the evidence to determine whether any other water rights are injured, and to decide whether the transfer would constitute an enlargement of the original right. IDWR also makes determinations as to whether the transfer is in the local public interest. I.C. § 42-222(1) (Supp. 1997). Where there is no change which triggers the statute, IDWR need not make such an examination. Here, IDWR would not need to conduct a transfer examination since a change in facility volume is not a change in nature or purpose of use.

C. PLACE OF USE

IDWR included a facility volume limit to further define the place of use. I.C. § 42-1411(2)(h) (Supp. 1997) establishes that place of use shall be described by:

[A] legal description of the place of use; if one (1) of the purposes of use is irrigation, then the number of irrigated acres within each forty (40) acre subdivision, except as provided in section 42-219, Idaho Code.

I.C. § 42-1411(2)(h) (Supp. 1997). IDWR concluded that facility volume could be included in describing the place of use. The court disagrees. I.C. § 42-1411(2)(h) does not include facility volume as a prescribed method of describing the place of use. The court holds that the plain meaning of the statute requires a standard legal description for the place of use, not a facility volume limitation.

D. PRIOR CONDITIONS

I.C. § 42-1411(2)(i) (Supp. 1997) provides that conditions on a water right may be included if they were included in a prior decree, license, or approved transfer application. Subcase 36-07071 was licensed in 1974. (Exhibit 2.) The license does not include facility volume. (Exhibit 2; Testimony of David Tuthill; Testimony of Mark Daily.) Therefore, the court holds I.C. § 42-1411(2)(i) (Supp. 1997) does not provide the basis for including a facility volume for this water right.

E. OTHER MATTERS NECESSARY TO DEFINE OR ADMINISTER

Finally, I.C. § 42-1411(2)(j) (Supp. 1997) provides that "such remarks and other matters as are necessary for the definition of the right, for clarification of any element of a right, or for administration of the right by the director" be included. I.C. § 42-1411(2)(j) (Supp. 1997). IDWR included facility volume as a "matter necessary to define or administer." The query is whether a facility volume limitation is necessary to define a water right, to clarify an element, or to administer this right. As discussed above, facility volume does not define or clarify quantity, nature or purpose of use, or place of use. The court holds facility volume may not be included as a prior condition since it was not included in the license issued in 1974.

1. Transfers and Nature of Use

IDWR provided three rationales for the necessity of including facility volume to administer this right. The first reason IDWR gave for necessity was that a change in

"nature of use" under an I.C. § 42-222 transfer would require a facility volume limitation. As discussed above, changes in operation such as facility volume do not constitute a change in nature of use. Therefore, this rationale does not fulfill the necessity requirement.

2. Transfers and Local Public Interest

Second, IDWR concluded that it is necessary to include a facility volume limitation for this right because it may have to analyze the local public interest in transfers under I.C. § 42-222. That conclusion appears to be in error. Even if this court gives great weight to IDWR's interpretation of I.C. § 42-222, the statute does not apply to a change in facility volume. Therefore, IDWR would have no reason to conduct an inquiry as to the local public interest. This rationale does not fulfill the necessity requirement.

3. Administration of Water Quality

Third, IDWR concluded that it was necessary to include a facility volume limitation for this right to define or administer water quality concerns. IDWR, however, has no expertise in water quality in general and has acquired no knowledge of the water quality for this right. Additionally, IDWR is not the agency charged with regulating water quality. IDWR's duty regarding water quality was defined by the Idaho Supreme Court in *Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (1985). The Court held that the primary function of "policing water quality" rests with the Department of Health and Welfare (now the State of Idaho Department of Health and Welfare Division of Environment Quality), not with IDWR. *Id.* at 341. The court held that "Water Resources should condition the issuance of a permit on a showing by the applicant that a proposed facility will meet the mandatory water quality standards." *Id.* Once the facility is complete, however, "later compliance with those laws after construction of a facility generally will be a proper concern of the Department of Health and Welfare." *Id.* This water right is clearly not in the permit stage. It ripened into a license more than twenty years ago. Therefore, it is not the current function of IDWR to police water quality for this right. Thus, the claimant has met both his burden of production and his burden of persuasion as to water quality. IDWR lacks the duty to police water quality and lacks expertise on this issue.

V. SUMMARY

IDWR recommended including a facility volume limitation despite having issued the license for this right without a facility volume limitation. The statutory language of I.C. § 42-1411 and I.C. § 42-222 does not include facility volume as an element nor does the plain language of the enumerated elements require such a limitation. As a matter of law, the claimant has met his burden of establishing that facility volume is not necessary to define, clarify, or administer this right. No other class of water users are subject to such limitations on water rights. It may be important for IDWR to retain the results of its investigation on fish propagation rights for some future use, and nothing in this decision would prevent it from retaining those results. However, just because IDWR has information about a water right does not mean that this court must impose all such information on the water right, forever limiting the right. Where neither the legislature nor the Idaho Supreme Court has imposed such restrictions on the flexibility of a water right, this court declines to add such limitations.

DATED: MAY 19 1998



BRIGETTE BILYEU
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 36-07071

1998 MAY 19 PM 4:13

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: JOHN W. JR. JONES
JONES, DELORIS D.
PO BOX 265
HAGERMAN, ID 83332

SOURCE: WEATHERBY SPRINGS TRIBUTARY: BILLINGSLEY CREEK
THREE SPRINGS BILLINGSLEY CREEK
HOAGLAND TUNNEL BILLINGSLEY CREEK

QUANTITY: 73.05 CFS

THE APPROPRIATOR SHALL CONTINUOUSLY ALLOW 6.50 CFS FROM
WEATHERBY SPRINGS TO BE DELIVERED INTO BAR S DITCH FROM THE
OUTLET OF FISH OPERATION DESCRIBED ABOVE FROM MARCH 1 UNTIL
NOVEMBER 1 OF EACH YEAR, AND SHALL CONTINUOUSLY ALLOW 4.00 CFS
FROM WEATHERBY SPRINGS TO BE DELIVERED INTO THE BAR S DITCH FROM
THE OUTLET OF FISH OPERATION DESCRIBED ABOVE FROM NOVEMBER 1
UNTIL MARCH 1 OF EACH YEAR.

PRIORITY DATE: 07/08/1969

POINT OF DIVERSION: T07S R14E S30 SENESW Within Gooding County
SESENW

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Fish Propagation 01-01 TO 12-31 73.05 CFS
90 RACEWAYS

PLACE OF USE: Fish Propagation Within Gooding County
T07S R14E S30 NESW

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

MAY 19 1998

Angelle Silver
SPECIAL MASTER

1998 MAY 19 PM 4:13

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA

Case No. 39576

CERTIFICATE OF MAILING

Water Right(s): 36-07071

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on May 19, 1998, with sufficient first-class postage prepaid to the following:

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

STATE OF IDAHO
Represented by:
CLIVE STRONG
OFFICE OF ATTORNEY GENERAL
STATE OF IDAHO
PO BOX 44449
BOISE, ID 83711-4449
Phone: 208-334-2400

BILLINGSLEY CREEK RANCH
Represented by:
GARY D. SLETTE
PO BOX 1906
TWIN FALLS, ID 83303
Phone: 208-734-0700

CERTIFICATE OF MAILING

PAGE 1
05/19/98

June 8, 1998

NOTE TO FILE

FROM: V.Hancock

CLAIM NO: >36-07071

COPY OF COMPLETE FILE TO BEEMAN AND HOFSTETTER THIS DATE

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. 36-07071

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

December 15, 1997 2:30pm

NAME:
BILL JONES

CAMEIN

RE:
KRAMER DECISION

HE WANTED TO GET THE DEPT'S STATEMENT ON HOW WE ARE ADDRESSING THE DECISION MADE IN THE 1979 KRAMER DECISION WHICH LIMITED THE FLOW OF THE BAR S DITCH TO 325" OR 6.50 CFS. HE WANTED TO MEET WITH ALLEN MERRITT AND DOUG JONES SO I GOT EVERYONE TOGETHER IN THE CONF. ROOM AND WAS ABLE TO INCLUDE NICK SPENCER ALSO. AFTER MR. JONES EXPLAINED HIS SITUATION NICK S. WAS ABLE TO DESCRIBE THE DEPT. VIEW AND THE EXPLANATION GIVEN TO THE DEPT. FROM THE SRBA COURT VIA SPECIAL MASTER DOLAN. BASICALLY THAT THIS IS A PERSONAL JUDGEMENT TO MR. JONES AND WILL NOT BE RECORDED WITHIN THE SRBA DECREE. MR. SPENCER AGREED TO WRITE A LETTER TO MR. JONES TO FURTHER DOCUMENT THE ITEMS DISCUSSED HERE. WE ALSO ENCOURAGED MR. JONES TO CONTACT S.M. DOLAN FOR ADDITIONAL HELP IN UNDERSTANDING THIS POSITION TAKEN BY THE COURT.

MR. JONES CLARIFIED THAT HE WAS NOT BEING REPRESENTED BY PAT BROWN ON THIS MATTER AT THIS TIME, ONLY ON THE OTHER RIGHTS -0068 & -0069.

CLAIM: 36-07071

RECEIVED

APR 30 1993

Department of Water Resources
Adjudication Bureau

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

In Re the General Adjudication
of Rights to the Use of Water
from the Snake River Basin
Water System

Case No. A36-07071
(You must insert the
water right number you
are objecting to)

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

OBJECTION

Petitioner,

36-07071 -0001/
93-04-0285

vs.

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

Respondents.

INSTRUCTIONS

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

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

(Over)

OBJECTION - 1

MICROFILMED

OCT 19 1994

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

I. GENERAL INFORMATION

Please fill in the following information:

1. Person objecting:

Name: John W. Jones, Jr. & Deloris D. Jones

Address: P. O. Box 265

Hagerman, Idaho 83332

Briefly describe your interest in this water right:

Licensed right with a priority date of

July 8, 1969

2. Owner of the water right:

Name: John W. Jones, Jr. & Deloris D. Jones

Address: P. O. Box 265

Hagerman, Idaho 83332

If this objection is filed by an attorney:

Attorney Name: Patrick D. Brown & Penelope Parker

Attorney Address: Hepworth, Nungester & Lezamiz

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

Attorney Phone No.: (208) 734-7510

If an attorney, notice of pending court proceedings
sent to the attorney only.

II. STATEMENT OF THE OBJECTION

Please check each "box" which states your objection to the recommendation in the Director's Report.

1. ☐ Name and Address: I object to the name and/or address of the owner of the water right.
2. ☐ Source: I object to the source of water.
3. ☐ Quantity: I object to:
 - a. ☐ the total quantity of water used in cubic feet per second; or
 - b. ☐ the total quantity of water stored in acre-feet per year; or
 - c. ☐ the total quantity of water reserved for each and every purpose, including all present and future uses.
4. ☐ Priority Date: I object to the priority date.
5. ☐ Points of Diversion: I object to the legal description of the point(s) of diversion.
6. ☐ Instream Flow: I object to the legal description of the beginning and ending points of the instream flow.
7. ☐ Purpose(s) of Use: I object to the purpose(s) of use.
8. ☐ Period of Year: I object to the period of year when water is used or is necessary for the purpose stated.
9. ☐ Place of Use: I object to:
 - a. ☐ the legal description of the place of use; or
 - b. ☐ the number of irrigated acres within each forty (40) acre subdivision.
10. ☐ Consumptive Use: I object to the annual volume of consumptive use.
11. ☒ Remarks: I object to the "remarks" listed with the water right.

(Over)

12. ☐ Water Right Recommendation: I object to:

a. ☐ this water right being recommended at all; or

b. ☐ this water right not being recommended.

13. ☒ Description of Reservation: I object to the legal description of the reservation.

14. ☒ Other: I object to: See attached

REASONS SUPPORTING EACH BOX CHECKED

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

See page 7

CHANGES TO THE DIRECTOR'S REPORT

Specifically describe how you want the Director's Report to be changed. You may use additional pages if necessary.

See page 7

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



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

See Hagerman Water Right Owners, Inc.'s

Compendium "A"

VERIFICATION (Must be Completed)

State of Idaho

County of Booing

John W. Jones Jr.

(Name of person filing objection), being first duly sworn, upon oath, deposes and says:

That I am the person or entity filing this objection, that I am a water claimant or party in this proceeding, as defined by I.C. Sec 42-1401A(1) and (7), and that I have read the foregoing objection, know its contents and that the statements contained therein are true to the best of my knowledge and belief.

John W. Jones Jr.

Signature of person filing objection

By: [Signature]

(Attorney signing in representative capacity)

1993. Subscribed and sworn to before me this 20th day of April,

[Signature]

Notary Public for Idaho

Residing at: Hagerman, Idaho

My Commission Expires: 5-10-97

(Over)

INSTRUCTIONS FOR MAILING

You must mail the objection, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted by the Clerk of the Court.** You must also send a copy to the owner of the water right, if other than yourself; to the Office of the Attorney General, State of Idaho; and to the United States Department of Justice, as set out below in the Certificate of Mailing. Finally, you must sign the Certificate of Mailing to show that you followed these steps.

CERTIFICATE OF MAILING

I hereby certify that on the 26 day of April, 1993, I mailed the original and copies of the foregoing objection, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepaid and addressed as follows:

1. Original to:

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

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

Owner name: John W. & Deloris Jones
Owner's address: P. O. Box 265
Hagerman, Idaho 83332

3. One copy to:

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

4. One copy to:

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 33
Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf

REASONS SUPPORTING EACH BOX CHECKED, page 4

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

CHANGES TO DIRECTOR'S REPORT, page 4

Non-Irrigation Uses: fish propagation 82 raceways should be 90 raceways;

Rights also diverted through point of diversion: the following water rights should not be included:

Hoagland Tunnel: 36-00041A, 36-00041B, 36-00041C, 36-00060, 36-00061, 36-00062, 36-00068, 36-00116, 36-00119, 36-00120; (These water rights are diverted before water enters the fish hatchery);

Three Springs & Weatherby Springs: 36-00029A, 36-00029B, 36-00046, 36-00086C, 36-00086D, 36-00086E, 36-00086F, 36-00086G, 36-00086H; (These water rights join together and are diverted before the water enters the fish hatchery).

The above listed water rights for Hoagland Tunnel, Three Springs and Weatherby Springs water rights do not flow through the fish hatchery and are diverted at a higher elevation. This water is separate from the water going through the fish hatchery.

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

Question 14., page 4, Other

I.

GENERAL RESPONSE

Except as specifically admitted herein, objectors deny each and every allegation contained in the Director's Report, any related or subsidiary pleadings, and/or any attachments thereto.

II.

DESCRIPTIVE SUMMARY

(DIRECTOR'S REPORT PART I)

(hereinafter DRP-I)

(DRP-I at first unnumbered page)

The objectors admit that Part I of the Director's recommendation contains some claims to water rights appropriated under state law from Reporting Area 3. The objectors deny all other averments because the objectors lack sufficient knowledge or information upon which to form a belief as to the truth of the averments.

III.

TABLE OF CONTENTS

(DRP-I at 2nd and 3rd unnumbered pages)

The objectors admit that the Table of Contents reflects the page numbers of the referenced sections and deny all other averments based upon the objectors' lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments and because any averment, expressed or implied, is so

indefinite that it prevents the objectors from knowing what would be admitted or denied.

IV.

INTRODUCTION

1. INSTRUCTIONS FOR USING THIS REPORT PART I. (DRP-I at page 1)

The objectors admit that Part I consists of seven sections; that the description of the water system includes a brief description of Reporting Area 3 and an illustration of the boundaries of the reporting area; that the water rights and the list of the recommended rights are grouped alphabetically by source and listed chronologically by priority date; that the rights or claims in the list of claims/rights not recommended are listed numerically by water right number; and that brief instructions are found at the beginning of the applicable sections. The objectors deny that any description or any implication that the description of the water system or the illustrations are true and accurate due to lack of knowledge or information regarding the truth of the averment; deny that the general provisions apply to all water rights or define or limit classes of water rights; and deny that the general provisions "will affect your water right," based upon insufficient knowledge or information upon which to form a belief as to the truth of the averments.

2. SCOPE OF THE ADJUDICATION. (DRP-I at page 1 - 3)

The objectors deny all averments in paragraph a., due to lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments.

Regarding paragraph b., the objectors lack sufficient information or knowledge upon which to form a belief as to whether water rights which are not claimed in the adjudication will or will not exist upon entry of the court's decree and, therefore, deny such averment. The objectors admit that the court entered an order dated January 17, 1989, but presently lack sufficient knowledge to know whether any of the other averments concerning the court's order are true or accurate and, therefore, deny the same. The objectors deny that a right must be adjudicated before water may be distributed by the director. The objectors deny all other averments in paragraph b.

3. PURPOSE OF THIS REPORT PART I. (DRP-I at page 3 - 4)

The objectors admit that portion of the first sentence which states "This report contains the Director's recommendations to the SRBA District Court as to the nature and extent of water rights," but deny that such recommendations "are necessary for administration of water rights in Reporting Area 3," and further deny the Director has authority to "administer" such rights.

Regarding the second paragraph, the objectors admit that all water rights remain subject to the applicable law generally, but deny the remainder of the second paragraph.

Regarding the third paragraph of this section, the objectors deny all averments therein based upon lack of knowledge or information upon which to form a belief as to the truthfulness of the averments.

V.

DESCRIPTION OF THE WATER SYSTEM: BASIN 36

1. **BOUNDARIES OF BASIN.** (DRP-I at pages 4 - 6)

Regarding the first paragraph of this section, the objectors deny all averments due to a lack of knowledge or information upon which to admit or deny.

Regarding the second, third and fourth paragraphs of this section, the objectors admit that as broad statements, those paragraphs are generally accurate but the statements are so broad and attenuated from any matter relevant to the objectors' water right that the objectors are unable to know what would be implicitly admitted or denied and therefore, deny the same.

With respect to the fifth paragraph of this section, the objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred and, therefore, deny the averments.

2. **WATER SOURCES.** (DRP-I at page 6)

The objectors admit that the Snake River Plain Aquifer is the source of outflows of springs located along the Snake River Canyon Wall in the Hagerman Valley. The objectors presently lack sufficient knowledge or information upon which to form an opinion as to the truth of the other averments set out in this section and, therefore, deny the same.

3. **DEVELOPMENT OF WATER USE.** (DRP-I at pages 6 - 9)

The objectors admit that numerous factual and historical averments are set out in this section, which may be accurate, but

these objectors have no basis for knowing whether some or all of the averments are intended to relate to the objectors' claims and, thus, are prevented from knowing what would be admitted or denied. Therefore, the averments are denied.

VI.

GENERAL PROVISIONS

GENERAL PROVISIONS 1 - 8 APPLY TO ALL WATER RIGHTS IN BASIN 36.
(DRP-I at page 9)

The objectors deny that "General Provisions 1 - 8" apply to all water rights in Basin 36 as the statements are so broad and attenuated from any matter relevant to the objectors' water rights, that the objectors are unable to know what would be explicitly admitted or denied. The objectors also specifically deny that general provisions 1-8 apply to the objectors' right.

1. **EFFECT OF ADJUDICATION.** (DRP-I at page 9)

With respect to paragraph a., the objectors presently have no knowledge or information upon which to form a belief as to the truth of whether a future decree would supersede prior decrees, or whether unclaimed rights would cease to exist and, therefore, deny the same.

Regarding paragraph b., the objectors deny that the Director has any powers to administer water rights other than those specifically delegated by the Legislature of the State of Idaho, and which do not violate the objectors' state and federal constitutional rights, and therefore the averments are denied.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

2. GENERAL ADMINISTRATIVE PROVISIONS. (DRP-I at pages 9 - 10)

The objectors admit paragraphs a. and b.

3. CONJUNCTIVE ADMINISTRATION (DRP-I at page 10)

The objectors deny the conjunctive administration provisions based upon the objectors' lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments and because any averment expressed or implied is so indefinite that it prevents the objectors from fairly understanding what would be admitted or denied. Additionally, the objectors deny that the Department of Water Resources has any statutory or regulatory authority for the "conjunctive administration" as therein described.

4. ADMINISTRATION OF GROUND WATER RIGHTS (DRP-I at page 10)

The objectors deny the averments within this section.

5. ADMINISTRATION OF BASIN 36 RELATIVE TO THE SNAKE RIVER (DRP-I at page 10)

The objectors admit that the springs are hydrologically interconnected with the Snake River Aquifer, but deny all other averments based upon the objectors' lack of sufficient information or knowledge upon which to form a belief as to the averments herein. The objectors additionally deny any said averments expressed or implied because the averments are so indefinite and generalized as to prevent the objectors from fairly understanding what would be admitted or denied.

6. ADMINISTRATION OF SMALL DOMESTIC AND STOCK WATER RIGHTS (DRP-I at page 11)

The objectors admit that part of the first sentence of subparagraph a. to the effect that "small domestic and stock water rights from surface water are not subject to administration," but deny the balance of said sentence and said paragraph.

The objectors admit the first sentence of paragraph b., and deny the balance of that paragraph because the criteria set forth therein ("if the director determines that administration is necessary") is so ambiguous, indefinite and uncertain that it prevents the objectors from knowing what would be admitted or denied, and by further reason of the fact that no statutory or regulatory authority exists conferring such sweeping and unlimited authority upon the Director or the Department.

The objectors deny the averments in paragraph c. as the averments are inaccurate and because the objectors lack sufficient knowledge or information upon which to form a belief as to the truth of the matters averred.

7. MEASURING DEVICES AND CONTROL WORKS (DRP-I at page 11)

The objectors deny all averments contained herein as such averments are based upon an indeterminate subjective standards which are so ambiguous and indefinite as to prevent the objectors from fairly knowing what would be admitted or denied. Additionally, no statutory or regulatory authority exists conferring such sweeping and unlimited authority upon the Director or the Department as is alleged in this paragraph.

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8. FIRE FIGHTING PURPOSES (DRP-I at page 11)

The objectors admit that subparagraph a. and subparagraph b. are generally accurate statements of present law, but deny the averments are in any way relevant to defining the objectors' right.

9. CONSUMPTIVE USE (DRP-I at page 12)

The objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred and, therefore, deny the same.

GENERAL PROVISION 10 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH DOMESTIC USE AS A PURPOSE OF USE (DRP-I at page 12)

The objectors deny that "General Provision 10" applies to all water rights in Basin 36 shown with domestic use as a purpose of use as the statements are so broad and attenuated from any matter relevant to the objectors' water rights, that the objectors are unable to fairly understand what would be explicitly admitted or denied and, therefore, deny the same.

10. DOMESTIC USE (DRP-I at page 12)

The objectors deny that the definition of "domestic use" contained in paragraphs a., b., and c. is consistent or in conformity with the definition of such term for purposes of the Idaho Constitution, or statutory definition contained in I.C. Section 42-111 as now, or as heretofore in effect at relevant times. The objectors further deny that the limitations set forth therein exist, are in force, or apply or serve in any way to limit objectors' rights.

GENERAL PROVISION 11 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH STOCK WATER USE AS A PURPOSE OF USE. (DRP-I at page 13)

The objectors deny that "General Provision 11" applies to all water rights in Basin 36 shown with stock water use as a purpose of use as the statements are so broad and attenuated from any matter relevant to the objectors' water right, that the objectors are unable to fairly understand what would be admitted or denied and, therefore, deny the same.

11. STOCK WATER USE (DRP-I at page 13)

The objectors deny the averments herein as beyond the scope and applicability of the definition as provided by Idaho law as now, or as heretofore in effect at relevant times. The objectors further deny that the limitations set forth therein limit the objectors' right or are relevant to the right.

GENERAL PROVISIONS 12 - 16 APPLY TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH IRRIGATION AS A PURPOSE OF USE (DRP-I at page 13)

The objectors deny that "General Provisions 12 - 16" apply to all water rights in Basin 36 shown with irrigation as a purpose of use as the statements are so broad and attenuated from any matter relevant to the objectors' water right that the objectors are unable to fairly understand what would be admitted or denied.

12. IRRIGATION USE. (DRP-I at pages 13 - 14)

The objectors deny all averments based upon the objectors' lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments and because

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prevent the objectors from fairly knowing what would be admitted or denied; because the standard utilized ("as determined by the director") is ambiguous, subjective and indefinite so as to prevent objectors from knowing what would be admitted or denied; and because it is both expressly and implicitly in excess of the power and authority conferred upon the State of Idaho, the Director or the Department by the Constitutions of the United States and State of Idaho, pertinent provisions of the Idaho Code or valid applicable regulations, if any, adopted by the Department in conformity with law. Therefore, the objectors deny the same.

13. DIVERSION VOLUME FOR IRRIGATION. (DRP-I at page 14)

The objectors admit that Figure 1 generally depicts certain lands in Basin 36; however, the objectors deny all other averments including that the amounts set forth are the maximum annual volume of water reasonably required at the field headgate for irrigation, either within Basin 36 in general, or upon objectors' real property in particular. The objectors additionally deny that the maximum annual volumes per acre set forth is that which is "reasonably required for irrigation unless a higher annual diversion volume is reasonably required due to conveyance losses, method of irrigation or field conditions;" because the standard utilized ("as determined by the director") is ambiguous, subjective and indefinite so as to prevent objectors from knowing what would be admitted or denied; and because it is both expressly and implicitly in excess of the power and authority conferred upon the State of Idaho, the Director or the Department

by the Constitutions of the United States and State of Idaho, pertinent provisions of the Idaho Code or valid applicable regulations, if any, adopted by the Department in conformity with law. Therefore, the objectors deny the same.

14. CONSUMPTIVE USE FOR IRRIGATION. (DRP-I at page 14 and 15)

The objectors admit that the recommended water rights contained within the Director's Report show only the irrigation use listed unless otherwise indicated in "Remarks." The objectors deny all other averments contained within this section, including the amount of maximum annual volume of consumptive use per acre in the northern and southern portions of the basin, all of which is beyond the scope of any power or authority vested in the Director or the Department, and contrary to fact; historical use; established, vested, decreed, licensed or permitted rights.

15. AMOUNT OF COMBINED WATER RIGHTS FOR IRRIGATION. (DRP-I at page 15)

The specific averments have no relationship to or basis in fact relating to the individual needs or rights of the objectors, and accordingly, objectors deny this section in its entirety. In addition, no statutory or regulatory authority exists conferring upon the Director, or the Department, the power to limit use and ownership of objectors' private property rights as alleged.

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ENCLOSURE

16. DIVERSION RATES IN EXCESS OF .02 CFS PER ACRE. (DRP-I at page 15 - 16)

The objectors deny the averments contained in this section in its entirety.

17. INSTRUCTIONS FOR USE OF LIST OF RECOMMENDED WATER RIGHTS. (DRP-I at page A-i, A-ii and A-iii)

The objectors admit that each water right in the list of recommended water rights includes a description including right number, name and address, source, maximum quantity, consumptive use, priority date, point of diversion, purpose of use, period of use, place of use, basis of right and others. The objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred in said descriptions other than that the descriptions allegedly include the Director's or Department's version of the facts as they relate to the matters identified. Objectors deny the accuracy of the substantive allegations or information set forth with regard to the objectors' right.

18. IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW. (DRP-I, pages A-1 - B-25)

The objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred in said recommended water rights other than those specific admissions contained in Questions 1 - 12 of the attached individual objection, and therefore deny the same.

DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36)

(DIRECTOR'S REPORT PART II)

I.

Objectors do not understand the allegations, averments or contents of Part II of the Director's Report for Reporting Area 3 (Basin 36) to pertain or relate to objectors or their claims, and do not believe any response is required. To the extent a response is required, objectors deny the same in its entirety.

DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36)

(DIRECTOR'S REPORT PART III)

I.

No report denominated as Part III of the Director's Report for Reporting Area 3 (Basin 36) has been filed, and accordingly objectors are unable to admit, deny or otherwise response to the same. Objectors do not understand that the contemplated subject matter of such Part III will relate or pertain to objectors or their claims, and no response is required in any case. To the extent any response is required, objectors deny the same in its entirety.

VIII.

AFFIRMATIVE DEFENSES

Pursuant to I.R.C.P. 8(c), objectors herewith state the following matters of affirmative defense or avoidance:

AFFIRMATIVE DEFENSE NO. 1

The objectors' water right is an incorporeal form of real property (as defined by Idaho Code Sections 7-703, 73-114, 55-101,

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and like statutes) protected by Section 14, Article 1, of the Idaho Constitution, and the Fifth Amendment to the United States Constitution, and allege that the actions of the Director in recommending, limiting and/or regulating said rights is an unconstitutional infringement upon and a taking of private property, without just compensation and violation thereof.

AFFIRMATIVE DEFENSE NO. 2

The adjudication authorization legislation, I.C. Section 42-1401, et seq., on its face and as applied by the Director and the Department constitutes an improper delegation of constitutional power and authority conferred upon the executive, legislative and/or judicial branches of government and as such violate the provisions governing separation of powers set forth in Article 2, Section 1, Idaho Constitution.

AFFIRMATIVE DEFENSE NO. 3

The procedure set forth in the adjudication authorization legislation, statutes, I.C. Section 42-1401, et seq., and any rules, regulations, procedures, policies or standards promulgated by the Director and/or the Department, if any, are vague and so lacking in reasonable specificity so as to render them impossible of reasonable comprehension, or consistent and meaningful application.

AFFIRMATIVE DEFENSE NO. 4

The procedures, rules, regulations, policies or standards, if any, adopted, implemented and applied by the Department and/or the Director violate the equal protection and due

process clauses of the Fourteenth Amendment, United States Constitution, and Article 1, Sections 2 and 13, Idaho Constitution.

AFFIRMATIVE DEFENSE NO. 5

The adjudication authorization legislation, Idaho Code Section 42-1401, et seq., and the actions of the Director and Department in recommending, limiting and/or regulating the objectors' water right constitutes a violation of 42 U.S.C. Section 1983.

AFFIRMATIVE DEFENSE NO. 6

The water right owned by the objectors is the subject of valid existing decrees issued by the Director and Department, which decrees are binding upon the State of Idaho, the Department and the Director. As a result, the State of Idaho, the Department and the Director are precluded by the doctrines of res judicata, collateral estoppel, judicial estoppel and the like from relitigating or questioning the validity, existence or priority of such right, and/or from taking any position in the Director's Report, or otherwise, which is inconsistent with such decrees.

AFFIRMATIVE DEFENSE NO. 7

The Director's recommendations are contrary to decreed rights, historical use and extent licenses and permits issued by the Department. There has been no forfeiture nor abandonment of the objectors' water rights, nor have the objectors' water rights been prescriptively or adversely possessed, nor have such decrees been vacated or such licenses and permits revoked.

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AFFIRMATIVE DEFENSE NO. 8

The Directors' Report fails to state a claim to the extent the same asserts a forfeiture, abandonment, prescriptive or adverse acquisition or loss, or loss resulting from estoppel, of the objectors' water right in the absence of any fact upon which forfeiture, abandonment, prescriptive or adverse acquisition for loss, or loss resulting from estoppel, may be based or asserted.

AFFIRMATIVE DEFENSE NO. 9

The objectors' water right is an incorporeal form of real property, as defined by Idaho Code Sections 7-703, 73-114, 55-101, and like statutes, and, as such, pursuant to Idaho Code Section 7-904, et. seq., the actions of the Director in attempting to limit, reduce and/or regulate such rights, and the assertion of some inconsistent proprietary ownership or right to use or control by the State of Idaho, constitutes an unauthorized and invalid taking of private property without the payment of just compensation, or compliance with statutory requirements, all in violation of Title 7, Chapter 7, Idaho Code.

AFFIRMATIVE DEFENSE NO. 10

The actions of the Director, the Department and their agents, servants and employees in recommending, limiting, reducing and/or regulating objector's water rights, either as alleged in the Director's Report or as in fact applied, violates objectors' rights as secured by Art. 1, Section 1; Art. 15, Sections 3, 4 and/or 5; and/or as otherwise provided in the Constitution of the State of Idaho.

AFFIRMATIVE DEFENSE NO. 11

The various allegations, statements and assertions contained in the Director's Report concerning the Department and/or the Director's position or intentions with regard to the adjudication, as well as the implementation of statutes and/or regulations, as well as the administration of water or management of water rights or claims to the beneficial uses of water, if implemented, constitute a violation of various provisions the United States and Idaho constitutions, and/or a violation of the letter, spirit and/or intent of various statutes enacted by the legislature, and/or constitute an exercise of purported authority or powers either in excess of those conferred by law, or in a manner inconsistent with those conferred by law, or both.

AFFIRMATIVE DEFENSE NO. 12

The individual recommendations relating to the specific water right of the objectors as set forth in the Director's Report are (1) not based upon substantial evidence and/or are not, in fact, the product of any reasonable, complete or accurate investigation as required by law; (2) are the product of arbitrary and capricious action on the part of the Department or the Director; (3) have been made in excess of the constitutional and statutory authority of the Department and the Director; (4) have been made upon an unlawful and invalid procedure; (5) are affected by various and sundry errors of law; and/or (6) are clearly erroneous in view of the reliable, probative and substantial evidence.

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AFFIRMATIVE DEFENSE NO. 13

The Director's Report is a pleading subject to the provisions of the Idaho Rules of Civil Procedure, including, but not limited to the requirement of I.R.C.P. 8(a)(1) that such pleadings contain a clear and plain statement of the facts, demonstrating an entitlement to relief. The Director's Report violates such provision.

AFFIRMATIVE DEFENSE NO. 14

The Director's Report fails to state a claim upon which relief may be granted.

AFFIRMATIVE DEFENSE NO. 15

The Director's Report is subject to, and must comply with, the requirements of Idaho Code Section 42-1411. The Director's Report does not comply with the requirements of the statute.

AFFIRMATIVE DEFENSE NO. 16

In conducting the investigation and compiling the Director's Report, the Department and the Director have not complied with the requirements of Idaho Code Section 42-1410.

AFFIRMATIVE DEFENSE NO. 17

In conducting the investigation and compiling the Director's Report, the Department and the Director have not complied with the requirements of Idaho Code Section 42-1416.

AFFIRMATIVE DEFENSE NO. 18

The procedures specified in the authorizing legislation and procedural rules promulgated in accordance therewith serve to

deny objectors due process of law in violation of Amendment Fourteen to the Constitution of the United States and Art. 1, Section 13, Idaho Constitution.

AFFIRMATIVE DEFENSE NO. 19

The "General Provisions" and "Other Statements" contained in the Director's Report, along with the Claims Investigation Manual, Adjudication Memoranda and other materials of a similar nature used or employed by the Department, the Director and/or their agents, servants and/or employees constitute rules and regulations which were required to be proposed, promulgated, adopted and approved in conformity with the Administrative Procedures Act and other applicable statutory provisions. The Department, Director and their agents, servants and employees have failed to comply with such requirements, and accordingly, the "General Provisions," "Other Statements", Claims Investigation Manual and the like are invalid, void and of no force or effect.

AFFIRMATIVE DEFENSE NO. 20

Neither the "General Conditions," the Claims Adjudication Manual, Adjudication Memoranda or other promulgations, adoptions, policies, or the like have been submitted to or approved by the Legislature as required by Idaho Code Section 67-5217.

AFFIRMATIVE DEFENSE NO. 21

The relief requested by the Department and the Director in the Director's Report are beyond and in excess of the subject matter jurisdiction of the Court.

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AFFIRMATIVE DEFENSE NO. 22

The actions of the Legislature, or the Department and the Director to enact, adopt, implement or enforce statutes, regulations, rules or policies subsequent to November 19, 1987, and to apply or enforce the same for the purpose of, or with the effect of recommending, diminishing or altering objectors' water rights, constitute a violation of Amendment Fourteen, United States Constitution; Art. 1, Section 13, Idaho Constitution; the SRBA authorization legislation; and Idaho Code Sections 73-101 and 73-106.

AFFIRMATIVE DEFENSE NO. 23

These proceedings are subject to the requirements and provisions of Idaho Code Sections 12-117, 12-121, 12-123 and I.R.C.P. 11, and the provisions of the private attorney general doctrine, and other related doctrines, and the Department, Director and State of Idaho are obligated to objectors for the payment and reimbursement of any and all reasonable costs or attorney fees incurred herein.

AFFIRMATIVE DEFENSE NO. 24

The Director's Report asserts what amounts to be a taking of private property by power of eminent domain as governed by Idaho Code Section 7-701 et seq., and as such, venue is therefore improper.

AFFIRMATIVE DEFENSE NO. 25

The Department and the Director are equitably estopped from seeking any reduction in the quantity, quality or priority of

objectors' water rights by virtue of prior statements, representations and actions of the Department, Director or their agents, servants and employees.

AFFIRMATIVE DEFENSE NO. 26

The Department and the Director are barred by laches and the applicable statutes of limitation, including, but not limited to, Idaho Code Sections 5-202, 5-203, 5-204, 5-206, 5-207, 5-208, 5-215, 5-218, 5-219(2), 5-224 and/or 5-241.

AFFIRMATIVE DEFENSE NO. 27

Objectors hereby reserve the right to assert any further affirmative defenses not expressly stated herein, but which subsequently become apparent.

WHEREFORE, the objectors pray for judgment as follows:

1. That the State of Idaho take nothing by reason of its Directors' Report, and that this action, and any claims asserted against objectors, be dismissed.

2. That a decree be entered adjudicating the existence, validity, amount and priority of objectors' water rights in accordance with objectors' claims.

3. That to the extent the acts of the Department or Director constitute a taking of objectors' property for public use, that objectors be allowed and awarded just compensation therefor.

4. That the objectors be allowed all costs of suit and reasonable attorney fees incurred herein.

5. For such further relief to which the Court finds objectors justly entitled.

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(WATER\21530ANS)



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

July 25, 1994

Patrick D. Brown
HEPWORTH LEZAMIZ & HOHNHORST
P.O. Box 389
Twin Falls, ID 83303-0389

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CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

JUL 28 1994

Department of Water Resources
Southern Region Office

RE: August 1993 Demand for Delivery of Water Right No. 36-7071 and
Request for Subsequent Hydrologic Data

Dear Mr. Brown:

This letter is a response to your correspondence dated July 18, 1994 concerning the 1993 demand for delivery of water right no. 36-7071 owned by John and Delores Jones and information IDWR has collected in that regard.

In my correspondence to you dated September 1, 1993, I stated that IDWR had installed monitoring equipment in the nearby Curren Tunnel and would be looking at this data to help determine whether pumping of wells in the area produces an immediate effect on the flow from the springs and tunnels.

Enclosed are copies of several hydrographs from the Curren Tunnel. The graphs show average daily flows in the tunnel since September of 1993. The graphs show a steady increase in water level and flow through the autumn, with a peak in late October and early November, followed by a steady decline through March. The portion of the hydrograph between autumn and spring is typical of most springs in the Hagerman and Thousand Springs area. Flows from April through July fluctuate more than the rest of the year. About one cfs of the fluctuations during this latter period is due to the Rangen pipe diversion. Some of the remaining fluctuations may be due to groundwater pumping and recharge from nearby irrigation. We are currently working with Rangen Inc. to monitor the flow in their pipe diversion. This will allow us to determine tunnel flow fluctuations caused by flow changes in the pipe.

In addition to the above monitoring efforts, IDWR has contacted about 18 separate well owners who operate about 28 wells within a three mile radius from the Curren Tunnel. We have asked these operators to submit information about their pumping activity in order to correlate fluctuations in the tunnel with pumping activity. Only two operators have submitted information in 1993 and only one operator has submitted any data for this year. You are welcome to review this or any other information that may relate to the Jones' water right at the IDWR main office.

Page 2

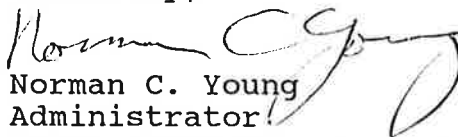
On July 20, 1994, IDWR staff visited the Jones Hatchery and repeated the measurements which were made at the hatchery last August. The staff measured a total of 34.23 cfs being diverted to the hatchery. Total measured discharge from Weatherby Springs, Hoagland Tunnel and Three Springs was 46.59 cfs. The measured flows to the hatchery and from the springs is nearly identical to the flows which were measured on August 24, 1993. The 1993 measurements were included with my September 1, 1993 correspondence.

On July 20 IDWR staff also evaluated the current distribution of available flow from the spring sources above. The total rate of diversion for all irrigation rights below the springs which have a priority date earlier than the Jones hatchery is 63.79 cfs. As the total available supply from all sources was about 47 cfs, about 17 cfs of irrigation rights were not filled. The last irrigation right or rights to fill have a priority date of 3/8/1902. It did not appear that any of the irrigation diversions below the springs were exceeding their water rights. The July 20, 1994 measurements confirm that the Jones hatchery is receiving less than the 73 cfs of water that was licensed under right 36-7071. This right has a priority date of 7/8/1969.

Your letter indicates that you are continuing the demand to deliver water to the Jones right. If this is a call for pumping of ground water to be curtailed outside of the water district, a petition needs to be filed in accordance with Rule 030 of the temporary Rules Governing Conjunctive Management of Surface and Ground Water (IDAPA 37-0311-9301). The petition should identify any specific wells or water rights that you identify as affecting the Jones' prior right. If you are unable to identify specific wells or rights, the petition can identify an area within which pumping is affecting the right. Note that Rule 50 designates the Eastern Snake River Plain Aquifer as an area of common ground water supply.

Upon receipt of a petition, IDWR will respond in accordance with the rules.

Sincerely,


Norman C. Young
Administrator

Water Management Division

enclosures

cc: Southern Region

John and Delores Jones

George Lemmon

MEMORANDUM

TO: NORM YOUNG

FROM: TIM LUKE *TL*

DATE: July 22, 1994

RE: Information Requested by Pat Brown's 7/18/1994 letter

=====

Attached are some hydrographs from Curren Tunnel with data through July 20, 1994. The latest graphs have an additional plot for adjusted flow since mid-April. This adjustment was made based on observed differences between our staff gage measurements in the tunnel and the water level sensor data. Also shown on the graph are several polysonic flow meter measurements of the Rangen pipeline, as well as the total flow of the tunnel on certain dates. The Rangen pipe measurements appear to explain some of the fluctuations in flow of the tunnel. We do not know when Rangen started to increase its use from the tunnel. However, we do know that they irrigate about 7 acres from this same pipe and that their irrigation demand likely increased in early April. Rangen stated also that they did increase their use from the pipe by about 170 gpm (0.38 cfs) on May 24 for the fish experiment which they are running though mid-October.

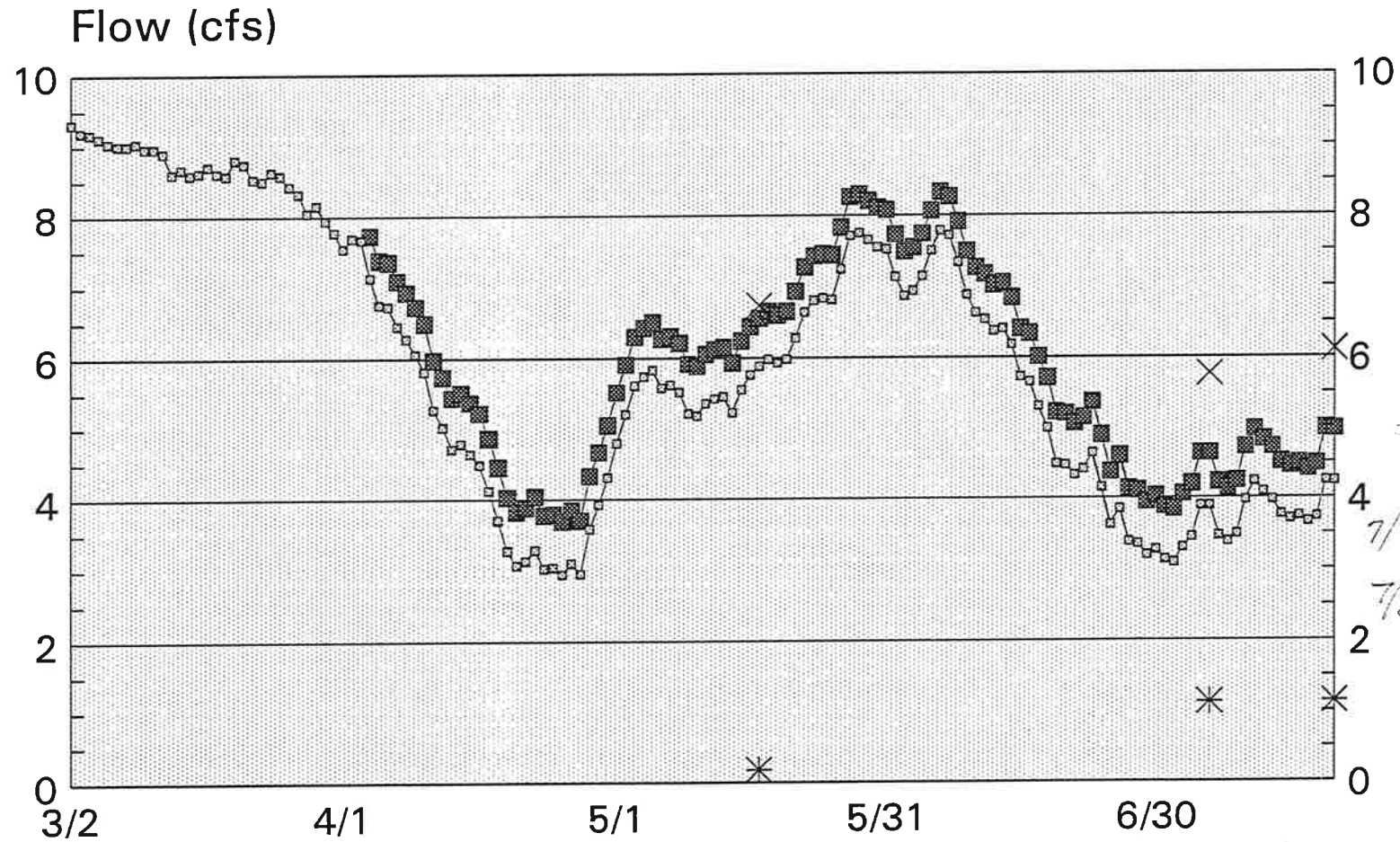
Other flow data attached includes spring flow measurements from several different springs diverted to the National Fish Hatchery. These springs are measured by weirs which have been strictly constructed according to standard weir requirements. The data is for water years 1992 and 1993. We checked the discharge on these springs last week and found essentially no difference in discharge from the same time one year ago.

In September of 1993, IDWR sent pump cards to about 17 separate well owners who operate 28 wells within a three mile radius on the plain from the Curren Tunnel. Several pump cards were returned at that time, most indicating that wells had been shut off for the season by September 1 or shortly thereafter. Only one well owner, Rangen-Tate, who operates one well, has returned pump cards this year. Those cards are attached.

Based on the limited data, it appears that there may be some fluctuation in the tunnel that is caused by groundwater pumping and recharge. The most dramatic fluctuations occurred between April 1 and about April 20, and June 1 and June 30. If the Rangen-Tate pumpcard is representative of other wells in the area, then there may indeed be a correlation between the sharp decrease in tunnel flow in April versus nearby groundwater pumping. Quantification of any decrease or increase due to pumping is difficult by just looking at our graph.

Curren Tunnel

Average Daily Flow Rate
Enlarged Version

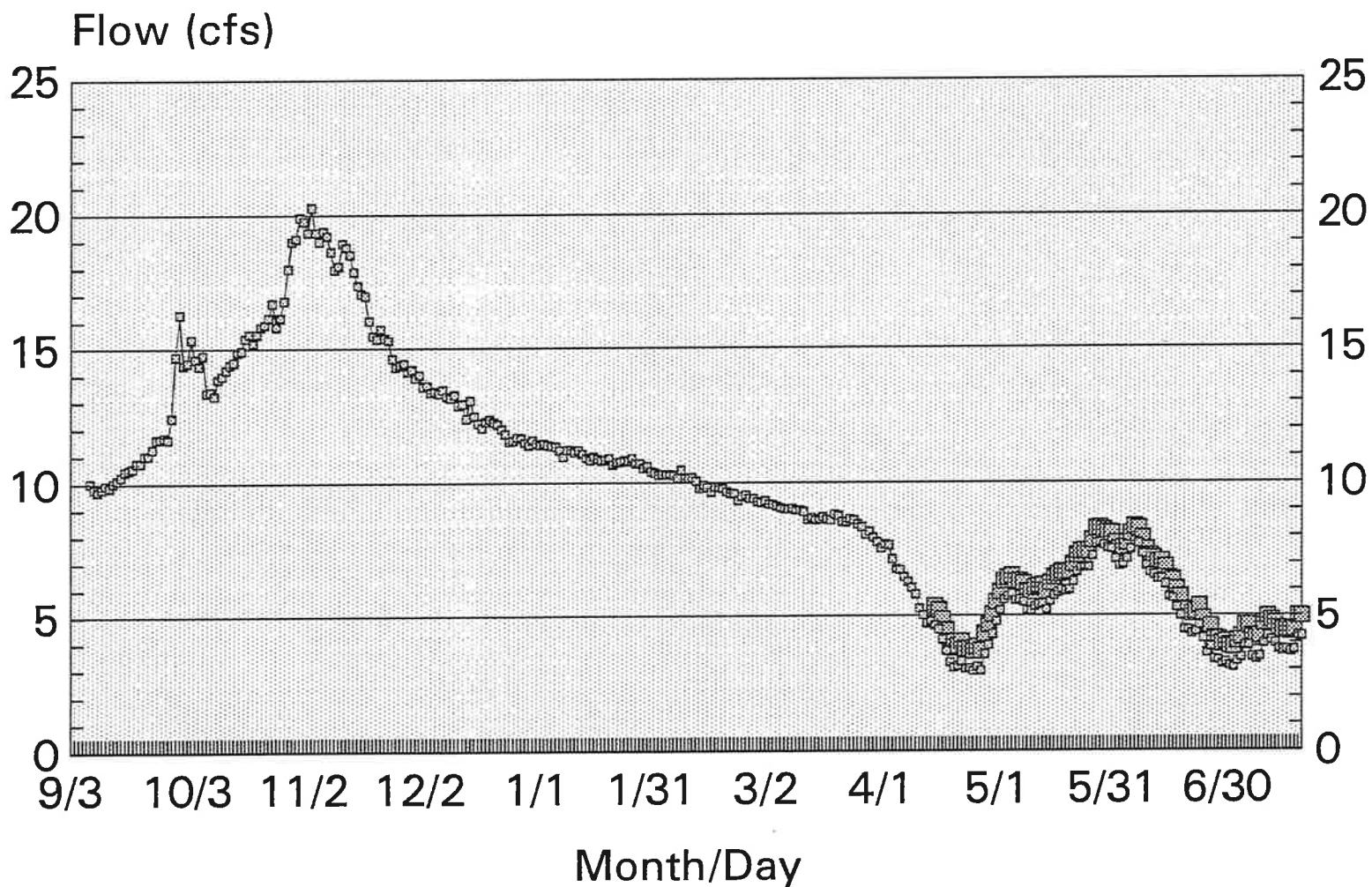


□ Free Flow (CFS) ✱ Rangen Pipe (CFS) ■ Adjusted Flow ✕ Total Flow (CFS)
 (RANGEN + ADJUSTED)

Based on average daily water levels and rating table.

Curren Tunnel

Average Daily Flow Rate



Based on average daily water levels and rating table.

Keith

MEMORANDUM

TO: NORM YOUNG *NY*

FROM: TIM LUKE *TL*

DATE: July 21, 1994

RE: VISIT & MEASUREMENTS AT JONES FISH HATCHERY

=====

On August 20, 1994, Scott King and I visited the Jones Fish Hatchery and diversions from Weatherby Springs, Three Springs and Hoagland Tunnel. We met Bill Jones while doing our measurements.

Attached to this memo is a diagram of the fish hatchery and spring diversions. Listed below is a summary of the measurements. The summary includes the amount of water being diverted to the fish hatchery.

Location/Source of Measurement	Method	Discharge

Sum of hatchery raceway weir measurements, including hatchery inflow from irrigation overflow	Raceway Suppressed Weirs	34.23 cfs
Irrigation Pipeline with commingled water from Three Sprgs. & Weatherby Sprgs.	Polysonic Meter	8.39 cfs
Hoagland Tunnel (meas. on ditch)	Swoffer 2100 Current Meter	5.50 cfs
Wheatherby Springs Overflow	Suppressed Weir	1.07 cfs

The total amount of water diverted to the Jones hatchery was 34.23 cfs. The total measured spring flow from Three Springs, the Weatherby Springs complex and Hoagland Tunnel was 46.59 cfs. This amount is derived by summation of the Hoagland Tunnel measurement (5.5 cfs), the commingled pipeline measurement (8.39 cfs), overflow from Wheatherby Springs (1.07 cfs) and the sum of the hatchery raceway weirs (34.23 cfs) less the overflow to the hatchery from the commingled pipeline (2.6 cfs).

The equation for total spring flow therefore is:

$$Q = 5.5 + 8.39 + 1.07 + (34.23 - 2.6) = 46.59 \text{ cfs}$$

The 2.6 cfs overflow to the hatchery from the commingled pipeline was determined by taking the difference of two weir discharge measurements in a single hatchery raceway. The overflow pipe discharges to this raceway in between the two weirs.

In addition to the measurements above, we also measured the discharge of a pump which diverts spring water from a lower pond to an upper pond. The commingled water in the upper pond is diverted in to the hatchery. The pump water therefore is measured with the other water in the hatchery raceways. The discharge from the pump was 3.81 cfs.

It should be noted that all of the weir measurements involve direct measurement of head of water over wood stoplogs set in rectangular concrete raceways. There are some small leaks between some of the wood stoplogs and weir crests lack a sharp edge. These specific devices and the method in which they were measured do not qualify as standard weirs, but they should provide close estimates of actual flow.

As compared to measurements taken by IDWR on August 26, 1993 (see memo dated 8/27/93), the total discharge to the hatchery on 7/20/1994 is only 0.56 cfs less. Total spring discharge between 8/26/93 and 7/20/94 is approximately the same.

Irrigation Water Rights and Diversions:

The total rate of diversion for all irrigation rights which have priority dates earlier than the Jones Hatchery 1969 right is 63.79 cfs. As the total available supply is about 47 cfs, then about 17 cfs of irrigation rights are not filled. This means that the last right to fill has a priority date of 3/8/1902. Water rights listings are attached to this memo.

Three SPRINGS

Billingsley Creek

Pipeline w/ combined water from 3 SPRGS & WEATHERBY SPRINGS

measured here

T-VALVE

Return/overflow Pipeline TO Hatchery

tributary to Billingsley C.K.

Billingsley Creek

Discharge to BAR-S Ditch which Discharges to CURRAN Ditch.

Hatchery & Raceways

Pipeline from Jones Tunnel / Weatherby Springs Complex

Pipeline to Hatchery

Pump from LWR SPRGS.

CONCRETE PIPE TO HATCHERY

Weatherby Springs

overflow From HOAGLAND Tunnel to WEATHERBY SPRINGS

HOAGLAND TUNNEL

current m/cfs on

Ditch From HOAGLAND TUNNEL to IRRIGATORS (JONES Ditch)

Sum of WEIR measurements on HATCHERY RACEWAYS, including Return Flow from Irrigation Pipeline = cfs on

Total Discharge to Hatchery on = cfs

Total Discharge from 3 SPRGS, WEATHERBY SPRGS & HOAGLAND TUNNEL =

U.S. FISH AND WILDLIFE SERVICE - DIVISION OF ENGINEERING
423011 Bickle Lake Cipolletti Weir

DAILY DISCHARGE IN CUBIC FEET PER SECOND WATER YEAR OCT 1992 TO SEP 1993

Day	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1												
2	15.2						15.2			15.2		
3		15.2										15.8
4			16.3						14.7			
5					15.8	15.8						
6		15.8									15.8	
7								15.2				
8				15.8								
9	15.8						15.2			15.2		
10												15.8
11			16.3						15.2			
12					15.8	15.2						
13		15.8									15.8	
14								14.7				
15				16.3								
16	15.2						15.8			15.8		
17												15.8
18			16.3						15.2			
19					15.8	15.2						
20		15.8									15.8	
21								14.7				
22				16.3								
23	15.8		16.3				15.2			15.8		
24												15.8
25									15.2			
26					15.8	15.2						
27		16.3									15.8	
28								14.7				
29				15.2	-----							
30	15.8	-----			-----		15.2			15.8		
31		-----	15.8		-----		-----		-----			-----
MEAN	15.6	15.8	16.2	15.9	15.8	15.4	15.3	14.8	15.1	15.6	15.8	15.8
MAX	15.8	16.3	16.3	16.3	15.8	15.8	15.8	15.2	15.2	15.8	15.8	15.8
MIN	15.2	15.2	15.8	15.2	15.8	15.2	15.2	14.7	14.7	15.2	15.8	15.8
WTR YEAR 1993	MEAN	15.6	MAX	16.3	MIN	14.7						

U.S. FISH AND WILDLIFE SERVICE - DIVISION OF ENGINEERING
423011 Bickle Lake Cipolletti Weir

DAILY DISCHARGE IN CUBIC FEET PER SECOND WATER YEAR OCT 1991 TO SEP 1992

Day	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1		16.8						15.8				
2										15.2		
3				16.8			15.8					
4	16.8											15.2
5									14.7			
6			16.8			15.8						
7					16.8						15.2	
8		16.8						15.2				
9												
10				16.3			15.2			15.2		
11	16.8											15.2
12									14.7			
13			16.8			16.3						
14					16.8						15.2	
15		16.8						15.2				
16												
17				16.8			15.2			15.2		
18	16.8											15.2
19									15.8			
20			16.8			16.3						
21					16.8						15.2	
22		16.8						15.2				
23												
24				16.8			15.2			15.2		
25	16.8											15.2
26									15.2			
27			16.8			15.8						
28					16.8						15.2	
29		16.8						15.2				
30					-----							
31		-----		16.8	-----		-----		-----	15.2		-----
MEAN	16.8	16.8	16.8	16.7	16.8	16.1	15.4	15.3	15.1	15.2	15.2	15.2
MAX	16.8	16.8	16.8	16.8	16.8	16.3	15.8	15.8	15.8	15.2	15.2	15.2
MIN	16.8	16.8	16.8	16.3	16.8	15.8	15.2	15.2	14.7	15.2	15.2	15.2
WTR YEAR 1992	MEAN	15.9		MAX	16.8	MIN	14.7					

U.S. FISH AND WILDLIFE SERVICE - DIVISION OF ENGINEERING
423008 Riley Lake Cipolletti Weir

DAILY DISCHARGE IN CUBIC FEET PER SECOND WATER YEAR OCT 1992 TO SEP 1993

Day	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1							5.09			4.88		
2	5.09											5.09
3		4.88										
4			5.09						4.88			
5					5.09	5.09						
6		5.09									5.09	
7								4.88				
8				5.09						4.88		
9	5.09						4.88					5.09
10												
11			5.09						4.88			
12					5.09	4.88					5.09	
13		5.09						4.88				
14				5.09								
15												
16	5.09						4.88			5.09		5.09
17									5.09			
18			5.09									
19					4.88	4.88					5.09	
20		5.09										
21								5.09				
22				5.09						5.09		
23	5.09		5.09				5.09					5.09
24									5.09			
25												
26					4.88	4.88					5.09	
27		5.09						5.09				
28				4.88	-----							
29					-----		5.09			5.09		
30	5.09	-----			-----				-----			-----
31		-----	5.09		-----							
MEAN	5.09	5.05	5.09	5.04	4.99	4.93	5.01	4.99	4.99	5.01	5.09	5.09
MAX	5.09	5.09	5.09	5.09	5.09	5.09	5.09	5.09	5.09	5.09	5.09	5.09
MIN	5.09	4.88	5.09	4.88	4.88	4.88	4.88	4.88	4.88	4.88	5.09	5.09
WTR YEAR 1993	MEAN	5.03		MAX	5.09	MIN	4.88					

U.S. FISH AND WILDLIFE SERVICE - DIVISION OF ENGINEERING
423008 Riley Lake Cipolletti Weir

DAILY DISCHARGE IN CUBIC FEET PER SECOND WATER YEAR OCT 1991 TO SEP 1992

Day	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1		5.30						5.09		4.88		
2				5.52			5.09					5.09
3												
4	5.09								4.88			
5												
6			5.09			5.09						
7					5.30			4.67			4.88	
8		5.09										
9												
10				5.30			4.88			4.88		
11	5.09											4.88
12									4.67			
13			5.30			5.09						
14					5.30						4.88	
15		5.30						4.67				
16												
17				5.30			4.88			4.88		5.09
18	5.09											
19									5.52			
20			5.09			5.09						
21					5.30						4.88	
22		5.09						5.09				
23												
24				5.30			4.88			4.88		4.88
25	5.09											
26									4.88			
27			5.30			5.09						
28					5.30						4.88	
29		5.09						4.67				
30												
31		-----		5.30	-----		-----		-----	4.88		-----
MEAN	5.09	5.17	5.20	5.34	5.30	5.09	4.93	4.84	4.99	4.88	4.88	4.99
MAX	5.09	5.30	5.30	5.52	5.30	5.09	5.09	5.09	5.52	4.88	4.88	5.09
MIN	5.09	5.09	5.09	5.30	5.30	5.09	4.88	4.67	4.67	4.88	4.88	4.88
WTR YEAR 1992	MEAN	5.06		MAX	5.52	MIN	4.67					

U.S. FISH AND WILDLIFE SERVICE - DIVISION OF ENGINEERING

423002

Spring No. 15 V-Notch Weir

DAILY DISCHARGE IN CUBIC FEET PER SECOND WATER YEAR OCT 1992 TO SEP 1993

Day	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1												
2	4.25						4.16			3.91		
3												4.16
4			4.25						3.91			
5					4.16	4.16						
6		4.25									4.08	
7								3.99				
8				4.25								
9	4.25						4.16			3.99		
10												4.16
11			4.25						3.99			
12					4.16	4.08						
13		4.25									4.08	
14								3.99				
15				4.25								
16	4.25						4.08			3.99		
17												4.16
18			4.25						3.99			
19					4.16	4.16						
20		4.25									4.08	
21								3.91				
22				4.25			4.08					
23	4.25		4.25							3.99		
24												4.25
25									3.99			
26					4.08	4.08						
27		4.25									4.25	
28								3.91				
29				4.16	-----							
30	4.25				-----		4.08			4.08		
31		-----	4.25		-----		-----		-----			
MEAN	4.25	4.25	4.25	4.23	4.14	4.12	4.11	3.95	3.97	3.99	4.12	4.18
MAX	4.25	4.25	4.25	4.25	4.16	4.16	4.16	3.99	3.99	4.08	4.25	4.25
MIN	4.25	4.25	4.25	4.16	4.08	4.08	4.08	3.91	3.91	3.91	4.08	4.16
WTR YEAR 1993	MEAN	4.13	MAX	4.25	MIN	3.91						

U.S. FISH AND WILDLIFE SERVICE - DIVISION OF ENGINEERING
423002 Spring No. 15 V-Notch Weir

DAILY DISCHARGE IN CUBIC FEET PER SECOND WATER YEAR OCT 1991 TO SEP 1992

Day	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1		4.25						3.83		3.91		
2				4.08			3.83					4.16
3												
4	4.25								3.75			
5												
6			3.99			3.91					3.99	
7					3.99			3.75				
8		4.25										
9				3.99			3.91			3.91		
10												4.16
11	4.25								3.75			
12												
13			4.08			3.91					3.99	
14					3.99							
15		4.25						3.75				
16				3.99			3.91			3.91		4.25
17												
18	4.25								3.83			
19												
20			4.08			3.91					3.99	
21					3.91							
22		4.25						3.83				
23				3.99			3.83			3.99		
24												4.25
25	4.25											
26									3.83			
27			4.08			3.91					4.16	
28					3.91			3.75				
29		4.25			-----							
30				3.99	-----		-----		-----	3.91		-----
31		-----										
MEAN	4.25	4.25	4.06	4.01	3.95	3.91	3.87	3.78	3.79	3.93	4.03	4.21
MAX	4.25	4.25	4.08	4.08	3.99	3.91	3.91	3.83	3.83	3.99	4.16	4.25
MIN	4.25	4.25	3.99	3.99	3.91	3.91	3.83	3.75	3.75	3.91	3.99	4.16
WTR YEAR 1992	MEAN	4.00	MAX	4.25	MIN	3.75						

U.S. FISH AND WILDLIFE SERVICE - DIVISION OF ENGINEERING

423004

Spring No. 17

DAILY DISCHARGE IN CUBIC FEET PER SECOND WATER YEAR OCT 1992 TO SEP 1993

Day	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1												
2	3.30						3.23			3.91		
3												4.25
4			3.52			3.52			4.08			
5					3.60	3.45						
6		3.45									4.25	
7			3.68					3.15				
8				3.60								
9	3.52						3.23			3.99		
10												4.25
11			3.68						4.08			
12					3.60	3.23					4.33	
13		3.52						3.15				
14												
15				3.60								
16	3.68						3.23			4.16		
17												4.25
18			3.68						4.16			
19					3.60	3.30						
20		3.60									4.33	
21								3.91				
22				3.60								
23	3.68		3.60				3.08			4.25		
24												4.25
25									3.91			
26					3.52	2.94						
27		3.60									4.25	
28								3.91				
29				3.52	-----							
30	3.75	-----			-----		3.23			4.33		
31		-----	3.68		-----		-----		-----			-----
MEAN	3.59	3.54	3.64	3.58	3.58	3.29	3.20	3.53	4.06	4.13	4.29	4.25
MAX	3.75	3.60	3.68	3.60	3.60	3.52	3.23	3.91	4.16	4.33	4.33	4.25
MIN	3.30	3.45	3.52	3.52	3.52	2.94	3.08	3.15	3.91	3.91	4.25	4.25

WTR YEAR 1993 MEAN 3.71 MAX 4.33 MIN 2.94

U.S. FISH AND WILDLIFE SERVICE - DIVISION OF ENGINEERING

423004 Spring No. 17 V-Notch Weir

DAILY DISCHARGE IN CUBIC FEET PER SECOND WATER YEAR OCT 1991 TO SEP 1992

Day	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1		3.60						5.94				
2										5.15		
3				4.08			3.45					3.99
4	4.59											
5												
6			3.60			3.52						
7					4.08						3.75	
8		3.68						5.74				
9												
10				3.91			3.60			5.24		
11	4.59											4.50
12									5.15			
13			3.83			3.60						
14					3.91						3.60	
15		3.45						5.34				
16												
17				3.91			3.60			5.44		
18	3.60											4.42
19									5.15			
20			3.83			3.60						
21					3.91						3.83	
22		3.45						5.34				
23												
24				3.91			5.53			5.24		
25	3.75											4.25
26									4.77			
27			3.83			3.30						
28					3.45						3.83	
29		3.60						5.53				
30												
31				4.08						3.83		
MEAN	4.13	3.56	3.77	3.98	3.84	3.51	4.05	5.58	5.02	4.98	3.75	4.29
MAX	4.59	3.68	3.83	4.08	4.08	3.60	5.53	5.94	5.15	5.44	3.83	4.50
MIN	3.60	3.45	3.60	3.91	3.45	3.30	3.45	5.34	4.77	3.83	3.60	3.99
WTR YEAR 1992	MEAN	4.21	MAX	5.94	MIN	3.30						

RECEIVED
JUN 20 1994
Idaho Department of Water Resources

IDAHO DEPARTMENT OF WATER RESOURCES
GROUND WATER USE INFORMATION

1. Month/Year: May/1994
2. Water User Name: Tate, Harvey Earl &/or Rangen, Inc.
3. Water Right Number(s): 36-02496, 36-07472 (Tate) &
36-8048 (Rangen, Inc.)
4. Diversion Name and/or Number: _____
5. Diversion Location: T.7S, R.14E, Sec. 32, SENWSE
6. Flow Meter Reading at Beginning of Month: _____
7. Method of Calculating or Estimating Flow Rate: _____
8. Comments: Prist, corners, hand lines

9. Daily Pump Use:

Day	Hours Pumped	Time Pumped From	To	Flow Rate	Day	Hours Pumped	Time Pumped From	To	Flow Rate
1	OFF				16	24			
2	}				17	}			
3	}				18	}			
4	}				19	OFF			
5	}				20				
6	}				21				
7	24				22				
8	}				23	3 hrs			
9	}				24				
10	}				25				
11	}				26				
12	}				27				
13	}				28				
14	OFF				29				
15	1				30				
					31				

IDAHO DEPARTMENT OF WATER RESOURCES
GROUND WATER USE INFORMATION

1. Month/Year: April 1994
2. Water User Name: Tate, Harvey Earl &/or Rangen, Inc.
3. Water Right Number(s): 36-02496, 36-07472 (Tate) &
36-8048 (Rangen, Inc.)
4. Diversion Name and/or Number: _____
5. Diversion Location: T.7S, R.14E, Sec. 32, SENWSE
6. Flow Meter Reading at Beginning of Month: _____
7. Method of Calculating or Estimating Flow Rate: _____

8. Comments: Some days just on; some days corners
only - Breakdowns off & on - Some days 12 hr
max - some days less -

9. Daily Pump Use:

Day	Hours Pumped	Time From	Pumped To	Flow Rate	Day	Hours Pumped	Time From	Pumped To	Flow Rate
1					16	ON			
2					17	"			
3					18	"			
4					19	"			
5					20	ON			
6					21	OFF			
7					22	"			
8					23	"			
9					24	ON			
10					25	"			
11					26	"			
12					27	"			
13					28	OFF			
14					29				
15					30				
					31				

ON
"
"
"
"
"
"
"

RECEIVED
APR 21 1994
WATER RESOURCES

R PROOF

CVR

MAPS

PHOTOS

MISC

UNRECORDED

OC1 13 1944

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

In Re the General Adjudication)
of the Rights to the Use of Water)
from the Snake River Basin)
Water System)
_____)

Case No. 36-07071 -0001

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

RESPONSE TO OBJECTION

Petitioner,)

vs.)

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

Respondents.)
_____)

I. GENERAL INFORMATION

1. Person responding to objection:

Name: R. KEITH HIGGINSON, DIRECTOR

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

Briefly describe your interest in this water right:

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

(Over)

RESPONSE TO OBJECTION NO. 36-07071 -0001 - PAGE 1

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001 1 2 001
UNCLASSIFIED

2. Person who filed objection:

Name: JOHN W & DELORIS D JONES JR
Address: PO BOX 265
HAGERMAN ID 83332

3. If this response is filed by an attorney:

Attorney Name(s): NICHOLAS B. SPENCER

Attorney Address: DEPUTY ATTORNEY GENERAL(S)
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711-4449

Attorney Phone No.: (208) 327-7900

II. STATEMENT OF THE RESPONSE

11. ☒ Remarks: I respond to the objection concerning the "remarks" listed with the water right.
13. ☒ Description of Reservation: I respond to the objection concerning the legal description of the reservation.
14. ☒ Other: I respond to the objection concerning:
ALL MATTERS RAISED IN THE CLAIMANTS' ANSWER,
AFFIRMATIVE DEFENSES, AND PRAYER FOR RELIEF.

REASONS SUPPORTING EACH BOX CHECKED

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

In response to Statement of the Objection item 13, and all

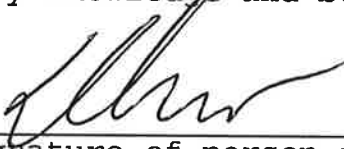
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

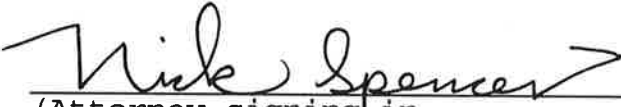
David B. Shaw, being first duly sworn, upon oath, deposes and says:

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



Signature of person filing response

By:



(Attorney signing in
representative capacity)

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



Notary Public for Idaho

Residing at: _____

My Commission expires _____

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

(Over)

OCT 1 1993
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CERTIFICATE OF MAILING

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

1. Original to:

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

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

See No. 3

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

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

4. One copy to:

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



Signature of Respondent or attorney
mailing on Respondent's behalf

allegations of the objection regarding this item, IDWR responds as follows: Since this water right is not a federal reserved water right, this objection item is inapplicable and the claimant's objection to this item is in error. IDWR further responds that under Idaho law water cannot be reserved for future use, but must be appropriated and put to beneficial use before the user can acquire a water right.

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

In response to the change sought in the description of the non-irrigation uses in the director's report, IDWR responds as follows: During the investigation of this claim IDWR was informed by the claimant that only 82 of the 90 raceways or ponds at this facility were used for fish propagation. The claimant has since clarified that the remaining eight ponds are "seed ponds", and are used for fish propagation. Therefore, there is an error in the description of the non-irrigation uses of this right in the director's report. The recommendation should be corrected as shown in the attachment entitled "Recommended Water Right Acquired Under State Law."

In response to the change sought in the director's report regarding other rights diverted through the same point of diversion, IDWR responds as follows: The director's report defines the point of diversion as the point at which water is diverted from the natural water source, not the point at which water is diverted from the diversion system to the place of use. The remarks correctly identify other rights diverted from the natural water source at the same point(s) as this right.

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

(Over)

CHANGES TO THE DIRECTOR'S REPORT

See attached List of Recommended Water Rights Acquired under State Law.

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

	No. of Pages
Notice of Claim No. A36-07071	3
IDWR's Response to Answer, Affirmative Defenses and Prayer For Relief of Claimant	4
Recommended Water Rights Acquired under State Law	1

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: A36-07071
Date Received: 8/19/1988
Receipt No: S001554
Received By: TW

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: JOHN W. JONES JR. 208-837-4580
Address: BOX 265
HAGERMAN, ID 83332

AND/OR

Name: DELORIS D. JONES JR. 208-837-4580
Address: BOX 265
HAGERMAN, ID 83332

2. Date of Priority: JUL 08, 1969

3. Source: WEATHERBY SPRINGS Trib. to: BILLINGSLEY CREEK
THREE SPRINGS BILLINGSLEY CREEK
HOAGLAND TUNNEL BILLINGSLEY CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
07S	14E	30	SE	NW			GOODING
			NE	SW			GOODING

5. Description of diverting works:
HEAD BOX, TWO 10" PIPES, ONE 24" PIPE & ONE 36" PIPE.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
FISH PROPAGATION	01/01	12/31	73.050		52794.00

7. Total Quantity Appropriated is:
73.050 C.F.S. (and/or) 52794.00 A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
FISH PROP/ 90 RACEWAYS-LRG & SMALL

A36-07071

Page 1

Date: 08/19/88

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10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
07S	14E	30	NE SW		FISH	

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: LICENSE

16. Signature(s)

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

Number of attachments: 1

For Individuals:

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

Signature of Claimant(s): John W Jones Jr Date: Aug 19 1988
Date:

State of Idaho)
County of Twin Falls) SS.

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

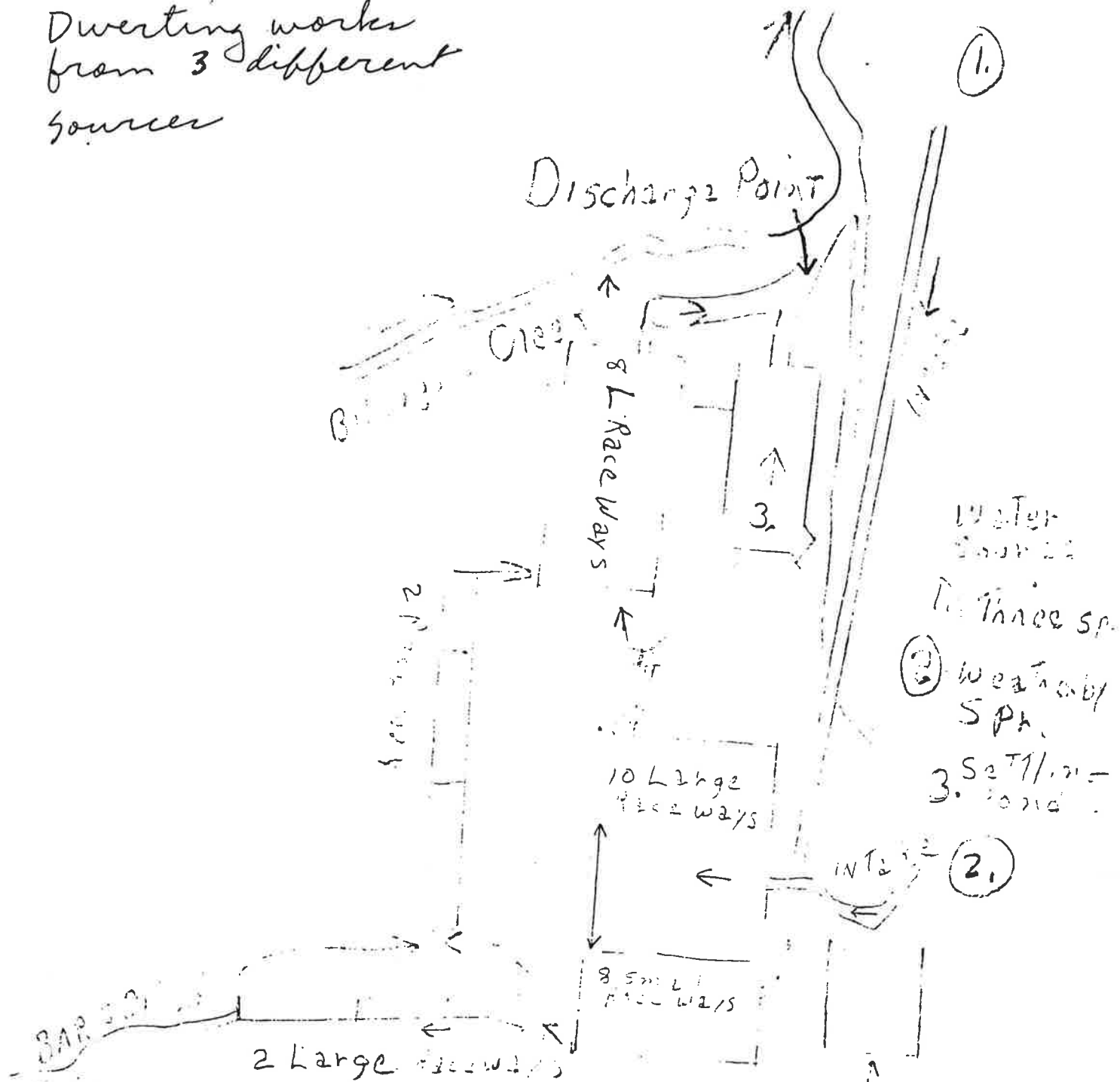
Roxanne Storey
Notary Public

Seal

Residing at Buhl, Id
My Commission Expires 6-30-94

POOR ORIGINAL

Diverting works
from 3 different
sources



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OCT 19 1994

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FEB 03 1993

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

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

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

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

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

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

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

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

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

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

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

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

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

DATE: SEP-5-1993
PAGE: A-1

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: HOAGLAND TUNNEL		TRIBUTARY: BILLINGSLEY CREEK				
36-07071	DELORIS D JONES JOHN W JONES JR PO BOX 265 HAGERMAN ID 83332	07/08/1969	FISH PROPAGATION	01-01 12-3	73.05 CFS	LICENSE
TOTAL QUANTITY:					73.05 CFS	

NON-IRRIGATION-USES:

FISH PROPAGATION, 82 90 RACEWAYS LARGE & SMALL

POINT OF DIVERSION:

T07S R14E S30

SESENW
SENESW

PLACE OF USE: FISH PROPAGATION

T07S R14E S30

NESW

REMARKS: FACILITY VOLUME 173,240 CU. FT.

THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF

DIVERSION DESCRIBED ABOVE:

36-00011A, 36-00011B, 36-00029A, 36-00029B, 36-00033B, 36-00033C,
36-00033D, 36-00033E, 36-00033F, 36-00033G, 36-00041A, 36-00041B,
36-00041C, 36-00041D, 36-00042A, 36-00044, 36-00046, 36-00060,
36-00061, 36-00062, 36-00068, 36-00070, 36-00086C 36-00086D,
36-00086E, 36-00086F, 36-00086G, 36-00086H, 36-000105, 36-00116,
36-00119, 36-00120, 36-15157 AND 36-11142.

THE APPROPRIATOR SHALL CONTINUOUSLY ALLOW 6.50 CFS FROM
WEATHERBY SPRINGS TO BE DELIVERED INTO BAR S DITCH FROM THE
OUTLET OF FISH OPERATION DESCRIBED ABOVE FROM MARCH 1 UNTIL
NOVEMBER 1 OF EACH YEAR, AND SHALL CONTINUOUSLY ALLOW 4.00 CFS
FROM WEATHERBY SPRINGS TO BE DELIVERED INTO THE BAR S DITCH FROM
THE OUTLET OF FISH OPERATION DESCRIBED ABOVE FROM NOVEMBER 1
UNTIL MARCH 1 OF EACH YEAR.

SOURCES FOR THIS RIGHT ARE WEATHERBY SPRINGS, THREE SPRINGS
AND HOAGLAND TUNNEL, ALL TRIBUTARY TO BILLINGSLEY CREEK.

MICROFILMED
OCT 19 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

01-Feb-1993

JOHN W JONES JR
BOX 265
HAGERMAN ID 83332

RE: Copy of SRBA File(s): 36-00068, 36-00069, 36-00070, 36-07071

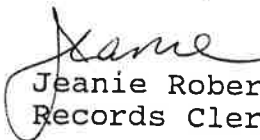
Dear Mr. Jones:

Please find enclosed the copies of documents you recently requested contained in the above referenced SRBA file(s) as of this date. Please note that copies of orthophoto quad maps or NAPP photography or aerial slides which may have been used in the review of your claim(s) have not been included since they are not easily reproduced. These items are however available for your review at our office. Please also note that in some situations some water rights may have other associated files which contain privileged information between IDWR staff and our legal council which has not been copied.

Please remit the following for the cost of the copies and postage:

\$12.17

Sincerely,


Jeanie Robertson
Records Clerk

Encl:

Jones
51
46
40
44
181x5 = 9.05
post 2.90
env. 22
12.17

MICROFILMED

OCT 19 1994

RECEIVED

JAN 27 1993

Department of Water Resources
Southern Region Office

Jan 25, 1993

(Date)

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

Dear Idaho Department of Water Resources:

Please provide me with a copy of all information included in
my file as it relates to water right number 36-00068; 36-00069
36-07071; 36-00070.

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

Please bill me for the copy charge.

Sincerely,

John W. Jones Jr.

John W. Jones Jr.
(Name)

Box 265

(Address)

Hagerman, Idaho 83332

(City, State, Zip Code)

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

MICROFILMED
OCT 19 1994

DIRECTOR'S REPORT CONVERSATION MEMO

1. PERSON(S) MAKING THE ENQUIRY:

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

BILL JONES

PO BOX 265

HAGERMAN ID 83332

2. SUBJECT OF INQUIRY:

REQUEST FOR COPIES OF WATER RIGHTS
LISTED IN 36-7071.

3. RESPONSE TO INQUIRY:

COPIES MADE OF THE PROFILE REPORTS.

NOTE: WR # 36-00070 WAS REPLACED BY 36-00069.
WR # 36-00041D SPLIT INTO 36-00041E & 36-00041F.

4. IDWR STAFF AND DATE:

Steve Clelland

11-3-92

Print name and initial

STEVE CLELLAND

SC

WATER RIGHT CLAIM (Nos.):

A36-07071

** COPY TO BILL JONES*

MICROFILMED

OCT 19 1994

NOTICE OF ERROR

RESPONSE

CORRECTED R PROOF

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

MICROFILMED

FEB 03 1993

NOTICE OF ERROR FORM

AUG-24-1992

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

Idaho Department of Water Resources

Statehouse Mail

Boise, Idaho 83720-9000

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

RECEIVED

SEP 23 1992

Department of Water Resources

YOUR DEADLINE FOR FILING A NOTICE OF ERROR IS:

RECEIVED 1992

1. Water right number: 36-07071

SEP 28 1992

Department of Water Resources
Southern Region Office

2. Name: John W Jones Jr
Deloris D Jones

Address: Box 265
Hagerman, Idaho 83332

Weekday Telephone Number: 837-4580

MICROFILMED

FEB 03 1993

TEAR AT PERFORATIONS AND COMPLETE FORM ON OTHER SIDE

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

3. Describe the portion of proposed recommendation with which you disagree:

Remarks

Non-irrigation uses - 82 raceways should be 90 raceways

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

Remarks { Do not know if 33 permits are the ones decreed thru Bar S Ditch.
Need copy of the permits to see if the total is 325 inches.
Rights for the 33 permits are from Weatherby Springs only and not Weatherby, Three Springs and Hoagland Tunnel.

5. Describe why you disagree with the proposed recommendation:

Remarks { Do not know if 33 permits are the ones decreed thru Bar S Ditch.
Need copy of the permits to see if the total is 325 inches.
Rights for the 33 permits are from Weatherby Springs only and not Weatherby, Three Springs and Hoagland Tunnel.

6. Date: *September 22, 1992*

SIGNATURE

John W. Jones Jr.
Delores Jones

DIRECTOR'S REPORT CONVERSATION MEMO

1. PERSON(S) MAKING THE ENQUIRY:

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

BILL JONES

PO Box 265

HAGERMAN ID 83332

2. SUBJECT OF INQUIRY:

No. of RACEWAYS

(837-4580)

He was concerned that the recommendation list 82 raceways since the license didn't and he says there are 8 seed ponds on the facility.

3. RESPONSE TO INQUIRY:

I told him that while it isn't described in the license it is being identified in the ~~the~~ Recommendation of rights. We were told during the field exam these ponds were no longer used so they were not included.

If the ponds are critical to his operation we can probably work together to include them in the Report later in the objection period.

4. IDWR STAFF AND DATE:

STEVE CLELLAND

son

Print name and initial

Steve Clelland

10-28-92

WATER RIGHT CLAIM (Nos.):

36-07071

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FEB 03 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

14-Oct-1992

JOHN W JONES JR
BOX 265
HAGERMAN ID 83332

RE: RESPONSE TO NOTICE OF ERRORS FOR CLAIMS 36-00068,
36-00069, 36-00070, AND 36-07071.

Dear Mr Jones

ISSUE = PERIOD OF USE FOR ALL CLAIMS

Your NOE(s) indicate that you would like the recommendation to show a longer season of use for irrigation. The Director has approved extending the period of use for the Hagerman valley to 3/15 to 11/15.

The proposed recommendation is based on irrigation season of use standards adopted by the Director for the various regions throughout the state. These standards are based on the period of the year in which there is less than a 75% chance of a 24 degree F. frost.

In addition, since there are some years in which water can be beneficially used for irrigation outside the irrigation season, the proposed Director's Report includes a general provision which provides for irrigation outside the irrigation season under certain conditions. The conditions are that the water is beneficially used, as determined by the director; that all water rights with a period of use outside the irrigation season, regardless of priority, are satisfied; and that the use does not conflict with the public interest as determined by the director. This proposed general provision will be included in the Director's Report.

RESPONSE TO NOE FOR 36-00068 AND 36-00069

Your NOE questions the basis for recommending disallowal of a claim to a previously decreed water right.

MICROFILMED

FEB 03 1993

JONES
PAGE 2
14-Oct-1992

Under Idaho law, water rights are limited to the amount of water beneficially used for the purposes for which the water rights were established. The amount of water beneficially used is limited to the amount that is actually used and is reasonably required. For irrigation purposes, a reasonable amount is the amount required using irrigation methods that are reasonably efficient under current circumstances. If the water right shown in a decree is no longer beneficially used, then the water right is forfeited.

In your case, you filed multiple overlapping claims. IDWR determined the amount of water reasonably required for the recommended uses, based on available data and current methods of analysis, and proposed to recommend the most senior claims that were within this total. To support recommendation of the notice of claims listed above, you will need to submit evidence of beneficial use of an amount of water greater than the total of the rights proposed to be recommended.

RESPONSE TO NOE FOR 36-07071

The recommendation for 82 raceways was based upon the field examiner's findings of raceways in use as of 1987. Expansion of the system beyond the original licensed system will require an application for permit even though the development has already occurred as the development has occurred since the May 20, 1971 mandatory permit statute for developments from surface water.

The 325 inches referenced in remarks was included within your claim based upon the court findings in Case No. 16676 which stated that the 325 inches was to be discharged into the Bar S ditch.

The Department does recognize that the "33" rights are only from Weatherby Springs although it does not clearly state that in the remarks section of your right. Within the "33" rights, only Weatherby Springs is listed.

Based upon currently available information, the period of use has been changed as stated above but the other points in your NOE(s) will remain the same.

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FEB 03 1993

JONES
PAGE 3
14-Oct-1992

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

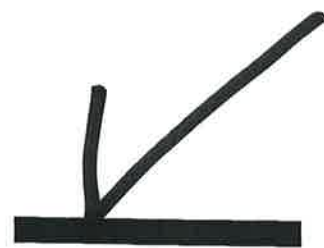
Sincerely

Kelly K. Christensen
Sr. Water Resource Agent

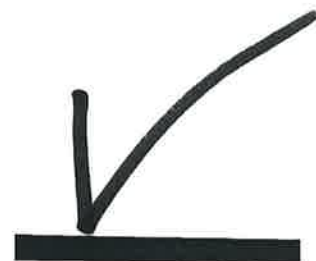
MICROFILMED

FEB 03 1993

R PROOF



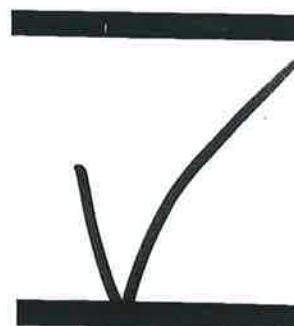
CVR



MAPS



PHOTOS



MISC

MICROFILMED

FEB 03 1993

Water Right Number - R36-07071 Prefix Translation: RESEARCH Old (D) Number -

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

*** C - CURRENT OWNER ***

JONES JR JOHN W 1 - PO BOX 265
2 -
3 -
City- HAGERMAN State- ID Zip- 83332
Phone - 208-837-4580
1 - PO BOX 265
2 -
3 -
City- HAGERMAN State- ID Zip- 83332
Phone - 208-837-4580

JONES DELORIS D

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

07/08/1969 17 SOUTHERN L - LICENSE

+ - - - - Source - - - - - + + - - - - Tributary - - - - - +

WEATHERBY SPRINGS BILLINGSLEY CREEK
THREE SPRINGS BILLINGSLEY CREEK
HOAGLAND TUNNEL BILLINGSLEY CREEK

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

Twn	Rng	Sec	Tract	Lot	RFlg	County
07S	14E	30	SE SE NW	(47)	GOODING	
			SE NE SW	(47)	GOODING	

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

Code	Description	Period From	Period To	Diversion Rate	Diversion Volume
19	FISH PROPAGATION	01/01	12/31	73.050	

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

73.050 0.0

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

Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County
07S	14E	30	NE SW		19	FISH PROPAGATION	(47) GOODING	

Total Acres:

+ - - Diversion Means - HEAD BOX, TWO 10" PIPES, ONE 24" PIPE & ONE 36" PIPE.

+ - - Non-Irrigation Use - FISH PROPAGATION, 82 RACEWAYS LARGE & SMALL

+ - - Other Rights for Same Use - NONE

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FEB 03 1993

Water right number - R36-07071

Prefix Translation: RESEARCH

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

FACILITY VOLUME 173,240 CU. FT.
THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF
DIVERSION DESCRIBED ABOVE:
36-00011A, 36-00011B, 36-00029A, 36-00029B, 36-00033B, 36-00033C,
36-00033D, 36-00033E, 36-00033F, 36-00033G, 36-00041A, 36-00041B,
36-00041C, 36-00041D, 36-00042A, 36-00044, 36-00046, 36-00060,
36-00061, 36-00062, 36-00068, 36-00070, 36-00086C 36-00086D,
36-00086E, 36-00086F, 36-00086G, 36-00086H, 36-000105, 36-00116,
36-00119, 36-00120, 36-15157 AND 36-11142.

THE APPROPRIATOR SHALL CONTINUOUSLY ALLOW 6.50 CFS FROM
WEATHERBY SPRINGS TO BE DELIVERED INTO BAR S DITCH FROM THE
OUTLET OF FISH OPERATION DESCRIBED ABOVE FROM MARCH 1 UNTIL
NOVEMBER 1 OF EACH YEAR, AND SHALL CONTINUOUSLY ALLOW 4.00 CFS
FROM WEATHERBY SPRINGS TO BE DELIVERED INTO THE BAR S DITCH FROM
THE OUTLET OF FISH OPERATION DESCRIBED ABOVE FROM NOVEMBER 1
UNTIL MARCH 1 OF EACH YEAR.

SOURCES FOR THIS RIGHT ARE WEATHERBY SPRINGS, THREE SPRINGS
AND HOAGLAND TUNNEL, ALL TRIBUTARY TO BILLINGSLEY CREEK.

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

3607071

+ - - - - - Conditions of Approval - - - - - +
No Conditions of Approval found.+ - - - - Decree Plaintiff - - - + + - - - - Decree Defendant - - - + + - Decree Date - +
00/00/0000

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

Date: 02/26/1991 User Id: BEDKE Subject: SCC-STAFF REVIEW

Date: 11/07/1991 User Id: CLELLAND Subject: FACILITY VOLUME

PER CONVERSATION WITH BILL JONES ON 10-24-91.

LARGE PONDS WEST - 6 X 2580 CU. FT. = 15,480 CU. FT.

SMALL PONDS - 16 X 860 CU. FT. = 13,760 CU. FT.

(8 SEED PONDS NOT USED)

Date: 08/11/1992 User Id: THORNTON Subject: TYPO CORRECTION

LARGE PONDS ABOVE - 30 X 2580 CU. FT. = 77,400 CU. FT.

LARGE PONDS BELOW - 30 X 2220 CU. FT. = 66,600 CU. FT.

TOTAL FACILITY VOLUME = 173,240 CU. FT.

+ - - Audit Fields - - +

08/18/92 THORNTON

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

Court Report Filing	- 00/00/0000	Field Inspection Made	- 08/22/1990	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 08/18/1992	Old Judicial District	-
Claim Received Date	- 08/19/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S001554	Water District	- 36A
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- AND/OR	Presumption Flag	-
				Notice of Error Flag	-

MICROFILMED

FEB 03 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

00:06:35
07/03/90

PAGE: 13
QUICKLOOK INFORMATION

CLAIM NUMBER: A36-07071

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			N			DB	
POINT OF DIV	Y N			④ 10 AC 1.5				
SOURCE	N		8-21-90 SCC/HHT	N				
PLACE OF USE	Y N			N				
DIV. AMOUNT CFS/VOLUME	N			N				
CONSUMPTIVE USE	- N			N				
PURPOSES	N			N				
PERIOD OF USE	N			N				
BASIS OF CLAIM	N			N				
REMARKS	N			N ④	6.			

"VERIFIED BY" CODES

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

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

MICROFILMED

FEB 03 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

00:06:35
07/03/90

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A36-07071

LAST: JONES, JR.
ADDRESS: P.O. BOX 265
CITY: HAGERMAN
PHONE NUMBER: 208-837-4580

FIRST: JOHN W.
STATE: ID ZIP: 83332

OWNER CODE: C

LAST: JONES
ADDRESS: P.O. BOX 265
CITY: HAGERMAN
PHONE NUMBER: 208-837-4580

FIRST: DELORIS D.
STATE: ID ZIP: 83332

OWNER CODE: C

FIELD EXAM REQUIRED?

VERIFICATION REQUIRED DUE TO REMARKS?

NO REMARKS IN CLAIM

DATABASE
N

FIELD
EXAMINER

MICROFILMED
FEB 03 1993

CONTACT PERSON: BILL JONES

PHONE NUMBER: () -

DATE OF FIELD EXAM: 8/21/90

APPOINTMENT MADE: Y() N()

TIME: : A() P()

ACCOMPANIED BY: SCC/HHT

PHONE NUMBER: () -

RELATIONSHIP TO CLAIMANT: _____

DIRECTIONS TO PROPERTY / REMARKS:

No field Exam needed but field Exam was completed for other rights here.
We spoke with Bill Jones regarding the entire system.

MICROFILMED

FEB 03 1993

A. AJ CLAIM: # A36-07071 PRIORITY DATE: 07-08-1969 STAGE: L
B. WR RECORD: # 36-07071 PRIORITY DATE: 07-08-1969 STAGE: L

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(/)
IF YES EXPLAIN.

REMARKS:

=====

RECOMMENDED PRIORITY DATE:
07-08-1969

REVIEWED BY

lw

DATE

7/18/90

MICROFILMED

FEB 03 1993

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A36-07071	07S	14E	30		NE	SW		GOODING
A36-07071	07S	14E	30		SE	NW		GOODING

OTHER AJ CLAIMS WITH SAME AJ POD
A PREFIX R PREFIX
A36-00009 NONE

WR RECORDS IN SAME 40 ACRE TRACT

36-00009
36-00010
36-00011
36-00015
36-00016
36-00017
36-00033
36-00041
36-00042
36-00044
36-00045
36-00060
36-00061
36-00062
36-00063
36-00068
36-00069
36-00086A
36-00086B
36-00105
36-00116
36-00118
36-00119
36-00120
36-02029
36-07740
36-00029
36-00046
36-02025

SOURCE: WEATHERBY SPRINGS
THREE SPRINGS
HOAGLAND TUNNEL

TRIB: BILLINGSLEY CREEK
BILLINGSLEY CREEK
BILLINGSLEY CREEK

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
36-07071	07S	14E	30		NE	SW		GOODING
36-07071	07S	14E	30		SE	NW		GOODING

OTHER WR RECORDS WITH SAME WR POD

AJ CLAIMS IN SAME 40 ACRE TRACT
A PREFIX R PREFIX

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FEB 03 1993

36-00009
36-00010
36-00011
36-00015
36-00016
36-00017
36-00033
36-00041
36-00042
36-00044
36-00045
36-00060
36-00061
36-00062
36-00063
36-00068
36-00069
36-00086A
36-00086B
36-00105
36-00116
36-00118
36-00119
36-00120
36-02029
36-07740
36-00029
36-00046
36-02025

A36-00009
A36-00033C
A36-00060
A36-00086G
A36-00119
A36-00033D
A36-00063
A36-00116
A36-00086F
A36-00086H
A36-00011B
A36-00011A
A36-00011C
A36-00105
A36-00120
A36-00061
A36-00062

NONE

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FEB 03 1999

SOURCE: WEATHERBY SPRINGS
THREE SPRINGS
HOAGLAND TUNNEL

TRIB: BILLINGSLEY CREEK
BILLINGSLEY CREEK
BILLINGSLEY CREEK

C. FIELD EXAM REQUIRED?

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

DATABASE
Y
N

FIELD
EXAMINER
N

REMARKS:

inform POD to 10 acre tract

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	COUNTY
<u>7S</u>	<u>13E</u>	<u>30</u>	<u>SE</u>	<u>NE</u>	<u>SW</u>	—	<u>47</u>
<u>7S</u>	<u>13E</u>	<u>30</u>	<u>SE</u>	<u>SE</u>	<u>NW</u>	—	<u>47</u>

change claim

SOURCE: WEATHERBY SPRINGS

TRIB: BILLINGSLEY CREEK

REVIEWED BY: LC

DATE: 7/18/90

VIA WEATHERBY SPRINGS
HOAGLAND TUNNEL
THREE SPRINGS

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A. ROOT WATER RIGHT NUMBERS: A36-07071

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
07S	14E	30	NE	SW		JONES, JR. , JOHN W.	A36-07071 /	36-07071 /	23.0		
						JONES, JR. , JOHN W.	A36-00068 /40.0	36-00068 /			
						JONES, JR. , JOHN W.	A36-00069 /40.0	36-00069 /			
						JONES, JR. , JOHN W.	A36-00070 /40.0	36-00070 /			
TOTAL ACRES							A36-07071		23.00		

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

PRESUMPTION FLAG:

REMARKS:

FISH USE.

RECOMMENDATIONS:

TOTAL ACRES: Ø

REVIEWED BY: SCU

DATE: 9-7-90

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A. AJ CLAIMED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY	
A36-07071 FISH PROPAGATION	FROM 01-01 TO 12-31	73.050 CFS	52794.00 AF/A
TOTAL DIVERSION RATE/VOLUME CLAIMED		73.050 CFS	52794.00 AF/A

B. WR RECORDED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY	
36-07071 FISH PROPAGATION	FROM 01-01 TO 12-31	73.050 CFS	52794.00 AF/A
TOTAL DIVERSION RATE/VOLUME CLAIMED		73.050 CFS	52794.00 AF/A

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

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

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y() N()

RECOMMEND TO WR STANDARDS OR OTHER?

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

REMARKS:

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A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

Y(☒) N(☐)

AJ TOTAL CLAIMED DIVERSION RATE: 73.050 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 73.050 CFS

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

FLOW MEASUREMENT REQUIRED?

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

DATABASE EXAMINER

N

FIELD

N

B.

FLOW MEASUREMENT

MEASUREMENT METHOD _____, SEE ATTACHED CALCULATIONS.

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

OTHER RIGHTS LISTED IN CLAIM: NONE

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

CLAIM	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A36-00068	WEATHERBY SPRINGS	JONES, JR. , JOHN W.	12.500	0.024		
A36-00070	SPRING	JONES, JR. , JOHN W.	0.500			

NO RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION

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D. RATE/VOLUME CALCULATIONS: (IRRIGATION)

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(____) ***

1b. CALCULATIONS

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 = 52794.00 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.)

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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 73.050	DATABASE EXAMINER 52794.00	DATABASE EXAMINER 0.0
TOTAL FOR THIS RIGHT		73.050	52794.00	0.0

REVIEWED BY:

See

DATE:

9-7-90

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C03

D06 = FAC. VOL.

A. CHECK ONLY THE FOLLOWING THAT APPLY:

OWNERSHIP _____
FORFEIT/ABANDON _____
ADDITIONAL DIV. AMOUNT _____

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

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 36-07071

TOTAL DIVERSION RATE OF WR SPLITS

DATABASE
73.050

EXAMINER

CFS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
-	A36-07071	73.050	-		36-07071	73.050
TOTAL CFS		73.050				73.050

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
Y

REMARKS:

*See attached decree for ~~to~~ Remarks added to recommended
right*

AUTHENTICATION:

SIGNATURE: _____

DATE: _____

NAME OF FIELD EXAMINER: _____

TITLE: _____

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FEB 03 1993

Bill Jones 10-24-91 8:30 Am

Lg above

$$30 \times 2580 \text{ ft}^3 = 77,400 \text{ ft}^3$$

Lg west

$$6 \times 2580 \text{ ft}^3 = 15,480 \text{ ft}^3$$

Lg Below

$$30 \times 2220 \text{ ft}^3 = 66,600 \text{ ft}^3$$

Small

$$\frac{16 \times 860 \text{ ft}^3}{82} = 13,760 \text{ ft}^3$$

(8 deep ponds
not used)

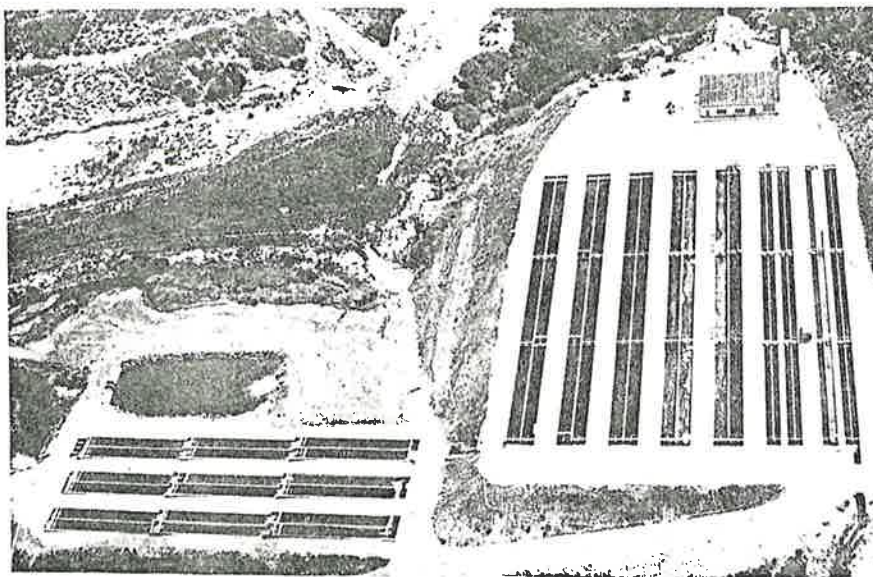
173,240 ft³

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FEB 03 1993

Per phone conversation: see

enter to comments



JONES & SANDY TROUT FARM

Jones & Sandy Livestock Co.
Box 265
Hagerman, Idaho 83332

Started in 1971

Map Location: H-5

Water Source: Three Springs and Weatherby
Springs

Water Flow: 72 CFS (Max.)
30 CFS (Min.)

Water Discharge: Billingsley Creek

Water Temp.: 58°F 15.5°C

Water Chemistry:

Dissolved Oxygen	9.30 ppm
pH	8.18
Nitrate	0.87 ppm
Hardness (Calcium)	86 ppm
Calcium	17.5 ppm
Potassium	7.3 ppm

Alkalinity	154 ppm
Conductivity	770 μ mos
Phosphate	0.16 ppm
Hardness (Total)	171 ppm
Sodium	30 ppm
Magnesium	22.5 ppm

Fish Rearing Space: 145,900 cubic feet in 72 ponds

Water Replacement Time: 33.7-81.0 minutes

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WATER RIGHTS WITH POD @ WEATHERBY SPRINGS
COMPLEX

11-7-91
SCC

36-00011A

36-00086E

36-00011B

36-00086F

36-00011C

36-00086G

36-00011D

36-00086H

36-00029A

36-00005

36-00033A

36-00116

36-00033B

36-00119

36-00033C

36-00120

36-00033D

36-00189A

36-00033E

36-00198A

~~36-00035D~~ WRONG SOURCE
RENUMBERED

36-00041A

36-07071

36-00041B

36-00042

36-10385

36-00044

36-10386

36-00046

36-15157

36-00060

36-00061

36-00062

36-00063

36-00068

36-00069

36-00070

~~36-00086B~~ DISALLOWED

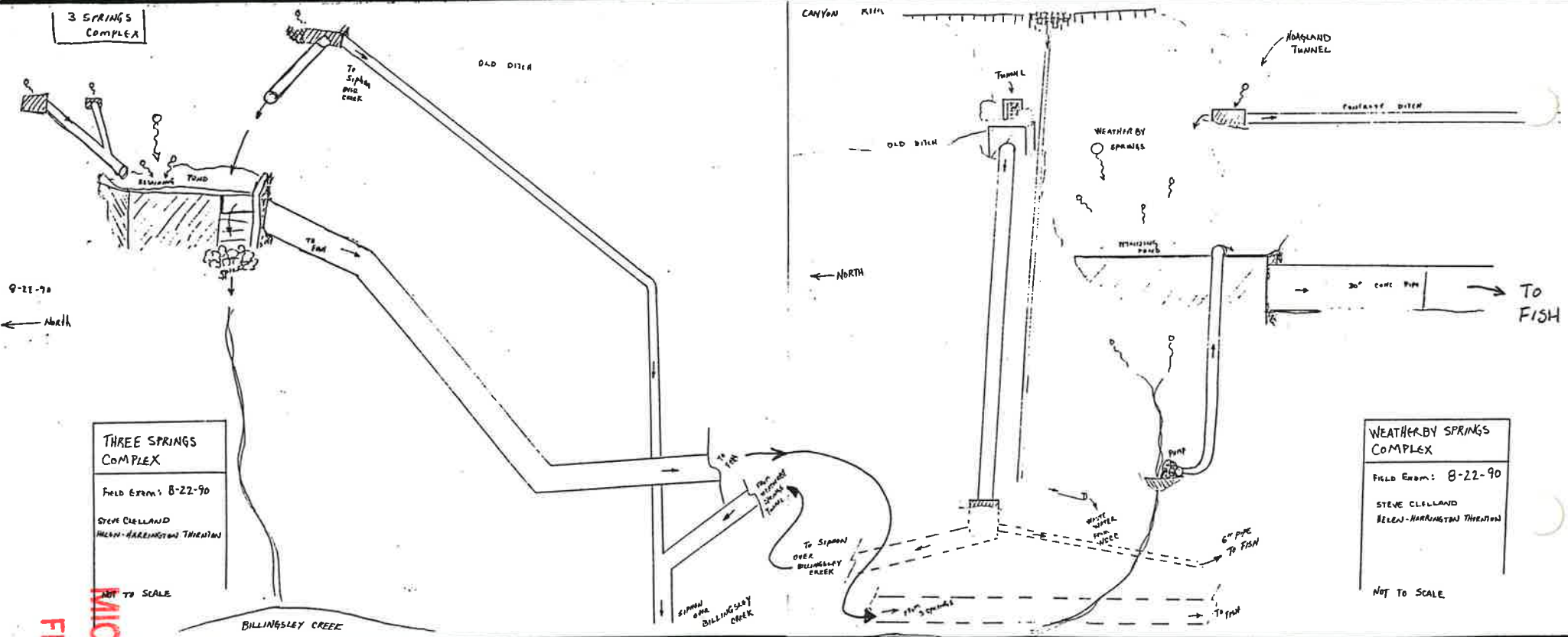
36-00086C

36-00086D

Based on R-Records
as of 11-7-91
SCC

MICROFILMED

FEB 03 1993



9-21-90
 ← North
 THREE SPRINGS COMPLEX
 Field Exam: 8-22-90
 STEVE CLALLAND
 MELAN-HARRINGTON THREATEN
 NOT TO SCALE

WEATHERBY SPRINGS COMPLEX
 Field Exam: 8-22-90
 STEVE CLALLAND
 MELAN-HARRINGTON THREATEN
 NOT TO SCALE

RECEIVED

JAN 23 1979

APR 24 1989

Department of Water Resources
Southern Region Office

HEPWORTH, NUNGESTER & FELTON
Bank & Trust Building
Post Office Box 389
Twin Falls, Idaho 83301
Tel. No. 208-734-7510
Attorneys for Plaintiffs

Exhibit No. _____
Case No. _____
Filed Jan 23 1979
CLERK
Deputy

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

* * * * *

JOHN W. JONES, JR., and DELORIS D.)
JONES, husband and wife; and W. A.)
SANDY and FLORENCE M. SANDY, husband)
and wife, dba, JONES AND SANDY)
LIVESTOCK,) Case No. 16676

Plaintiffs,

vs.

RESERVOIR LAND COMPANY, INC., an)
Idaho corporation; KNAKE EYE LAND)
& CATTLE CO. and VIEJO MANAGEMENT)
CO.; dba BUCKEYE LAND CO.; BUCKEYE) STIPULATION OF FACTS
LAND CO.; CLIFFORD PETERSON; OMER E.)
LORANGER and BEVERLY B. LORANGER,)
husband and wife; WALLACE W. BATES)
and LOLEITA V. BATES, husband and)
wife; RICHARD P. SAUER and LUCILLE B.)
SAUER, husband and wife; SHELDON G.)
CARLETON and BARBARA S. CARLETON,)
husband and wife; EDNA M. (BELL) REA;)
STANLEY J. HOSKOVEC and BETTY)
HOSKOVEC, husband and wife; ALFRED)
H. COLE and PHYLLIS A. COLE, husband)
and wife; ELLIS & WEIR, INC., a)
domestic corporation; HAROLD V.)
WOLINE and LOIS C. WOLINE, husband)
and wife; FRED STURTEVANT and JOYCE)
E. STURTEVANT, husband and wife;)
and DOES I THROUGH V,)

Defendants.

* * * * *

STIPULATION OF FACTS -1-

1 COMES NOW the parties through their attorneys of
2 record and stipulate as follows:

3 WHEREAS, the Bar S ditch carrying water from Weatherby
4 Springs across Billingsly Creek consists of an open ditch and a
5 series of metal pipes;

6 WHEREAS, on or about 1960 or 1961, a steel pipe with
7 an outside diameter of 24 inches was welded near the mouth or
8 inlet portion of the pipe or siphon crossing Billingsly Creek;

9 WHEREAS, at all times since 1960 or 1961, to the
10 present date, this pipe or siphon has been restricted at its
11 inlet by a section or sections of metal pipe having an outside
12 diameter of 24 inches;

13 WHEREAS, the maximum flow discharge for said original
14 pipe or siphon at all times since 1960 or 1961 has been 325
15 miners inches of water; and,

16 WHEREAS four other reputed or alleged diverters of
17 water from the Bar S ditch downstream from said crossing at
18 Billingsly Creek have been discovered, who have not been named
19 in the above-entitled proceeding and who, therefore, cannot be
20 bound by any judgment, decree, adjudication or stipulation
21 entered in the above-entitled proceeding;

22 All parties, by and through their attorneys of record,
23 agree and stipulate: ~

24 1. (a) that plaintiffs shall continuously, and on
25 a year round basis, allow 325 miners inches of water from
26 Weatherby Springs to be delivered into the Bar S ditch from the
27 outlet of its fish hatchery operation upon the express condition

28 STIPULATION OF FACTS -2-

1 precedent that defendant Buckeye Land Company enclose on or before
2 January 1, 1980, the existing open Bar S ditch with a suitable
3 enclosed pipeline along the entire reach of said Bar S ditch
4 located on the property presently owned by plaintiffs downstream
5 from plaintiffs fish hatchery operation; or in the alternative,

6 (b) in the event said open ditch is not enclosed
7 as set out in subparagraph (a) immediately above, that plaintiffs
8 shall continuously allow 325 miners inches of water from Weatherby
9 Springs to be delivered into the Bar S ditch from the outlet of
10 its fish hatchery operation from March 1 until November 1 of
11 each year, and plaintiffs shall continuously allow 200 miners
12 inches of water from Weatherby Springs to be delivered into the
13 Bar S ditch from the outlet of its fish hatchery operation from
14 November 1 until March 1 of each year.

15 2. that the trial date scheduled for this matter be
16 vacated to allow these individuals to be named so as to provide
17 for a full adjudication of the water rights of all individuals
18 diverting water along said stream;

19 3. that all other issues of law and fact not stipulated
20 by the parties herein are reserved until the time of trial.

21 DATED this _____ day of January, 1979.

22
23 HEPWORTH, NUNGESTER & FELTON

24
25 By 
26 John C. Hepworth for Plaintiffs

27
28 STIPULATION OF FACTS -3-

1 PARRY, ROBERTSON, LALY & LARSON

2 AND

3 BENOIT AND ALEXANDER

4
5 By *Robert Alexander*

6 Bob Alexander for Defendants
7 Buckeye Land Company and Reservoir
8 Land Company

9 CHURCH, CHURCH, & SNOW

10 By *Harmon H. Weir*

11 For Defendants
12 Ellis & Weir, Inc. *H. H. Weir*

13 JAMES HOBDEY & VARIN

14
15 By *Carl H. Hobdey*

16 For Defendants

17 Clifford Peterson; Omer E. Loranger
18 and Beverly B. Loranger; Wallace W.
19 Bates; Richard P. Sauer and Lucille B.
20 Sauer; Sheldon G. Carleton and Bar-
21 bara S. Carleton; Edna M. Rea;
22 Stanley J. Hoskovec and Betty
23 Hoskovec; and Alfred H. Cole.

24 O R D E R

25 IT IS SO ORDERED.

26 -1-22-79

27 *151 Douglas D. Kramer*
28 District Judge

STIPULATION OF FACTS -4-

DISTRICT COURT
GOODING, IDAHO

APR 27 AM 9:00

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

JOHN W. JONES, JR., and
DELORIS D. JONES, et al

Plaintiffs,

vs.

RESERVOIR LAND COMPANY, INC.,
et al,

Defendants.

CASE NO. 16676

MEMORANDUM OPINION

The matter before the court is defendants' motion to amend the order of this Court dated January 22, 1979 incorporating a stipulation by all parties concerning their respective water rights in Weatherby Springs. The defendants' contend that their attorneys signed the stipulation under the mistaken impression that it called for 325 miner's inches of water to be delivered through the Billingsley Creek Siphon. In fact, the stipulation states that the water is to be delivered into the Bar S Ditch from the outlet of plaintiffs' fish hatchery operation. Though some comment was made at oral argument and in defendants' brief as to counsels' lack of authority to make the stipulation as worded, there is nothing in the affidavits filed with the Court to support that proposition. If there was a mistake in the formation of the stipulation it was unilateral, not mutual. Typically, a mutual mistake is required to make a contract voidable. Restatement, Contracts § 503. The stipulation explicitly deals with the problem of water loss in the Bar S Ditch. If the defendants place a suitable enclosed pipe line along the ditch by January 1, 1980 they are entitled to 325 miner's inches year round. If not, they are entitled to merely 200 inches from November 1 to March 1 of each year. The stipulation underscores the fact that the parties were well aware of the excessive water loss problem in the Bar S ditch at the time it was signed. It is well recognized in Idaho that only a reasonable loss in transport is allowed to the holder of a water right. Glenn Dale Ranches Inc. v. Shaub 94 Idaho 585, 494 P.2d 1029 (1972). The Court cannot believe that the dispute now before it centers around an amount of water which would constitute a reasonable loss. It must involve water substantially in excess of that amount. If so, the defendants are not entitled to the water under the Glenn Dale Ranches case. Accordingly, the Court sees no reason to exercise its discretion in favor of the defendants. The motion to alter or amend is denied. There appears no reason to order specific performance of the stipulation at this time.

MEMORANDUM OPINION/1

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FEB 03 1993

However, the Court will not hesitate to enforce its order should it be necessary to do so. No attorney's fees will be allowed.

Dated this 24 day of April, 1979.


Douglas D. Kramer
District Judge