

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: A36-10446
Date Received: 8/15/1988
Receipt No: S001436
Received By: W

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: MICHAEL J. FLEMING 208-837-4934
Address: RT 1 BOX 7
HAGERMAN, ID 83332

2. Date of Priority: JAN 01, 1934

3. Source: UNNAMED SPRING Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
07S	13E	2	SW	NE	NE		GOODING

5. Description of diverting works:
EARTHEN DAM, FLOOD IRRIG.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	10/01	0.700		

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

8. Total consumptive use is 18.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	13E	2	NW	NE		IRR	6.0

Section Acres 6.0

Total Acres 6.0

A36-10446

Page 1

Date: 08/15/88

MICROFILMED
OCT 20 1994

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:

A37-03155, A37-00795, A37-00796, A37-03157, A37-00798

14. Remarks:

WATER NOTED IN DEED, HOWEVER, NO RECORD OF FILING.

15. Basis of Claim: STATUTORY CLAIM

16. Signature(s)

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

Number of attachments: 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): Michael J. Fleming Date: Aug 15, 1988
Date:

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 15th day

of August 19 88

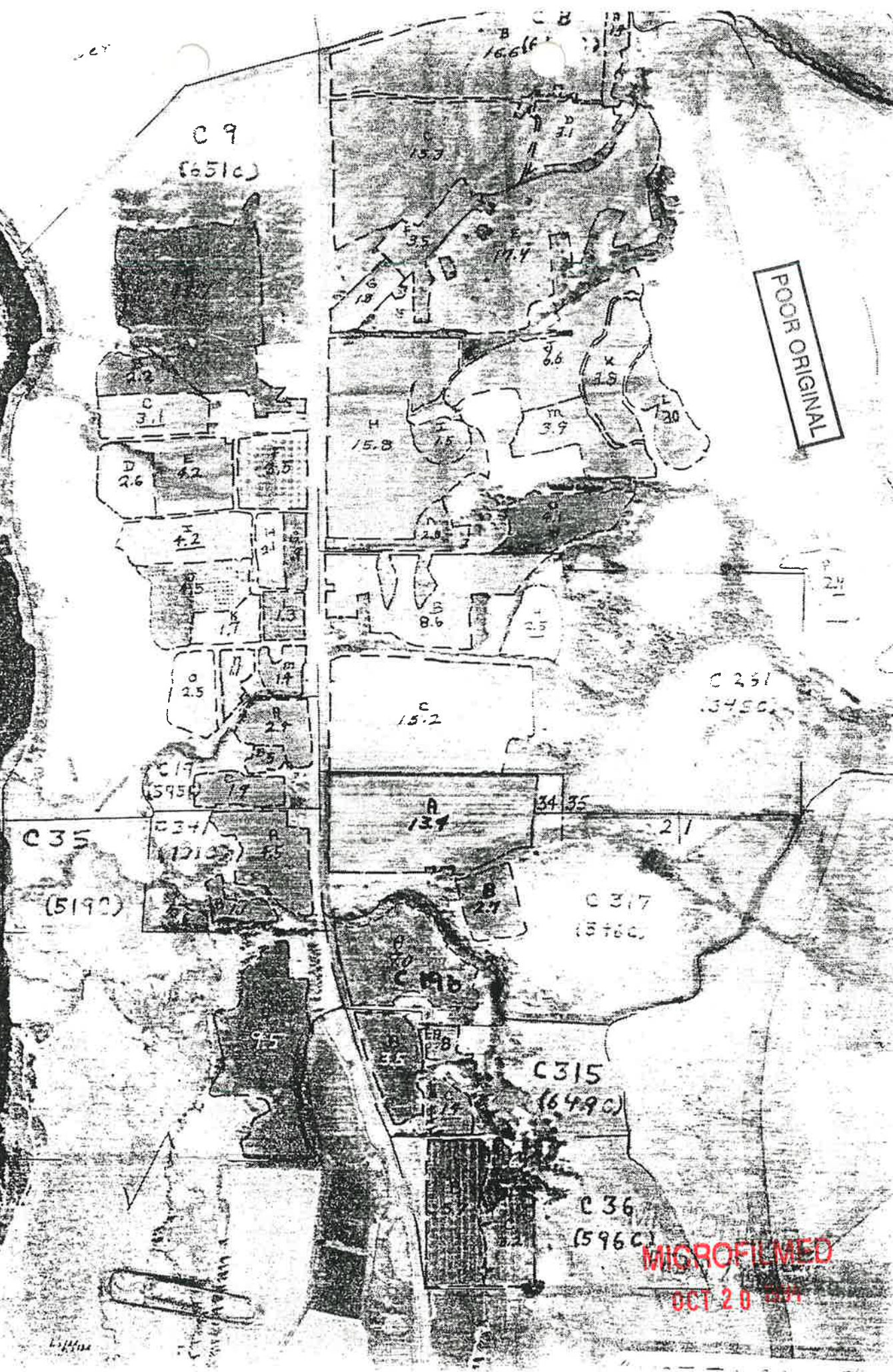
Roxanne Story
Notary Public

Seal

Residing at Buhl, Id

My Commission Expires 6-30-94

POOR ORIGINAL



36-00004	36-00047	36-00065	36-00066B	36-00067	36-00136A	36-00136B	36-00194	36-02046	36-02166
36-02178	36-07298	36-10033	36-10035	36-10169	36-10223	36-10446	36-10815	36-15094	A36-00004
A36-00047	A36-00065	A36-00065B	A36-00066B	A36-00067	A36-00136	A36-00194	A36-02046	A36-02166	A36-02178
A36-07298	A36-10033	A36-10035	A36-10169	A36-10223	A36-10446	A36-10815	A36-15094		

TOTAL RECORDS IN SELECTION FILE: 38

MICROFILMED
OCT 20 1994

INPUT: AJ_SELECTION:SHAFF-BROWN-NOA6.SEL

TYPE OF ACTION: MODIFY

MODIFY ALL FIELDS FLAG: Y

LAST NAME: BROWN

ADDRESS LINE 1: HEPWORTH NUNGESTER LEZAMIZ

ADDRESS LINE 3: PO BOX 389

CITY: TWIN FALLS

FIRST NAME: PATRICK D

ADDRESS LINE 2:133 SHOSHONE ST N

STATE: ID ZIP: 833030389

PHONE NUMBER: (208) 734-7510

✓ 36-00004 SUCCESSFULLY CHANGED ON HOST
✓ 36-00047 SUCCESSFULLY CHANGED ON HOST
✓ 36-00065 SUCCESSFULLY CHANGED ON HOST
✓ 36-00066B SUCCESSFULLY CHANGED ON HOST
✓ 36-00067 SUCCESSFULLY CHANGED ON HOST
✓ 36-00136A SUCCESSFULLY CHANGED ON HOST
✓ 36-00136B SUCCESSFULLY CHANGED ON HOST
✓ 36-00194 SUCCESSFULLY CHANGED ON HOST
✓ 36-02046 SUCCESSFULLY CHANGED ON HOST
✓ 36-02166 SUCCESSFULLY CHANGED ON HOST
✓ 36-02178 SUCCESSFULLY CHANGED ON HOST
✓ 36-07298 SUCCESSFULLY CHANGED ON HOST
✓ 36-10033 SUCCESSFULLY CHANGED ON HOST
✓ 36-10035 SUCCESSFULLY CHANGED ON HOST
✓ 36-10169 SUCCESSFULLY CHANGED ON HOST
✓ 36-10223 SUCCESSFULLY CHANGED ON HOST
✓ 36-10446 SUCCESSFULLY CHANGED ON HOST
✓ 36-10815 SUCCESSFULLY CHANGED ON HOST
✓ 36-15094 SUCCESSFULLY CHANGED ON HOST
✓ A36-00004 SUCCESSFULLY CHANGED ON HOST
✓ A36-00047 SUCCESSFULLY CHANGED ON HOST
✓ A36-00065 SUCCESSFULLY CHANGED ON HOST
✓ A36-00065B SUCCESSFULLY CHANGED ON HOST
✓ A36-00066B SUCCESSFULLY CHANGED ON HOST
✓ A36-00067 SUCCESSFULLY CHANGED ON HOST
✓ A36-00136 SUCCESSFULLY CHANGED ON HOST
✓ A36-00194 SUCCESSFULLY CHANGED ON HOST
✓ A36-02046 SUCCESSFULLY CHANGED ON HOST
✓ A36-02166 SUCCESSFULLY CHANGED ON HOST
✓ A36-02178 SUCCESSFULLY CHANGED ON HOST
✓ A36-07298 SUCCESSFULLY CHANGED ON HOST
✓ A36-10033 SUCCESSFULLY CHANGED ON HOST
✓ A36-10035 SUCCESSFULLY CHANGED ON HOST
✓ A36-10169 SUCCESSFULLY CHANGED ON HOST
✓ A36-10223 SUCCESSFULLY CHANGED ON HOST
✓ A36-10446 SUCCESSFULLY CHANGED ON HOST
✓ A36-10815 SUCCESSFULLY CHANGED ON HOST
✓ A36-15094 SUCCESSFULLY CHANGED ON HOST

MICROFILMED
OCT 20 1994

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

3	Alice A. & Paul J. Anderton	✓A36-10223 ^h
	Fay Coates and/or Fred Beckstead	✓A36-07298 ^h
4	Fay Coates and/or Fred Beckstead	✓A36-00066B ^h
	Fay Coates and/or Fred Beckstead	✓A36-10169 ^h
5	Fay Coates and/or Fred Beckstead	✓A36-00065 ^h
	Fay Coates and/or Fred Beckstead	✓A36-00067 ^h
6	Dairy West Associates	✓A36-10815 ^h
	Michael J. Fleming	✓A36-15094 ^h
	Michael J. Fleming	✓A36-10446 ^h
7	Salmon Falls Land & Livestock	✓A36-00194 ^h
	Salmon Falls Land & Livestock	✓A36-02046 ^h
8	Salmon Falls Land & Livestock	✓A36-02166 ^h
	Salmon Falls Land & Livestock	✓A36-02178 ^h
9	Salmon Falls Land & Livestock	A36-00136B ^h
	Salmon Falls Land & Livestock	A36-00136A ^h
10	Salmon Falls Land & Livestock	✓A36-10035 ^h
	Salmon Falls Land & Livestock	✓A36-10033 ^h
11	Spring Valley Ranch, Inc.	✓A36-00004 ^h
	Dixie Adamson	✓A36-00047 ^h

12 Dated this 10 day of May, 1993.

13 HEPWORTH, NUNGESTER & LEZAMIZ,
14 CHARTERED

15 By: 

16 Patrick D. Brown
17 Attorneys for Respondents
18
19
20
21
22
23



Hepworth,
Nungester,
& Lezamiz

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 (PDB\21530SUP.NO6\crh)

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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

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

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

15
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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.

* * * * *

21
22
23
COMES NOW the law firm of Hepworth, Nungester & Lezamiz
and supplements its Notice of Appearance to add on behalf of



Hepworth,
Nungester,
& Lezamiz

SIXTH SUPPLEMENTAL NOTICE OF APPEARANCE - 1

MICROFILMED

OCT 20 1994

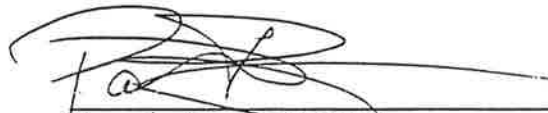
CERTIFICATE OF MAILING

The undersigned, a resident attorney of the State of Idaho, with offices at 133 Shoshone St. North, P.O. Box 389, Twin Falls, Idaho 83303, and one of the attorneys for the respondents in this matter, certifies that he caused to be mailed a copy of the above and foregoing FIFTH SUPPLEMENTAL NOTICE OF APPEARANCE on the 10 day of May, 1993, to:

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

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

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


Patrick D. Brown



Hepworth,
Nungester,
& Lezamiz

SIXTH SUPPLEMENTAL NOTICE OF APPEARANCE - 3

MICROFILMED
OCT 20 1994



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

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 3, 1990

A36-10446
MICHAEL J. FLEMING
375 1 BOX 7

MAGNETMAN

ID 83362

Dear Claimant(s):

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

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

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

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

Sincerely,

A handwritten signature in dark ink, appearing to read 'Allen Merritt'.

Allen Merritt, P.E.
Water Rights Supervisor

Enclosure

MICROFILMED
FEB 07 1993

RECEIVED

Oct 24, 1990

OCT 25 1990

Dear Sirs:

Department of Water Resources
Southern Region Office

Claim A36-10446

I am having trouble finding
Someone Still alive who knows
when the water was first used.
When I do I will send you
the information.

Thank you

Michael J. Gering

MICROFILMED
FEB 07 1993

507
RECEIVED

DEC 02 1999

Department of Water Resources
Southern Region

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

In Re SRBA

Case No. 39576

) NOTICE OF COMPLETED
) ADMINISTRATIVE PROCEEDINGS
)
) Water Rights 36-00064B, 36-10446,
) 36-15094 and 37-10993

IDWR has completed the following Administrative Proceeding:

☒ Change of Address
☐ Substitution of Party
☐ I.C. 42-222 Transfer

CHANGE OF ADDRESS

Name of Claimant: MICHAEL J FLEMING
New Address: 17826 HIGHWAY 30
BLISS ID 83314-5066
Phone: (208) 837-6453

Claimant's Water Rights: 36-00064B, 36-10446, 36-15094 and 37-10993

The Claimant has filed Objections or Responses to the following water
rights: 36-00064B, 36-10446 and 36-15094

NOTICE OF COMPLETED
ADMINISTRATIVE PROCEEDING 36-00064B, 36-10446, 36-15094
9/30/1999 AND 37-10993

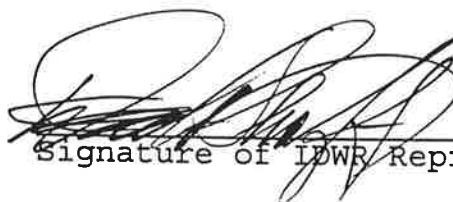
PAGE 1

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

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

DATED:

10/07/99



Signature of IDWR Representative

CERTIFICATE OF MAILING

I certify that on 11-18-99 I mailed the original
and copies of this form to the following persons, postage prepaid
and addressed as follows:

1. Original to:
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707
2. One Copy to:
Each party in the subcase, or attorney of record:

MICHAEL J FLEMING
17826 HIGHWAY 30
BLISS ID 83314-5066

PAUL F FLEMING
PO BOX 54
HAGERMAN ID 83332
3. One Copy to:
Chief, Natural Resources Division
Office of the Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
4. One Copy to:
United States Dept. of Justice
Environment & Natural Resource Div.
550 West Fort Street, MSC 033
Boise, ID 83724

Sandy Egbert
Signature of person or attorney mailing the form

NOTICE OF COMPLETED

ADMINISTRATIVE PROCEEDING
9/30/1999

36-00064B, 36-10446, 36-15094
AND 37-10993

PAGE 3

AJ5856NP

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

DATE: SEP-30-1999
PAGE: A-40

RIGHT NUMBER: 36-10446

NAME & ADDRESS: MICHAEL J FLEMING
17826 HIGHWAY 30
BLISS ID 83314-5066

SOURCE: UNNAMED STREAM TRIBUTARY: SNAKE RIVER

QUANTITY: 0.09 CFS

PRIORITY DATE: 03/15/1961

POINT OF DIVERSION: T07S R13E S02 LOT 1 (SWSENE) Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	02-15 11-30	0.09 CFS

PLACE OF USE: IRRIGATION Within GOODING County
 T07S R13E S02 Lot 2 (SWNE) 2.5 Lot 1 (SENE) 0.5
 3 ACRES TOTAL

EXPLANATORY MATERIAL: BASIS OF CLAIM - BENEFICIAL USE



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

RECEIVED

SEP 02 1999

Department of Water Resources

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

MICHAEL J FLEMING
17826 HIGHWAY 30
BLISS ID 83314-5066

August 24, 1999

Re: Snake River Basin Adjudication (SRBA)
Water Rights #36-00064B, 36-10446, 36-15094, 37-00795A,
37-00796, 37-03155, 37-03157, 37-07559, 37-00798, 37-10993
& 47-10199

Change of Address

Dear Water Right Holders:

IDWR has been notified the address presently in our records is incorrect. Although we have reached you at the address above, we need your written confirmation this is your correct mailing address before we can change our records. Future notices related to your water rights can be sent only to the address on your water right or as otherwise changed by you.

Please sign your name at the bottom of this letter and return it to this office. Make corrections to your name and address if necessary and list any other water rights you may have before returning this letter by September 17, 1999. Thank you for your help.

If your mail delivery address changes in any form, please contact us in writing so we can update our records.

If there has been a change in ownership of the property connected with the water rights referenced above, please write down the name and address of the new owner(s) so we can send them a form to make this required change to the water right record.

Sincerely,

Sally

Sally Sherman
Technical Records Specialist
Adjudication Bureau

SS:region

#####

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

Michael J Fleming
Claimant Signature

208-837-6453

Telephone No.

Corrected misspelled name to match signature

Permit cc: W.A.

Records changed, NCAP prepared SS 9-2-99

None

May 26, 1998

NOTE TO FILE

FROM: V.Hancock

CLAIM NO: >36-00004 36-00047 36-15094 36-10446 36-00003B
36-00003L 36-00077E

MADE COPIES OF ABOVE FILES FOR MATT HOWARD FOR BEEMAN & HOFSTETTER

MAY 05 1998

Department of Water Resource
Southern Region

1998 APR 29 PM 2:45

DEPT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA)

Case No. 39576)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

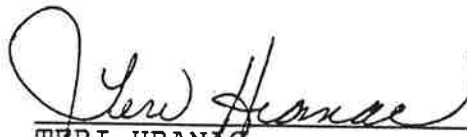
Water Right(s): 36-10446
36-15094

On April 29, 1998, Special Master FRITZ X HAEMMERLE issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

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

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

DATED April 29, 1998.


TERI HRANAC
Deputy Clerk

APR 29 1998

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

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

In Re SRBA

Case No. 39576

Subcase(s) 36-10446
SPECIAL MASTER'S REPORT

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

- ☐ There were no objections to this claim; however, this claim is used in combination with another claim which is the subject of an objection.
- ☒ All objections to this claim were resolved by stipulation of the parties.
- ☐ All objections to this claim were resolved at trial. The court made oral findings of fact and conclusions of law at the trial and they are incorporated herein.
- ☐ All objections were withdrawn from this subcase.

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

Dated 4/29/97.


FRITZ X. HAEMMERLE
Special Master
Snake River Basin Adjudication

Water Right Number - R36-10446

Prefix Translation: RESEARCH

Old (D) Number -

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

*** C - CURRENT OWNER ***
FLEMING

MICHAEL J

1 - RT BOX 7 933 E 2700 S.

2 -
3 -

City- HAGERMAN

State- ID Zip- 83332

Phone - 208-837-4934
6453

+ - - Priority Date - - +

+ - - - Region - - - +

+ - - - Stage - - - +

+ - - - Status - - - +

01/01/1954
3/15/1961

ERROR IN REGION

Beneficial Use

DISALLOWED

+ - - - - Source - - - - +
SPRING unnamed Stream

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

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

Twn	Rng	Sec	Tract	Lot	RFlg	County
07S	13E	2	SE SW NE NE	1		(47) GOODING

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

Code	Description	Period From	Period To	Diversion Rate	Diversion Volume
01 - IRRIGATION		3/15 04/01	11/15 10/01	1.09 0.700	

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

0.700
1.09
18.0

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

Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County
07S	13E	2	SW NW NE	2	6.0	2.5	01 IRRIGATION	(47) GOODING
			SE NE	1		0.5		
Total Acres:					6.0	3.0		

+ - - Diversion Means - EARTHEN DAM, FLOOD IRRIG.

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - A37-03155, A37-00795, A37-00796, A37-03157, A37-00798 - 36-15094

+ - - - - Remarks - - - - -

NO BENEFICIAL USE FOUND

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

No Old Water Right Numbers Found

+ - - - - Conditions of Approval - - - - -

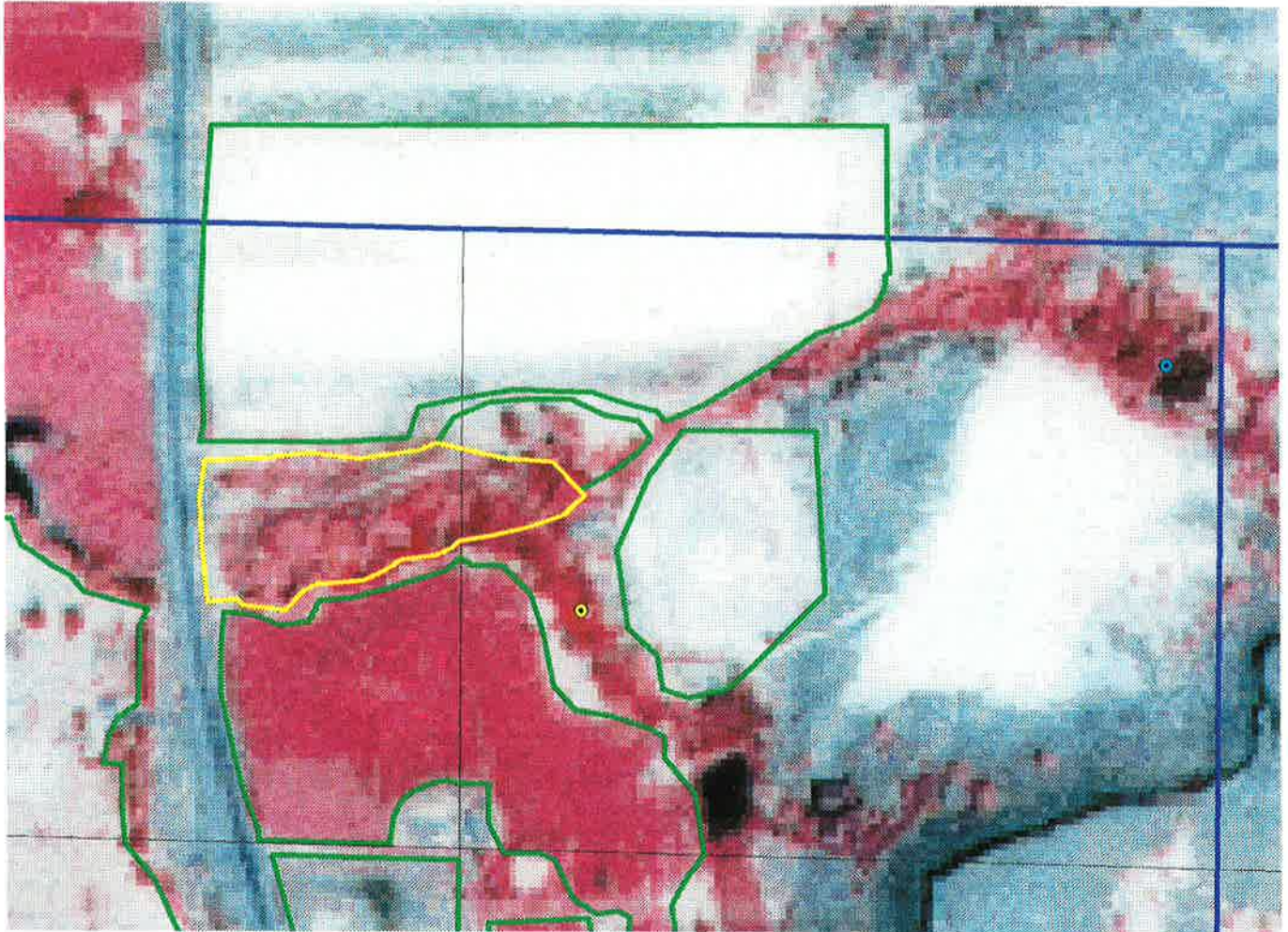
P03 - NO BENEFICIAL USE FOUND: This is included for a claim based on beneficial use that is PROPOSED to be disallowed because beneficial use of water was not confirmed by IDWR's field

RECOMMENDATION
APR 29 1998
SPECIAL MASTER

MICROFILMED
FEB 07 1993

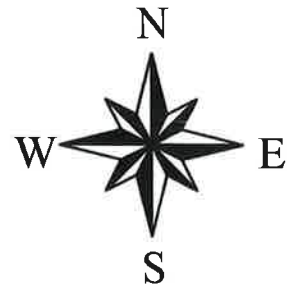
IDAHO DEPARTMENT OF WATER RESOURCES

36-10446



660 0 660 Feet

TNS 7S, RNG 13E,
S2, NE



● Recommended Point of Diversion

RECOMMENDED Place of use

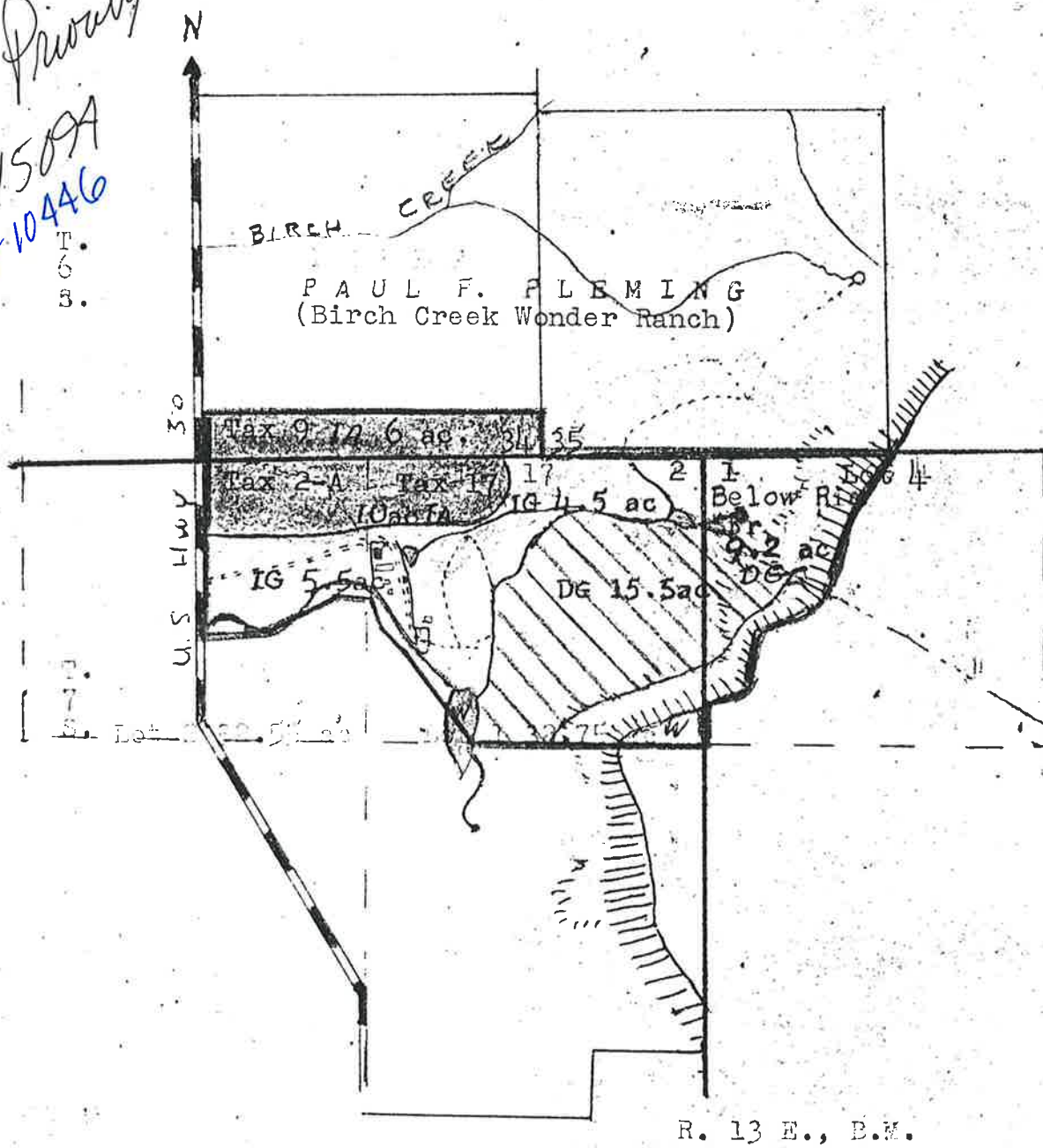
Section lines

Quarter/Quarter Lines

GIS PLACE OF USE PRESENTATION
1987 and/or 1988 NAPP PHOTOGRAPHY
DATE: APRIL 29, 1998
BY: STEVE CLELLAND

Exhibit 1

Proof of Priority
 A36-1509A
 & A36-10446
 T. 6 S.
 R. 13 E.



ALAN ERWIN STOCK FARM



Irrig. Agriculture, approximately .	16.00 ac.
Irrig, Grazing	10.00 ac.
Dry Grazing	24.70 ac.
Reservoirs, yard and road,	5.02 ac.
(Could be Irri. Graz.) 20 ac.	55.72 ac.

Cy to Harry &

SUBCASE NO. 36-10446

	CLAIM (8/15/88)	AMENDED CLAIM	RECOMMENDATION	OBJECTION
NAME	Michael Fleming	N/A	Disallowed	Michael Fleming
BASIS OF CLAIM	Statutory Claim			
SOURCE	Unnamed Spring	Stream		
QUANTITY	0.70 cfs	.09		
PRIORITY DATE	1/1/1934	3/15/68		
PURPOSE OF USE	Irrigation			
PERIOD OF USE	4/1 - 10/1	3/15 - 11/15		
POINT OF DIVERSION	T07S R13E S2	SW SENE LOT 1		
PLACE OF USE	T07S R13E S2 6.0 acres	2.5 SW NE Lot 2 0.5 SE SE Lot 1 SENE	3 Acres	
remarks	"Water noted in deed, however, no record of filing."			XX - water right not being recommended. *

* requests as claimed with stockwater and wildlife as purpose of use; season of use: 2/1 - 12/31; T07S R13E S1 added to place of use on objection (same amount of acres as claimed).

4/27/98 scc

See photos

in

A 36-15094

Notes from
SF5
agreement

4-28-98

scc

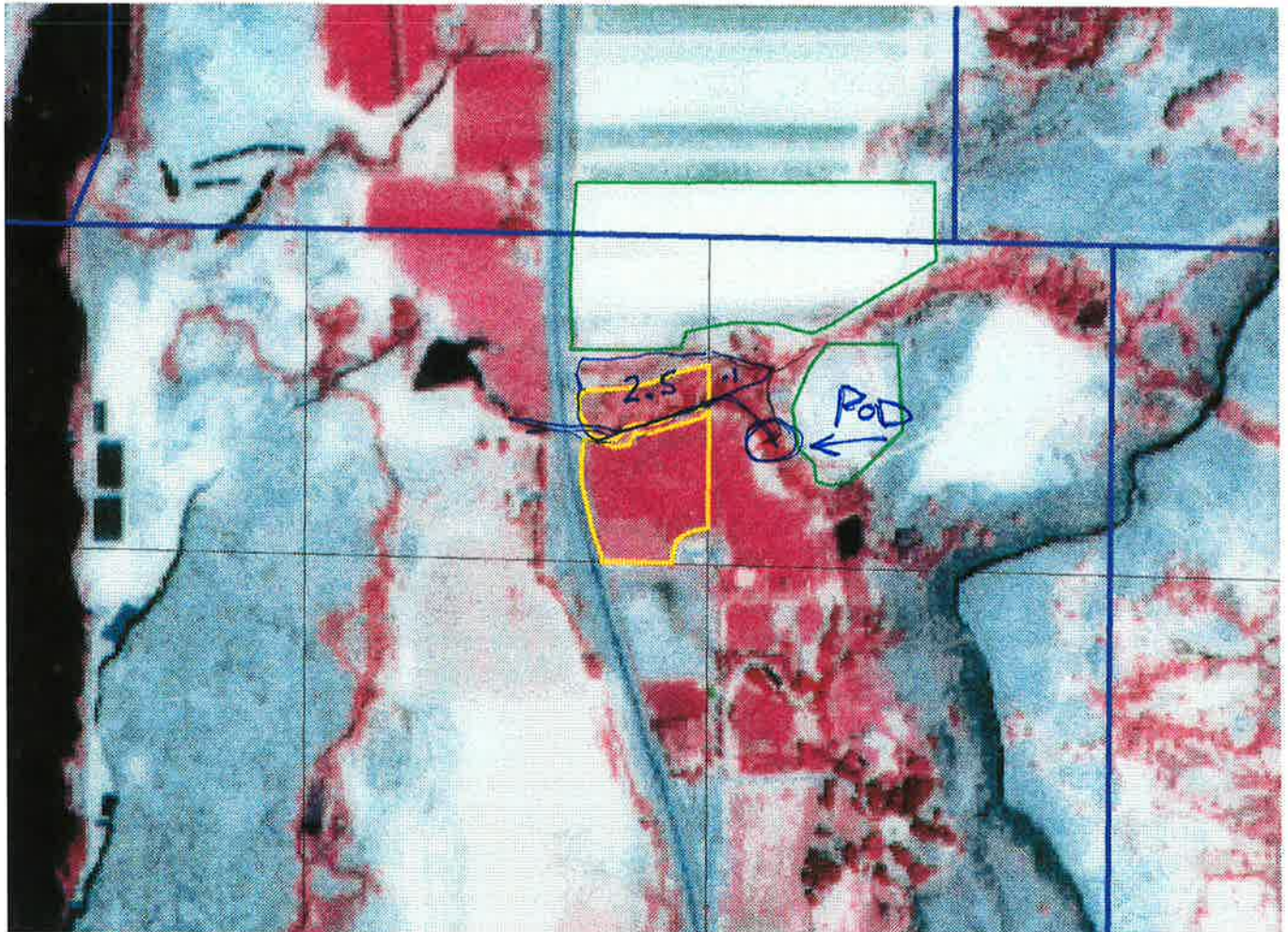
3 Ac

1.03 cfs/Ac

= .09 cfs

IDAHO DEPARTMENT OF WATER RESOURCES

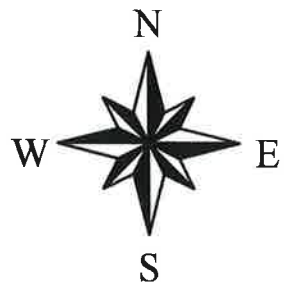
36-10446
MICHAEL FLEMING



660 0 660 1320 Feet

POD: SW SENE (LOT 1)
POU SWNE 3.0 (LOT 2)

TNS 7S, RNG 13E,
SEC 2, NW1/4NE1/4



○ Recommended Point of Diversion

□ Recommended Place of use

▬ Section lines

□ Quarter/Quarter Lines

*Draft notes
during SF5
4-28-98 sa*

GIS PLACE OF USE PRESENTATION
1987 and/or 1988 NAPP PHOTOGRAPHY
DATA ENTRY OCTOBER 2, 1997
BY KELLY K CHRISTENSEN

CLAIM NUMBERS 36-10446DATE 10-2

TRANSFER NUMBER _____

OBJECTION FILED _____

AGENT KKCTOTAL ACRES FROM RECOMMENDATION 6GEOGRAPHIC INFO SYSTEM 5

RIGHT NO				NE				NW				SW				SE			
	TNS	RNG	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
RECOM	<u>7S</u>	<u>13E</u>	<u>2</u>		<u>6</u>														
GIS					<u>4.9</u>														<u>5</u>
RECOM																			
GIS																			
RECOM																			
GIS																			
RECOM																			
GIS																			

UPDATED

POLYGON #

UPDATED

B36-DBPOU.DBF

4/29/98 san

POLYGON CREATED ON 604

()

ATTRIBUTES OF B36-POU.SHP

no number #783

B36-DBPOD.DBF

ATTRIBUTES OF B36-POD.SHP

assigned #698

Recommendation - Disallowed Re allowed w/ additional proof.
(tied in with 36-000648 &
36-15094 for SRPA hearings)

PTU approximated P/D not identified
as claim was recommended for
disallowance.

SF5 signed

P/U CONFLICT yes () no ()

P/D CONFLICT yes () no ()

READY FOR DECREE yes (✓) no ()

SENT FOR DECREE yes (✓) no ()

R PROOF

CVR

MAPS

PHOTOS

MISC

MICROFILMED

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. 36-10446 -0001

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

RESPONSE TO OBJECTION

Petitioner,)

vs.)

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

Respondents.)
_____)

I. GENERAL INFORMATION

1. Person responding to objection:

Name: R. KEITH HIGGINSON, DIRECTOR

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

Briefly describe your interest in this water right:

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

(Over)

2. Person who filed objection:

Name: MICHAEL J FLEMING
Address: ROUTE 1 BOX 7
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

12. ☒ Water Right Recommendation: I respond to the objection concerning:
- 12b. ☒ This water right not being recommended.
14. ☒ Other: I respond to the objection concerning:

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

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of Objection items 12 and 12b., and all allegations of the objection regarding these items, IDWR responds as follows: IDWR recommended the claim for disallowal because (1) the claimant did not submit evidence to support a priority date prior to the May 20, 1971, mandatory permit requirement date, as established by Idaho Code section 42-201, for the the appropriation of water from a surface water source, and (2) IDWR did not find this claimed water use to exist. IDWR further responds that the notice of claim was filed as a claim to a water right based on beneficial use. To the extent that the claimant

now asserts that the claim is based on a decree, the claimant improperly seeks to use the objection process to amend the notice of claim. A claimant must obtain leave of court to amend a claim after the director's report is filed just as a party must obtain leave of court to file a late claim after the director's report is filed. Once leave of the court is granted, IDWR can investigate the amended claim and make an appropriate recommendation to the district court.

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

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

In further response to the changes sought in the director's report, IDWR responds as follows. The objection seeks purposes of use and places of use not stated on the notice of claim, and a longer of season of use than was claimed. The claimant improperly seeks to use the objection process to amend the notice of claim.

CHANGES TO THE DIRECTOR'S REPORT

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

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

(Over)

RECEIVED

	No. of Pages
Notice of Claim No. A36-10446	3
IDWR's Response to Answer, Affirmative Defenses and Prayer for Relief	4

VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

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

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



Signature of person filing response

By:



(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 1st day of September
1993.



Notary Public for Idaho

Residing at: _____

My Commission expires _____

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

(Over)

CERTIFICATE OF MAILING

I hereby certify that on the 1st 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

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: A36-10446
Date Received: 8/15/1988
Receipt No: S001436
Received By: W

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: MICHAEL J. FLEMING 208-837-4934
Address: RT 1 BOX 7
HAGERMAN, ID 83332

2. Date of Priority: JAN 01, 1934

3. Source: UNNAMED SPRING Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
07S	13E	2	SW	NE	NE		GOODING

5. Description of diverting works:
EARTHEN DAM, FLOOD IRRIG.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	10/01	0.700		

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

8. Total consumptive use is 18.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
07S	13E	2	NW	NE		IRR	6.0

Section Acres 6.0

Total Acres 6.0

A36-10446

Page 1

Date: 08/15/88

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FEB 07 1993
OCT 20 1994

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:

A37-03155, A37-00795, A37-00796, A37-03157, A37-00798

14. Remarks:

WATER NOTED IN DEED, HOWEVER, NO RECORD OF FILING.

15. Basis of Claim: STATUTORY CLAIM

16. Signature(s)

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

Number of attachments: 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): Michael J. Bennett Date: Aug 15, 1988
Date:

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 15th day

of August 19 88

Roxanne Storey
Notary Public

Seal

Residing at Buhl, Id

My Commission Expires 6-30-94

027

C 8
16.6(6.1)

C 9
(6516)

POOR ORIGINAL

C 35
(5190)

C 17
(5950)

C 34
(1212)

C
15.2

A
13.4

B
2.7

C 19b

C 315
(6490)

C 36
(5960)

C 251
(3450)

C 317
(5960)

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

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

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

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

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

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

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

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

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

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

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

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



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

15-Jan-1993

MICHAEL J FLEMING
933 E 2700 S
HAGERMAN ID 83332

RE: Copy of SRBA File(s): 36-00064B, 36-10446, 36-15094

Dear Mr. Fleming:

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:

\$8.67

Sincerely,


Jeanie Robertson
Records Clerk

Encl:

Fleming
40
33
38
 $\frac{111 \times 5 = 5.55}{\text{Post.} \quad 2.90}$
 $\frac{\text{env.} \quad .22}{8.67}$

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JAN 13 1993

Department of Water Resources
Southern Region Office

1/13/93
(Date)

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

36-000648
36-15094
36-10446

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 _____.

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,

Michael J Fleming
(Name)

~~933 E 2700 S~~ 933 E 2700 S
(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

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OCT 20 1994

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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. A36-10446
(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,

36-10446 -0001/
93-04-0395

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)

MICROFILMED

OCT 20 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: Michael J. Fleming

Address: Route 1, Box 7

Hagerman, ID 83332

Briefly describe your interest in this water right:

Beneficially used since 01/01/1934

2. Owner of the water right:

Name: Michael J. Fleming

Address: Route 1, Box 7

Hagerman, ID 83332

3. If this objection is filed by an attorney:

Attorney Name: Hepworth, Nunqester & Lezamiz

Attorney Address: P. Parker & Patrick D. Brown

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

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

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

II. STATEMENT OF THE OBJECTION

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

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

(Over)

12. ☒ Water Right Recommendation: I object to:
- a. ☐ this water right being recommended at all; or
- b. ☒ this water right not being recommended.
13. ☐ Description of Reservation: I object to the legal description of the reservation.
14. ☒ Other: I object to: See Attached

REASONS SUPPORTING EACH BOX CHECKED

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

See Page 7

CHANGES TO THE DIRECTOR'S REPORT

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

Priority date: 1/01/1934; source: unnamed springs; point of
diversion: 07S, 13E, S.2 SW NE NE; purpose: irrigation, stock
water & wildlife; period of use: 02/01 to 12/31; maximum
quantity: .70 cfs; place of use: 07S, 13E S.2 NENW for 6 acres
and 7S, 13E S.1 SWSW

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.

VERIFICATION (Must be Completed)

State of Idaho

County of Blaine Falls

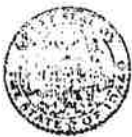
Michael J. Fleming, being first duly
(Name of person filing objection)
sworn, upon oath, deposes and says:

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

Michael J. Fleming
Signature of person filing objection

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

Subscribed and sworn to before me this 28 day of April,
1993.



LINDA M. ROUSSEAU
NOTARY PUBLIC - STATE OF IDAHO

Residing at

Linda M. Rousseau

Notary Public for Idaho

Residing at: Blaine Falls ID

My Commission Expires: 9-11-93

(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 20 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: Michael J. Fleming

Owner's address: Route 1, Box 7

Hagerman, ID 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 12 - IDWR recommends a disallowance of a claim that has been decreed and/or beneficially used.

CHANGES TO DIRECTOR'S REPORT, page 4

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

Question 14., page 4, Other

I.

GENERAL RESPONSE

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

II.

DESCRIPTIVE SUMMARY

(DIRECTOR'S REPORT PART I)

(hereinafter DRP-I)

(DRP-I at first unnumbered page)

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

III.

TABLE OF CONTENTS

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

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

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

IV.

INTRODUCTION

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

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

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

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

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

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

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

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

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

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OCT 20 1994

V.

DESCRIPTION OF THE WATER SYSTEM: BASIN 36

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

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

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

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

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

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

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

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

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

VI.

GENERAL PROVISIONS

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

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

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

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

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

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

The objectors admit paragraphs a. and b.

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

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

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

The objectors deny the averments within this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(DIRECTOR'S REPORT PART II)

I.

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

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

(DIRECTOR'S REPORT PART III)

I.

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

VIII.

AFFIRMATIVE DEFENSES

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

AFFIRMATIVE DEFENSE NO. 1

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

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

AFFIRMATIVE DEFENSE NO. 2

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

AFFIRMATIVE DEFENSE NO. 3

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

AFFIRMATIVE DEFENSE NO. 4

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

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

AFFIRMATIVE DEFENSE NO. 5

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

AFFIRMATIVE DEFENSE NO. 6

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

AFFIRMATIVE DEFENSE NO. 7

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

AFFIRMATIVE DEFENSE NO. 8

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

AFFIRMATIVE DEFENSE NO. 9

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

AFFIRMATIVE DEFENSE NO. 10

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

AFFIRMATIVE DEFENSE NO. 11

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

AFFIRMATIVE DEFENSE NO. 12

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

AFFIRMATIVE DEFENSE NO. 13

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

AFFIRMATIVE DEFENSE NO. 14

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

AFFIRMATIVE DEFENSE NO. 15

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

AFFIRMATIVE DEFENSE NO. 16

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

AFFIRMATIVE DEFENSE NO. 17

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

AFFIRMATIVE DEFENSE NO. 18

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

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

AFFIRMATIVE DEFENSE NO. 19

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

AFFIRMATIVE DEFENSE NO. 20

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

AFFIRMATIVE DEFENSE NO. 21

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

AFFIRMATIVE DEFENSE NO. 22

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

AFFIRMATIVE DEFENSE NO. 23

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

AFFIRMATIVE DEFENSE NO. 24

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

AFFIRMATIVE DEFENSE NO. 25

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

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

AFFIRMATIVE DEFENSE NO. 26

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

AFFIRMATIVE DEFENSE NO. 27

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

WHEREFORE, the objectors pray for judgment as follows:

1. That the State of Idaho take nothing by reason of its Directors' Report, and that this action, and any claims asserted against objectors, be dismissed.
2. That a decree be entered adjudicating the existence, validity, amount and priority of objectors' water rights in accordance with objectors' claims.
3. That to the extent the acts of the Department or Director constitute a taking of objectors' property for public use, that objectors be allowed and awarded just compensation therefor.
4. That the objectors be allowed all costs of suit and reasonable attorney fees incurred herein.
5. For such further relief to which the Court finds objectors justly entitled.

(WATER\21530ANS)

NOTICE OF ERROR



RESPONSE



CORRECTED R PROOF



MICROFILMED

FEB 07 1993

NOTICE OF ERROR FORM

AUG-24-1992

RECEIVED

SEP 18 1992

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

Idaho Department of Water Resources

Statehouse Mail

Boise, Idaho 83720-9000

Department of Water Resources

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

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

1. Water right number: 36-10446
2. Name: Michael J Fleming
Address: 933 E 2700 N
Hagerman
Weekday Telephone Number: 837-6453

MICROFILMED

FEB 07 1993

TEAR AT PERFORATIONS AND COMPLETE FORM ON OTHER SIDE

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

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

All

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

5. Describe why you disagree with the proposed recommendation:

6. Date:

SIGNATURE

A handwritten signature in blue ink, appearing to be 'W. J. S.', is written over a horizontal line.



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

16-Oct-1992

MICHAEL J FLEMING
933 E 2700 N
HAGERMAN ID 83332

RE: RESPONSE TO NOTICE OF ERROR FOR CLAIM 36-10446

Dear Mr Fleming

This claim has been disallowed based on the non-use of the water right as described by the claim. Based upon currently available information I am unable to reinstate your claim.

If you still do not agree with the proposed IDWR recommendations to the court, you may file an objection with the court after you receive the final recommendation of your water right. The objection process will be explained when you receive your final recommendation of your water right.

Sincerely

Kelly K Christensen
Sr Water Resource Agent

MICROFILMED
FEB 07 1993

R PROOF



CVR



MAPS



PHOTOS



MISC



MICROFILMED
FEB 07 1993

Water Right Number - R36-10446 Prefix Translation: RESEARCH Old (D) Number -

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

*** C - CURRENT OWNER ***
FLEMING MICHAEL J 1 - RT 1 BOX 7
2 -
3 -
City- HAGERMAN State- ID Zip- 83332
Phone - 208-837-4934

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
01/01/1934 ERROR IN REGION I - DISALLOWED

+ - - - - Source - - - - - + + - - - - - Tributary - - - - - +
SPRING SNAKE RIVER

+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County
07S 13E 2 SW NE NE (47) GOODING

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
01 - IRRIGATION 04/01 10/01 0.700

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
0.700 18.0

+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County
07S 13E 2 NW NE 6.0 01 IRRIGATION (47) GOODING

Total Acres: 6.0

+ - - Diversion Means - EARTHEN DAM, FLOOD IRRIG.

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - A37-03155, A37-00795, A37-00796, A37-03157, A37-00798

+ - - - - Remarks - - - - - +
NO BENEFICIAL USE FOUND.

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

+ - - - - Conditions of Approval - - - - - +
P03 - NO BENEFICIAL USE FOUND: This is included for a claim based on
- beneficial use that is PROPOSED to be disallowed because
- beneficial use of water was not confirmed by IDWR's field

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Water right number - R36-10446

Prefix Translation: RESEARCH

+ - - - - Conditions of Approval - - - - - +
(Condition continued from previous page)
- examination or by other evidence submitted by the claimant.

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

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

Date: 03/25/1991 User Id: BEDKE Subject: SCC-STAFF REVIEW

Date: 12/11/1991 User Id: CLELLAND Subject: COPIED FROM REMARKS

WATER NOTED IN DEED, HOWEVER, NO RECORD OF FILING.

Date: 12/11/1991 User Id: CLELLAND Subject: DISALLOWAL

THIS 6 ACRE POU IS IRRIGATED BUT FROM A DIFFERENT SOURCE AND SYSTEM THAN DESCRIBED BY THIS CLAIM. THE EARTH DAM AS CLAIMED
ONLY SUPPLIED PIPED IN STOCKWATER TO SOME CORRALS, NO IRRIGATION WAS POSSIBLE. NO SPRING FOUND.

+ - - Audit Fields - - +
03/17/92 ROBERTSO

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

Court Report Filing	- 00/00/0000	Field Inspection Made	- 03/15/1991	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 03/17/1992	Old Judicial District	-
Claim Received Date	- 08/15/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S001436	Water District	-
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	-	Presumption Flag	-
				Notice of Error Flag	-

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

02:33:53
07/03/90

PAGE: 10
QUICKLOOK INFORMATION

CLAIM NUMBER: A36-10446

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	(Y) y	- None -	3-15-91 SLL NB	DISALLOW		SC 12-11-91	DB	
POINT OF DIV	(Y) y			(Y)	1,2,4,5.			
SOURCE	(Y) y							
PLACE OF USE	(Y)				1,2,4,5			
DIV. AMOUNT CFS/VOLUME	(Y)							
CONSUMPTIVE USE	-							
PURPOSES	(Y)				5			
PERIOD OF USE	(Y)							
BASIS OF CLAIM	(Y)							
REMARKS	(Y)				5,6			

"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.

- Source
- acres
- pou legals
- System
NOT FOUND!

NO USES FOUND

DISALLOW

hwt
7-18-90

FED 07-1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

02:33:53
07/03/90

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A36-10446

LAST: FLEMING
ADDRESS: RT. 1 BOX 7
CITY: HAGERMAN
PHONE NUMBER: 208-837-4934

FIRST: MICHAEL J.
STATE: ID ZIP: 83332

OWNER CODE: C

FIELD EXAM REQUIRED?

DATABASE
Y

FIELD
EXAMINER

VERIFICATION REQUIRED DUE TO REMARKS?

CLAIM REMARKS: WATER NOTED IN DEED, HOWEVER, NO RECORD OF FILING.

FIELD EXAMINATION INFORMATION

CONTACT PERSON:

No One Home

DATE OF FIELD EXAM: *3/15/91*

APPOINTMENT MADE: Y() N(*x*)

ACCOMPANIED BY:

STEVE CLELAND &

RELATIONSHIP TO CLAIMANT:

NORMAN BROWN

DIRECTIONS TO PROPERTY / REMARKS:

During the field exam no evidence was found to show irrigation use or any diversion.

RECORDED
FEB 07 1993

A. AJ CLAIM: # A36-10446 PRIORITY DATE: 01-01-1934 STAGE: J

B. WR RECORD: NO WATER RIGHT RECORD TO MATCH THIS AJ CLAIM

C. FIELD EXAM REQUIRED?

DUE TO PRIORITY DATE DISCREPANCY? (Y/N)

DATABASE
Y

FIELD
EXAMINER

X

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

REMARKS:

no proof filed at final review

RECOMMENDED PRIORITY DATE:

DISALLOW

REVIEWED BY

su

DATE

12-11-91

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A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A36-10446	07S	13E	2	SW	NE	NE		GOODING

OTHER AJ CLAIMS WITH SAME AJ POD
A PREFIX R PREFIX
NONE NONE

WR RECORDS IN SAME 40 ACRE TRACT
NONE

SOURCE: SPRING

TRIB: SNAKE RIVER

B. WR POINT OF DIVERSION AND SOURCE:

THERE IS NO WATER RIGHT RECORD WITH THE SAME CLAIM NUMBER

SOURCE: NO SOURCE FOR RECORD

TRIB: NO TRIBUTARY FOR RECORD

C. FIELD EXAM REQUIRED?

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

DATABASE
Y
Y

FIELD
EXAMINER
X
Y

REMARKS:

POD incorrectly described - no NENE exists.

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>2</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>1</u>	<u>47</u>

SOURCE: _____
REVIEWED BY: _____

TRIB: _____
DATE: _____

NO DIVERSION FOUND. 3-15-91 SCC
NO SPRING FOUND

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A. ROOT WATER RIGHT NUMBERS: A36-10446

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
07S	13E	2	NW	NE		FLEMING, MICHAEL J.	A36-10446 / 6.0	- /		~~Ø~~	~~Ø~~
						FLEMING, MICHAEL J.	A37-00795 / 8.0	- /			
						FLEMING, MICHAEL J.	A37-00796 / 8.0	- /			
						FLEMING, MICHAEL J.	A37-00798 / 8.0	37-00798 / 6.0			
						FLEMING, MAICHAEL J.	A37-03155 / 8.0	- /			
						FLEMING, MICHAEL J.	A37-03157 / 8.0	- /			
						ELGAN, DOUGLAS L.	A36-10912 /	- /			
TOTAL ACRES							A36-10446	6.00			

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

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE
Y

FIELD
EXAMINER
Y

PRESUMPTION FLAG:

REMARKS:

NO IRRIGATION USE FOUND

RECOMMENDATIONS:

TOTAL ACRES: Ø

REVIEWED BY: SCC

DATE: 3-18-91

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A. AJ CLAIMED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
A36-10446 IRRIGATION	FROM 04-01 TO 10-01	.700 CFS
TOTAL DIVERSION RATE/VOLUME CLAIMED		.700 CFS

B. WR RECORDED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
TOTAL DIVERSION RATE/VOLUME CLAIMED		

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

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

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y() N(X)

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: 0.700 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: CFS

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

FLOW MEASUREMENT REQUIRED?

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

FIELD
DATABASE EXAMINER
Y

B.

FLOW MEASUREMENT

MEASUREMENT METHOD , SEE ATTACHED CALCULATIONS.

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

OTHER RIGHTS LISTED IN CLAIM: A37-03155, A37-00795, A37-00796, A37-03157, A37-00798

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

CLAIM	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A36-10446	SPRING	FLEMING , MICHAEL J.	0.700	0.116		
A37-00795	BIRCH CREEK	FLEMING , MICHAEL J.	0.700	0.005		
A37-00798	BIRCH CREEK	FLEMING , MICHAEL J.	0.640	0.004		
A37-03155	BIRCH CREEK, SOUTH FORK	FLEMING , MAICHAEL J.	0.500	0.003		
A37-03157	BIRCH CREEK, SOUTH FORK	FLEMING , MICHAEL J.	0.200	0.001		

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

CLAIM NO.	PURPOSES	NAME	MONTH/DAY	RATE	VOLUME
A36-10912	DOMESTIC	ELGAN , DOUGLAS L.	FROM 01-01 TO 12-31	.040 CFS	

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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 = 18.0 AF/A

ACRES _____ x CONSUMPTIVE VOL. AF/A FOR AREA _____ =

TOTAL CONSUMPTIVE USE _____ AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = _____ AF/A

ACRES _____ x DIVERSION VOL. AF/A FOR AREA _____ =

TOTAL DIVERSION VOLUME _____ AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y(____) N(____)

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

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RECOMMENDATIONS:

REC.
PURPOSES

DISALLOW

REC. PERIOD
FROM TO

REC. DIV
RATE CFS

REC. DIV
VOL. AF/A

REC. CONS.
USE

DATABASE EXAMINER

DATABASE EXAMINER

DATABASE EXAMINER

TOTAL FOR THIS RIGHT

REVIEWED BY:

See

DATE:

3-18-91

confirmed

12-11-91

su

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P03

no beneficial use found.

A. CHECK ONLY THE FOLLOWING THAT APPLY:

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

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 36-10446

TOTAL DIVERSION RATE OF WR SPLITS DATABASE EXAMINER CFS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
-	A36-10446	0.700	-		-	
TOTAL CFS		0.700				

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
N

FIELD
EXAMINER

REMARKS:

AUTHENTICATION:

SIGNATURE: Steve Bell

DATE: 3-18-91

NAME OF FIELD EXAMINER: _____ TITLE: _____

Steve Bell 12-11-91

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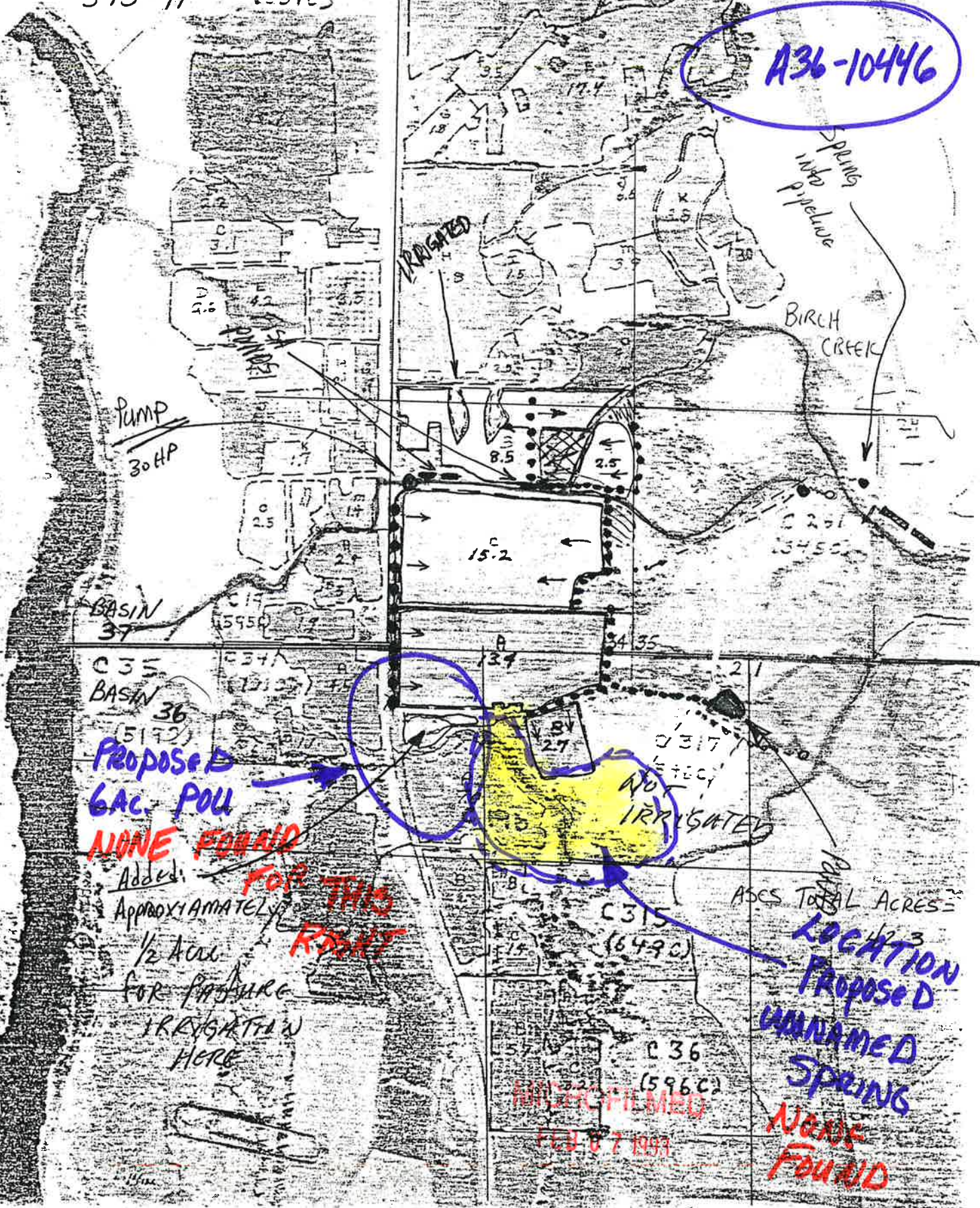
Field
EXAM MAP Notes

By Steve CLELLAND
Norman BROWN C 9

3-15-91 (5510)

FOR MICHAEL FLEMING

A36-10446



PROPOSED
GAC. POI

NONE FOUND

Added FOR THIS
Approximately
1/2 Acre
FOR FUTURE
IRRIGATION
HERE

ASCS TOTAL ACRES =
LOCATION
PROPOSED
UNNAMED
SPRING
NONE
FOUND

DATE 3-19-91

FROM STEVE CLELLAND
 A36-10594 + A36-10446
 TO UNCLAIMED STOCKWATER USE

SUBJECT

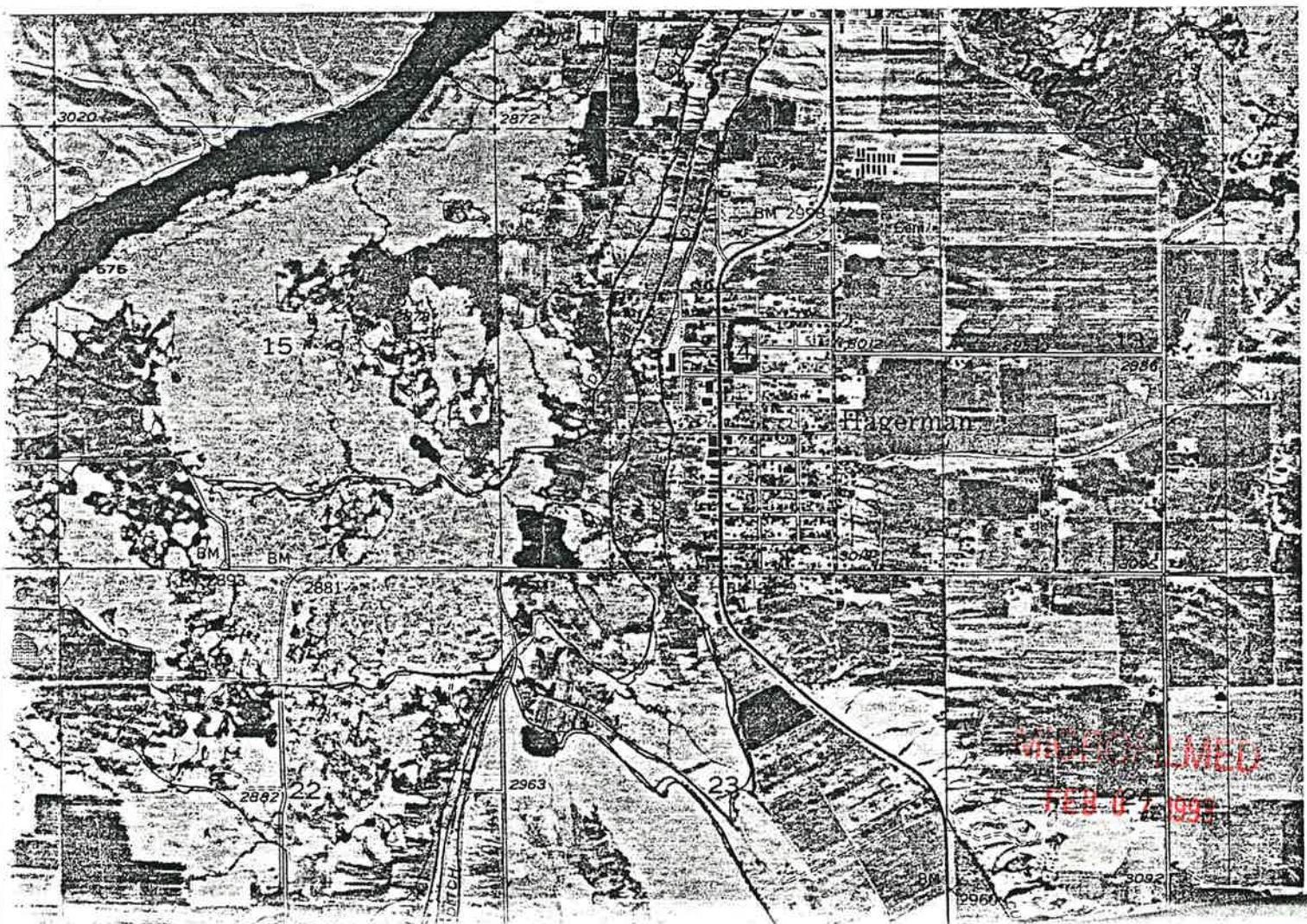
During field exam I found a dam with small pvc pipes delivering stockwater to ~~ponds~~ ^{corals} in 7S. 13E. Sec. 1 in SW SW NW. I could not list this use in any of the claims previously filed by Michael Fleming.

Source is unnamed stream. No irrigation uses involved.

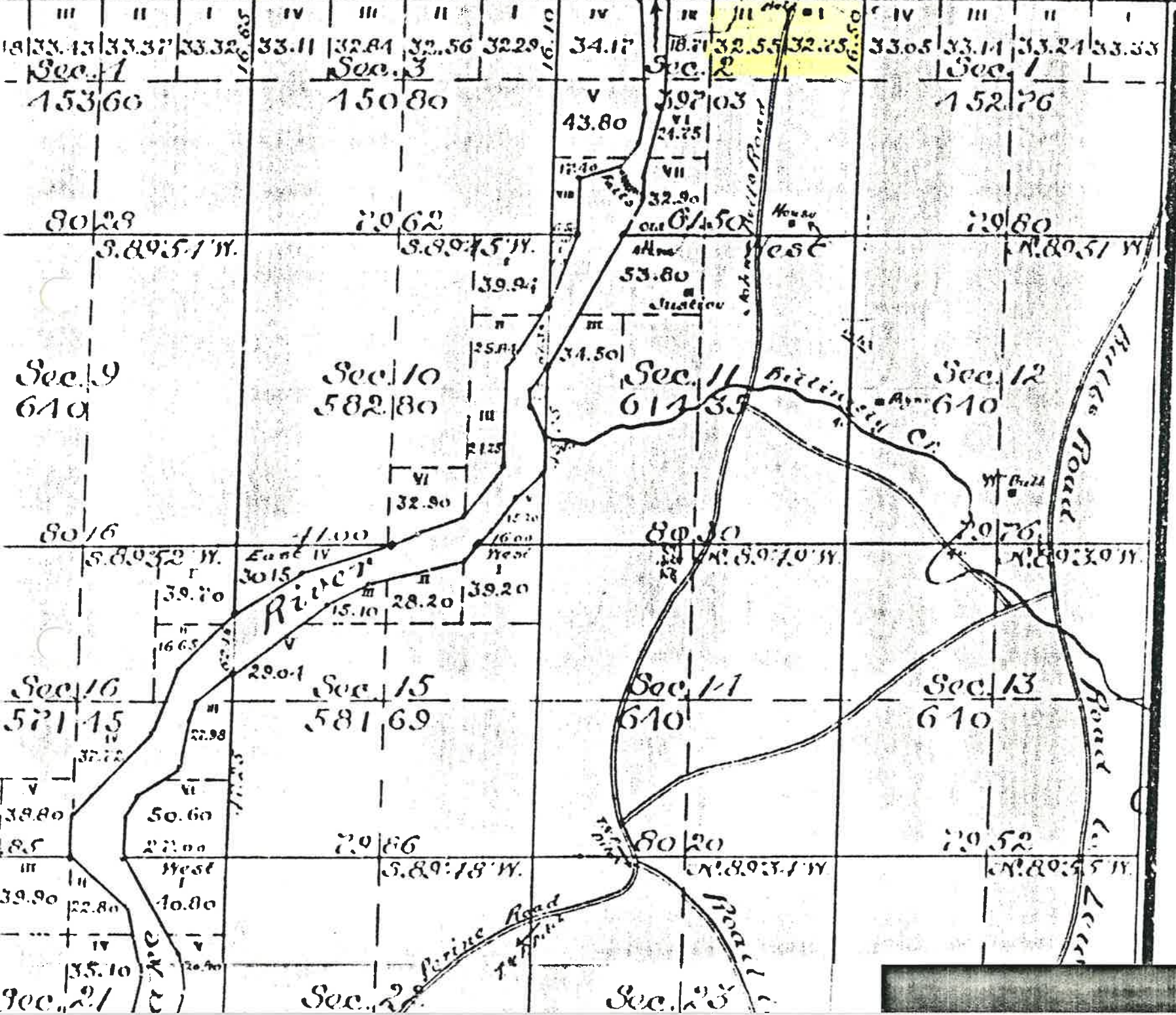
POSSIBLE SOLUTION:

CLAIMANT CAN AMEND A36-~~10594~~ ⁻¹⁰⁴⁴⁶
 to show other uses + claims.

Steve Clelland
 SIGNATURE



TANDARD PARALLEL SOUTH



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FEB 07 1993

A36-10446
FLEMING