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*Attorneys for Weitz & Company, Inc.*

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

In Re SRBA

Case No. 39576

Subcases No. 61-248 and 61-10419

**WEITZ'S RESPONSE  
TO MHID'S MOTION FOR  
SUMMARY JUDGMENT**

Weitz & Company, Inc. ("Weitz"), by and through its attorneys Laura A. Schroeder and James Browitt of Schroeder Law Offices, P.C., hereby submits this Response to Mountain Home Irrigation District's ("MHID") *Motion for Summary Judgment* ("Motion") and *Memorandum in Support of Motion for Summary Judgment* ("Memo"). Weitz requests that MHID's Motion be denied for the reasons stated herein.

**I. INTRODUCTION**

MHID has moved for summary judgment on the ground that, as a matter of law, Water Right No. 61-248 was decreed "disallowed" by operation of the *Final Unified Decree* of the Snake River Basin Adjudication ("SRBA"), is therefore invalid, and can no longer "be diverted by anyone." *Memo*, p. 5. MHID asserts that because the historic beneficial use established by Weitz's predecessors in interest was neither claimed in the SRBA specifically as 61-248 nor

1 partially decreed in that precise form, said use has ceased to exist. However, the evidence before  
2 this Court undermines MHID's position.

## 3 II. STANDARD OF REVIEW

4 A court must grant summary judgment "if the movant shows that there is no genuine  
5 dispute as to any material fact and the movant is entitled to judgment as a matter of law." IRCP  
6 56(a). If reasonable persons could reach different conclusions or draw conflicting inferences  
7 from the evidence, summary judgment must be denied. *Farm Credit Bank of Spokane v.*  
8 *Stevenson*, 125 Idaho 270, 272, 869 P.2d 1365, 1467 (1994) (citing *Doe v. Durtschi*, 110 Idaho  
9 466, 469, 716 P.2d 1238, 1241 (1986)). But if the court determines that no genuine issues of  
10 material fact exist, judgment may be entered for the party it deems entitled to prevail as a matter  
11 of law, even if that party is the nonmoving party. *Barlow's, Inc. v. Bannock Cleaning Corp.*, 103  
12 Idaho 310, 312, 647 P.2d 766, 768 (Ct. App. 1982).

## 13 III. ARGUMENT

14 MHID has stressed throughout the course of this matter that the failure of Weitz or its  
15 predecessors in interest to claim 61-248 in the SRBA ultimately resulted in the water right's  
16 invalidation. See, e.g., *Verified Petition for Declaratory Judgment* ("Petition"), ¶¶ 27, 49; *Reply*  
17 *to Response to Verified Petition for Declaratory Judgment*, sec. A; *Memo*, pp. 3, 7. While there  
18 is some veracity to this in the strictly literal sense – the Idaho Department of Water Resources  
19 ("IDWR") does not classify 61-248 as an active right – it is disingenuous for MHID to declare  
20 that the beneficial use established 136 years ago by way of the constitutional method of  
21 appropriation and subsequently recognized under 61-248 no longer exists. In fact, the pre-  
22 existing beneficial use had to survive or it could not have been adjudicated by this Court to  
23 MHID. Thus, MHID cannot deny that the quantifiable elements of 61-248 were claimed by  
24 MHID in the SRBA, partially decreed and formally recognized by the issuance of the *Final*  
25 *Unified Decree* because the record shows otherwise. So do MHID's actions in filing said claim  
26



1 and relying on the beneficial use established by Weitz's predecessors in interest recognized by  
2 61-248.

3 It is indisputable the Notice of Claim MHID submitted in 1989 and eventually numbered  
4 61-10419 was intended to be "a combination" of six existing appropriations recognized as water  
5 rights in previous adjudications, among them 61-248. Exhibit 6 to *Petition*, ¶ 14. Not only did  
6 the claim reflect the collective appropriation of the six rights, *id.*, ¶ 6, IDWR confirmed the  
7 aggregate diversion by illustrating the rate attributable – both in cubic feet per second and the  
8 antiquated metric of miner's inches – to each individual right. *Adjudication Claim Verification*  
9 *Report*, p. 7, attached hereto as Exhibit 1. Plainly, the diversion of 3.2 cfs (or 160 miner's inches)  
10 that was appropriated, perfected and exercised under 61-248 became – per MHID's request and  
11 with IDWR's approval – an integral piece of an 18.1 cfs (905 miner's inches) appropriation that  
12 was ultimately decreed as 61-10419. This point alone refutes MHID's assertion that, pursuant to  
13 Idaho law, the use established under 61-248 can no longer be diverted, *Memo*, p. 5; said use has  
14 been recognized and authorized by this Court, albeit as part of a much larger configuration.

15 Accordingly, MHID's contention that the other defining elements of 61-248 have not  
16 been decreed into another water right, *id.*, p. 8, is irrelevant. With the exception of the date of  
17 priority<sup>1</sup>, MHID is also incorrect:

- 18 • The place of use identified for 61-248, *Water Right Claims Proof Reading Report*,  
19 attached hereto as Exhibit 2, falls within current MHID boundaries, which is the  
20 designated place of use for all of MHID's water rights, including 61-10419, pursuant  
21 to Idaho Code 42-219(5). Exhibit 6 to *Petition*, ¶ 10. After 61-10419 was decreed,  
22  
23  
24

25 <sup>1</sup> MHID's Notice of Claim for 61-10419 designated May 1, 1886 to correspond with the latest dates of priority  
26 among the six rights that were combined under the single claim. The original priority date for 61-248 was April 8,  
1885, as recognized in the 1914 Elmore County District Court case *Bennett v. Nourse*. See also Exhibit 1, p. 2.



MHID's boundaries were apparently expanded to include 125 acres that have been exclusively cultivated by Weitz or its successors in interest.<sup>2</sup>

- 61-10419 diverts from the same surface-water source as did 61-248, Canyon Creek. Exhibit 2; Exhibit 6 to *Petition*, ¶ 3.
- Both 61-248 and 61-10419 are irrigation rights, with comparable seasons of use. Similar to 61-10419, Exhibit 6 to *Petition*, ¶ 6, 61-248 was historically used for direct-from-source irrigation, irrigation storage and irrigation from storage. *See, generally*, Exhibit 2 to *Petition*.

The one aspect 61-248 and 61-10419 clearly do not share is "title" or ownership, which is not considered a defining element of a water right under Idaho law. *A&B Irrigation Dist. v. State (In re SRBA)*, 336 P.3d 792, 796, 157 Idaho 385, 391 (2014) ("A water right is defined in terms of the priority, amount, season of use, purpose of use, point of diversion, and place of use."). *See also* Idaho Code 42-1410(1) (Examination of claims made in a general adjudication "shall continue in a manner and for such a period of time as ... is necessary to evaluate the extent and nature of each water right for which a notice of claim under state law has been filed."). So while the *Final Unified Decree* is "conclusive as to the **nature and extent** of all water rights that fall within the parameters of the SRBA, Idaho Code 42-1420(1) (emphasis added), it does not indelibly establish the "title" or owner of those rights. In other words, "title" and ownership of water rights, even those confirmed by judicial decree, can be changed.

Therefore, this Court is not precluded from considering the contours of the entitled ownership for 61-10419 – or, more precisely, title to the portion of 61-10419 that represents the use that can be attributed to 61-248, namely the 3.2 cfs diversion rate. *See generally* Weitz's *Memorandum in Support of Motion for Summary Judgment*. But questions of ownership aside, it is indisputable that the quantifiable elements of 61-248 were partially decreed as part of 61-

<sup>2</sup> Based on Weitz's belief, and in the absence of information requested from MHID that might prove otherwise, Weitz is the only irrigator within the Northwest quarter of Section 26, T03S R06E receiving water from MHID.



1 10419 and formally recognized by issuance of the *Final Unified Decree*. As the record in this  
2 matter distinctly indicates, this is the deliberate result of a claim filed, appropriately or not, **by**  
3 **MHID**.

#### 4 IV. CONCLUSION

5 As demonstrated above, MHID cannot show, as a matter of law, that Weitz's beneficial  
6 interest in Water Right No. 61-248 was invalidated as the result of the SRBA's *Final Unified*  
7 *Decree*. Therefore, Weitz respectfully requests that this Court deny MHID's Motion for  
8 summary judgment.

9  
10 DATED this 25th day of February, 2021.

11 SCHROEDER LAW OFFICES, P.C.

12 

13  
14 \_\_\_\_\_  
15 Laura A. Schroeder, ISB #3799  
16 James Browitt, ISB #9016  
17 *Attorneys for Weitz & Company, Inc.*  
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## CERTIFICATE OF MAILING

I hereby certify that on February 25, 2021 I caused a true and correct copy of the foregoing ***WEITZ'S RESPONSE TO MHID'S MOTION FOR SUMMARY JUDGMENT*** to be mailed with sufficient first-class postage to the following:

Chris M. Bromley  
Candice M. McHugh  
McHugh Bromley, PLLC  
380 S. 4<sup>th</sup> Street, Suite 103  
Boise, ID 83702  
*Attorney for Mountain Home Irrigation District*

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P.O. Box 83720  
Boise, ID 83720-0010

United States Department of Justice  
Environment & Natural Resources Division  
550 W Fort St., MSC 033  
Boise, ID 83724

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

Dated this 25th day of February, 2021.



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EXHIBIT 1

EXHIBIT 1

09:46:56  
11/05/98

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIM VERIFICATION REPORT

PAGE: 1  
GENERAL INFORMATION

LAST: MOUNTAIN HOME IRRIGATION DISTRICT FIRST:   
ADDRESS: C/O CLAYTON COLTHORPE  
140 S 3RD EAST  
CITY: MOUNTAIN HOME STATE: ID ZIP: 83647  
PHONE NUMBER: 208-587-4867  
OWNER CODE: C

FIELD EXAM REQUIRED?   
VERIFICATION REQUIRED DUE TO REMARKS?   
CLAIM REMARKS: GEN THIS IS A COMBINATION OF WATER RIGHT NUMBERS A61-00249, A61-00248  
A61-00267, A61-00268, A61-00259 AND A61-00265.  
MOUNTAIN HOME IRRIGATION DISTRICT SUPPLIES WATER FOR THE OWNERS  
OF THE PLACES OF USE.  
SEE ATTACHED SYSTEM DESCRIPTION. SEE DECREE 61-A-1.  
AMENDED CLAIM TO INDICATE STORAGE AND APPROPRIATE ACRE-FOOT  
AMOUNT.

FIELD EXAMINATION INFORMATION  
CONTACT PERSON: Clayton Colthorpe  
DATE OF FIELD EXAM: 11-1-98  
ACCOMPANIED BY: Manager  
RELATIONSHIP TO CLAIMANT: Manager  
DIRECTIONS TO PROPERTY / NOTES:  
Address above.

PHONE NUMBER: 208-587-4867  
TIME: : A( ) P( )  
PHONE NUMBER: ( ) - -

SCANNED  
JUL 08 2003

A. AJ CLAIM: # A61-10419 PRIORITY DATE: 05-01-1886 STAGE: D

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

C. CAN THE PRIORITY DATE CLAIMED BE CONFIRMED BY A DECREE OR LICENSE?

Y(✓) N( )

D. HAS THERE BEEN A LATER COURT DECREE OF THE WATER RIGHT(S) FROM THIS WATER SOURCE?

Y( ) N(✓)

E. IS THERE ANY INDICATION THAT THERE HAS BEEN A FIVE YEAR PERIOD OF CONTINUOUS NONUSE?  
(IF YES, DESCRIBE BELOW)

Y( ) N(✓)

F. IF THIS CLAIM IS BASED ON A PERMIT, WHERE IS THE PERMIT IN THE LICENSING PROCESS?

PROOF OF BENEFICIAL USE SUBMITTED

N/A(✓) Y( ) N( )

FIELD EXAM COMPLETED

N/A(✓) Y( ) N( )

FIELD EXAM SENT TO STATE OFFICE

N/A(✓) Y( ) N( )

LICENSE ISSUED

N/A(✓) Y( ) N( )

\* IF THE PERMIT WILL NOT BE LICENSED PRIOR TO THE DIRECTOR'S REPORT,  
USE CONDITION CODE A01 AND RECOMMEND AS PERMITTED.

G. IF THIS CLAIM IS BASED ON BENEFICIAL USE, IS ADDITIONAL EVIDENCE  
OF THE PRIORITY DATE REQUIRED?

N/A(✓) Y( ) N( )

\* FOR CLAIMS BASED ON BENEFICIAL USE, DESCRIBE THE EVIDENCE OF PRIORITY SUBMITTED,  
INCLUDING THE ANALYSIS OF THE EVIDENCE.

H. IS THE STAGE OF THE CLAIM CODED CORRECTLY?

Y(✓) N( )

NOTES:

*Decreed priority re: 61-00249 = 3-31-1885*

*61-00248 = 4-8-1885*

*61-00259 = 5-1-1886*

*61-00267 = 5-1-1885*

*61-00268 = 5-1-1885*

*61-00265 = 5-1-1886*

RECOMMENDED PRIORITY DATE:

*5-1-1886*  
REVIEWED BY *Mel Schultz*

DATE *11-8-98*

## A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

| RIGHT     | TWP. RGE. | SEC. | 1/4 | 1/4 | 1/4 | 1/4 | POD<br>FLAG | COUNTY | DIVERSION NAME | DIVERSION NUMBER |
|-----------|-----------|------|-----|-----|-----|-----|-------------|--------|----------------|------------------|
| A61-10419 | 02S       | 06E  | 36  |     | NE  | NW  |             | ELMORE |                |                  |
| A61-10419 | 02S       | 06E  | 36  |     | NE  | SW  |             | ELMORE |                |                  |

## OTHER AJ CLAIMS WITH SAME AJ POD

## A PREFIX

A61-00144

A61-00252A

A61-00258

A61-00263

A61-00264

A61-00266

A61-10039

A61-10417

A61-10421

## WR RECORDS IN SAME 40 ACRE TRACT

61-00252A

SOURCE: CANYON CREEK

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. IS THE CLAIMED POD WITHIN THE SAME 40 ACRE TRACT THAT IS DESCRIBED IN THE WATER RIGHT FILE? N/A( ) Y( ) N( )

\* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN POD, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

D. CAN THE CLAIMED POD BE VERIFIED USING THE WATER RIGHT FILE OR GPS DATA? N/A( ) Y( ) N( )

E. SHOULD THE CLAIMED POD BE VERIFIED BY FIELD EXAM? Y( ) N( )

F. IS THE CLAIMED SOURCE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A( ) Y( ) N( )

\* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN SOURCE, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

G. CAN THE CLAIMED SOURCE BE VERIFIED USING THE WATER RIGHT FILE? Y( ) N( )

H. SHOULD THE CLAIMED SOURCE BE VERIFIED BY FIELD EXAM? Y( ) N( )

I. HOW WAS THE POD AND SOURCE VERIFIED?

LICENSING FIELD EXAM (DATE OF FIELD EXAM)

AJ FIELD EXAM

(DATE OF FIELD EXAM)

NAME OF EXAMINER

OTHER (DESCRIBE IN NOTES BELOW)

NOTES: No POO specified in the Decree.

| TWP.                  | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | FLAG | COUNTY | DIVERSION NAME      | DIVERSION NBR |
|-----------------------|------|------|-----|-----|-----|-----|------|--------|---------------------|---------------|
| 02S                   | 06E  | 36   | NE  | NE  | NW  |     | PQD  | ELMORE |                     |               |
| —                     | —    | —    | —   | —   | SE  |     |      | ELMORE |                     |               |
| —                     | —    | —    | —   | —   | SW  |     |      |        |                     |               |
| —                     | —    | —    | —   | —   |     |     |      |        |                     |               |
| —                     | —    | —    | —   | —   |     |     |      |        |                     |               |
| —                     | —    | —    | —   | —   |     |     |      |        |                     |               |
| —                     | —    | —    | —   | —   |     |     |      |        |                     |               |
| —                     | —    | —    | —   | —   |     |     |      |        |                     |               |
| SOURCE:               |      |      |     |     |     |     |      |        | TRIB:               |               |
| <i>Township Creek</i> |      |      |     |     |     |     |      |        | <i>Groabe River</i> |               |

REVIEWED BY: McA Schultz DATE: 11-8-98

SYSTEM DESCRIPTION: DESCRIBED BELOW (\_\_\_\_), SEE LICENSE FILE (\_\_\_\_), OR SEE ATTACHMENT (\_\_\_\_)

A. AJ CLAIMED USES:

| PURPOSE OF USE                    | PERIOD OF USE (MONTH/DAY) | DIV. RATE FOR EACH USE | DIV. VOL. FOR EACH USE |
|-----------------------------------|---------------------------|------------------------|------------------------|
| A61-10419 IRRIGATION              | FROM 03-15 TO 11-15       | 18.100 CFS             |                        |
| A61-10419 IRRIGATION STORAGE      | FROM 01-01 TO 12-31       |                        | 8688.00 AF/A           |
| A61-10419 IRRIGATION FROM STORAGE | FROM 03-15 TO 11-15       |                        | 8688.00 AF/A           |
| TOTAL DIVERSION RATE/VOLUME       |                           | 18.100 CFS             | 8688.00 AF/A           |

B. WR RECORDED USES:

| PURPOSE OF USE | PERIOD OF USE (MONTH/DAY) | DIV. RATE FOR EACH USE | DIV. VOL. FOR EACH USE |
|----------------|---------------------------|------------------------|------------------------|
|----------------|---------------------------|------------------------|------------------------|

C. DOES THE CLAIMED PURPOSE OF USE CORRECTLY DESCRIBE THE WATER USE? Y( ) N( )

D. IS THE CLAIMED PURPOSE OF USE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A( ) Y( ) N( )

\* IF NO, AND IF THE ACTUAL WATER USE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN PURPOSE OF USE, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

E. SHOULD THE CLAIMED PURPOSE OF USE BE VERIFIED BY FIELD EXAM? Y( ) N( )

F. DOES THE CLAIMED PERIOD OF USE CONFORM TO IDWR STANDARDS? Y( ) N( )

G. SHOULD THE PERIOD OF USE BE RECOMMENDED TO IDWR STANDARDS? Y( ) N( )

\* IF THE RECOMMENDED PERIOD OF USE IS DIFFERENT THAN IDWR STANDARDS, EXPLAIN IN NOTES BELOW.

H. IS THE CLAIMED DIVERSION RATE FOR EACH USE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A( ) Y( ) N( )

\* IF NO, DESCRIBE IN NOTES BELOW HOW THE RECOMMENDED DIVERSION RATE FOR EACH USE WAS DETERMINED.

I. SHOULD THE CLAIMED DIVERSION RATE FOR EACH USE BE VERIFIED BY FIELD EXAM? N/A( ) Y( ) N( )

J. IS THE CLAIMED DIVERSION VOLUME FOR EACH USE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A( ) Y( ) N( )

\* IF NO, DESCRIBE IN NOTES BELOW HOW THE RECOMMENDED DIVERSION VOLUME FOR EACH USE WAS DETERMINED.

K. SHOULD THE CLAIMED DIVERSION VOLUME FOR EACH USE BE VERIFIED BY FIELD EXAM? N/A( ) Y( ) N( )

NOTES:

No diversion volume specified in the decree.  
This right is delivered as both a live flow right  
and a storage right.

AJ CLAIM TOTAL DIVERSION RATE: 18.100 CFS

WR ROOT RIGHT TOTAL DIVERSION RATE: CFS

A. IS THE CLAIMED TOTAL DIVERSION RATE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A( ) Y( ) N( )

B. CAN THE CLAIMED TOTAL DIVERSION RATE BE VERIFIED USING THE WATER RIGHT FILE? N/A( ) Y( ) N( )

\* ALL CLAIMS BASED ON BENEFICIAL USE (INCLUDING POSTED NOTICES AND STATUTORY CLAIMS) REQUIRE A FLOW MEASUREMENT.

C. IS THERE ANY INDICATION THAT THERE HAS BEEN A FIVE YEAR PERIOD OF CONTINUOUS NONUSE OF THIS RIGHT, OR ANY PORTION OF THE DIVERSION RATE? Y( ) N( )

\* IF AN AMOUNT SMALLER THAN THE ORIGINAL DIVERSION RATE IS CLAIMED AND A FIELD EXAM IS NOT REQUIRED, EXPLAIN IN NOTES.

D. SHOULD THE CLAIMED DIVERSION RATE BE VERIFIED BY FIELD EXAM? Y( ) N( )

MEASUREMENT METHOD None FLOW MEASUREMENT

SEE ATTACHED CALCULATIONS.

F. RATE/VOLUME CALCULATIONS: (IRRIGATION)

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

IS A DIVERSION RATE PER ACRE GREATER THAN 0.02 CFS/ACRE CLAIMED? Y( ) N( )

IF YES, IS AN ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y( ) N( )

2. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = 8688.00 AF/A

ACRES            x DIVERSION VOL. AF/A FOR AREA            =

TOTAL DIVERSION VOLUME            AF/A

3. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = 13346.7 AF/A

ACRES            x CONSUMPTIVE VOL. AF/A FOR AREA            =

TOTAL CONSUMPTIVE USE            AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION: SEE BELOW ( ) OR SEE ATTACHMENT ( )

NOTES:

The combined decreed rates are as follows:

61-00248 = 160 inches or 3.20 cfs  
 - 00249 = 160 " " 3.20 "  
 - 00259 = 160 " " 3.20 "  
 - 00265 = 160 " " 3.20 "  
 - 00267 = 35 " " .70 "  
 - 00268 = 230 " " 4.60  
 Total 905 inches = 18.10 cfs

RECOMMENDATIONS: CHECK HERE IF RECOMMENDED AS CLAIMED ( )

| REC.<br>PURPOSE OF USE  | REC. PERIOD<br>FROM TO | REC. DIV<br>RATE CFS | REC. DIV<br>VOL. AF/A | REC. CONS.<br>USE |
|-------------------------|------------------------|----------------------|-----------------------|-------------------|
| IRRIGATION              | 03-15 11-15            | DATABASE 18.100      | DATABASE EXAMINER     | DATABASE EXAMINER |
| IRRIGATION STORAGE      | 01-01 12-31            |                      | 8688.00               | 13346.7           |
| IRRIGATION FROM STORAGE | 03-15 11-15            |                      | 8688.00               | 13346.7           |
|                         |                        |                      |                       |                   |
|                         |                        |                      |                       |                   |
|                         |                        |                      |                       |                   |
| TOTAL FOR THIS RIGHT    |                        | 18.10                | 8688                  |                   |

NON-IRRIGATION USES CLAIMED:

NON-IRRIGATION USES RECOMMENDED: CHECK HERE IF RECOMMENDED AS CLAIMED ( )

REVIEWED BY: Mac Schultz DATE: 11-8-98.

FLAG:

STANDARD CONDITIONS (CODE):

STANDARD REMARKS (CODE):  
EXP - P15, F06 + shares  
P01 - E14 amended  
GEN - Storage facilities, F07.

EXPLANATORY CONDITIONS (CODE):

COS

EXPLANATORY REMARKS (CODE):

A. CHECK ONLY THE FOLLOWING THAT APPLY:

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

ACCEPTED AS CLAIMED ( )  
NEEDS REVIEW ( )

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 61-10419

TOTAL DIVERSION RATE OF WR SPLITS

SPLITS:

| OLD RIGHT NUMBERS | CURRENT CLAIM NUMBERS | DIVERSION RATE | CURRENT "R" CLAIM NUM. | "R" DIV. RATE | WR RIGHT NUMBERS | DIVERSION RATE |
|-------------------|-----------------------|----------------|------------------------|---------------|------------------|----------------|
| -                 | A61-10419             | 18.100         | -                      | -             | -                | -              |

TOTAL CFS

18.100

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 DESCRIBED BELOW ( ) OR SEE ATTACHMENT ( )?

DATABASE N  
FIELD EXAMINER Y( ) N( )

NOTES:

AUTHENTICATION:

SIGNATURE:

DATE:

NAME OF FIELD EXAMINER:

TITLE:

*See folder for additional maps, etc*

MAPS AND AERIAL PHOTOGRAPHS USED TO REVIEW THIS NOTICE OF CLAIM TO A WATER RIGHT

| TYPE OF MAP OR PHOTOGRAPH (CHECK IF USED)                          | IF USED, SUPPLY APPROPRIATE DATE AND OTHER INFORMATION | COPY INCLUDED IN FILE? |
|--------------------------------------------------------------------|--------------------------------------------------------|------------------------|
| <input type="checkbox"/> ORTHOPHOTOQUAD                            | DATE OF PHOTO _____ IDWR ID NO. _____                  | Y( ) N( )              |
| <input checked="" type="checkbox"/> TOPOGRAPHIC                    | DATE FIELD CHECKED _____ IDWR ID NO. <u>213</u>        | Y( ) N( )              |
| <input type="checkbox"/> MAP                                       | DATE OF PHOTO _____ IDWR ID NO. _____                  | Y( ) N( )              |
| <input type="checkbox"/> ASCS AERIAL PHOTO                         | DATE OF PHOTO _____                                    | Y( ) N( )              |
| <input type="checkbox"/> ASCS COLOR SLIDE                          | DATE OF PHOTO _____                                    | Y( ) N( )              |
| <input type="checkbox"/> BLM OR USFS AERIAL PHOTO                  | DATE OF PHOTO _____                                    | Y( ) N( )              |
| <input type="checkbox"/> TOWNSHIP SURVEY (GOVERNMENT PLAT)         | DATE OF SURVEY _____                                   | Y( ) N( )              |
| <input type="checkbox"/> SCS SOIL SURVEY MAP                       | DATE ISSUED _____                                      | Y( ) N( )              |
| <input type="checkbox"/> SUBDIVISION PLAT MAP                      | DATE OF MAP _____                                      | Y( ) N( )              |
| <input checked="" type="checkbox"/> OTHER <i>Pages from decree</i> | DATE _____ <u>(4)</u>                                  | Y( ) N( )              |
| <input type="checkbox"/> OTHER _____                               | DATE _____                                             | Y( ) N( )              |
| <input type="checkbox"/> OTHER _____                               | DATE _____                                             | Y( ) N( )              |

LIST OF ATTACHMENTS (CHECK IF ATTACHED) IF ATTACHED, SUPPLY APPROPRIATE INFORMATION

|                                                        | NO. OF PAGES | NOTES |
|--------------------------------------------------------|--------------|-------|
| <input type="checkbox"/> LICENSING FIELD EXAM          | _____        | _____ |
| <input type="checkbox"/> WATER RIGHT LICENSE           | _____        | _____ |
| <input type="checkbox"/> IDWR APPROVED TRANSFER        | _____        | _____ |
| <input type="checkbox"/> SYSTEM DESCRIPTION            | _____        | _____ |
| <input type="checkbox"/> PHOTOGRAPHS                   | _____        | _____ |
| <input type="checkbox"/> SPLIT RIGHT REVIEW            | _____        | _____ |
| <input type="checkbox"/> HUBBLE ANALYSIS               | _____        | _____ |
| <input type="checkbox"/> CONVEYANCE LOSS ANALYSIS      | _____        | _____ |
| <input type="checkbox"/> FLOW MEASUREMENT CALCULATIONS | _____        | _____ |
| <input type="checkbox"/> OTHER _____                   | _____        | _____ |
| <input type="checkbox"/> OTHER _____                   | _____        | _____ |

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIM VERIFICATION REPORT

09:46:56  
11/05/98

PAGE: 12  
QUICKLOOK INFORMATION

12  
CLAIM NUMBER: A61-10419

| WR ELEMENT                | DATA<br>DISCREPANCY<br>Y/N | CORRESPONDENCE<br>SENT/RECEIVED<br>BY WHOM/DATE | FIELD EXAM<br>BY WHOM/DATE | CHANGE<br>CLAIM<br>Y/N | ELEMENT<br>DOCUMENTED<br>WHOM/DATE | COMPLETED<br>REVIEW<br>WHOM/DATE | COMPLETED<br>DATA ENTRY<br>WHOM/DATE | VERIFIED<br>DATE<br>WHOM/DATE |
|---------------------------|----------------------------|-------------------------------------------------|----------------------------|------------------------|------------------------------------|----------------------------------|--------------------------------------|-------------------------------|
| PRIORITY DATE             | Y                          |                                                 | LU<br>8-23-94              | N                      |                                    | MS<br>11-17-98                   | MS<br>11-17-98                       |                               |
| POINT OF DIV              | Y                          |                                                 |                            | Y                      |                                    |                                  |                                      |                               |
| SOURCE                    | Y                          |                                                 |                            | N                      |                                    |                                  |                                      |                               |
| PLACE OF USE              | Y                          |                                                 |                            | Y                      |                                    |                                  |                                      |                               |
| DIV. AMOUNT<br>CFS/VOLUME | Y                          |                                                 |                            | N                      |                                    |                                  |                                      |                               |
| CONSUMPTIVE USE           | -                          |                                                 |                            | NA                     |                                    |                                  |                                      |                               |
| PURPOSES OF USE           | Y                          |                                                 |                            | N                      |                                    |                                  |                                      |                               |
| PERIOD OF USE             | Y                          |                                                 |                            | N                      |                                    |                                  |                                      |                               |
| BASIS OF CLAIM            | Y                          |                                                 |                            | N                      |                                    |                                  |                                      |                               |
| REMARKS                   | Y                          |                                                 |                            | Y                      |                                    |                                  |                                      |                               |

SCANNED  
JUL 08 2003

BARCODE UPDATED  
WHOM/DATE

MS 11-17-98

EXHIBIT 2

EXHIBIT 2

| Water Right Number - | Adj. Flag Translation: | Standard Water Right Number | Old (D) Number - |
|----------------------|------------------------|-----------------------------|------------------|
| 61-00248             |                        |                             |                  |

\*\*\* C - CURRENT OWNER \*\*\*  
BENNETT

**RICHARD**

1 -  
2 -  
3 -  
City  
Phone

State- Zip-

| + - - Priority Date | - + | + - - Region | - - + | + - - Stage | - - + | + - - Status |
|---------------------|-----|--------------|-------|-------------|-------|--------------|
| 04/08/1985          |     |              |       |             |       |              |
| 14                  |     |              |       |             |       |              |
| D - DECREED         |     |              |       |             |       |              |

```

+ - - - - Source - - - - - +
CANYON CREEK
+ - - - - Tributary - - - - - +
SNAKE RIVER

```

| Town | Rng | Sec | Tract | Lot | Pdgs | County | Point of Diversion | Stream Index (Blank if no Index Code) |
|------|-----|-----|-------|-----|------|--------|--------------------|---------------------------------------|
|------|-----|-----|-------|-----|------|--------|--------------------|---------------------------------------|

| Code | Description | Period From | Water Use<br>Period To | Diversion Rate | Diversion Volume |
|------|-------------|-------------|------------------------|----------------|------------------|
| 01   | IRRIGATION  |             |                        | 3.200          |                  |

01 - IRRIGATION

|                         |                           |                             |                               |                  |
|-------------------------|---------------------------|-----------------------------|-------------------------------|------------------|
| + - Total Div. Rate - + | + - Total Div. Volume - + | + - Total Div. Capacity - + | + - Total Consumptive Use - + | + - KW Usage - + |
| 3.200                   |                           |                             |                               |                  |

| Twn | Rng | Sec | Tract | Lot | Acres | Place of Use | Description | County    |
|-----|-----|-----|-------|-----|-------|--------------|-------------|-----------|
| 03S | 06E | 26  | NE NW |     |       | 01           | IRRIGATION  | 39 ELMORE |
| 03S | 06E | 26  | NW NW |     |       | 01           | IRRIGATION  | 39 ELMORE |
| 03S | 06E | 26  | SW NW |     |       | 01           | IRRIGATION  | 39 ELMORE |
| 03S | 06E | 26  | SE NW |     |       | 01           | IRRIGATION  | 39 ELMORE |

**Total Acres:**

+ - - Diversion Means -

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use -

|  | Remarks           |
|--|-------------------|
|  | No Remarks found. |

[illegible]

| + - - -                 | - Decree Plaintiff | - - + | + - - -              | - Decree Defendant | - - + | + - Decree Date |
|-------------------------|--------------------|-------|----------------------|--------------------|-------|-----------------|
| RICHARD BENNETT ET. AL. |                    |       | F. A. NOURSE ET. AL. |                    |       | 07/30/1914      |

MICROFILMED

AUG 12 1992

SCANNED  
JUL 08 2003

IDAHO DEPARTMENT OF WATER RESOURCES  
WATER RIGHT CLAIMS PROOF READING REPORT

(QD-26)

|                               |                                                    |
|-------------------------------|----------------------------------------------------|
| Water right number - 61-00248 | Adj. flag translation: Standard Water Right Number |
|-------------------------------|----------------------------------------------------|

|       | Audit Fields - | 05/06/80 | 05/01/88 | CONVERT |
|-------|----------------|----------|----------|---------|
| + - - |                |          |          |         |

[illegible]