

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: A36-07229  
Date Received: 8/18/1988  
Receipt No: S001534  
Received By: SCC

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: RICHARD L. COOK  
Address: RT. 1 BOX 22  
HAGERMAN, ID 83332 208-837-6164

2. Date of Priority: MAR 30, 1972

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

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 of | Lot | County  |
|----------|-------|---------|--------|--------|--------|-----|---------|
| 07S      | 13E   | 11      | SW     |        | NE     |     | GOODING |

5. Description of diverting works:  
HEADGATES, DITCHES TO PONDS.

6. Water is used for the following purposes:

| Purpose  | From  | To    | C.F.S. | (or) | A.F.A. |
|----------|-------|-------|--------|------|--------|
| WILDLIFE | 01/01 | 12/31 | 10.500 |      |        |

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:  
W/ VARIABLE HABITAT PONDS

10. Place of Use:

| Township | Range | Section | 1/4 of | 1/4 of | Lot | Use    | Acres |
|----------|-------|---------|--------|--------|-----|--------|-------|
| 07S      | 13E   | 15      | NE     | SW     |     | WILDLF |       |

11. Place of use in counties: GOODING

A36-07229

Page 1

Date: 08/18/88

MICROFILMED

OCT 19 1994

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

13. Other Water Rights Used:  
A36-07081, A36-08317

14. Remarks:

USE OF WATER UNDER THIS LICENSE IS SUBJECT TO CONTROL BY THE  
WATERMASTER OF STATE WATER DISTRICT NO. 36A, BILLINGSLEY CREEK.

15. Basis of Claim: LICENSE

16. Signature(s)

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

Number of attachments: \_\_\_\_\_

**For Individuals:**

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

Signature of Claimant(s):

Date: Aug. 18/1988

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

State of Idaho

County of Twin Falls ) SS.

Subscribed and sworn (or affirmed) before me this 18th day

of August 19 88

Roxanne Storey  
Notary Public

Seal

Residing at Buhl, Id

My Commission Expires 6-30-94

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  
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CIVIL CASE NUMBER: 39576

Ident. Number: A36-07229

Date Received: 8/18/1988

Receipt No: S001534

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

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: GARY COOK CORP.  
Address: A CALIFORNIA CORP.  
110 NEWPORT CENTER DR. #250  
NEWPORT BEACH CA 92660
- AND/OR
- Name: SLOPE COMPACTION  
Address: A CALIFORNIA CORP.  
C/O DONALD L. MCCOY  
23622 CALABASAS RD. #239  
CALABASAS CA 91302
- AND/OR
- Name: SLOPE COMPACTION  
Address: A CALIFORNIA CORP.  
C/O DENNIS M. MCCOY  
23622 CALABASAS RD. #239  
CALABASAS CA 91302
- AND/OR
- Name: M. J. AND SHARON WIENS, JR. FAMILY TRUST  
Address: 1701 LAS VEGAS BLVD. SOUTH  
LAS VEGAS NEV 89104
- AND/OR
- Name: E. A. COLLINS  
Address: 2933 COASTLINE COURT  
LAS VEGAS NEV 89117
- AND/OR
- Name: JOSEPH PATRICK ARCHIE  
Address: 3417 WILLIAMSBOROUGH COURT  
RALEIGH NC 27609
- AND/OR
- Name: SARAH ELLEN ARCHIE  
Address: 3417 WILLIAMSBOROUGH COURT  
RALEIGH NC 27609
- AND/OR
- Name: ROSS COOPER

Ownership change  
4/3/91 SL

MICROFILMED  
FEB 03 1993

Address: 6773 PORTSHEAD DR.  
MALIBU CA 90265

AND/OR

Name: KATHLEEN COOPER  
Address: 6773 PORTSHEAD DR.  
MALIBU CA 90265

2. Date of Priority: MAR 30, 1972

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

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 | Lot | County  |
|----------|-------|---------|--------|--------|-----|-----|---------|
| 07S      | 13E   | 11      | SW     | NE     |     |     | GOODING |

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HEADGATES, DITCHES TO PONDS.

6. Water is used for the following purposes:

| Purpose  | From  | To    | C.F.S  | (or) | A.F.A. |
|----------|-------|-------|--------|------|--------|
| WILDLIFE | 01/01 | 12/31 | 10.500 |      |        |

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:  
WILDLIFE, VARIABLE HABITAT PONDS

10. Place of Use:

| Township | Range | Section | 1/4 of | 1/4 | Lot | Use    | Acres |
|----------|-------|---------|--------|-----|-----|--------|-------|
| 07S      | 13E   | 15      | NE     | SW  |     | WILDLF |       |

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:  
A36-07081, A36-08317

14. Remarks:  
USE OF WATER UNDER THIS LICENSE IS SUBJECT TO CONTROL BY THE  
WATERMASTER OF STATE WATER DISTRICT NO. 36A, BILLINGSLEY CREEK.

15. Basis of Claim: LICENSE

16. Signature(s)

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

Number of attachments: \_\_\_\_\_

**For Individuals:**

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

Signature of Claimant(s): \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_ Date: \_\_\_\_\_

State of Idaho )  
County of \_\_\_\_\_ ) SS.

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

\_\_\_\_\_  
Notary Public

Seal

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

My Commission Expires \_\_\_\_\_

**MICROFILMED**  
**FEB 03 1993**

Water Right Number - R36-07229

Prefix Translation: RESEARCH

Old (D) Number -

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

\*\*\* C - CURRENT OWNER \*\*\*  
GARY COOK CORP.1 - A CALIFORNIA CORP.  
2 - 110 NEWPORT CENTER DR. #250  
3 -  
City- NEWPORT BEACH State- CA Zip- 92660  
Phone - 208-000-0000

SLOPE COMPACTION

1 - A CALIFORNIA CORP.  
2 - C/O DONALD L. MCCOY  
3 - 23622 CALABASAS RD. #239  
City- CALABASAS State- CA Zip- 91302  
Phone - 208-000-0000

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M. J. AND SHARON WIENS, JR. FAMILY TRUST

1 - 1701 LAS VEGAS BLVD. SOUTH  
2 -  
3 -  
City- LAS VEGAS State- NE Zip- 89104  
Phone - 208-000-0000

COLLINS

E. A.

1 - 2933 COASTLINE COURT  
2 -  
3 -  
City- LAS VEGAS State- NE Zip- 89117  
Phone - 208-000-0000

ARCHIE

JOSEPH PATRICK

1 - 3417 WILLIAMSBOROUGH COURT  
2 -  
3 -  
City- RALEIGH State- NC Zip- 27609  
Phone - 208-000-0000

ARCHIE

SARAH ELLEN

1 - 3417 WILLIAMSBOROUGH COURT  
2 -  
3 -  
City- RALEIGH State- NC Zip- 27609  
Phone - 208-000-0000

COOPER

ROSS

1 - 6773 PORTSHEAD DR.  
2 -  
3 -  
City- MALIBU State- CA Zip- 90265  
Phone - 208-000-0000

COOPER

KATHLEEN

1 - 6773 PORTSHEAD DR.  
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City- MALIBU State- CA Zip- 90265  
Phone - 208-000-0000

MICROFILMED

FEB 03 1993

Water right number - R36-07229

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\*\*\* O - ORIGINAL OWNER \*\*\*  
COOK

RICHARD L.

1 - RT. 1 BOX 22

2 -

3 -

City- HAGERMAN

State- ID Zip- 83332

Phone - 208-837-6164

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - - +  
03/30/1972 17 SOUTHERN L - LICENSE+ - - - - Source - - - - - + + - - - - - Tributary - - - - - +  
BILLINGSLEY CREEK SNAKE RIVER+ - - - - - - - - - - - - - - - Point of Diversion - - - - - +  
Twn Rng Sec Tract Lot RFlg County  
07S 13E 11 NW SW NE (47) GOODING+ - - - - - - - - - - - - - - - Water Use - - - - - +  
Code Description Period From Period To Diversion Rate Diversion Volume  
16 - WILDLIFE 01/01 12/31 10.500+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +  
10.500 0.0+ - - - - - - - - - - - - - - - Place of Use - - - - - +  
Twn Rng Sec Tract Lot Acres Code Description County  
07S 13E 15 NE SW 16 WILDLIFE (47 ) GOODING

Total Acres:

+ - - Diversion Means - HEADGATES, DITCHES TO PONDS.

+ - - Non-Irrigation Use - WILDLIFE, VARIABLE HABITAT PONDS

+ - - Other Rights for Same Use - A36-07081

+ - - - - - - - - - - - - - - - Remarks - - - - - +  
USE OF WATER UNDER THIS LICENSE IS SUBJECT TO CONTROL BY THE  
WATERMASTER OF STATE WATER DISTRICT NO. 36A, BILLINGSLEY CREEK.+ - - - - - - - - - - - - - - - Old Water Right Numbers - - - - - +  
No Old Water Right Numbers Found

MICROFILMED

FEB 03 1993

Water right number - R36-07229

Prefix Translation: RESEARCH

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

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

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

+ - - Audit Fields - - +  
09/03/91 GIVENS

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

|                      |              |                       |              |                         |         |
|----------------------|--------------|-----------------------|--------------|-------------------------|---------|
| Court Report Filing  | - 00/00/0000 | Field Inspection Made | - 00/00/0000 | Civil Case Number       | - 39576 |
| Objection Filed Date | - 00/00/0000 | Field Inspection Flag | -            | Old Case Number         | -       |
| Response Filed Date  | - 00/00/0000 | Verified Date         | - 09/03/1991 | Old Judicial District   | -       |
| Claim Received Date  | - 08/18/1988 | Last Amended Date     | - 00/00/0000 | Temporary Right         | - P     |
|                      |              | Receipt Number        | - S001534    | Water District          | - 36A   |
|                      |              | POU Ownership Flag    | - Y          | Federal/State Indicator | - S     |
|                      |              | Name Connector        | - AND/OR     | Presumption Flag        | -       |
|                      |              |                       |              | Notice of Error Flag    | -       |

MICROFILMED  
FEB 03 1993

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M. J. AND SHARON WIENS, JR. FAMILY TRUST

COLLINS

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ARCHIE

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WATERMASTER OF STATE WATER DISTRICT NO. 36A, BILLINGSLEY CREEK.+ - - - - Old Water Right Numbers - - - - - +  
No Old Water Right Numbers FoundMICROFILMED  
FEB 03 1993

|                      |              |                       |              |                         |         |
|----------------------|--------------|-----------------------|--------------|-------------------------|---------|
| Court Report Filing  | - 00/00/0000 | Field Inspection Made | - 00/00/0000 | Civil Case Number       | - 39576 |
| Objection Filed Date | - 00/00/0000 | Field Inspection Flag | -            | Old Case Number         | -       |
| Response Filed Date  | - 00/00/0000 | Verified Date         | - 09/03/1991 | Old Judicial District   | -       |
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|                      |              |                       |              | Notice of Error Flag    | -       |

**MICROFILMED**  
**FEB 03 1993**



State of Idaho

# DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS  
Governor

R. KEITH HIGGINSON  
Director

05-Sep-1991 11:48

BETTY J. STANSELL  
LAND TITLE and ESCROW INC.  
BOX 473  
GOODING ID 83330

Re: Change of Ownership - No. A36-07229, A36-07081, A36-02002, (3161)  
A36-08317, A36-00098, A36-00097, A36-00101, A36-00141, A36-10520  
- RICHARD L. COOK

Ms. Stansell:

Pursuant to the notification that you are representing the claimant(s) on the above referenced Adjudication Claim(s), the Department has changed the record(s) of the current owner as you requested. Please find enclosed copy(s) of the computer record of the claim(s) noting the change in claimant(s).

Please review the record(s) and if you have any corrections or any questions, please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Judy Givens'.

Judy Givens  
Adjudication Secretary

/jg

Enclosures

MICROFILMED  
FEB 03 1993



State of Idaho

# DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS  
Governor

R. KEITH HIGGINSON  
Director

03-Sep-1991 15:50

BETTY J. STANSELL  
LAND TITLE and ESCROW INC.  
BOX 473  
GOODING ID 83330

Re: Change of Ownership - No. A36-07229, A36-07081, A36-02002, (3161)  
A36-08317 - RICHARD L. COOK

Ms. Stansell:

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Please review the record(s) and if you have any corrections or any questions, please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Judy'.

Judy Givens  
Adjudication Secretary

/jg

Enclosures

MICROFILMED  
FEB 03 1993

State of Idaho

RECEIVED

Department of Water Administration

AUG 22 1991

ASSIGNMENT OF ~~PERMIT~~ LICENSE

Department of Water Resources  
Southern Region Office

I, RICHARD L. COOK, hereby assign to SEE ATTACHED - EXHIBIT "A"  
of See Exhibit "A"

License

☒ All my right, title and interest, in and to ~~Permit~~ No. 36-7229  
to appropriate the public waters of the State of Idaho.

CHECK ONE

☐ The following described portion of my right, title and interest  
in and to Permit No. \_\_\_\_\_ to appropriate the public waters of  
the State of Idaho. (Describe that portion of the permit being  
assigned by listing the acreage within each 40-acre subdivision,  
the point of diversion and the amount of water in cubic feet per  
second for direct diversion, or acre feet for storage.)

Made this 4th day of October, 19 90



Richard L. Cook ~~Permit~~ Holder  
License

Josephine A. Cook  
Spouse of Permit Holder  
License

State of Idaho )  
County of GOODING ) ss.

On this 16th day of October, 19 90, personally  
appeared before me the signer(s) of the above instrument, who duly acknow-  
ledged to me that he (she) (they) executed the same.

Betty L. Stansell  
Notary Public residing at Twin Falls, ID.

My commission expires: 1/13/94

MICROFILMED  
FEB 03 1993

EXHIBIT "A"

As to an undivided 1/5th interest to the following:

GARY COOK CORPORATION, a California Corporation,  
as tenants in common;

SLOPE COMPACTION, a California Partnership, consisting of  
DONALD L. McCOY and DENNIS M. McCOY, as tenants in common;

M. J. WIENS, JR. and SHARON WIENS FAMILY TRUST UAD  
AGREEMENT dated January 17, 1979, as tenants in common;

E. A. COLLINS, an unmarried man, as tenants in common;

As to an undivided 1/10th interest to the following:

JOSEPH PATRICK ARCHIE and SARAH ELLEN ARCHIE, husband and  
wife, as tenants in common;

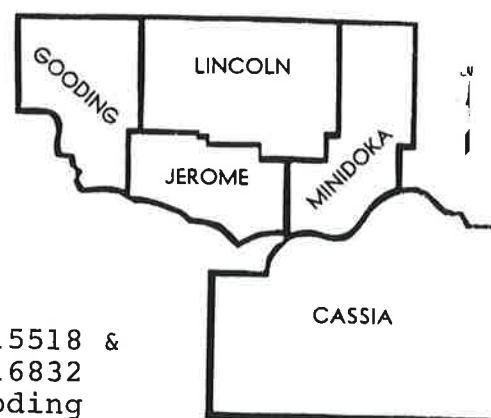
ROSS COOPER and KATHLEEN COOPER, husband and wife, as  
tenants in commons.

MICROFILMED

JAN 25 1993

# Land Title and Escrow, Inc.

A FULL SERVICE TITLE COMPANY



G-15518 &  
REFER TO: G-16832  
OFFICE: Gooding

August 20, 1991

State of Idaho  
Water Resources Department  
220 Shoshone East  
Twin Falls, ID. 83301

Gentlemen:

Enclosed are Assignments of Licenses/Permits as numbered below, along with copies of Warranty Deeds showing interest to each party.

License No. 36-7229  
License No. 36-7081  
Permit No. 3161  
Permit No. 36-8317

36-02002

The copies of Warranty Deeds dated May 1, 1989 and Corrected Warranty Deeds dated October 4, 1990 are covering the same property as to a 1/10th interest as the copies of Warranty Deeds recorded October 17, 1990, also bearing a 1/10th interest, which of course equals the 1/5th interest named on Exhibit "A" attached to the Assignment.

The only two parties that own a 1/10th interest are Joseph Patrick and Sarah Ellen Archie, husband and wife, and Ross and Kathleen Cooper, husband and wife.

If you have any questions please feel free to call me at 733-4390 or 324-3357. Thank you.

Very truly yours,  
LAND TITLE AND ESCROW, INC.

*Betty J. Stansell*  
Betty J. Stansell, Closing Agent

Encls.

:bjs

BOX 177, BURLEY, IDAHO 83318  
PHONE 678-3524 - FAX 678-4435

BOX 349, JEROME, IDAHO 83338  
PHONE 324-4842 - FAX 324-8961

BOX 473, GOODING, IDAHO 83330  
PHONE 934-8477 - FAX 934-5890

BOX 111, RUPERT, IDAHO 83350  
PHONE 436-0606 - FAX 436-1199

RECEIVED

AUG 22 1991

Department of Water Resources  
Southern Region Office

MICROFILMED

JAN 25 1993

SD-33

Last Name: SLOPE

STATE

| S | First            | O | Water      | Priority   |             | Total     | Use       |
|---|------------------|---|------------|------------|-------------|-----------|-----------|
| E | Name             | W | Right No.  | Date       | Source      | Diversion | Code Desc |
| L |                  | N |            |            |             |           |           |
| - | SLOPE COMPACTION |   |            |            |             |           |           |
| - |                  | C | R36-00097/ | 04/01/1905 | BILLINGSLEY | 1.500     | 01 IRR    |
| - |                  | C | R36-00098/ | 04/01/1895 | BILLINGSLEY | 4.840     | 01 IRR    |
| - |                  | C | R36-00098  | 04/01/1895 | BILLINGSLEY | 4.840     | 01 IRR    |
| - |                  | C | R36-00101/ | 04/01/1905 | BILLINGSLEY | 2.000     | 01 IRR    |
| - |                  | C | R36-00101/ | 04/01/1905 | BILLINGSLEY | 2.000     | 01 IRR    |
| - |                  | C | R36-00141/ | 04/01/1895 | BILLINGSLEY | 6.000     | 01 IRR    |
| - |                  | C | A36-07081/ | 08/26/1969 | BILLINGSLEY | 4.000     | 16 WILDLF |
| - |                  | C | A36-07229/ | 03/30/1972 | BILLINGSLEY | 10.500    | 16 WILDLF |
| - |                  | C | R36-02002/ | 09/30/1907 | BILLINGSLEY | 0.600     | 01 IRR    |
| - |                  | C | R36-02002/ | 09/30/1907 | BILLINGSLEY | 0.600     | 01 IRR    |
| - |                  | C | R36-07229/ | 03/30/1972 | BILLINGSLEY | 10.500    | 16 WILDLF |
| - |                  | C | R36-07229/ | 03/30/1972 | BILLINGSLEY | 10.500    | 16 WILDLF |
| - |                  | C | A36-00098/ | 04/01/1895 | BILLINGSLEY | 7.000     | 01 IRR    |
| - |                  | C | R36-00141/ | 04/01/1895 | BILLINGSLEY | 6.000     | 01 IRR    |

END OF DATA...ENTER MENU OPTION AND/OR PRESS ENTER TO CONTINUE  
 (Enter=Continue) (GOLD7=This Query)

(MENU \_\_\_\_\_)

MICROFILMED  
 FEB 03 1993

SD-33

Last Name: SLOPE

STATE

| S | First            | O | Water      | Priority   |             | Total     | Use       |
|---|------------------|---|------------|------------|-------------|-----------|-----------|
| E | Name             | W | Right No.  | Date       | Source      | Diversion | Code Desc |
| L |                  | N |            |            |             |           |           |
| - | SLOPE COMPACTION |   |            |            |             |           |           |
| - |                  | C | A36-02002/ | 09/30/1907 | BILLINGSLEY | 0.600     | 01 IRR    |
| - |                  | C | A36-02002/ | 09/30/1907 | BILLINGSLEY | 0.600     | 01 IRR    |
| - |                  | C | A36-07081/ | 08/26/1969 | BILLINGSLEY | 4.000     | 16 WILDLF |
| - |                  | C | A36-07229  | 03/30/1972 | BILLINGSLEY | 10.500    | 16 WILDLF |
| - |                  | C | A36-08317/ | 10/20/1986 | TUCKER SPRI | 3.000     | 17 WILD S |
| - |                  |   |            |            |             |           | 55 DIV S  |
| - |                  | C | A36-08317/ | 10/20/1986 | TUCKER SPRI | 3.000     | 17 WILD S |
| - |                  |   |            |            |             |           | 55 DIV S  |
| - |                  | C | R36-07081/ | 08/26/1969 | BILLINGSLEY | 4.000     | 16 WILDLF |
| - |                  | C | R36-07081/ | 08/26/1969 | BILLINGSLEY | 4.000     | 16 WILDLF |
| - |                  | C | A36-00097  | 04/01/1905 | BILLINGSLEY | 1.500     | 01 IRR    |
| - |                  | C | A36-00097/ | 04/01/1905 | BILLINGSLEY | 1.500     | 01 IRR    |
| - |                  | C | A36-00098/ | 04/01/1895 | BILLINGSLEY | 7.000     | 01 IRR    |
| - |                  | C | A36-00101/ | 04/01/1905 | BILLINGSLEY | 2.000     | 01 IRR    |
| - |                  | C | R36-00097/ | 04/01/1905 | BILLINGSLEY | 1.500     | 01 IRR    |

(Enter=Continue)

(GOLD7=This Query)

(MENU \_\_\_\_\_)

MICROFILMED

FEB 03 1993

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

TOTAL RECORDS IN SELECTION FILE: 116

MICROFILMED  
MAR 20 1993

RECEIVED  
FEB 10 1993  
Department of Water Resources

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

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23  
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

12  
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,

NOTICE OF APPEARANCE

15  
16  
17  
18  
19  
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23  
Petitioner,

vs.

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

Respondents.

\* \* \* \* \*

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



Hepworth,  
Nungester,  
& Lezamiz

NOTICE OF APPEARANCE - 1

MICROFILMED  
MAR 20 1993

1 Users, Inc. and its individual members:

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



Hepworth,  
Nungester,  
& Lezamiz

NOTICE OF APPEARANCE - 2

MICROFILMED  
MAR 20 1993

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



Hepworth,  
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NOTICE OF APPEARANCE - 3

**MICROFILMED**

**MAR 20 1993**

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

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

12 DATED This 9 day of February, 1993.

13 HEPWORTH, NUNGESTER & LEZAMIZ

14  
 15 By Patrick D. Brown  
 16 PATRICK D. BROWN  
 Attorneys for Respondents

17  
 18 CERTIFICATE OF MAILING

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



Hepworth,  
 Nungester,  
 & Lezamiz

NOTICE OF APPEARANCE - 4

MICROFILMED

MAR 20 1993

1 February, 1993, to:

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

6 Clive Strong  
7 Chief Natural Resources Division  
8 Office of Attorney General  
9 Statehouse  
10 Room 210  
11 Boise, Idaho 83720

12 David Shaw  
13 Adjudications Bureau Chief  
14 Department of Water Resources  
15 1301 North Orchard  
16 Boise, Idaho 83706

17 United States Department of Justice  
18 Environment and Natural Resources Division  
19 550 West Fort Street, Box 33  
20 Boise, ID 83734

21   
22 Patrick D. Brown



Hepworth,  
Nungester,  
& Lezamiz

NOTICE OF APPEARANCE - 5

MICROFILMED  
MAR 20 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

March 1, 1993

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

Re: Notice of Appearance

Dear Mr. Brown:

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

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

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

MICROFILMED

MAR 20 1993

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

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

MICROFILMED  
 MAR 20 1993

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

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

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

**MICROFILMED**  
**MAR 20 1993**

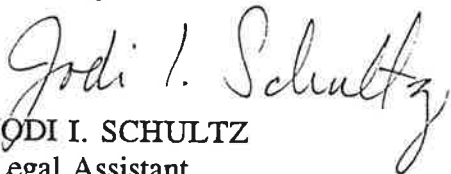
Mr. Patrick D. Brown  
March 1, 1993  
Page 4

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

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

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

Sincerely,



JODI I. SCHULTZ

Legal Assistant

Idaho Department of Water Resources

cc: IDWR Southern Region

MICROFILMED  
MAR 20 1993

See file

A36-00097

for Deeds &  
Attachments for  
Change of Ownership

MICROFILMED  
MAR 20 1993

State of Idaho  
DEPARTMENT OF WATER RESOURCES  
FIELD REPORT

36-7229  
Permit No.

CONTACT WITH PERMIT HOLDER

|                                                                               | DATE      | INITIALS    | REMARKS |
|-------------------------------------------------------------------------------|-----------|-------------|---------|
| <input type="checkbox"/> Appointment letter mailed:                           | 4-25-1979 | [Signature] |         |
| <input type="checkbox"/> Telephone call made:<br>(List Telephone No. used)    |           |             |         |
| <input type="checkbox"/> Appointment scheduled for:<br>(Date, time, location) |           |             |         |

EXAMINATION

Date 10:30 A.M. 5-19-1980 Accompanied by RICHARD COOK SANDS DITCH FLUME 34.5 CFS  
Total Q measured 13.031 CFS  
If source is surface water, estimate total flow of source  
Methods of measurement FLUME & WEIR Meets Permit requirements? Capacity

Measurement calculations: Inlet MEASUREMENT @ SAND DITCH FLUME 34.5 CFS (See Chart)  
OUTLET " " @ POND STANDARD CONTRACTED WEIR 13.031 CFS  
Weir meas:  $13.031 \text{ CFS} = (3.73(5.25 - 0.2(84))^{3/2})$   
rectangular

Allow 10.5 as limited by Permit

| WELL/DIVERSION* NO. | HP | MOTOR MAKE | MOTOR SERIAL NO. | PUMP MAKE | PUMP SERIAL NO. | MEASURING DEVICE TYPE | CONDITION OF MEAS. DEV. | REMARKS |
|---------------------|----|------------|------------------|-----------|-----------------|-----------------------|-------------------------|---------|
|                     |    |            |                  |           |                 |                       |                         |         |
|                     |    |            |                  |           |                 |                       |                         |         |
|                     |    |            |                  |           |                 |                       |                         |         |

System Description WATER IS DIVERTED FROM BILLINGSLEY CREEK INTO THE SANDS DITCH THEN REDIVERTED INTO THE FISH PONDS THEN DISCHARGED UPON LANDS FOR IRRIGATION.

\*Code with map on reverse side. Disregard code if only one.

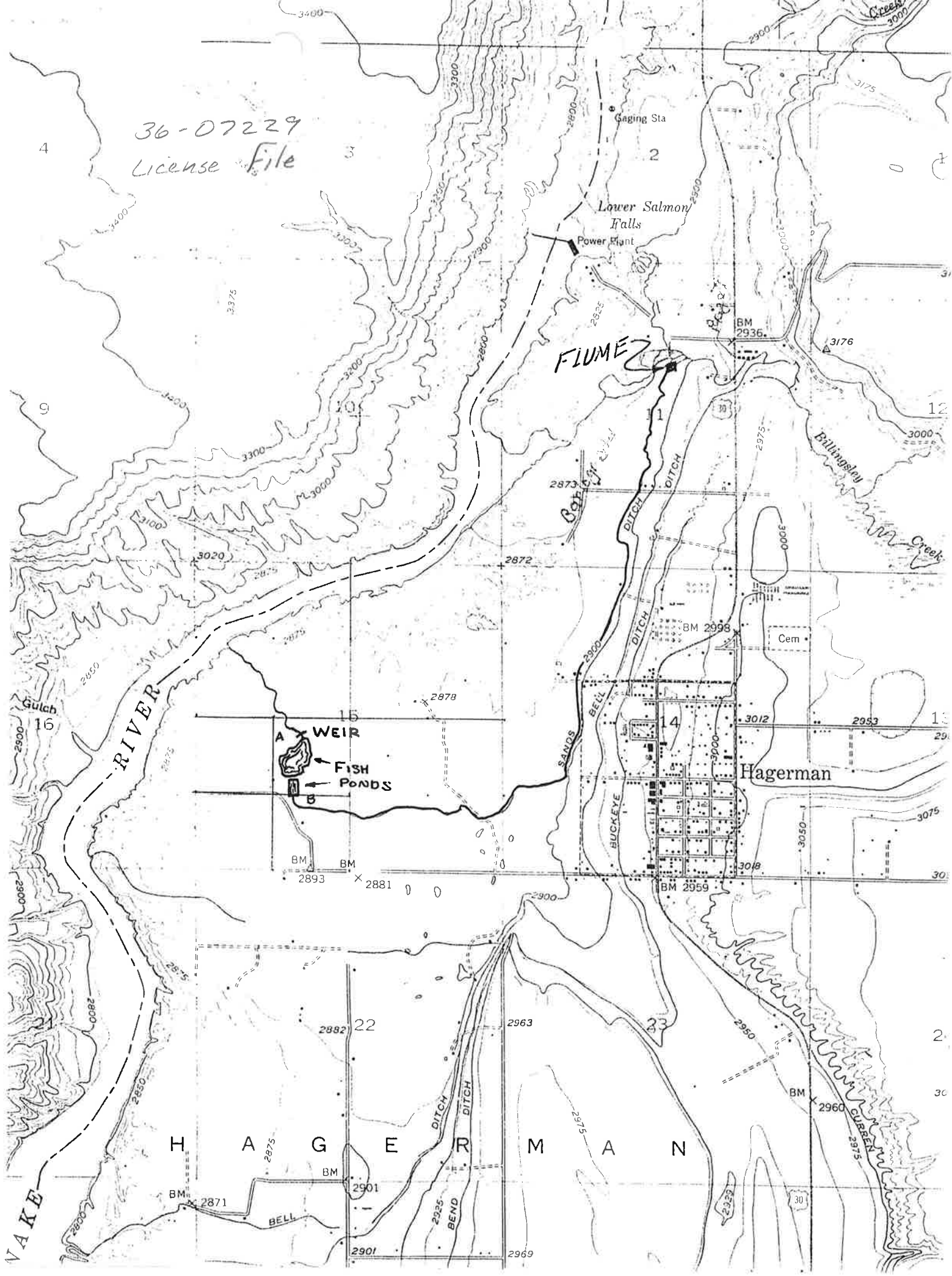
RECOMMENDED AMOUNTS

| USE              | Irrigation requirement = | AFA/Acre | FROM   | TO      |
|------------------|--------------------------|----------|--------|---------|
| FISH PROPAGATION | Q (cfs) 10.50 CFS        | N/A      | JAN 1  | Dec 31  |
|                  |                          |          |        |         |
|                  |                          |          |        |         |
|                  |                          |          |        |         |
|                  |                          |          |        |         |
| Total            | 10.50 CFS                | P/A      | JAN. 1 | Dec. 31 |

Remarks APPLICANT IS THE LAST USER ON THE SANDS DITCH THEREFORE A MEASURING DEVICE SHOULD BE REQUIRED ONLY @ THE OUTLET OF THE FISH PONDS. POND A IS 5.0 Acres & Pond B is  $150' \times 100' \times 4' / 43,560 = 1.38 \text{ AC-FT}$   
PER TELECON W/ GARY F. Pond depth AVE. 6 FT  
FACILITY VOLUME =  $1.38 + 30 = 31.4 \text{ AC-FT}$   
8/24/81  
J.J.

NOTE: NO M.D. IS NEEDED ON EFFLUENT DISCHARGE BECAUSE THE EFFLUENT IS NOT RETURNED TO THE SOURCE PER 1/4/81

36-07229  
License File



6/9/94

## COMMUNICATION DOCUMENTATION

Claim No. SEE BELOW

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

IDWR Employee/Agent Steve Clelland

March 19, 1998 10:00am

NAME:

MATT HOWARD

CALLIN

RE:

QUESTIONS ON SLOPE COMP.

HE WANTED TO KNOW WHY THE USE WAS CHANGED FOR THIS RIGHT FROM FISH PROPAGATION TO WILDLIFE... I TOLD HIM THE RIGHT WAS PART OF A MASS RUSH TIN THE 70'S TO GET FISH PROPAGATION RIGHTS ON ANYTHING THAT WOULD HOLD WATER. AFTER THE RUSH IT APPEARS THIS SYSTEM WAS NOT SUITABLE TO COMMERCIAL FISH PRODUCTION AND THE USE CONTINUED AS A WILDLIFE HABITAT USE. AT THE TIME OF SRBA REVIEW THE CHANGE IN USE WAS CORRECTED TO A MORE ACCURATE DESCRIPTION AS AN ACCOMPLISHED CHANGE IN NATURE OF USE. BECAUSE IT WAS A LICENSED RIGHT NOT MUCH WAS CHANGED ON THE ELEMENTS OTHER THAN USE.

MR. HOWARD ASKED ABOUT THE STORAGE COMPONENT... I AGREED THERE PROBABLY SHOULD HAVE BEEN A CALCULATION OF STORAGE, AND, PERHAPS THE FLOW RATE SHOULD HAVE BEEN ADJUSTED TO REFLECT THE LESS INTENSIVE NEED FOR WATER TURN OVER FOR WILDLIFE PONDS VERSUS COMMERCIAL FISH RACEWAYS.

CLAIMS: A36-07081 & A36-07229

## SUBCASE NO. 36-07229

|                               | <b>CLAIM (8/18/88)</b>                                                                                                                                             | <b>AMENDED CLAIM</b> | <b>RECOMMENDATION</b>                                                                                                                            | <b>OBJECTION</b>                                                         |
|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| <b>NAME</b>                   | Gary Cook Corp.<br>Slope Compaction<br>M.J. & Sharon Wiens,<br>Jr. Family Trust<br>E.A. Collins<br>Joseph Archie<br>Sarah Archie<br>Ross Cooper<br>Kathleen Cooper | N/A                  | M.J. & Sharon Wiens, Jr<br>Family Trust<br>E.A. Collins<br>Sarah & Joseph Archie<br>Ross & Kathleen Cooper<br>Gary Cook Corp<br>Slope Compaction |                                                                          |
| <b>BASIS OF CLAIM</b>         | License                                                                                                                                                            |                      | License                                                                                                                                          |                                                                          |
| <b>SOURCE</b>                 | Billingsley Creek                                                                                                                                                  |                      | Billingsley Creek                                                                                                                                |                                                                          |
| <b>QUANTITY</b>               | 10.500 cfs                                                                                                                                                         |                      | 10.500 cfs                                                                                                                                       |                                                                          |
| <b>PRIORITY DATE</b>          | 3/30/1972                                                                                                                                                          |                      | 3/30/1972                                                                                                                                        | XX change date of<br>priority to comport with<br>decree                  |
| <b>PURPOSE OF USE</b>         | Wildlife/ Variable<br>Habitat Ponds                                                                                                                                |                      | Wildlife/Variable Habitat<br>Ponds                                                                                                               |                                                                          |
| <b>PERIOD OF USE</b>          | 1/1 - 12/31                                                                                                                                                        |                      | 1/1 - 12/31                                                                                                                                      |                                                                          |
| <b>POINT OF<br/>DIVERSION</b> | T07S R13E S11                                                                                                                                                      |                      | T07S R13E S11                                                                                                                                    |                                                                          |
| <b>PLACE OF USE</b>           | T07S R13E S15                                                                                                                                                      |                      | T07S R13E S15                                                                                                                                    |                                                                          |
| <b>REMARKS</b>                |                                                                                                                                                                    |                      | + see below                                                                                                                                      | XX strike all remarks<br>except "water delivered<br>through Sands Ditch" |
|                               |                                                                                                                                                                    |                      |                                                                                                                                                  |                                                                          |

+ "A measuring device of a type approved by IDWR shall be maintained as a part of the diverting works.

Water is delivered through Sands Ditch.

2.88 cfs of right no. 36-15384 is limited to use for conveyance losses in delivery of this right during the irrigation season.

2.88 cfs of this right is limited to use for conveyance."



## 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

PHILIP E. BATT  
GOVERNOR

April 11, 1995

R. KEITH HIGGINSON  
DIRECTOR

SARAH ELLEN ARCHIE  
JOSEPH PATRICK ARCHIE  
2309 WOODROW DR  
RALEIGH NC 27609-7626

RE: Snake River Basin Adjudication (SRBA)  
Notices of Claim To a Water Right #36-07081, 36-07229,  
36-08317, 36-10520 & 36-15384  
Change in Address

Dear Claimants:

Thank you for notifying us of your change in address of the water rights referenced above. SRBA Judge Hurlbutt issued an Order June 17, 1993 requiring claimants like yourself identified in a Director's Report to use Standard Form 3 for change in address. We have enclosed this form for your use.

Please contact us or the Court (208/736-3011) if you have any questions.

Sincerely,

Idaho Department of Water Resources  
Adjudication Bureau

SO:ss:region  
Enclosure:  
Standard Form 3

RECEIVED

APR 13 1995

Department of Water Resources  
Southern Region

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DEC 04 1996

**R PROOF**

**CVR**

**MAPS**

**PHOTOS**

**MISC**

OCT 19 1994

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. 36-07229 -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)

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2. Person who filed objection:

Name: M J & SHARON WIENS JR FAMILY TRUST  
Address: 1701 LAS VEGAS BLVD SOUTH  
LAS VEGAS NV 89104

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

4. ☒ Priority Date: I respond to the objection concerning the priority date.
11. ☒ Remarks: I respond to the objection concerning the "remarks" listed with the water right.
14. ☒ Other: I respond to the objection concerning:  
ALL MATTERS RAISED IN THE CLAIMANT'S ANSWER,  
AFFIRMATIVE DEFENSES AND PRAYER FOR RELIEF.

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection item 4, and all allegations of the objection regarding this item, IDWR responds it recommended that priority date the claimant is entitled to based on the license upon which the claim is based.

In further response to this objection item and the claimant's description of interest in the water right, IDWR further responds as follows: (1) IDWR recommended the water right in question as a licensed right as claimed by the claimant; (2) the claimant now asserts that the right is decreed or otherwise has an earlier

date of beneficial use; and (3) to the extent that the claimant is now attempting to assert a different basis for the 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 after a director's report is filed, just as a party must obtain leave of the 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 court. IDWR further responds that the decreed rights referenced by the claimant are being recommended as water right nos. 36-00098 and 36-15467.

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

In response to Statement of the Objection item 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.

#### 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)

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No. of  
Pages

Notice of Claim No. A36-07229

2

IDWR's Response to Answer, Affirmative Defenses and Prayer  
for Relief of Claimant

4

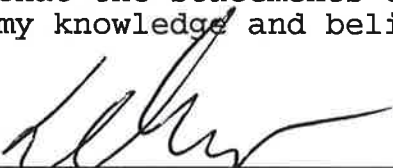
VERIFICATION (Must be Completed)

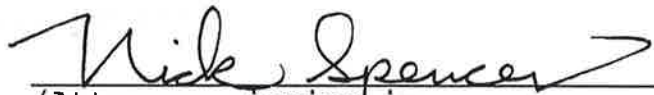
State of IDAHO

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 10<sup>th</sup> 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 10<sup>th</sup> 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

Name: GARY COOK CORP  
Address: 110 NEWPORT CENTER DR #250  
NEWPORT BEACH CA 92660

Name: E A COLLINS  
Address: 2933 COASTLINE COURT  
LAS VEGAS NV 89117

Name: JOSEPH P & SARAH E ARCHIE  
Address: 3417 WILLIAMSBOROUGH COURT  
RALEIGH NC 27609

Name: ROSS & KATHLEEN COOPER  
Address: 6773 PORTSHEAD DR  
MALIBU CA 90265

Name: SLOPE COMPACTION CORP  
Address: C/O DONALD L & DENNIS M MC COY  
23622 CALABASAS RD #239  
CALABASAS CA 91302

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: A36-07229  
Date Received: 8/18/1988  
Receipt No: S001534  
Received By: ECC

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: RICHARD L. COOK  
Address: RT. 1 BOX 22  
HAGERMAN, ID 83332  
208-837-6164

2. Date of Priority: MAR 30, 1972

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

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 | Lot | County  |
|----------|-------|---------|--------|--------|-----|-----|---------|
| 07S      | 13E   | 11      | SW     | NE     |     |     | GOODING |

5. Description of diverting works:  
HEADGATES, DITCHES TO PONDS.

6. Water is used for the following purposes:

| Purpose  | From  | To    | C.F.S  | (or) | A.F.A. |
|----------|-------|-------|--------|------|--------|
| WILDLIFE | 01/01 | 12/31 | 10.500 |      |        |

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

A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:  
W/ VARIABLE HABITAT PONDS

10. Place of Use:

| Township | Range | Section | 1/4 of | 1/4 | Lot | Use    | Acres |
|----------|-------|---------|--------|-----|-----|--------|-------|
| 07S      | 13E   | 15      | NE     | SW  |     | WILDLF |       |

11. Place of use in counties: GOODING

A36-07229

Page 1

Date: 08/18/88

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

13. Other Water Rights Used:  
A36-07081, A36-08317

14. Remarks:

USE OF WATER UNDER THIS LICENSE IS SUBJECT TO CONTROL BY THE  
WATERMASTER OF STATE WATER DISTRICT NO. 36A, BILLINGSLEY CREEK.

15. Basis of Claim: LICENSE

16. Signature(s)

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

Number of attachments: \_\_\_\_\_

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): Richard L. Goss Date: Aug. 18/1988  
Date: \_\_\_\_\_

State of Idaho

County of Twin Falls ) SS.

Subscribed and sworn (or affirmed) before me this 18th day  
of August 19 88

Roxanne Storey  
Notary Public

Seal

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

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

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

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

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- 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.

RECEIPT  
For Monies Paid  
to the  
IDAHO DEPARTMENT OF WATER RESOURCES

-07229

Receipt No: 8015407

RECEIVED

FEB 22 1993

Department of Water Resources  
Southern Region Office

Date: 2/22/1993  
Time: 11:18:57

Received  
From:

WIENS M.J. JR.

| Type of Payment                      | Program Acct Class | Amount |
|--------------------------------------|--------------------|--------|
| FEE FOR COPIES OF ADJUDICATION CLAIM |                    |        |
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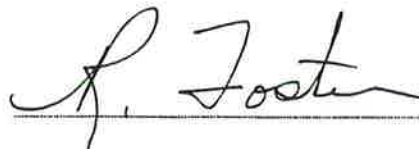
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Region: SOUTHERN

Signature:



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OCT 19 1994



State of Idaho

# DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS  
Governor

R. KEITH HIGGINSON  
Director

29-Jan-1993

M J WIENS JR  
1701 LAS VEGAS BLVD S  
LAS VEGAS NV 89104

RE: Copy of SRBA File(s): 36-00097, 36-00098, 36-00101,  
36-00141, 36-02002, 36-07081,  
36-07229, 36-08317, 36-10520

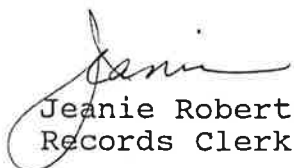
Dear Mr. Wiens:

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:

\$21.08

Sincerely,

  
Jeanie Robertson  
Records Clerk

Encl:

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OCT 19 1994

RECEIVED

JAN 19 1993  
Department of Water Resources  
Southern Region Office

1-12-93  
(Date)

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

Dear Idaho Department of Water Resources:

Please provide me with a copy of all information included in  
my file as it relates to water right number SEE BELOW.

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.

WATER RIGHT NO. 36-07229  
36-07081  
36-80317  
36-00098  
36-00097  
36-02002  
36-00101  
36-00141  
36-10520

Sincerely,

M.J. WIENS JR.  
(Name)

1701 LAS VEGAS BLVD. SO.  
(Address)

LAS VEGAS NV 89104  
(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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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. A36-07229  
(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,

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)

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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: M. J. Wiens, Jr. et al

Address: 1701 Las Vegas Blvd. South

Las Vegas, Nevada 89104

Briefly describe your interest in this water right:

Licensed water right with identified purposes

of use as wildlife, variable habitat ponds.

License No. 36-7229 for 10.500 cfs; decreed

right pursuant to New International Mortgage

Bank v. Idaho Power Company dated 3/22/1932

2. Owner of the water right:

Name: M.J. & Sharon Wiens, Jr. Family Trust, A.E.  
Collins, Joseph Patrick, Sarah Ellen Archie,  
Ross & Kathleen Cooper, Gary Cook Corp. & Slope  
Compaction Corp.

Address: 1701 Las Vegas Blvd. South

Las Vegas, NV 89104

3. If this objection is filed by an attorney:

Attorney Name: Hepworth, Nungester & 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

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**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.

Strike all remarks except "water delivered through Sands  
Ditch"; change date of priority to comport with decree

---

---

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



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

\_\_\_\_\_  
See Hagerman Water Right Owners, Inc.'s

\_\_\_\_\_  
Compendium "A"

VERIFICATION (Must be Completed)

State of Nevada

County of Clark

M. J. Wiens, Jr., 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.

[Signature]  
Signature of person filing objection

By: [Signature]

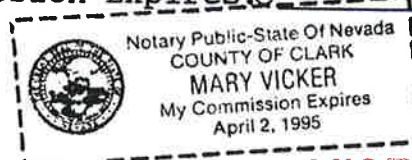
(Attorney signing in  
representative capacity)

Subscribed and sworn to before me this 19<sup>th</sup> day of April,  
1993.

[Signature]  
Notary Public for Nevada

Residing at: Las Vegas

My Commission Expires: April 2, 1995



(Over)

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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 29<sup>th</sup> 28 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: M. J. Wiens, Jr. et al

Owner's address: 1701 Las Vegas Blvd. South

Las Vegas, Nevada 89104

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 4 - IDWR recommends a junior priority date which is not supported by the previously decreed right or the date of first beneficial use.

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

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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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.

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**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.

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

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

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

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

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

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

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

**(DIRECTOR'S REPORT PART II)**

**I.**

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

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

**(DIRECTOR'S REPORT PART III)**

**I.**

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

**VIII.**

**AFFIRMATIVE DEFENSES**

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

**AFFIRMATIVE DEFENSE NO. 1**

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

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

**AFFIRMATIVE DEFENSE NO. 2**

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

**AFFIRMATIVE DEFENSE NO. 3**

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

**AFFIRMATIVE DEFENSE NO. 4**

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

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

**AFFIRMATIVE DEFENSE NO. 5**

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

**AFFIRMATIVE DEFENSE NO. 6**

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

**AFFIRMATIVE DEFENSE NO. 7**

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

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AFFIRMATIVE DEFENSE NO. 8

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

AFFIRMATIVE DEFENSE NO. 9

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

AFFIRMATIVE DEFENSE NO. 10

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

AFFIRMATIVE DEFENSE NO. 11

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

AFFIRMATIVE DEFENSE NO. 12

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

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AFFIRMATIVE DEFENSE NO. 13

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

AFFIRMATIVE DEFENSE NO. 14

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

AFFIRMATIVE DEFENSE NO. 15

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

AFFIRMATIVE DEFENSE NO. 16

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

AFFIRMATIVE DEFENSE NO. 17

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

AFFIRMATIVE DEFENSE NO. 18

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

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

**AFFIRMATIVE DEFENSE NO. 19**

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

**AFFIRMATIVE DEFENSE NO. 20**

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

**AFFIRMATIVE DEFENSE NO. 21**

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

AFFIRMATIVE DEFENSE NO. 22

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

AFFIRMATIVE DEFENSE NO. 23

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

AFFIRMATIVE DEFENSE NO. 24

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

AFFIRMATIVE DEFENSE NO. 25

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

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

AFFIRMATIVE DEFENSE NO. 26

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

AFFIRMATIVE DEFENSE NO. 27

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

WHEREFORE, the objectors pray for judgment as follows:

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

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

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

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

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

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(WATER\21530ANS)

MEMO TO OBJECTION FILE:

DATE: APRIL 30, 1993

THE FOLLOWING DOCUMENTS WERE FILED WITH 170 OBJECTIONS FROM  
HEPWORTH, NUNGESTER, & LEZAMIZ CHARTERED OF TWIN FALLS:

1. AFFIDAVIT OF EILEEN ANN McDEVITT RE: HAGERMAN WATER RIGHT  
OWNERS INC. COMPENDIUM A

SUPPORTING DOCUMENTS:

1. HAGERMAN WATER RIGHT OWNERS INC. COMPENDIUM A
2. FINDINGS OF FACT; DANIEL JONES & GUY LeMOOR
3. DECREE; SWINEHART, WOODY & SWINEHART VS VADAR DIST 63
4. DECREE; 1409
5. STIPULATION FOR DECREE; NEW INTERNATIONAL MORTGAGE BANK  
VS IDAHO POWER CO
6. FINDINGS OF FACT; NEW INTERNATIONAL MORTGAGE BANK  
VS IDAHO POWER CO
7. DECREE; NEW INTERNATIONAL MORTGAGE BANK  
VS IDAHO POWER CO
8. JUDGEMENT & DECREE; DELBERT CLAMPITT AND DELSIE CLAMPITT
9. STIPULATION OF FACTS; DBA JONES & SANDY LIVESTOCK VS  
RESERVOIR LAND COMPANY IC
10. MEMORANDUM OPINION; JOHN W JONES JR & DELORIS D JONES VS  
RESERVOIR LAND COMPANY, INC
11. AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW;  
HAMILTON, MECHAM, HARRISON, REID VS NORMAN & ANITA  
STANDAL

ALL OF THE ORIGINAL DOCUMENTS LISTED ABOVE ARE FILED IN OBJECTION  
FILE NUMBER 36-00003A.

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RECEIVED

APR 30 1993

Department of Water Resources  
Adjudication Bureau

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

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

Case No. A36-07229  
(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,

36-07229 -0001/  
93-04-0306

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)

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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.

Strike all remarks except "water delivered through Sands  
Ditch"; change date of priority to comport with decree

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

☒

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

See Hagerman Water Right Owners, Inc.'s

Compendium "A"

**VERIFICATION (Must be Completed)**

State of Nevada

County of Clark

M. J. Wiens, Jr., 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.

[Signature]  
Signature of person filing objection

By:

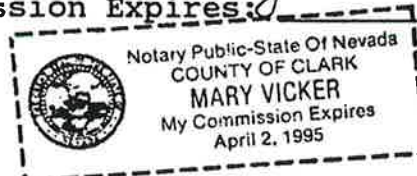
[Signature]  
(Attorney signing in  
representative capacity)

Subscribed and sworn to before me this 19<sup>th</sup> day of April,  
1993.

[Signature]  
Notary Public for Nevada

Residing at: Las Vegas

My Commission Expires: April 2, 1995



(Over)

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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 29<sup>th</sup> 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: M. J. Wiens, Jr. et al  
Owner's address: 1701 Las Vegas Blvd. South  
Las Vegas, Nevada 89104

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 4 - IDWR recommends a junior priority date which is not supported by the previously decreed right or the date of first beneficial use.

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

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.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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OCT 19 1994

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.

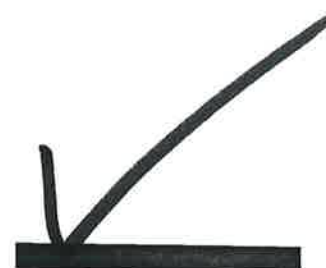
MICROFILMED  
OCT 19 1994

(WATER\21530ANS)

**R PROOF**



**CVR**



**MAPS**



**PHOTOS**



**MISC**



**MICROFILMED**

**FEB 03 1993**

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

VERIFIED BY H.H.J.

Water Right Number - R36-07229

Prefix Translation: RESEARCH

Old (D) Number -

+ - - - - Last Name - - - +

+ - First Name - - +

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

\*\*\* C - CURRENT OWNER \*\*\*  
GARY COOK CORP

1 - A CALIFORNIA CORP  
2 - 110 NEWPORT CENTER DR #250  
3 -  
City- NEWPORT BEACH State- CA Zip- 92660  
Phone - 208-000-0000

M J AND SHARON WIENS JR FAMILY TRUST

1 - 1701 LAS VEGAS BLVD SOUTH  
2 -  
3 -  
City- LAS VEGAS State- NE Zip- 89104  
Phone - 208-000-0000

COOPER

KATHLEEN

1 - 6773 PORTSHEAD DR  
2 -  
3 -  
City- MALIBU State- CA Zip- 90265  
Phone - 208-000-0000

ARCHIE

JOSEPH PATRICK

1 - 3417 WILLIAMSBOROUGH COURT  
2 -  
3 -  
City- RALEIGH State- NC Zip- 27609  
Phone - 208-000-0000

SLOPE COMPACTION

1 - A CALIFORNIA CORP  
2 - C/O DONALD L MCCOY  
3 - 23622 CALABASAS RD #239  
City- CALABASAS State- CA Zip- 91302  
Phone - 208-000-0000

SLOPE COMPACTION

1 - A CALIFORNIA CORP  
2 - C/O DENNIS M MCCOY  
3 - 23622 CALABASAS RD #239  
City- CALABASAS State- CA Zip- 91302  
Phone - 208-000-0000

COOPER

ROSS

1 - 6773 PORTSHEAD DR  
2 -  
3 -  
City- MALIBU State- CA Zip- 90265  
Phone - 208-000-0000

COLLINS

E A

1 - 2933 COASTLINE COURT  
2 -  
3 -  
City- LAS VEGAS State- NE Zip- 89117  
Phone - 208-000-0000

ARCHIE

SARAH ELLEN

1 - 3417 WILLIAMSBOROUGH COURT  
2 -  
3 -  
City- RALEIGH State- NC Zip- 27609  
Phone - 208-000-0000

MICROFILMED  
FEB 03 1993

Water right number - R36-07229

Prefix Translation: RESEARCH

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

\*\*\* O - ORIGINAL OWNER \*\*\*  
COOK

RICHARD L

1 - RT 1 BOX 22

2 -

3 -

City- HAGERMAN

Phone - 208-837-6164

State- ID Zip- 83332

+ - - Priority Date - - +  
03/30/1972+ - - - Region - - - +  
17 SOUTHERN+ - - - Stage - - - +  
L - LICENSE

+ - - - Status - - - - +

+ - - - - Source - - - - - +  
BILLINGSLEY CREEK+ - - - - Tributary - - - - - +  
SNAKE RIVER+ - - - - Point of Diversion - - - - - +  
Twn Rng Sec Tract Lot RFlg County

07S 13E 11 NW SW NE (47) GOODING

+ - - - - Water Use - - - - - +  
Code Description Period From Period To Diversion Rate Diversion Volume

16 - WILDLIFE

01/01

12/31

10.500

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +  
10.500 0.0+ - - - - Place of Use - - - - - +  
Twn Rng Sec Tract Lot Acres Code Description County

07S

13E

15

NE SW

16 WILDLIFE

(47) GOODING

Total Acres:

+ - - Diversion Means - HEADGATES, DITCHES TO PONDS.

+ - - Non-Irrigation Use - WILDLIFE, VARIABLE HABITAT PONDS

+ - - Other Rights for Same Use - 36-07081

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

WATER IS DELIVERED THROUGH SANDS DITCH.

2.88 CFS OF RIGHT NO. 36-15384 IS LIMITED TO USE FOR  
CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT DURING THE  
IRRIGATION SEASON.2.88 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE  
LOSSES IN DELIVERY OF THIS RIGHT AND 36-07081 DURING THE  
NON-IRRIGATION SEASON.MICROFILMED  
FEB 03 1993

Water right number - R36-07229

Prefix Translation: RESEARCH

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

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

No Old Water Right Numbers Found

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

M01 - A MEASURING DEVICE OF A TYPE APPROVED BY IDWR SHALL BE  
- MAINTAINED AS A PART OF THE DIVERTING WORKS.

+ - - - - Decree Plaintiff - - - + + - - - - Decree Defendant - - - + + - Decree Date - +

00/00/0000

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

Date: 02/07/1991 User Id: BEDKE Subject: SCC-STAFF REVIEW

Date: 02/07/1991 User Id: BEDKE Subject: SCC-STAFF REVIEW

Date: 08/04/1992 User Id: CHRISTEN Subject: COPIED FROM REMARKS

USE OF WATER UNDER THIS LICENSE IS SUBJECT TO CONTROL BY THE WATERMASTER OF STATE WATER DISTRICT NO. 36A, BILLINGSLEY CREEK.

Date: 08/11/1992 User Id: THORNTON Subject: DATA ENTRY CORRECTION

+ - - Audit Fields - - +

08/19/92 THORNTON

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

|                      |              |                       |              |                         |         |
|----------------------|--------------|-----------------------|--------------|-------------------------|---------|
| Court Report Filing  | - 00/00/0000 | Field Inspection Made | - 00/00/0000 | Civil Case Number       | - 39576 |
| Objection Filed Date | - 00/00/0000 | Field Inspection Flag | -            | Old Case Number         | -       |
| Response Filed Date  | - 00/00/0000 | Verified Date         | - 08/19/1992 | Old Judicial District   | -       |
| Claim Received Date  | - 08/18/1988 | Last Amended Date     | - 00/00/0000 | Temporary Right         | - P     |
|                      |              | Receipt Number        | - S001534    | Water District          | - 36A   |
|                      |              | POU Ownership Flag    | - Y          | Federal/State Indicator | - S     |
|                      |              | Name Connector        | - AND/OR     | Presumption Flag        | -       |
|                      |              |                       |              | Notice of Error Flag    | -       |

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FEB 03 1993

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIM VERIFICATION REPORT

00:40:56  
07/03/90

PAGE: 12  
QUICKLOOK INFORMATION

CLAIM NUMBER: A36-07229

| WR ELEMENT                | FIELD EXAM<br>Y/N | CORRESPONDENCE<br>SENT/RECEIVED<br>BY WHOM/DATE | FIELD EXAM<br>BY WHOM/DATE | CHANGE<br>CLAIM<br>Y/N | VERIFIED BY<br>CODE | COMPLETED<br>REVIEW<br>WHOM/DATE | COMPLETED<br>DATA ENTRY<br>WHOM/DATE | VERIFIED<br>DATE<br>WHOM/DATE |
|---------------------------|-------------------|-------------------------------------------------|----------------------------|------------------------|---------------------|----------------------------------|--------------------------------------|-------------------------------|
| PRIORITY DATE             |                   |                                                 | 8-20-90<br>SCC             | N                      |                     |                                  |                                      |                               |
| POINT OF DIV              | Y                 |                                                 |                            | (Y)                    | 1,5                 |                                  |                                      |                               |
| SOURCE                    |                   |                                                 |                            | N                      |                     |                                  |                                      |                               |
| PLACE OF USE              | Y                 |                                                 |                            | N                      |                     |                                  |                                      |                               |
| DIV. AMOUNT<br>CFS/VOLUME |                   |                                                 |                            | N                      | add volumes?        |                                  |                                      |                               |
| CONSUMPTIVE USE           | -                 |                                                 |                            | N                      |                     |                                  |                                      |                               |
| PURPOSES                  | Y                 |                                                 |                            | N                      |                     |                                  |                                      |                               |
| PERIOD OF USE             |                   |                                                 |                            | N                      |                     |                                  |                                      |                               |
| BASIS OF CLAIM            |                   |                                                 |                            | N                      |                     |                                  |                                      |                               |
| REMARKS                   | Y                 |                                                 |                            |                        |                     |                                  |                                      |                               |

"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.

NOT RECORDED  
FEB 03 1993

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIM VERIFICATION REPORT

00:40:56  
07/03/90

PAGE: 1  
GENERAL INFORMATION

CLAIM NUMBER: A36-07229

LAST: COOK  
ADDRESS: RT. 1 BOX 22  
CITY: HAGERMAN  
PHONE NUMBER: 208-837-6164

FIRST: RICHARD L.  
STATE: ID ZIP: 83332

OWNER CODE: C

FIELD EXAM REQUIRED?

DATABASE  
Y

FIELD  
EXAMINER

VERIFICATION REQUIRED DUE TO REMARKS?

CLAIM REMARKS: USE OF WATER UNDER THIS LICENSE IS SUBJECT TO CONTROL BY THE  
WATERMASTER OF STATE WATER DISTRICT NO. 36A, BILLINGSLEY CREEK.

FIELD EXAMINATION INFORMATION

CONTACT PERSON: \_\_\_\_\_

PHONE NUMBER: (\_\_\_\_) \_\_\_\_-\_\_\_\_

DATE OF FIELD EXAM: \_\_\_\_/\_\_\_\_/\_\_\_\_

APPOINTMENT MADE: Y(\_\_\_\_) N(\_\_\_\_)

TIME: \_\_\_\_:\_\_\_\_ A(\_\_\_\_) P(\_\_\_\_)

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

PHONE NUMBER: (\_\_\_\_) \_\_\_\_-\_\_\_\_

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

DIRECTIONS TO PROPERTY / REMARKS:

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FEB 03 1999

A. AJ CLAIM: # A36-07229 PRIORITY DATE: 03-30-1972 STAGE: L  
B. WR RECORD: # 36-07229 PRIORITY DATE: 03-30-1972 STAGE: L

C. FIELD EXAM REQUIRED?

DUE TO PRIORITY DATE DISCREPANCY? (Y/N)

DATABASE  
N

FIELD  
EXAMINER  
N

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

REMARKS:

RECOMMENDED PRIORITY DATE:  
03-30-1972

REVIEWED BY

SCC

DATE

2-6-91

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FEB 03 1993

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

| RIGHT     | TWP. | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | CNTY    |
|-----------|------|------|------|-----|-----|-----|-----|---------|
| A36-07229 | 07S  | 13E  | 11   |     | SW  | NE  |     | GOODING |

OTHER AJ CLAIMS WITH SAME AJ POD

| A PREFIX   | R PREFIX |
|------------|----------|
| A36-10080  | NONE     |
| A36-00113E |          |
| A36-00141  |          |
| A36-00066  |          |
| A36-00066A |          |
| A36-00079  |          |
| A36-07081  |          |

WR RECORDS IN SAME 40 ACRE TRACT

36-00006  
36-00007  
36-00036  
36-00037  
36-00066  
36-00079  
36-00080  
36-00081  
36-00097  
36-00098  
36-00099  
36-00100  
36-00101  
36-00110  
36-00111  
36-00113B  
36-00113D  
36-00140  
36-00141  
36-00142  
36-00143  
36-00144  
36-00145  
36-00146  
36-00147  
36-00148  
36-00150  
36-00151  
36-02082  
36-07081  
36-07172  
36-07233  
36-07271  
36-07565  
36-07838

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

B. WR POINT OF DIVERSION AND SOURCE:

| RIGHT    | TWP. | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | CNTY    |
|----------|------|------|------|-----|-----|-----|-----|---------|
| 36-07229 | 07S  | 13E  | 11   |     | SW  | NE  |     | GOODING |

OTHER WR RECORDS WITH SAME WR POD

AJ CLAIMS IN SAME 40 ACRE TRACT

MICROFILMED  
FEB 03 1993

A PREFIX

R PREFIX

MICROFILMED  
FEB 03 1993

36-00006  
36-00007  
36-00036  
36-00037  
36-00066  
36-00079  
36-00080  
36-00081  
36-00097  
36-00098  
36-00099  
36-00100  
36-00101  
36-00110  
36-00111  
36-00113B  
36-00113D  
36-00140  
36-00141  
36-00142  
36-00143  
36-00144  
36-00145  
36-00146  
36-00147  
36-00148  
36-00150  
36-00151  
36-02082  
36-07081  
36-07172  
36-07233  
36-07271  
36-07565  
36-07838

A36-10080  
A36-00113E  
A36-00141  
A36-00066  
A36-00066A  
A36-00079  
A36-07081  
A36-07565  
A36-10543  
A36-00021A  
A36-00021B  
A36-00037A  
A36-00036  
A36-10566  
A36-07233  
A36-07271  
A36-00006  
A36-00007  
A36-00110A  
A36-00081A  
A36-07172  
A36-00037C  
A36-00080A  
A36-00099  
A36-00100  
A36-00111A  
A36-00113G

NONE

MICROFILMED  
FEB 03 1993

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

C. FIELD EXAM REQUIRED?

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

DATABASE  
Y  
N

FIELD  
EXAMINER  
✓  
✓

REMARKS:

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RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

| TWP. | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | COUNTY |
|------|------|------|-----|-----|-----|-----|--------|
|      |      | OK   | NW  |     |     |     |        |
|      |      |      |     |     |     |     |        |

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

REVIEWED BY: SC

DATE: 2-6-91

change

VIA SANDS DITCH

MICROFILMED

FEB 03 1993

A. ROOT WATER RIGHT NUMBERS: A36-07229

B. POU LISTING

| TWP         | RNG | SEC | 1/4 | 1/4 | LOT | NAME              | AJ<br>#/ACRES   | WR<br>#/ACRES | LANDSAT<br>DATA | FIELD<br>EXAM. | RECOMM.<br>ACRES |
|-------------|-----|-----|-----|-----|-----|-------------------|-----------------|---------------|-----------------|----------------|------------------|
| 07S         | 13E | 15  | NE  | SW  |     | COOK , RICHARD L. | A36-07229 /     | 36-07229 /    | 3.0             |                |                  |
|             |     |     |     |     |     | COOK , RICHARD L. | A36-02002 / 3.0 | - /           |                 |                |                  |
|             |     |     |     |     |     | COOK , RICHARD L. | A36-07081 /     | 36-07081 /    |                 |                |                  |
|             |     |     |     |     |     | COOK , RICHARD L. | A36-00097 / 3.0 | - /           |                 |                |                  |
|             |     |     |     |     |     | COOK , RICHARD L. | A36-00098 / 3.0 | 36-00098 /    |                 |                |                  |
|             |     |     |     |     |     | COOK , RICHARD L. | A36-00101 / 3.0 | - /           |                 |                |                  |
|             |     |     |     |     |     | COOK , RICHARD L. | A36-00141 / 3.0 | 36-00141 /    |                 |                |                  |
|             |     |     |     |     |     | SANDS , MARTHA A. |                 | 36-00140 /    |                 |                |                  |
| TOTAL ACRES |     |     |     |     |     |                   | A36-07229       |               | 3.00            |                |                  |

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

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE  
Y

FIELD  
EXAMINER  
N

PRESUMPTION FLAG:

REMARKS:

RECOMMENDATIONS:

TOTAL ACRES: 0

REVIEWED BY: SEC

DATE: 2-6-91

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FEB 03 1993

WILDLIFE  
ONLY

A. AJ CLAIMED USES:

| PURPOSES                            | MONTH/DAY           | DIVERSION QUANTITY |
|-------------------------------------|---------------------|--------------------|
| A36-07229 WILDLIFE                  | FROM 01-01 TO 12-31 | 10.500 CFS         |
| TOTAL DIVERSION RATE/VOLUME CLAIMED |                     | 10.500 CFS         |

B. WR RECORDED USES:

| PURPOSES                            | MONTH/DAY           | DIVERSION QUANTITY |
|-------------------------------------|---------------------|--------------------|
| 36-07229 FISH PROPAGATION           | FROM 01-01 TO 12-31 | 10.500 CFS         |
| TOTAL DIVERSION RATE/VOLUME CLAIMED |                     | 10.500 CFS         |

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

|                                          | DATABASE | FIELD EXAMINER |
|------------------------------------------|----------|----------------|
| DUE TO WATER-USE DISCREPANCY? (Y/N)      | Y        | <u>2</u>       |
| DUE TO DIVERSION RATE DISCREPANCY? (Y/N) | N        | <u>2</u>       |
| DUE TO PERIOD FROM/TO DISCREPANCY? (Y/N) | N        | <u>2</u>       |

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y(X) N( )

RECOMMEND TO WR STANDARDS OR OTHER?

Y( ) N(X)

Explain in remarks, below.

REMARKS:

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A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

Y(☒) N(☐)

AJ TOTAL CLAIMED DIVERSION RATE: 10.500 CFS  
WR ROOT RIGHT TOTAL DIVERSION RATE: 10.500 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?

FIELD  
DATABASE EXAMINER

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

N

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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: A36-07081, ~~A36-08317~~

Delete

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

| CLAIM     | SOURCE            | NAME             | DIV. RATE | DIV. RATE/ACRE | DIV. VOL. | DIV. VOL./ACRE |
|-----------|-------------------|------------------|-----------|----------------|-----------|----------------|
| A36-02002 | BILLINGSLEY CREEK | COOK, RICHARD L. | 0.600     | 0.006          |           |                |
| A36-00098 | BILLINGSLEY CREEK | COOK, RICHARD L. | 7.000     | 0.076          |           |                |
| A36-00101 | BILLINGSLEY CREEK | COOK, RICHARD L. | 2.000     | 0.021          |           |                |
| A36-00141 | BILLINGSLEY CREEK | COOK, RICHARD L. | 6.000     | 0.065          |           |                |

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

| CLAIM NO. | PURPOSES | NAME             | MONTH/DAY           | RATE       | VOLUME |
|-----------|----------|------------------|---------------------|------------|--------|
| A36-07229 | WILDLIFE | COOK, RICHARD L. | FROM 01-01 TO 12-31 | 10.500 CFS |        |
| A36-07081 | WILDLIFE | COOK, RICHARD L. | FROM 01-01 TO 12-31 | 4.000 CFS  |        |

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(\_\_\_\_) \*\*\*

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = \_\_\_\_\_ AF/A

ACRES \_\_\_\_\_ x CONSUMPTIVE VOL. AF/A FOR AREA \_\_\_\_\_ =

TOTAL CONSUMPTIVE USE \_\_\_\_\_ AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = \_\_\_\_\_ AF/A

ACRES \_\_\_\_\_ x DIVERSION VOL. AF/A FOR AREA \_\_\_\_\_ =

TOTAL DIVERSION VOLUME \_\_\_\_\_ AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y(\_\_\_\_) N(\_\_\_\_)

*per License*

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

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RECOMMENDATIONS:

| REC.<br>PURPOSES     | REC. PERIOD<br>FROM TO | REC. DIV<br>RATE CFS | REC. DIV<br>VOL. AF/A | REC. CONS.<br>USE |
|----------------------|------------------------|----------------------|-----------------------|-------------------|
|                      |                        | DATABASE EXAMINER    | DATABASE EXAMINER     | DATABASE EXAMINER |
| <u>WILDLIFE</u>      | <u>1-1 12-31</u>       | <u>10.5</u>          |                       |                   |
| TOTAL FOR THIS RIGHT |                        | <u>10.5</u>          |                       |                   |

REVIEWED BY: See

DATE: 2-6-91

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(add volumes?)

A. CHECK ONLY THE FOLLOWING THAT APPLY:

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

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

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 36-07229

TOTAL DIVERSION RATE OF WR SPLITS

DATABASE  
10.500

EXAMINER  
\_\_\_\_\_

CFS

SPLITS:

| OLD RIGHT<br>NUMBERS | CURRENT<br>CLAIM NUMBERS | DIVERSION<br>RATE | CURRENT "R"<br>CLAIM NUM. | "R" DIV.<br>RATE | WR RIGHT<br>NUMBERS | DIVERSION<br>RATE |
|----------------------|--------------------------|-------------------|---------------------------|------------------|---------------------|-------------------|
| -                    | A36-07229                | 10.500            | -                         |                  | 36-07229            | 10.500            |
| TOTAL CFS            |                          | 10.500            |                           |                  |                     | 10.500            |

DIVERSION RATE REVIEW

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

DATABASE  
Y

FIELD  
EXAMINER

OK

REMARKS:

AUTHENTICATION:

SIGNATURE: \_\_\_\_\_

DATE: 2-6-91

NAME OF FIELD EXAMINER: \_\_\_\_\_

TITLE: \_\_\_\_\_

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A36-07229

INTER-DEPARTMENT MEMO — 1

FROM STEVE CLELLAND

DATE 2-6-91

TO Dick Cook FILES

SUBJECT CHANGE IN NATURE OF USE

after reviewing the old decrees + the newer licenses for this water it appears the nature of use has changed over time. The Decree allows 0.04 cfs/acre for irrigation, which can be supplied by WR claim A36-00098 alone. The remaining water is not used for irrigation but licensed now for wildlife/Fish uses.

  
SIGNATURE

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