

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: A36-07233
Date Received: 7/22/1988
Receipt No:
Received By: ADm

COPY

**FOR YOUR FILES
DO NOT RETURN**

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

1. Name: BOB PORTER 208-734-3455
Address: 562 SHOUP AVE. WEST
TWIN FALLS, ID 83301

AND/OR

Name: FRED SURBAUGH 208-734-3455
Address: 562 SHOUP AVE. WEST
TWIN FALLS, ID 83301

2. Date of Priority: APR 17, 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	NW	SW	NE		GOODING

5. Description of diverting works:
VIA SAND DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
WILDLIFE	01/01	12/31	9.200		

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

A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
W/ POND & HABITATE MAINTENANCE

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OCT 19 1988

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
07S	13E	15	SW		NE		WILDLF	
			SE		NE		WILDLF	
			SE		SW		WILDLF	
			NE		SE		WILDLF	
			NW		SE		WILDLF	
			SW		SE		WILDLF	
			SE		SE		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:
A36-07172

14. Remarks:

THIS CLAIM IS BASED ON THE WILDLIFE USE OF DECREED WATER RIGHTS 36-0099 & 36-0100 WHICH ARE USED FOR IRRIGATION ON THESE LANDS. THE TOTAL FLOW OF THESE DECREES IS 9.2 CFS. LICENSE 36-7233 WAS ORIGINALLY ISSUED TO RECORD THIS USE HOWEVER IT WAS ISSUED AS FISH PROPAGATION. NO COMMERCIAL FISHERY EXISTS; IT WAS MEANT TO RECORD THE USE OF THE WATER IN PONDS FOR FISH. THE TERM WILDLIFE MORE CORRECTLY DESCRIBES THE ACTUAL USE OF THE WATER. WATER IS USED TO FLOW THRU WATERWAYS AND PONDS CONSTRUCTED TO MAINTAIN A WILDLIFE HABITATE FOR WATERFOWL, FISH AND OTHER TYPES OF WILDLIFE IN THE AREA.

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 X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1

For Individuals:

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

Signature of Claimant(s): [Signature] Date: 22 July 88
Date: _____

State of Idaho)
County of Twin Falls) ss.

Subscribed and sworn (or affirmed) before me this 22 day
of July 19 88
[Signature]
Notary Public

Seal

Residing at Kinseely, Id.
My Commission Expires 6/30/94

15
MICROFILMED
OCT 13 1954

Substation

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

TOTAL RECORDS IN SELECTION FILE: 116

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RECEIVED
FEB 10 1993
Department of Water Resources

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

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

* * * * *

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

Case No. 39576

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 Petitioner,

16 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,)

20 Respondents.

* * * * *

21
22 PLEASE BE NOTIFIED that the firm of Hepworth, Nungester
23 & Lezamiz, Chartered, hereby appears on behalf of Hagerman Water



Hepworth,
Nungester,
& Lezamiz

NOTICE OF APPEARANCE - 1

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1 Users, Inc. and its individual members:

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



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



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

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

12 DATED This 9 day of February, 1993.

13 HEPWORTH, NUNGESTER & LEZAMIZ

14
 15 By 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



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 Nungester,
 & Lezamiz

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1 February, 1993, to:

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

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

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

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

12
13 
14 Patrick D. Brown



Hepworth,
Nungester,
& Lezamiz



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 1, 1993

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

Re: Notice of Appearance

Dear Mr. Brown:

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

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

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

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

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

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

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

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

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

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

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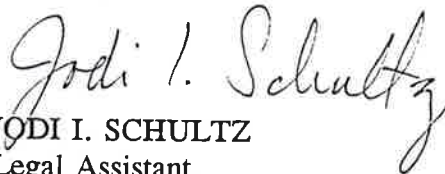
Mr. Patrick D. Brown
March 1, 1993
Page 4

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

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

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

Sincerely,



JODI I. SCHULTZ
Legal Assistant

Idaho Department of Water Resources

cc: IDWR Southern Region

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OCT 19 1994



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

July 6, 2001

DIRK KEMPTHORNE
GOVERNOR

BOB PORTER
FRED SURBAUGH
PO BOX 1808
TWIN FALLS ID 83303-1808

KARL J. DREHER
DIRECTOR
RECEIVED

SEP 21 2001

Department of Water Resources
Southern Region

RE: Snake River Basin Adjudication (SRBA)
Water Rights #36-99, 36-100, 36-7172, 36-7233, 36-10249

Dear Water Right Holders:

Mail sent to you by the SRBA Court was returned to the SRBA Court by the Postal Service. We received the returned mail on July 2. The Postal Service advised us your address has changed to the above address. We have enclosed the returned mail.

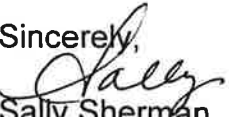
Although we have reached you at the address above, we need your written confirmation this is your correct mailing address before we can change our records.

Please sign your name at the bottom of this letter and return it to this office. Make corrections to your name and address if necessary before returning this letter, list any other water rights you have, and return this letter by July 31, 2001. Thank you for your help.

If your mail delivery address changes in any form, please contact us in writing so we can update our records. Be sure to list your water right numbers.

If there has been a change in ownership of the property connected with the water rights referenced above, please call this office toll-free at 1/800-451-4129 to obtain a form to make this required change to the water right records.

Sincerely,


Sally Sherman

Technical Records Specialist
Adjudication Bureau

SS:region

Enclosure:

Returned Mail

#####

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

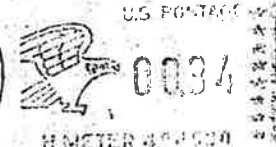
Water Right Holder's Signature

Telephone No.

STATE OF IDAHO
District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

36-99
36-100
36-7172
36-7233
36-10249

Bob Porter
Fred Surbqugh
562 Shoup Avenue West
Twin Falls, ID 83301



36-00099
36-00000

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE

SURB562 833012004 1999 06 02/03/01
FORWARD TIME EXP RTN TO SEND
FRED SURBAUGH LDR
PO BOX 1406
TWIN FALLS ID 83303-1406
RETURN TO SENDER

83303/2707



AJ0749NP
No. R36-07233

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 11/24/97
PAGE: 1

=====

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	BOB PORTER	04/17/1972	WILDLIFE	01-01 12-31	9.20 CFS	
C	FRED SURBAUGH					
	562 SHOUP AVE W					
	TWIN FALLS ID 83301					
	(208) 734-3455					
				TOTAL DIVERSION:	9.20 CFS	

Water Source: BILLINGSLEY CREEK

Tributary to: SNAKE RIVER

Stage: LICENSE

Point(s) of Diversion:

T07S R13E S11

NWSWNE

GOODING County

Place of use Legal Description for: WILDLIFE

				NE				NW				SW				SE				
T	R	S	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	:
07S	13E	15	:																	:
			:																	:
			:																	:

POU County: GOODING

Other Rights: 36-07172

Conditions of Approval:

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

Remarks: USE WILDLIFE USE IS IN POND AND FOR HABITAT MAINTENANCE.

EXP WATER IS DELIVERED THROUGH SANDS DITCH.

Dates: Exam Made Date:

Verified Date:

Objection Filed Date:

Misc: Water District Number: 36A

Field Inspection Flag:

Presumption Flag:

"DO NOT FILM"

R PROOF

CVR

MAPS

PHOTOS

MISC

MICROFILMED

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. 36-07233 -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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OCT 19 1994

2. Person who filed objection:

Name: BOB PORTER
Address: FRED SURBAUGH
562 D SHOUP AVE W
TWIN FALLS ID 83301

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

1. ☒ Name and Address: I respond to the objection concerning the name and/or address of the owner of the water right.
9. ☒ Place of Use: I respond to the objection concerning:
- 9a. ☒ The legal description of the place of use.
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 CLAIMANTS' ANSWER,
AFFIRMATIVE DEFENSES AND PRAYER FOR RELIEF

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection item 1, and all allegations regarding this item, IDWR responds as follows: No notice of change of ownership has been filed with IDWR by the owner of the right as required by Idaho Code Sec. 42-1409(7). IDWR therefore lacks sufficient information to form a belief as

to the truth of the matter asserted. Upon the filing of a notice of change of ownership, IDWR will correct the name and address of the owner of this water right accordingly. The claimant may also need to file a Standard Form 3 with the SRBA Court.

In response to Statement of the Objection 9 and 9.a, and all allegations of the objection regarding those items, IDWR responds that the recommended water right accurately describes the place of use of the right.

In response to Statement of the Objection item 11, and all allegations of the objection regarding that item, IDWR responds that there is an error in the remarks in the description of the conveyance losses associated with this water right in the director's report. The recommendation should be corrected as shown in the attachment entitled "Recommended Water Rights Acquired Under State Law." In further response to this objection 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 remaining 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

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

(Over)

FILED 11-28
FBI/DOJ/IDWR

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

	No. of Pages
Notice of Claim No. A36-07233	4
IDWR's Response to Answer, Affirmative Defenses and Prayer for Relief of Claimant	4
Recommended Water Rights Acquired under State Law	1

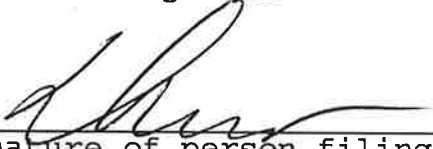
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

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

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



Signature of person filing response

By: 

(Attorney signing in
representative capacity)

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



Notary Public for Idaho
Residing at: _____
My Commission expires: _____

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

(Over)

26 JUL 1993
WFO:LEWIS D

CERTIFICATE OF MAILING

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

1. Original to:

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

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

See No. 3

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

Name: HEPWORTH NUNGESTER & LEZAMIZ
Address: PARTICK 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: A36-07233

Date Received: 7/22/1988

Receipt No:

Received By: ADm

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: BOB PORTER 208-734-3455
Address: 562 SHOUP AVE. WEST
TWIN FALLS, ID 83301

AND/OR

Name: FRED SURBAUGH 208-734-3455
Address: 562 SHOUP AVE. WEST
TWIN FALLS, ID 83301

2. Date of Priority: APR 17, 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	NW	SW	NE		GOODING

5. Description of diverting works:
VIA SAND DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
WILDLIFE	01/01	12/31	9.200		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
W/ POND & HABITATE MAINTENANCE

A36-07233

Page 1

Date: 07/22/88

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OCT 19 1994

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	13E	15	SW	NE		WILDLF	
			SE	NE		WILDLF	
			SE	SW		WILDLF	
			NE	SE		WILDLF	
			NW	SE		WILDLF	
			SW	SE		WILDLF	
			SE	SE		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:
A36-07172

14. Remarks:

THIS CLAIM IS BASED ON THE WILDLIFE USE OF DECREED WATER RIGHTS 36-0099 & 36-0100 WHICH ARE USED FOR IRRIGATION ON THESE LANDS. THE TOTAL FLOW OF THESE DECREES IS 9.2 CFS. LICENSE 36-7233 WAS ORIGINALLY ISSUED TO RECORD THIS USE HOWEVER IT WAS ISSUED AS FISH PROPAGATION. NO COMMERCIAL FISHERY EXISTS; IT WAS MEANT TO RECORD THE USE OF THE WATER IN PONDS FOR FISH. THE TERM WILDLIFE MORE CORRECTLY DESCRIBES THE ACTUAL USE OF THE WATER. WATER IS USED TO FLOW THRU WATERWAYS AND PONDS CONSTRUCTED TO MAINTAIN A WILDLIFE HABITATE FOR WATERFOWL, FISH AND OTHER TYPES OF WILDLIFE IN THE AREA.

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 X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1

For Individuals:

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

Signature of Claimant(s): [Signature] Date: 22 July 88.
Date: _____

State of Idaho)
County of Twin Falls) ss.

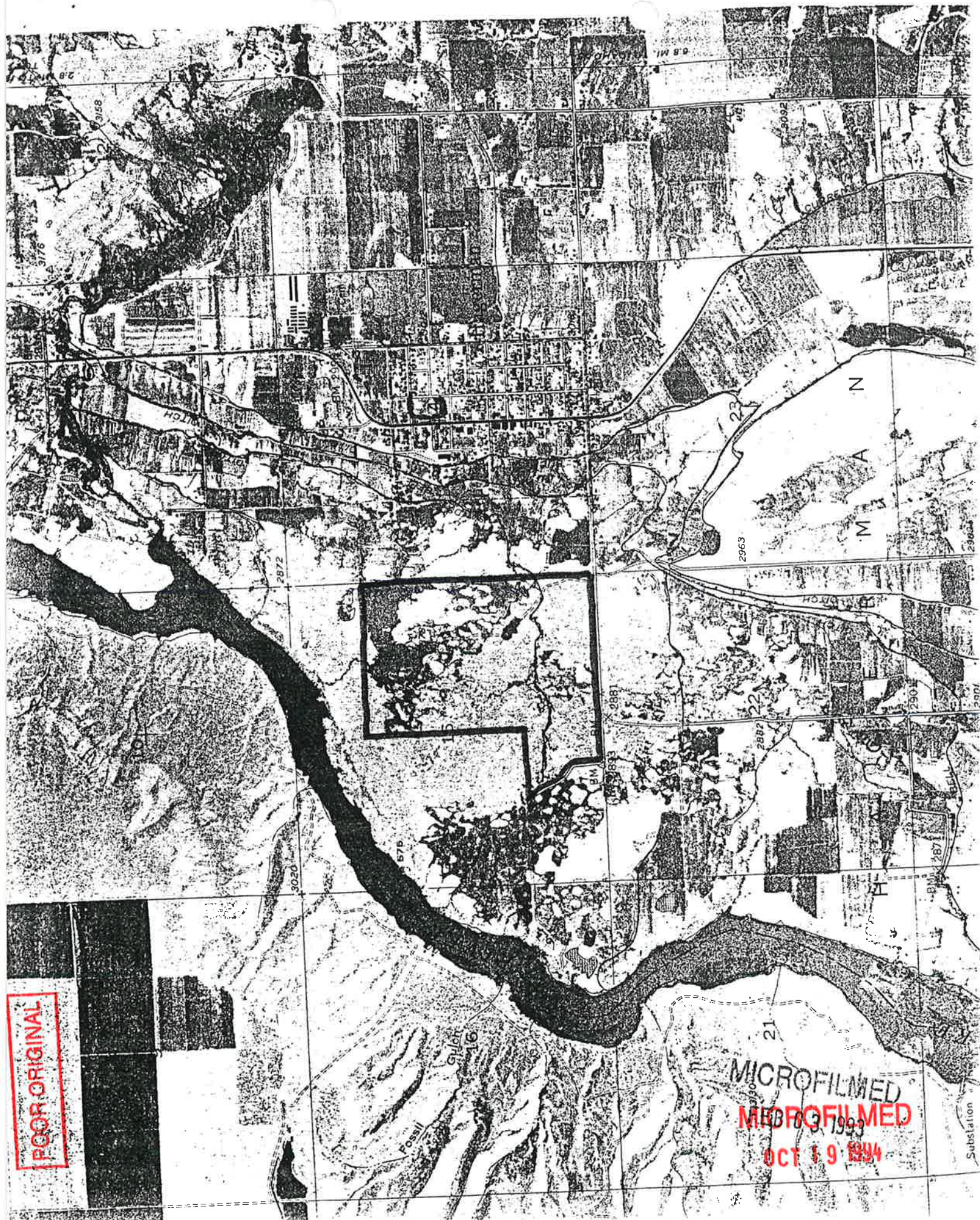
Subscribed and sworn (or affirmed) before me this 22 day
of July 19 88

[Signature]
Notary Public

Seal

Residing at Kimberly, Id.
My Commission Expires 6/30/94

POOR ORIGINAL



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OCT 19 1994

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

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

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

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

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

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

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

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

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

MICHAEL J. DOD

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

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

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

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: SEP-4-1993
PAGE: A-1

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: BILLINGSLEY CREEK		TRIBUTARY: SNAKE RIVER				
36-07233	BOB PORTER FRED SURBAUGH 562 SHOUP AVE W TWIN FALLS ID 83301	04/17/1972	WILDLIFE	01-01 12-31	9.2 CFS	LICENSE
TOTAL QUANTITY:					9.2 CFS	
NON-IRRIGATION-USES: WILDLIFE, POND AND HABITAT MAINTENANCE						
POINT OF DIVERSION: T07S R13E S11 NWSWNE						
PLACE OF USE: WILDLIFE						
T07S R13E S15 SWNE NESE NWSE						
REMARKS:	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. 0.25 CFS OF RIGHT NO. 36-00099 IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT DURING THE IRRIGATION SEASON. 0.25 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT AND 36-07172 DURING THE NON- IRRIGATION SEASON.					

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OCT 9 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

17-Mar-1993

SUSAN WALMSLEY
HAGERMAN WATER RIGHTS OWNERS
PO BOX 306
HAGERMAN ID 83332

RE: Copy of SRBA File(s): 36-00099, 36-00100, 36-07172, 36-07233,
36-10249

Dear Ms. Walmsley:

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:

\$14.92

Sincerely,

Jeanie
Jeanie Robertson
Records Clerk

Encl:

cc: Robert J Porter
562 Shoup Ave W
Twin Falls ID 83301

Porter
55
40
51
51
15
212 x 5 = 10.60
post. 4.10
-cwr. .22
14.92

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OCT 19 1994

Twin Falls Orthopedic Associates, P.A.

Orthopedic & Fracture Surgery

Rodney D. Swartling, M.D.

Robert J. Porter, II, M.D.

John W. Howar, M.D.

Frederick L. Surbaugh, M.D.

David P. Murray, M.D.

RECEIVED

MAR 08 1993

Department of Water Resources
Southern Region Office

March 3, 1993



562 Shoup Ave. West
Twin Falls, Idaho 83301
Telephone (208) 734-3455
24 Hours a Day

Idaho Dept. of Water Resources
Southern Region
222 Shoshone St. E.
Twin Falls, ID 83301-6602

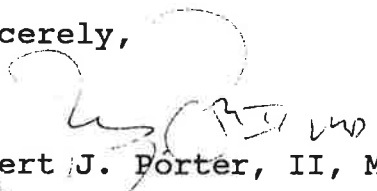
Dear Sir:

I would like for you to send copies of all information included in my file as it relates to water right numbers A36-00100, A36-00099, A36-07233, A36-07172, and A36-10249 to Susan Walmsley, Hagerman Water Rights Owners, P. O. Box 306, Hagerman, ID 83332.

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

Please send me the bill for these copies at 562 Shoup Ave. W., Twin Falls, ID 83301.

Sincerely,


Robert J. Porter, II, M. D.

RJP/jvb

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OCT 19 1994

RECEIVED

JUN 01 1993

Department of Water Resources
Adjudication Bureau

1993 MAY 28 PM 2:41

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

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

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

Case Nos. 36-00099; 36-00100;
36-0172; and 36-07233

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

ORDER REQUIRING
DESIGNATION OF COUNSEL

Petitioner,

vs.

36-07233 -0001/
93-05-0052

The United States; the State of Idaho; and
all Claimants to the Use of Water From
the Snake River Basin Water System,

Respondents.

April 29, 1993, objections as to Water Rights Numbers 36-00099; 36-00100; 36-07172; and 36-07233 were filed by the law firm of Hepworth, Nungester & Lezamiz, Twin Falls, Idaho, on behalf of Bob Porter and Fred Surbaugh.

April 30, 1993, objections to the same water rights numbers were filed by the law firm of Rosholt, Robertson and Tucker, Boise, Idaho, also on behalf of Bob Porter and Fred Surbaugh.

IT IS ORDERED that Bob Porter and Fred Surbaugh designate, in writing, their counsel for purposes of proceeding on these objections which must be filed on or before 5:00 p.m., June 7, 1993. The Designation of Counsel shall be served on all counsel who have filed objections on behalf of Bob Porter and Fred Surbaugh and shall follow the General Docket Sheet Procedure.

DATED May 28, 1993.



DANIEL C. HURLBUTT, JR.

Presiding Judge

Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER REQUIRING DESIGNATION OF COUNSEL was mailed on May 28, 1993, in an envelope with sufficient first-class postage to the following:

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

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

Patrick D. Brown
Hepworth, Nungester & Lezamiz
P. O. Box 389
Twin Falls, ID 83303-0389

James C. Tucker
Rosholt, Robertson & Tucker
P.O. Box 2139
Boise, ID 83702-2139

Bob Porter and Fred Surbaugh
526D Shoup Ave. W.
Twin Falls, ID 83301

By



Deputy Clerk

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. A36-07233
(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,

36-07233 -0001/
93-04-0308

vs.

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

Respondents.

INSTRUCTIONS

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

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

(Over)

MICROFILMED

OCT 19 1994

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

I. GENERAL INFORMATION

Please fill in the following information:

1. Person objecting:

Name: Bob Porter and Fred Surbaugh

Address: 562 Shoup Avenue West

Twin Falls, ID 83301

Briefly describe your interest in this water right:

License with a priority date of 04/17/1972

2. Owner of the water right:

Name: See Exhibit "B" attached

Address: _____

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 Page 7

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.

Place of use: as set forth in notice of claim; strike all

remarks except "water is delivered through Sands Ditch";

names of owners as set forth in Exhibit "B"

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"

See Exhibit "B", Owners, Page 1

VERIFICATION (Must be Completed)

State of Idaho

County of Blaine Falls

Robert J. Porter II

_____, 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]

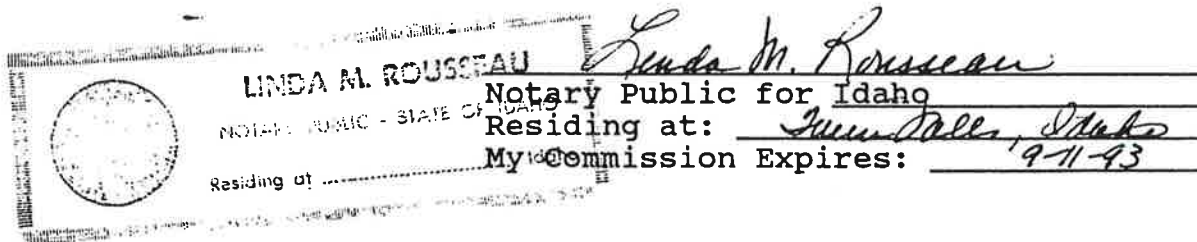
Signature of person filing objection

By:

[Signature]

(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 17 day of April,
1993.



(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 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: Bob Porter or Fred Surbaugh
Owner's address: 562 Shoup Avenue West
Twin Falls, ID 83301

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 1 - See Paragraph 2, page 2 for correct name and/or address.

Box 9 - Director's Report fails to accurately state the place of 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

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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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(DIRECTOR'S REPORT PART II)

I.

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

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

(DIRECTOR'S REPORT PART III)

I.

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

VIII.

AFFIRMATIVE DEFENSES

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

AFFIRMATIVE DEFENSE NO. 1

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

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

AFFIRMATIVE DEFENSE NO. 2

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

AFFIRMATIVE DEFENSE NO. 3

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

AFFIRMATIVE DEFENSE NO. 4

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

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

AFFIRMATIVE DEFENSE NO. 5

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

AFFIRMATIVE DEFENSE NO. 6

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

AFFIRMATIVE DEFENSE NO. 7

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

AFFIRMATIVE DEFENSE NO. 8

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

AFFIRMATIVE DEFENSE NO. 9

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

AFFIRMATIVE DEFENSE NO. 10

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

AFFIRMATIVE DEFENSE NO. 11

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

AFFIRMATIVE DEFENSE NO. 12

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

AFFIRMATIVE DEFENSE NO. 13

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

AFFIRMATIVE DEFENSE NO. 14

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

AFFIRMATIVE DEFENSE NO. 15

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

AFFIRMATIVE DEFENSE NO. 16

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

AFFIRMATIVE DEFENSE NO. 17

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

AFFIRMATIVE DEFENSE NO. 18

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

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

AFFIRMATIVE DEFENSE NO. 19

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

AFFIRMATIVE DEFENSE NO. 20

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

AFFIRMATIVE DEFENSE NO. 21

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

AFFIRMATIVE DEFENSE NO. 22

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

AFFIRMATIVE DEFENSE NO. 23

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

AFFIRMATIVE DEFENSE NO. 24

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

AFFIRMATIVE DEFENSE NO. 25

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

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

AFFIRMATIVE DEFENSE NO. 26

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

AFFIRMATIVE DEFENSE NO. 27

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

WHEREFORE, the objectors pray for judgment as follows:

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

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

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

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

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

(WATER\21530ANS)

HAGERMAN DUCK CLUB MEMBERS

Al Collins
P.O. Box 42447
Las Vegas NV 89116
(702) 644-0583

Dr. Mark Grefenson
Route #4
Twin Falls ID 83301
(208) 733-8369

Dr. Julian Nicholson
Route 3 -- Canyon Ridge
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(208) 734-5917

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Scheu Mfg. Company
P.O. Box 250
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3025 Sheridan Street., 2nd Floor
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(702) 870-1480 (home)
(702) 368-3723 (FAX)

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Steve Miller
6080 Gowan Road
Las Vegas NV 89108
(702) 438-2700

Dr. Robert Porter
598 Sunrise Boulevard North
Twin Falls ID 83301
(208) 733-7759 (home)
(208) 734-3455 (office)

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OCT 19 1994

EXHIBIT B

Dr. Fred Surbaugh
3359 Woodridge
Twin Falls ID 83301
(208) 733-9127

Mike Cord
P.O. Box 3962
Ketchum ID 83340
(208) 726-2770

(Hagerman.dc)

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OCT 19 1994

NOTICE OF ERROR

RESPONSE

CORRECTED R PROOF



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FEB 03 1993

NOTICE OF ERROR FORM

AUG-24-1992

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

**Idaho Department of Water Resources
Statehouse Mail
Boise, Idaho 83720-9000**

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

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

1. Water right number: 36-07233
2. Name: Fred Surbaugh
Bob Porter
Address: 562 Shoup Ave. W.
Twin Falls, ID 83301

Weekday Telephone Number: 734-3455

RECEIVED

SEP 24 1992

Department of Water Resources
Boise, Idaho Office

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TEAR AT PERFORATIONS AND COMPLETE FORM ON OTHER SIDE

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

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

Place of use.

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

Place of use to be reviewed.

5. Describe why you disagree with the proposed recommendation:

Recommended place of use may contain an error.

6. Date: 9/24/92

SIGNATURE

A handwritten signature in black ink, appearing to be "John G. [unclear]", is written over a horizontal line.

RESPONSE TO NOTICE OF ERROR
IN THE SNAKE RIVER BASIN ADJUDICATION

Water Right No: 36-07172 36-07233 Contact Date: 10-21-92

IDWR Contact Person: (print and initial) STEVE CLELLAND See

Claimant Contact Person DR. ^{BOB} PORTER & Dr FRED SURBAUGH

Others Present _____

Contact By (give date) _____

Meeting (location): _____

Phone Call (no.) _____

Letter (attach letter): Response sheet

IDWR USE ONLY	
Date	Initials
Date Entered <u>10-21-92</u>	<u>See</u>
Verified	

I. Issues identified by claimant: REVIEW PLACE of use, MAY BE ERROR.

II. Reasons provided claimant for original recommendation: I reviewed the files and the maps therein. Based on aerial photography and field confirmation the ponds are as recommended in the place of use. also reviewed the original license exam maps.

III. Additional information provided by claimant: NONE

IV. Changes to be made in final recommendation (if any): NONE

V. Action taken (date): sent response form to : BOB PORTER
flag set in file FRED SURBAUGH
562 SHoup AVE W
TWIN FALLS ID 83301

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FEB 03 1993

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT
(REGIONAL)08/17/92 13:26:50
Page 1
VERIFIED BY *[Signature]*

Water Right Number - R36-07233

Prefix Translation: RESEARCH

Old (D) Number -

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

+ - First Name - - +

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

*** C - CURRENT OWNER ***
PORTER

BOB

1 - 562 SHOUP AVE W
2 -
3 -

City- TWIN FALLS

State- ID Zip- 83301

Phone - 208-734-3455

SURBAUGH

FRED

1 - 562 SHOUP AVE W

2 -

3 -

City- TWIN FALLS

State- ID Zip- 83301

Phone - 208-734-3455

+ - - Priority Date - - +
04/17/1972+ - - 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 9.200

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
9.200 0.0+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County

07S	13E	15	SW NE			16	WILDLIFE	(47)	GOODING
07S	13E	15	NE SE			16	WILDLIFE	(47)	GOODING
07S	13E	15	NW SE			16	WILDLIFE	(47)	GOODING

Total Acres:

+ - - Diversion Means - VIA SAND DITCH

+ - - Non-Irrigation Use - WILDLIFE, POND AND HABITAT MAINTENANCE

+ - - Other Rights for Same Use - 36-07172

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

WATER IS DELIVERED THROUGH SANDS DITCH.
0.25 CFS OF RIGHT NO. 36-00099 IS LIMITED TO USE FORMICROFILMED
FEB 03 1993

Water right number - R36-07233

Prefix Translation: RESEARCH

+ - - - - - Remarks - - - - - +
CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT DURING THE
IRRIGATION SEASON.
0.25 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE
LOSSES IN DELIVERY OF THIS RIGHT AND 36-07172 DURING THE NON-
IRRIGATION SEASON.

+ - - - - - 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: 01/15/1991 User Id: BEDKE Subject: SCC-STAFF REVIEW
Date: 01/15/1991 User Id: BEDKE Subject: SCC-STAFF REVIEW
Date: 08/04/1992 User Id: CHRISTEN Subject: COPIED FROM REMARKS
THIS CLAIM IS BASED ON THE WILDLIFE USE OF DECREED WATER RIGHTS
THE TOTAL FLOW OF THESE DECREES IS 9.2 CFS. LICENSE 36-7233
FISH PROPAGATION. NO COMMERCIAL FISHERY EXISTS; IT WAS MEANT TO
WILDLIFE MORE CORRECTLY DESCRIBES THE ACTUAL USE OF THE WATER.
MAINTAIN A WILDLIFE HABITATE FOR WATERFOWL, FISH AND OTHER
36-0099 & 36-0100 WHICH ARE USED FOR IRRIGATION ON THESE LANDS.
WAS ORIGINALLY ISSUED TO RECORD THIS USE HOWEVER IT WAS ISSUED AS
RECORD THE USE OF THE WATER IN PONDS FOR FISH. THE TERM
WATER IS USED TO FLOW THRU WATERWAYS AND PONDS CONSTRUCTED TO
TYPES OF WILDLIFE IN THE AREA.

+ - - Audit Fields - - +
08/17/92 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	- 08/17/1992	Old Judicial District	-
Claim Received Date	- 07/22/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S001058	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

R PROOF



CVR



MAPS



PHOTOS

MISC

MICROFILMED
FEB 03 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

00:40:56
07/03/90

PAGE: 14
QUICKLOOK INFORMATION

CLAIM NUMBER: A36-07233

WR ELEMENT	FIELD EXAM Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	VERIFIED BY CODE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE			See/HHT 8-90	N		HHT 8/4/92	UB	KKC 8-4-92
POINT OF DIV	Y			N				
SOURCE				N				
PLACE OF USE	Y							
DIV. AMOUNT CFS/VOLUME								
CONSUMPTIVE USE								
PURPOSES	Y							
PERIOD OF USE								
BASIS OF CLAIM								
REMARKS	Y							

lat
7-20-90

"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.

*Needs further review

RECEIVED
FEB 3 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

00:40:56
07/03/90

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A36-07233

LAST: PORTER
ADDRESS: 562 SHOUP AVE. W.
CITY: TWIN FALLS
PHONE NUMBER: 208-734-3455

FIRST: BOB
STATE: ID ZIP: 83301

OWNER CODE: C

LAST: SURBAUGH
ADDRESS: 562 SHOUP AVE. W.
CITY: TWIN FALLS
PHONE NUMBER: 208-734-3455

FIRST: FRED
STATE: ID ZIP: 83301

OWNER CODE: C

FIELD EXAM REQUIRED?

VERIFICATION REQUIRED DUE TO REMARKS?

DATABASE
Y

FIELD
EXAMINER

CLAIM REMARKS: THIS CLAIM IS BASED ON THE WILDLIFE USE OF DECREED WATER RIGHTS
36-0099 & 36-0100 WHICH ARE USED FOR IRRIGATION ON THESE LANDS.
THE TOTAL FLOW OF THESE DECREES IS 9.2 CFS. LICENSE 36-7233
WAS ORIGINALLY ISSUED TO RECORD THIS USE HOWEVER IT WAS ISSUED AS
FISH PROPAGATION. NO COMMERCIAL FISHERY EXISTS; IT WAS MEANT TO
RECORD THE USE OF THE WATER IN PONDS FOR FISH. THE TERM
WILDLIFE MORE CORRECTLY DESCRIBES THE ACTUAL USE OF THE WATER.
WATER IS USED TO FLOW THRU WATERWAYS AND PONDS CONSTRUCTED TO
MAINTAIN A WILDLIFE HABITATE FOR WATERFOWL, FISH AND OTHER
TYPES OF WILDLIFE IN THE AREA.

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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:

Change in use occurred before 1983.

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A. AJ CLAIM: # A36-07233 PRIORITY DATE: 04-17-1972 STAGE: L

B. WR RECORD: # 36-07233 PRIORITY DATE: 04-17-1972 STAGE: L

C. FIELD EXAM REQUIRED?

	DATABASE	FIELD EXAMINER
DUE TO PRIORITY DATE DISCREPANCY? (Y/N)	N	<u>N</u>

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

REMARKS:

=====

RECOMMENDED PRIORITY DATE:
04-17-1972

REVIEWED BY hht

DATE 7-20-90

=====

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A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A36-07233	07S	13E	11	NW	SW	NE		GOODING

OTHER AJ CLAIMS WITH SAME AJ POD

A PREFIX	R PREFIX
A36-00036	NONE
A36-10566	
A36-07271	
A36-00006	
A36-00007	
A36-00110A	
A36-00081A	
A36-07172	
A36-00037C	
A36-00080A	
A36-00099	
A36-00100	
A36-00111A	
A36-00113G	

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
36-07229
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
36-07233	07S	13E	11		SW	NE		GOODING

OTHER WR RECORDS WITH SAME WR POD

AJ CLAIMS IN SAME 40 ACRE TRACT

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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
36-07229
36-07271
36-07565
36-07838

A36-10080
A36-07229
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
A36-07271
A36-00006
A36-00007
A36-00110A
A36-00081A
A36-07172
A36-00037C
A36-00080A
A36-00099
A36-00100
A36-00111A
A36-00113G

NONE

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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

22

REMARKS:

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	COUNTY
<u>07S</u>	<u>13E</u>	<u>11</u>	<u>NW</u>	<u>SW</u>	<u>NE</u>	<u>—</u>	<u>47</u>

SOURCE: BILLINGSLEY CREEK

TRIB: SNAKE RIVER

REVIEWED BY: Ret

DATE: 7-20-90

VIA SANDS DITCH

OK

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A. ROOT WATER RIGHT NUMBERS: A36-07233

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
07S	13E	15	SE	NE		PORTER, BOB	A36-07233 /	- /	31.0		
						PORTER, BOB	A36-07172 /	- /			
						PORTER, BOB	A36-00099 /31.0	36-00099 /			
						PORTER, BOB	A36-00100 /31.0	- /			
						SANDS, MARTHA A.		36-00140 /			
07S	13E	15	NE	SE		PORTER, BOB	A36-07233 /	36-07233 /	16.0		
						PORTER, BOB	A36-07172 /	36-07172 /			
						PORTER, BOB	A36-00099 /16.0	36-00099 /			
						PORTER, BOB	A36-00100 /16.0	- /			
											WILDLIFE (16)
07S	13E	15	NW	SE		PORTER, BOB	A36-07233 /	36-07233 /	2.0		
						PORTER, BOB	A36-07172 /	36-07172 /			
						PORTER, BOB	A36-00099 / 2.0	36-00099 /			
						PORTER, BOB	A36-00100 / 2.0	- /			
						SANDS, MARTHA A.		36-00141 /			
											WILDLIFE (16)
07S	13E	15	SW	SE		PORTER, BOB	A36-07233 /	- /	16.0		
						PORTER, BOB	A36-10249 /	- /			
						PORTER, BOB	A36-07172 /	- /			
						PORTER, BOB	A36-00099 /16.0	- /			
						PORTER, BOB	A36-00100 /16.0	36-00100 /			
						SANDS, MARTHA		36-02002 / 5.0			
07S	13E	15	SW	NE		PORTER, BOB	A36-07233 /	- /	22.0		
						PORTER, BOB	A36-07172 /	- /			
						PORTER, BOB	A36-00099 /22.0	36-00099 /			
						PORTER, BOB	A36-00100 /22.0	- /			
						SANDS, MARTHA A.		36-00140 /			
											WILDLIFE (16)
07S	13E	15	SE	SE		PORTER, BOB	A36-07233 /	- /	3.0		
						PORTER, BOB	A36-07172 /	36-07172 /			
						PORTER, BOB	A36-00099 / 6.0	36-00099 /			
						PORTER, BOB	A36-00100 / 6.0	- /			
07S	13E	15	SE	SW		PORTER, BOB	A36-07233 /	- /	9.0		
						COOK, RICHARD L.	A36-02002 / 9.0	36-02002 /10.0			
						BIG BEND IRRIGATION & MINING	CA36-02007 /10.0	- /			
						BIG BEND IRRIGATION & MINING	CA36-00192 /10.0	36-00192 /			
						PORTER, BOB	A36-07172 /	- /			
						COOK, RICHARD L.	A36-00097 / 9.0	- /			
						COOK, RICHARD L.	A36-00098 / 9.0	- /			
						PORTER, BOB	A36-00099 / 5.0	- /			
						PORTER, BOB	A36-00100 / 5.0	- /			
						COOK, RICHARD L.	A36-00101 / 9.0	36-00101 /			
						BIG BEND IRRIGATION & MINING	CA36-00133 /10.0	36-00133 /			
						COOK, RICHARD L.	A36-00141 / 9.0	- /			
TOTAL ACRES							A36-07233		99.00		

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NO IRRIGATION

WILDLIFE (16)

WILDLIFE (16)

WILDLIFE (16)

0

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

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE
Y

FIELD
EXAMINER
✓

PRESUMPTION FLAG:

REMARKS:

WILDLIFE (16) USE ONLY

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FEB 03 1993

RECOMMENDATIONS:

TOTAL ACRES: 0

REVIEWED BY: SCC

DATE: 1-4-91

A. AJ CLAIMED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
A36-07233 WILDLIFE	FROM 01-01 TO 12-31	9.200 CFS
TOTAL DIVERSION RATE/VOLUME CLAIMED		9.200 CFS

B. WR RECORDED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
36-07233 FISH PROPAGATION	FROM 01-01 TO 12-31	9.200 CFS
TOTAL DIVERSION RATE/VOLUME CLAIMED		9.200 CFS

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

	DATABASE	FIELD EXAMINER
DUE TO WATER-USE DISCREPANCY? (Y/N)	Y	
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:

MICROFILMED
FEB 03 1993

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

Y(☒) N(☐)

AJ TOTAL CLAIMED DIVERSION RATE: 9.200 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 9.200 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

N

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FEB 03 1993

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: A36-07172

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

CLAIM	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A36-00099	BILLINGSLEY CREEK	PORTER , BOB	8.000	0.081		
A36-02002	BILLINGSLEY CREEK	COOK , RICHARD L.	0.600	0.006		
A36-02007	TUCKER SPRINGS, UPPER	BIG BEND IRRIGATION & MINING C	4.000	0.006	2895.90	4.58
A36-00192	TUCKER SPRINGS, LOWER	BIG BEND IRRIGATION & MINING C	15.000	0.017	10859.70	12.35
A36-00097	BILLINGSLEY CREEK	COOK , RICHARD L.	1.500	0.016		
A36-00098	BILLINGSLEY CREEK	COOK , RICHARD L.	7.000	0.076		
A36-00101	BILLINGSLEY CREEK	COOK , RICHARD L.	2.000	0.021		
A36-00133	TUPPER SPRINGS, UPPER	BIG BEND IRRIGATION & MINING C	20.000	0.022	14479.60	16.47
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
A36-07233	WILDLIFE	PORTER , BOB	FROM 01-01 TO 12-31	9.200 CFS	
A36-07172	STOCKWATER	PORTER , BOB	FROM 01-01 TO 12-31	.020 CFS	
A36-07172	DOMESTIC	PORTER , BOB	FROM 01-01 TO 12-31	.020 CFS	
A36-07172	WILDLIFE	PORTER , BOB	FROM 01-01 TO 12-31	4.000 CFS	
A36-10249	DOMESTIC	PORTER , BOB	FROM 01-01 TO 12-31	.040 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.)

1b. CALCULATIONS

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See A36-07172

*for system capacity
calculations*

(Total Cap. = 3.69)

RECOMMENDATIONS:

REC. PURPOSES	REC. PERIOD FROM TO	REC. DIV RATE CFS	REC. DIV VOL. AF/A	REC. CONS. USE
DATABASE EXAMINER	DATABASE EXAMINER	DATABASE EXAMINER	DATABASE EXAMINER	DATABASE EXAMINER
WILDLIFE	1-1 12-31	9.2		
		9.2	—	1
TOTAL FOR THIS RIGHT				

REVIEWED BY:

SCC

DATE:

1-4-91

need to check license file to confirm findings of field exam. ✓ OK SCC

* TOTAL SYSTEM CAPACITY = 3.69 Ac.-Ft.

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A. CHECK ONLY THE FOLLOWING THAT APPLY:

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

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 36-07233

TOTAL DIVERSION RATE OF WR SPLITS

DATABASE
9.200

EXAMINER

CFS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
-	A36-07233	9.200	-		36-07233	9.200
	TOTAL CFS	9.200				9.200

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: Steve C. Ellis

DATE: 1-4-91

NAME OF FIELD EXAMINER: _____

TITLE: _____

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CONVEYANCE LOSS - WORSTELL

REACH	LENGTH (FT)	AVE WIDTH (FT)	SEEPAGE (FT/DAY)	WORSTELL LOSS (CFS)	DELIVERY (CFS)	DELIVERY LEFT (CFS)	LOSS FACTOR	DELIVERY LOSS (CFS)	FLOW (CFS)
1	200	10.0	2.00	0.05	0.61	11.93	0.0042	0.00	15.29
2	900	10.0	2.00	0.23	0.44	11.32	0.0201	0.01	14.63
3	1300	10.0	2.00	0.33	0.21	10.88	0.0302	0.01	13.96
4	200	10.0	2.00	0.05	0.34	10.67	0.0047	0.02	13.42
5	700	10.0	2.00	0.18	0.22	10.33	0.0171	0.02	13.03
6	600	10.0	2.00	0.15	0.84	10.11	0.0150	0.08	12.64
7	600	10.0	2.00	0.15	0.55	9.27	0.0164	0.06	11.65
8	1400	10.0	2.00	0.35	0.24	8.72	0.0406	0.04	10.94
9	2900	10.0	2.00	0.73	1.06	8.48	0.0864	0.25	10.35
10	4500	10.0	2.00	1.14	7.42	7.42	0.1532	2.88	8.56
11				0.00		0.00	0.0000	0.00	-0.00
12				0.00		0.00	0.0000	0.00	-0.00
13				0.00		0.00	0.0000	0.00	-0.00
14				0.00		0.00	0.0000	0.00	-0.00
15				0.00		0.00	0.0000	0.00	-0.00
16				0.00		0.00	0.0000	0.00	-0.00
17				0.00		0.00	0.0000	0.00	-0.00
18				0.00		0.00	0.0000	0.00	-0.00
19				0.00		0.00	0.0000	0.00	-0.00
20				0.00		0.00	0.0000	0.00	-0.00
TOTALS	13300			3.36	11.93			3.36	

REACH = SECTION OF CHANNEL
 LENGTH = LENGTH OF REACH, THE CHANNEL CAN BE DIVIDED INTO EQUAL LENGTH REACHES
 OR ACTUAL LENGTHS BETWEEN DELIVERY POINTS
 AVE WIDTH = AVERAGE TOP WIDTH OF REACH
 SEEPAGE = SOIL SEEPAGE RATE OF REACH
 WORSTELL LOSS = CONVEYANCE LOSS IN REACH BASED ON WORSTELL METHOD
 DELIVERY = TOTAL DELIVERIES IN REACH
 DELIVERY LEFT = SUM(DELIVERIES OF CURRENT AND REMAINING REACHES)
 LOSS FACTOR = WORSTELL LOSS/DELIVERY LEFT
 DELIVERY LOSS = SUM(LOSS FACTORS OF CURRENT AND PREVIOUS REACHES) X DELIVERY,
 REPRESENTS THE LOSSES ASSIGNED TO THE DELIVERIES IN THE REACH
 FLOW = TOTAL FLOW AT BEGINNING OF EACH REACH

SANDS Ditch

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36-
 00099

36-7233

Hagerman, Idaho
May 18, 1972

State of Idaho
Department of Water Administration
Statehouse - Annex 2
Boise, Idaho

RECEIVED

MAY 18 1972

Department of Water Administration

In reply to your letter requesting more information I am returning a letter from reliable source showing we are financially able to go ahead with our plans.

In answer to second question I am sending a detailed map showing pond from Application permit - 36-7192 & the proposed one for Application permit - 36-7233.

For no. 3 question we intend to raise 40,000 lbs. more fish than than we are at present time.

36-7233

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Name of Applicant - Vay M. & Jean Cook
Rt #1, Hagerman, Idaho

Source of water supply - Billingsley Creek,
tributary of Snake River.

Point of Diversion - SW $\frac{1}{4}$ of NE $\frac{1}{4}$ Sec. 11 T. 7S
Range 13 B.M. Gooding County

Amt. ^{U.F.S.} 9.2 for Fish Prop. - Jan 1 to Dec 31
Total quantity: 9.2 cubic feet per second

Description of ditches - headgates etc. Headgate
in Billingsley Cr. into Sands Ditch to place of
use.

Height of storage dam - 12 ft. to 8 ft.

4 acre pond - 8 ft deep - 32 acre ft. capacity

Place of use NE $\frac{1}{4}$ of SE $\frac{1}{4}$ Sec 15 T. 7S. R. 13 E. B.M.

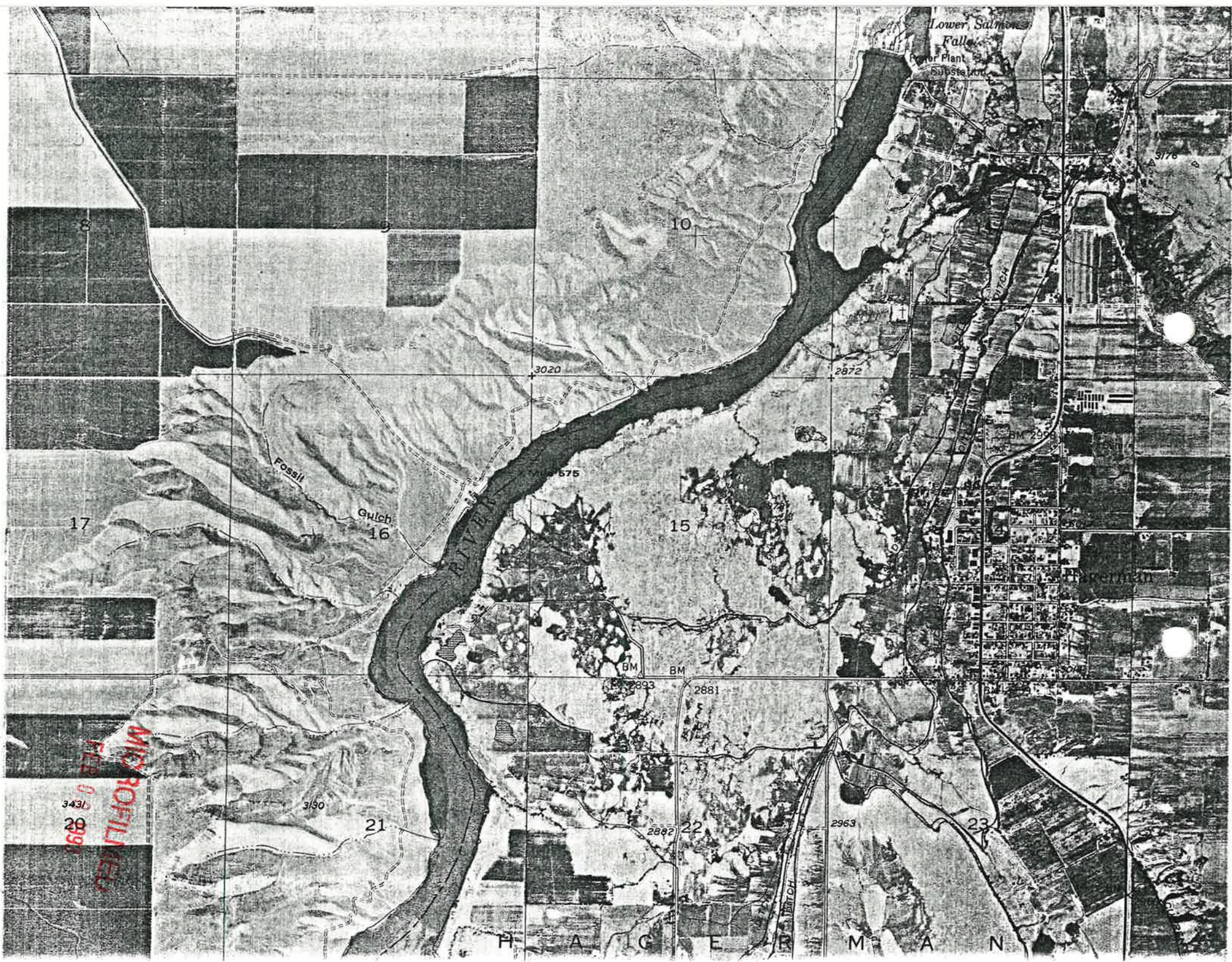
Estimated cost: \$1,000

Estimated schedule of construction - Begin in June 1972

Finish by Nov 1972 - Full operation early in 1973

Purpose - Fish propagation

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Lower Salmon Falls
Water Plant
Substation

3176

10

3020

2872

Fossil

575

Guich

16

15

17

BM

BM

2893

2881

2882

22

2963

23

3130

21

3430

28

2898

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H A I C E M A N

36-7233

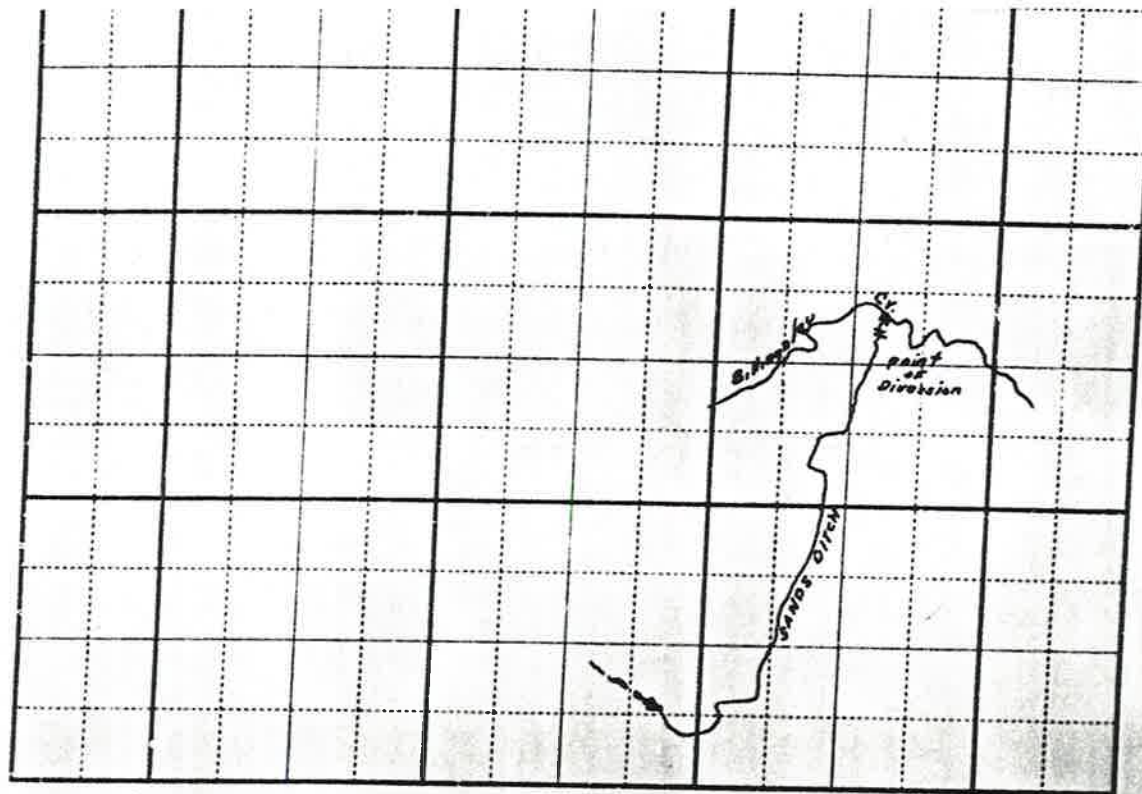
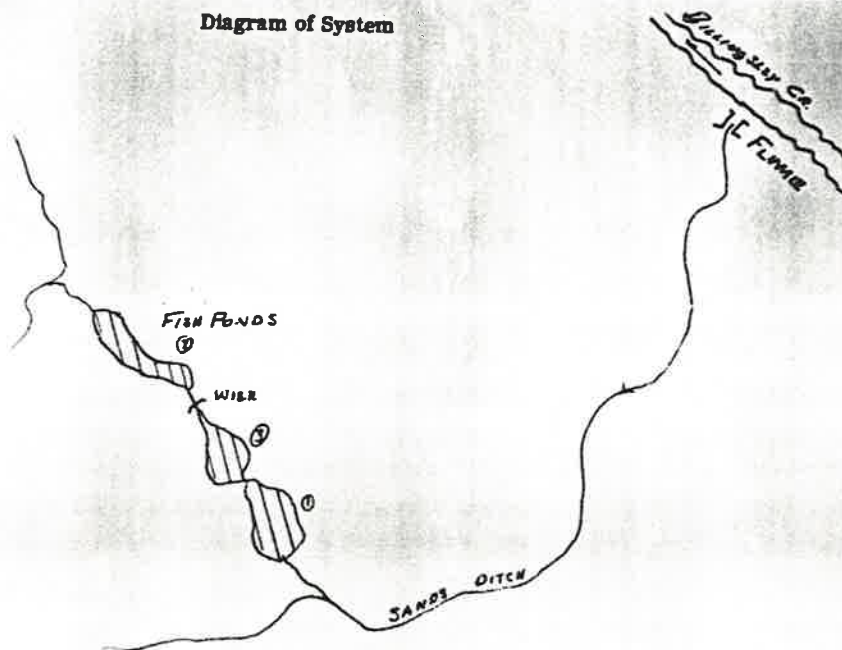


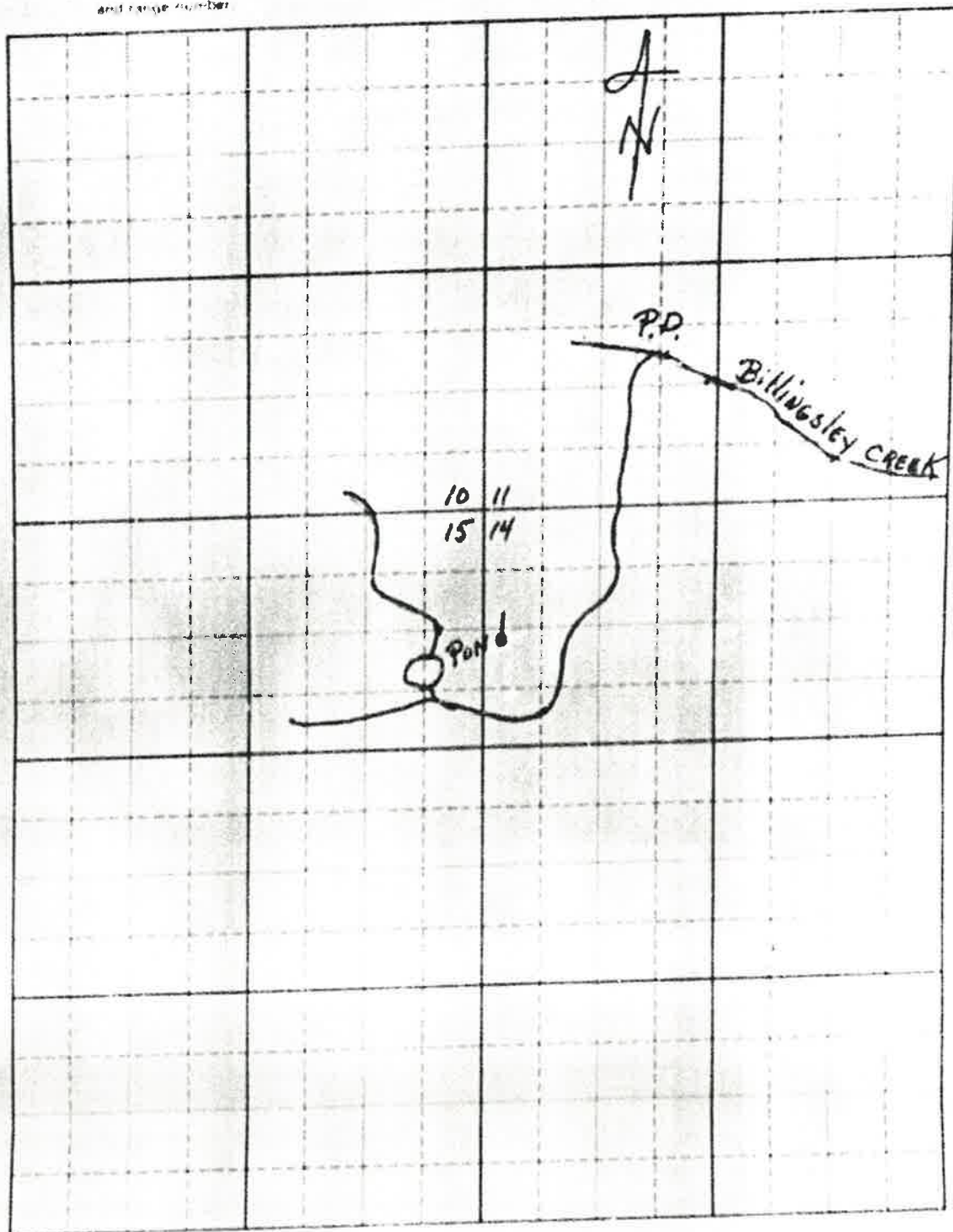
Diagram of System



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36-7233
Application Map

11. Map of proposed project show clearly the proposed point of entry, exit, and range number.



Scale: 2 inches equal 1 mile

approximately

don't

needed

100.

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CONVERSATION MEMORANDUM

NAME OF PARTY Bob PORTER
EMPLOYEE: STEVE CLELLAND See

DATE 1-3-91 5:11 pm
FILE A36-07172
A36-07233

RE: change in Nature of use.

I called Dr. Porter and left a message and he returned my call. He bought the farm and existing water system in 1983. all uses were in place at that time and probably before that.

I conferred with Allen Merritt and he explained the Fish use history of the area. Briefly, there was a boom time in the fish industry beginning in the early Seventies. Within a short time (5yrs) the boom time was over and many of the farm ponds such as these had difficulty in obtaining commercial fish contracts. as the fish uses declined most persons continued to run the water through the ponds.

Dr. Porter was also concerned about the fish Manure Sediment flowing down the Billingsley Creek and Sando Ditch. I refer his Water Quality issues to Health & Welfare.

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R36 07233

INITIALS

DATESTAGE
OR
STATU

**PRESUMPTION
CODE**

FOI

Sands Ditch

DO 4

0.25 36-00099 during irrigation season

DO 9

0.25 ~~350~~ during non-irrigation season

MOA

Ad Water District 36A

MICROFILMED
FEB 03 1993